

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 2.21.3702, 2.21.3703, 2.21.3707, 2.21.3708, 2.21.3709, 2.21.3719, 2.21.3720, 2.21.3721, 2.21.3723, 2.21.3724, 2.21.3726, 2.21.3728, 2.21.3735, the amendment and transfer of ARM 2.21.3705, and the repeal of ARM 2.21.3704 and 2.21.3715 pertaining to recruitment and selection	)	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, AND REPEAL
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TO: All Concerned Persons

1. On June 10, 2010, the Department of Administration published MAR Notice No. 2-21-438 regarding a public hearing to consider the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 1368 of the 2010 Montana Administrative Register, Issue Number 11. Prior to publication of the notice, the department failed to provide the sponsor notification required by 2-4-302, MCA, for New Rule I.

The department has since attempted notify the primary legislative sponsor of the proposed rule. A letter was mailed to the sponsor at the address on file with the Secretary of State regarding New Rule I, implementing the Military Selective Service Act, fulfilling the sponsor notification requirement. The sponsor did not respond. The bill sponsor requirements do not apply to the amendments, amendments and transfers, or repeal.

The text of all proposed rule actions remains as originally published.

2. On August 30, 2010, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules.

3. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on August 16, 2010, to advise us of the nature of the accommodation that you need. Please contact Linda Davis, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; Montana Relay Service 711; or e-mail ldavis@mt.gov.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Linda Davis, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; or e-mail ldavis@mt.gov, and must be received no later than 5:00 p.m., August 30, 2010.

5. Linda Davis, Department of Administration, has been designated to preside over and conduct this hearing.

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

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

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

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

Certified to the Secretary of State July 19, 2010.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.7.106A, 10.10.301,	)	PROPOSED AMENDMENT
10.10.301B, 10.10.301D, 10.10.320,	)	
10.10.611, 10.10.613, 10.15.101,	)	
10.20.102, 10.20.106, 10.21.101C,	)	
and 10.30.405 pertaining to school	)	
finance	)	

TO: All Concerned Persons

1. On August 24, 2010, at 10:30 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's Conference Room, at 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Office of Public Instruction (OPI) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the OPI no later than 5:00 p.m. on August 13, 2010 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (8) remain the same.

(9) In accordance with 20-5-324, MCA and ARM 10.10.301B, the school district trustees ~~or county superintendent~~ may pay costs of transportation listed on an attendance agreement along with tuition due on that contract in the year of the student's attendance or, if the obligation occurs after the district's budget is adopted, in the ensuing year. Parents or guardians may be charged in the year of attendance.

AUTH: 20-10-112, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-10-141, 20-10-142, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.106A to remove the county superintendent as a party responsible for paying costs of transportation listed on an attendance agreement. Pursuant to 20-5-324(2), MCA, the state is now responsible for paying these costs and the process is in ARM 10.10.301B(8).

10.10.301 CALCULATING TUITION RATES (1) through (5)(c) remain the same.

(d) Tuition amounts 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~~ the number of pupil instruction days scheduled by the school district in the year of attendance.

(e) remains the same.

AUTH: 20-5-312, 20-9-102, 20-9-201, MCA

IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301 to clarify the portion of the year a student is enrolled is based on the number of pupil instruction days scheduled by the district in the year of attendance. If a school district meets the minimum aggregate hour requirements in 20-1-301, MCA, the number of pupil instruction days could be less than 180 days.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (10) remain the same.

(11) The state's tuition and related transportation obligation shall be paid to the eligible receiving district by the Superintendent of Public Instruction in the year following the year of attendance.

(12) remains the same.

AUTH: 20-5-323, 20-9-102, MCA

IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301B to clarify when the state pays tuition and related transportation reimbursements to eligible school districts as provided in 20-5-324, MCA.

10.10.301D TUITION REPORTS (1) remains the same.

~~(a) students who attended a school of the district under a mandatory agreement pursuant to 20-5-321, MCA;~~

~~(b) resident students who attended a public school out-of-state for which the district is responsible for payment of the tuition charges; and~~

~~(c) remains the same but is renumbered (b).~~

(2) For each student attendance agreement approved under ARM 10.10.301(b)(8), the trustees of a district shall electronically submit to the Superintendent of Public Instruction the number of days the student was enrolled in the district for the year of attendance.

~~(2)~~ (3) To be eligible to receive state payments for tuition and tuition reimbursements under 20-5-324, MCA, a district must submit the tuition report in (1) and the electronic data in (2) to the Superintendent of Public Instruction by June 30 of the year following the student's year of attendance.



AUTH: 20-5-323, 20-9-102, MCA

IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301D to reflect changes in processes resulting from the OPI's implementation of an electronic reporting system for state paid tuition. This amendment clarifies the information to be submitted on the paper report and the information that must be submitted electronically.

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(f) remain the same.

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in (4); ~~and~~

(h) transfers of unused tuition receipts from the miscellaneous programs fund to the general fund as provided in ARM 10.10.310-; and

(i) transfers of excess funds in the lease or rental agreement fund to the general fund as required in 20-9-509, MCA.

(3) through (11) remain the same.

AUTH: 20-9-102, 20-10-112, MCA

IMP: 20-9-208, 20-9-439, 20-9-443, 20-9-509, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.320 to clarify that transfers required in 20-9-509, MCA are not subject to the public hearing process. This change mirrors current policy for other year-end transfers to the general fund as seen in 20-9-512, MCA (compensated absences fund) and 20-9-515, MCA (litigation reserve fund).

10.10.611 ESTABLISHMENT OF INVESTMENT ACCOUNTS (1) In accordance with 20-9-235, MCA, a school district may set up school district investment accounts for any fund or funds of the district, except the debt service fund. A full service education cooperative established under 20-7-451, MCA, and which receives state special education allowable cost payments and quality educator payments directly from the Superintendent of Public Instruction under 20-7-457 and 20-9-327, MCA, may set up investment accounts for any fund or funds of the cooperative in accordance with 20-9-235, MCA.

(2) through (4) remain the same.

AUTH: 20-9-102, 20-9-235, MCA

IMP: 20-9-235, 20-9-327, 20-9-440, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.611 to clarify that state payments made to a school district's debt service fund may not be deposited to a school district investment account as provided in 20-9-235(5), MCA and, pursuant to 20-9-440, MCA, the county treasurer must pay a school district's debt service obligations from

a separate debt service fund maintained at the county level. The rule is also being amended to clarify that quality educator payments to special education cooperatives under 20-9-327, MCA may be paid to an investment account established by the cooperative.

10.10.613 AGREEMENT WITH THE COUNTY TREASURER (1) through (4) remain the same.

(5) The written agreement must, at a minimum, meet the statutory requirements of 20-9-235, MCA. The district or full service education cooperative and the county treasurer may include additional agreed-upon provisions. An agreement that contains an automatic renewal provision must be reviewed and reauthorized by the parties at least every five years.

AUTH: 20-9-102, 20-9-235, MCA

IMP: 20-9-235, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.613 to clarify the term of the written agreement between a school district or special education cooperative and the county treasurer under 20-9-235, MCA. Agreements that contain an automatic renewal provision should be reviewed and reauthorized by the school district or cooperative and the county treasurer on a periodic basis.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) "Absent" means the student is not present during organized public school instruction for which he is enrolled. An enrolled student who is receiving services at an offsite instructional setting on the official enrollment count date is not absent for purposes of the official counts submitted to the ~~state~~ Superintendent of Public Instruction unless the student does not attend his next scheduled organized public school instruction session, if any.

(2) through (11) remain the same.

(12) "Certified countywide elementary ANB" or "certified countywide high school ANB" means the number certified by OPI using the previous fiscal year countywide enrollment count. Joint districts prorate ANB to the located and nonlocated counties based on a percentage of spring enrollment from each county. Certified countywide ANB is used to calculate mill values per ANB.

(13) through (26)(a) remain the same.

(b) a high school student who is a resident of the district and is receiving educational or vocational services in a Montana job corps program or the Montana Youth Challenge program under an interlocal agreement with the district as provided in 20-9-707, MCA;

(c) through (58) remain the same.

(59) "Superintendent" means the ~~state~~ Superintendent of Public Instruction.

(60) through (63) remain the same.

AUTH: 20-9-102, MCA

IMP: Title 20, ch. 9, MCA

REASON: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.15.101(12) to clarify how joint districts prorate ANB to the located and nonlocated counties. This amendment provides clarity and consistency for the calculation of county mill values per ANB as provided in ARM 10.21.102B. This rule is also being amended to implement the addition of a student enrolled in an eligible Montana Youth Challenge program to the definition of "enrolled student" for purposes of ANB funding under 20-9-311, MCA (SB 216, 2009 Legislative Session).

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) remains the same.

(2) The ~~state~~ Superintendent of Public Instruction shall determine the appropriate budget units for the ANB calculation and the BASE funding program for the district. The enrollment generated by a budget unit that is subsequently closed shall be added to the enrollment of another budget unit of the district for the first year after the closing of a budget unit if students are enrolled in the other budget unit.

(3) through (7) remain the same.

(a) a student who has reached the age of five on or before September 10 and is enrolled in a kindergarten program but is receiving services in a preschool environment pursuant to an individualized education program (IEP), is included in eligibility for purposes of ANB.

(a) and (b) remain the same but are renumbered (b) and (c).

(i) through (16) remain the same.

AUTH: 20-9-102, 20-9-346, 20-9-369, MCA

IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.20.102 to clarify the circumstances under which a school district providing services to a preschool student pursuant to an IEP would be eligible for ANB funding under 20-9-311, MCA. A student in this situation should be enrolled in kindergarten at age five to ensure the school district is involved in the student's transition into its elementary system. School districts are entitled to state ANB funding for students enrolled in kindergarten through 12th grade.

10.20.106 STUDENTS PLACED IN EDUCATION PROGRAMS (1) The ~~State~~ Superintendent of Public Instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. The ~~State~~ Superintendent of Public Instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana resident student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB,

provided:

(a) through (5) remain the same.

(a) a student who is placed in a private, nonsectarian day treatment program. Districts may use the district tuition fund to pay for educational services and may claim an ANB reimbursement payment under provisions of 20-5-324, MCA, and ARM ~~10.10.106~~ 10.10.301D for a student placed under an IEP in a day treatment program at a private, nonsectarian school located in or outside the child's district of residence; and

(b) remains the same.

AUTH: 20-7-419, MCA

IMP: 20-5-321, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.20.106 to correct the reference to administrative rule.

10.21.101C NOTIFICATION OF MILL VALUES PER ANB AND GTB RATIOS (1) By March 1 the ~~State~~ Superintendent of Public Instruction will calculate preliminary state, county, and district mill values per ANB, facility guaranteed mill values per ANB, and preliminary state and district GTB ratios.

(2) By March 1 the ~~State~~ Superintendent of Public Instruction will send:

(a) through (4) remain the same.

(5) By February 1, the Superintendent of Public Instruction must be notified that a school district has elected to waive its right to receive its portion of protested taxes as provided in 15-1-409, MCA. The Department of Revenue (DOR) determines the total taxable value of the property in the school district that is not subject to a tax protest and notifies the Superintendent of Public Instruction by February 1 of the taxable value. The Superintendent of Public Instruction will calculate the school district's GTB ratio in ARM 10.21.101D using the new taxable value.

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

(a) If the alleged error involves ANB data, GTB mill values, or GTB ratios, the ~~state~~ Superintendent of Public Instruction must receive notification establishing the error. The ~~State~~ Superintendent of Public Instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant impact.

(b) If the alleged error involves taxable valuation, the district must request a correction from the DOR. The DOR will make any necessary correction and notify the ~~State~~ Superintendent of Public Instruction of the correction. The ~~State~~ Superintendent of Public Instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant statewide impact.

~~(6)~~ (7) By April 25 the State Superintendent of Public Instruction must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. The State Superintendent of Public Instruction will combine the districts' ANB, GTBA budget area, and taxable values to calculate the combined district's final debt service GTB mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

~~(7)~~ (8) If material differences in statewide ratios are documented or legislative changes occur regarding the calculation, the State Superintendent of Public Instruction will recalculate and notify all districts and counties by May 1 of the final state, county, and district mill values per ANB, final facility guaranteed mill values, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state GTB ratios.

AUTH: 20-9-369, MCA

IMP: 15-1-409, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.21.101C to implement the provisions of 15-1-409, MCA (HB 562, 2009 Legislative Session) by establishing a due date for information needed to calculate a school district's GTB ratio and to comply with reporting requirements as required by 20-9-369, MCA.

10.30.405 K-12 DISTRICT ISSUANCE OF BONDS (1) A K-12 district may become indebted by the issuance of bonds, including all outstanding bonds and registered warrants assumed at the time of formation of the K-12 district, up to ~~90%~~ 100% of the taxable value of the property subject to taxation, pursuant to 20-9-406, MCA. The bonded indebtedness may not exceed ~~45%~~ 50% of the taxable value for elementary program purposes and ~~45%~~ 50% for high school purposes. The exception to this limit is an elementary or high school that qualifies for guaranteed tax base aid under provisions of 20-9-367, MCA. For these K-12 districts, the maximum indebtedness is ~~45%~~ 50% of the sum of the statewide mill value per elementary ANB times 1000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1000 times the high school ANB of the district.

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

(iv) taxable value of \_\_\_\_\_  
district or ~~45%~~ 50% of the statewide  
mill value per ANB times 1000  
times the ANB of the district

(v) remains the same.

~~(c) The total amount of a building reserve proposition for a K-12 district, for the purposes authorized in 20-9-502, MCA, when added to the existing indebtedness of the district, may not exceed the limitations set forth in 20-9-506, MCA.~~

AUTH: 20-3-106, MCA

IMP: 20-9-406, MCA

REASON: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.30.405 to implement the provisions of 20-9-406, MCA (HB 513, 2009 Legislative Session).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail [bemarlow@mt.gov](mailto:bemarlow@mt.gov), and must be received no later than 5:00 p.m., August 26, 2010.

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

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail on October 13, 2009 and by first-class mail on July 2, 2010.

/s/ Ann Gilkey  
Ann Gilkey  
Rule Reviewer

/s/ Denise Juneau  
Denise Juneau  
Superintendent of Public Instruction

Certified to the Secretary of State July 19, 2010.

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

In the matter of the amendment of )  
ARM 12.6.2201, 12.6.2203, 12.6.2208, )  
12.6.2210, and 12.6.2215 and the )  
adoption of NEW RULE I regarding )  
exotic species )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On August 25, 2010 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment and adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than August 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail [jfitzpatrick@mt.gov](mailto:jfitzpatrick@mt.gov).

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

12.6.2201 EXOTIC WILDLIFE: DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Controlled species" means a live, exotic wildlife species, subspecies, or hybrid of that species, ~~that may not be imported, possessed, sold, purchased or exchanged in Montana unless a person obtains written authorization from the department.~~

(3) and (4) remain the same.

(5) "Permit" means written authorization issued by the department to possess, sell, purchase, breed, or exchange a controlled or prohibited species in the state of Montana.

(6) through (8) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-701, 87-5-703, 87-5-705, 87-5-707, 87-5-708, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2203 GENERAL REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other

holding device except when necessary to provide appropriate care. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, be sturdy enough to prevent escape, and provide protection to the public. Food, water, and shelter must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition.

(2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements will be consistent with those under 9 CFR, Ch. 1, Part 3 "Standards for Humane Handling, Care, Treatment and Transportation" and consistent with ARM 12.6.1302.

~~(3) All ponds containing controlled exotic fish must be registered with the department. Ponds used to hold controlled exotic fish (including koi and goldfish):~~

- ~~(a) must not be larger than 400 square feet;~~
  - ~~(b) must not be within the 100-year flood plain;~~
  - ~~(c) must be at least 200 yards from any open water;~~
  - ~~(d) must not receive diverted surface water; and~~
  - ~~(e) must not have an effluent or discharge to surface water.~~
- (4) remains the same but renumbered (3).

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2208 LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

(a) Barbary Falcon - *Falco peregrinoides*;

(a) through (q) remain the same but are renumbered (b) through (r).

~~(r) (s) exotic waterfowl in the family Anatidae that are not classified as prohibited.~~

~~(2) A person may possess the controlled fish species listed in (2)(a) and (b) without obtaining a controlled species permit. However, individuals possessing these species shall submit a completed reporting form to the department upon acquiring the fish and shall follow restrictions established in ARM 12.6.2203 regarding ponds where fish are held. The following fish are classified as controlled species:~~

(a) coho salmon - *Oncorhynchus kisutch*;

~~(a) (c) Kkoi - *Cyprinus carpio* (for use in outdoor ponds); and~~

~~(b) Ggoldfish - *Carassius auratus* (for use in outdoor ponds).~~

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2210 CONTROLLED SPECIES PERMITS (1) ~~The department may authorize a permit to possess a controlled species in Montana. The department may also authorize a permit to sell, purchase, breed, or exchange a controlled species in Montana. A permit is required for all controlled species except those identified in ARM 12.6.2208(2)(b) and (c).~~

(a) and (b) remain the same.

(2) through (7) remain the same.



AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) through (3) remain the same.

- (4) The following mammals are classified as prohibited species:
  - (a) Brush-tailed possum - *Trichosurus vulpecula*;
  - (b) Nutria - *Myocastor coypus*;
  - (c) ~~primates in the family Cebidae~~ family (new world primates);
  - (d) ~~primates in the family Cercopithecidae~~ family (old world monkeys);
  - (e) Hyaenidae family (hyenas);
  - ~~(e)~~ (f) ~~primates in the family Hylobatidae~~ family (gibbons);
  - (f) ~~(g)~~ ~~primates in the family Pongidae~~ family (apes);
  - (g) through (j) remain the same but are renumbered (h) through (k).
- (5) and (6) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

- 4. The rule as proposed to be adopted provides as follows:

NEW RULE I SPECIFIC REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE (1) These specific requirements apply in addition to the general requirements found in ARM 12.6.2203 and any other specific condition that may be found on the permit.

(2) Coho salmon, *Onocorhynchus kisutch*, may only be raised for commercial activities.

- (a) Coho salmon must be raised in a facility that:
  - (i) holds a corporate surety bond to the state of Montana for \$500, conditioned to the effect that the permit holder will not violate the conditions of the permit;
  - (ii) is indoors and locked with access restricted solely to individuals involved in the operation and maintenance of the facility;
  - (iii) is not within the 100-year flood;
  - (iv) is at least 200 feet from any surface water;
  - (v) does not receive diverted surface water;
  - (vi) does not have an effluent or discharge of waste or water within 200 feet of surface water including perennial, intermittent, or ephemeral streams or rivers; and
  - (vii) complies with all other local, state, and federal regulations and permits.
- (b) No live fish may leave the facility.
- (c) Fish health screening must be:
  - (i) consistent with the requirements of ARM 12.7.503 and 12.7.504;
  - (ii) done annually; and
  - (iii) reported to the department within 30 days of receipt of results.

(d) Any significant mortality in the facility that occurs as a result of an infectious disease must be reported to the department within 30 days.

(e) Carcasses must either be disposed in a state regulated landfill or in another manner that would not impact state waters or be accessible to wildlife or other animals that might carry carcasses to water.

(3) Goldfish, *Carassius auratus*, and koi, *Cyprinus carpio*, may only be held in outdoor ponds registered with the department using a form provided by the department.

(a) Ponds used to hold goldfish and koi:

(i) must not be larger than 400 square feet;

(ii) must not be within the 100-year flood plain;

(iii) must be at least 200 yards from any open water;

(iv) must not receive diverted surface water; and

(v) must not have an effluent or discharge to surface water.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

5. The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of two species of exotic wildlife to the list of controlled species. These additions made revisions to ARM 12.6.2208 and 12.6.2203 necessary. After evaluating these species and finding that potential impacts of private ownership could be minimized by the owners following restrictions on a controlled species permit, these animals were recommended to be classified as controlled. Additional controls are placed on these species by other required state and federal permits.

Revisions to ARM 12.6.2215 add one family of exotic wildlife to the list of prohibited species not allowed for personal possession as pets in Montana. The classification of these exotic wildlife species as prohibited for personal possession as pets was recommended by the committee because the species would not be readily subject to control by humans while in captivity, would pose a substantial threat to native wildlife and plants or agricultural production if released from captivity,

or would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

The specific requirements for coho salmon are necessary to reduce their potential impacts and are required to obtain a controlled species permit to possess Coho salmon. The requirements for coho salmon are listed in NEW RULE I along with the requirements for goldfish and koi currently located in ARM 12.6.2203.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to FWP Exotics, Fisheries, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to [fwpexotics@mt.gov](mailto:fwpexotics@mt.gov). Any comments must be received no later than September 3, 2010.

7. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

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

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

/s/ Bob Ream

Bob Ream

Chairman

Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State July 19, 2010

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF EXTENSION OF
17.30.617 and 17.30.638 pertaining to )	COMMENT PERIOD ON
outstanding resource water designation )	PROPOSED AMENDMENT
for the Gallatin River )	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5. On September 11, 2008, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1953, 2008 Montana Administrative Register, issue number 17. On February 26, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 162, 2009 Montana Administrative Register, issue number 4. On August 13, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1324, 2009 Montana Administrative Register, issue number 15. On February 11, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 264, 2010 Montana Administrative Register, issue number 3.

2. During the initial comment period and extensions of the original comment period, the board was advised that members of the Big Sky community, which would be affected by this rulemaking, had formed a collaborative and had hired an engineering firm, which completed a feasibility study on extending the coverage of the Big Sky Water and Sewer district service area. The board received comments indicating that this would protect water quality in the Gallatin River as well as or better than adoption of the proposed rule. Members of the community were exploring funding options when the current economic downturn began. That downturn has resulted in an interruption of the efforts to find funding. However, the board believes that these efforts should resume as the economy recovers. The Department of Environmental Quality has recommended that the comment period be extended to allow resumption of efforts to obtain funding. The board has granted

this request.

3. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than November 12, 2010. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., October 22, 2010, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail [ber@mt.gov](mailto:ber@mt.gov).

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, July 19, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 18.12.401 and 18.12.501 pertaining to aeronautics division ) NOTICE OF PROPOSED REPEAL ) NO PUBLIC HEARING ) CONTEMPLATED

TO: All Concerned Persons

1. On September 29, 2010, the Department of Transportation proposes to repeal the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on August 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Debbie Alke, Department of Transportation, Aeronautics Division, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-2506; fax (406) 444-2519; TDD/Montana Relay Service (406) 444-7696; or e-mail dalke@mt.gov.

3. The department proposes to repeal the following rules:

18.12.401 UNLAWFUL USE OF PUBLIC AIRPORTS

AUTH: 67-2-102, MCA  
IMP: 67-2-102, MCA

18.12.501 PENALTIES

AUTH: 67-2-102, MCA  
IMP: 67-1-105, MCA

REASON: The proposed repeal of ARM 18.12.401 and 18.12.501 is necessary because the department's biennial rule review identified these rules as outdated and archaic. The original intent of the subjugation of most public airports to these rules as originally written is now covered by current federal regulations. As written, these rules are both obsolete and in conflict with the current airport industry standards. The Department of Transportation's Aeronautics Division has not used these rules for many years, and it is no longer necessary to continue to list these rules as official department rules of which the public must be aware when dealing with the aeronautics division.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Debbie Alke, Department of

Transportation, Aeronautics Division, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-2506; fax (406) 444-2519; or e-mail [dalke@mt.gov](mailto:dalke@mt.gov), and must be received no later than 5:00 p.m., August 26, 2010.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Debbie Alke at the above address no later than 5:00 p.m., August 26, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 400 persons based on 4000 licensed pilots in the state.

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

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

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

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Jim Lynch  
Jim Lynch,  
Director  
Department of Transportation

Certified to the Secretary of State July 19, 2010.

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

In the matter of the amendment of )  
ARM 24.16.7506, 24.16.7541, )  
24.16.7544, 24.16.7547, 24.25.101, )  
24.25.102, 24.25.103, 24.25.104, )  
24.25.105, 24.25.107, 24.25.201, )  
24.25.203, 24.25.204, 24.25.206, )  
24.25.301, 24.25.302, 24.25.303, )  
24.25.304, 24.25.305, 24.25.306, )  
24.25.307, 24.25.308, 24.25.401, )  
24.25.501, 24.25.502, 24.25.503, )  
24.25.504, 24.25.505, 24.25.601, )  
24.25.701, 24.25.702, 24.25.703, )  
24.25.704, 24.25.801, 24.25.802, )  
24.25.803, 24.25.804, 24.26.102, )  
24.26.201, 24.26.202, 24.26.203, )  
24.26.206, 24.26.212, 24.26.215, )  
24.26.501, 24.26.502, 24.26.503, )  
24.26.508, 24.26.518, 24.26.614, )  
24.26.620, 24.26.630, 24.26.644, )  
24.26.655, 24.26.666, 24.26.680, )  
24.26.680B, 24.26.681, 24.26.682, )  
24.26.684, 24.26.685, the adoption of )  
NEW RULES I through IX, and the )  
repeal of 24.25.106, 24.25.108, )  
24.25.109, 24.25.120, 24.25.202, )  
24.25.602, 24.25.603, 24.25.604, )  
24.25.605, 24.25.606, 24.25.607, )  
24.25.608, 24.25.609, 24.25.610, )  
24.25.611, 24.25.612, 24.26.213, )  
24.26.216, 24.26.217, 24.26.701, )  
24.26.702, 24.26.705, 24.26.706, )  
24.26.707, 24.26.710, 24.26.711, )  
24.26.712, all related to collective )  
bargaining proceedings heard by the )  
Board of Labor Appeals )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT,  
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 26, 2010, at 10:00 a.m., the Department of Labor and Industry (department) and the Board of Personnel Appeals (board) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.



2. The department and the board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 19, 2010, to advise us of the nature of the accommodation that you need. Please contact the Office of Legal Services, Department of Labor and Industry, Attn: Marieke Beck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2917; fax (406) 444-1394; TDD (406) 444-5549; or e-mail mabeck@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Department of Labor and Industry's Commissioner of Labor and the Board of Personnel Appeals have determined that is necessary to amend, adopt, and repeal a number of the rules related to the administrative procedures for collective bargaining.

The bulk of the proposed rule amendments reflect clarifications and additions that help better explain the existing functions. The new rules will assist the parties in understanding their rights and responsibilities in front of the department's Hearings Bureau. In addition, it is reasonably necessary to update certain rules in order to conform to legislative repeals, for example, the board is no longer the appellate body for wage and hour petitions. Proposed amendments to Title 24, chapter 25, were made to conform to the procedures for collective bargaining by nurses with the collective bargaining procedures for public employees.

The majority of the proposed amendments are technical and nonsubstantive in nature, such as renumbering, correcting syntax, streamlining, eliminating redundancies, and improving readability. In addition, references to the division have been changed throughout the rules to accurately reflect the responsibility of either the board or the department. The authority and implementation citations are being amended throughout for accuracy.

This general statement of reasonable necessity applies to all of the proposed amendments, new rules, and repeals. Where additional specific bases for proposed action exists, those bases are identified and set forth in the statement of reasonable necessity that immediately follows the rule.

4. The rules proposed to be amended by the department provide as follows, stricken material interlined, new material underlined:

24.16.7506 DEFINITIONS (1) "Adverse decision" means a decision by the department, ~~a hearings officer or the board~~ that is not favorable to the party who wishes to have the decision reviewed.

(2) ~~"Board" means the board of personnel appeals, and has the same meaning as provided by 39-3-201, MCA.~~

(3) through (14) remain the same but are renumbered (2) through (13).

AUTH: 39-3-202, 39-3-403, MCA  
IMP: 39-3-202, 39-3-216, 39-3-403, MCA

24.16.7541 DEFAULT ORDERS AND DISMISSALS

(1) through (3) remain the same.

(4) Appeals of default orders and dismissals must be made in writing within 15 days of the date the default order or dismissal was mailed or served upon the requesting party. ~~The board is the body that hears appeals of default orders.~~

AUTH: 39-3-202, 39-3-403, MCA  
IMP: 39-3-216, MCA

24.16.7544 REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED

(1) remains the same.

~~(2) All questions regarding alleged non-receipt of mail, or whether a request for a redetermination, request for a formal hearing, or an appeal was timely made must be resolved by the board.~~

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

AUTH: 39-3-202, 39-3-403, MCA  
IMP: 39-3-216, MCA

24.16.7547 APPEAL OF FORMAL HEARING (1) ~~Appeal of a formal hearing order is made to the board.~~ A party who has received an adverse decision may request an appeal a rehearing or file a petition for judicial review of the department's decision pursuant to Title 2, chapter 4, part 7, within 30 days of the date of the mailing of the hearing officer's decision.

~~(2) The time period in which to make an appeal is within 15 days of the date the decision of the hearing officer is mailed. The appeal must identify where the appealing party alleges the hearing officer was in error. The appeal must be filed with the Board of Personnel Appeals, P.O. Box 1728, Helena, MT 59620.~~

AUTH: 39-3-202, 39-3-403, MCA  
IMP: ~~39-3-217~~ 39-3-216, MCA

5. The rules proposed to be amended by the board provide as follows, stricken material interlined, new material underlined:

24.25.101 BOARD OF PERSONNEL ~~DIVISION~~ APPEALS ADDRESS

(1) All requests, petitions, and other correspondence to the ~~division~~ board should be addressed to the ~~Personnel Appeals Division, Capitol Station, Board of Personnel Appeals, P.O. Box 201503, Helena, MT 59604~~ 59620-1503. The board's physical location is 1805 Prospect Avenue, Helena, MT 59601.

AUTH: 2-4-201, 39-32-103, MCA  
IMP: 2-4-201, 39-32-112, MCA

24.25.102 SERVICE OF PROCESS, FILING, COMPUTATION OF TIME

(1) All service, filing, and computation of time in proceedings before ~~this division~~ the board shall be bound by the ~~Montana Rules of Civil Procedure~~ in accordance with the board's administrative rules found at ARM Title 24, chapter 26.

AUTH: 2-4-201, 39-32-103, MCA

IMP: 2-4-201, 39-32-112, MCA

24.25.103 INTERVENTION

(1) Any employee, group of employees, employee representative, or employer may be permitted to intervene by serving a motion to intervene upon the parties and the ~~division~~ board. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The ~~division~~ board shall determine the validity of the basis for intervention.

AUTH: 2-4-201, 39-32-103, MCA

IMP: 2-4-201, 39-32-112, MCA

24.25.104 AMENDING PETITIONS

(1) Any petition may be amended, in whole or in part, by the petitioner or the ~~division~~ board or withdrawn by the petitioner at any time prior to the casting of the first ballot in an election, or prior to the closing of a case, upon such conditions as the ~~division~~ board considers proper and just.

AUTH: ~~2-4-24~~ 2-4-201, 39-32-103, MCA

IMP: 2-4-201, 39-32-112, MCA

24.25.105 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING

(1) When a notice of a hearing has been given, but a party fails to appear at the time specified for that hearing, the ~~Personnel Appeals Division~~ board shall enter an order at that time, stating the evidence before it supporting the ~~division's~~ board's action. If the defaulting party is able to show good cause for ~~his~~ the absence, the order will be vacated and a new hearing date set.

AUTH: 2-4-201, 39-32-103, MCA

IMP: 2-4-201, 39-32-112, MCA

24.25.107 HEARINGS

(1) The ~~division~~ board shall conduct its hearings in accordance with the appropriate provisions of the Administrative Procedures Act and to the extent applicable, in conformance with the board's administrative rules, found at ARM Title 24, chapter 26.

AUTH: 2-4-201, 39-32-103, MCA

IMP: 2-4-201, 39-32-112, MCA

24.25.201 DEFINITIONS

(1) The ~~Department of Labor and Industry~~ board hereby adopts the definitions set forth in 39-32-102, MCA.

~~(2) The word "division" means the personnel appeals division and in the proper context may also mean an agent appointed by the division to perform certain division functions.~~

(2) "Board" means the Board of Personnel Appeals and in the proper context may also mean an agent appointed by the board to perform certain board functions.

AUTH: 39-32-103, MCA  
IMP: 2-4-201, 39-32-103, MCA

24.25.203 FILING OF A LABOR ORGANIZATION'S BYLAWS (1) Any employee organization seeking certification from the board as the exclusive representative of a group of employees must first file with the ~~division~~ board a copy of the labor organization's written bylaws. ~~The bylaws must be filed only once with the division.~~ If any revisions or changes are made, the bylaws must be refilled.

(2) remains the same.

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108~~ 39-32-103, MCA

24.25.204 PROOF OF INTEREST CONFIDENTIAL (1) The proof of interest submitted with any petition shall not be furnished to any of the parties. The ~~division~~ board shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108~~ 39-32-103, MCA

24.25.206 NOTICE OF STRIKE (1) Any notice of strike given by the employees of a health care facility or their duly elected representative as is required by 39-32-110, MCA, must be simultaneously filed with ~~this division~~ the board.

AUTH: 39-32-103, MCA  
IMP: 39-32-110, MCA

24.25.301 COMPOSITION OF UNIT (1) A unit may consist of all of the employees of the employer or any department, division, bureau, section, or combination thereof if found to be appropriate by ~~this division~~ the board.

(2) The composition of an appropriate unit may also be determined by mutual consent between such facility and the employees.

AUTH: 39-32-103, MCA  
IMP: 39-32-106, MCA

24.25.302 APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the ~~division~~ board shall consider such factors as:

- (a) similarity of duties;
- (b) licensure;

- (c) conditions of employment;
- (d) through (l) remain the same.

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.303 PROFESSIONAL EMPLOYEES (1) When a petition for a unit determination proposes a unit which contains both professional and nonprofessional employees, and the unit is found to be appropriate by ~~this division~~ the board, an election will be conducted among the professional employees to determine whether or not they wish to be included in the proposed unit.

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

AUTH: 39-32-103, MCA

IMP: ~~39-32-106(3)~~ 39-32-106, MCA

24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

(1) A petition for new unit determination and election shall be filed with the ~~division~~ board by an employee or a representative of a group of employees in accordance with ARM 24.26.612.

~~(2) The original petition shall be signed by the petitioner.~~

~~(3) The original petition and five copies of the petition shall be filed with the division.~~

~~(4) The petition shall contain:~~

~~(a) a description of the unit to be determined specifying inclusions and exclusions;~~

~~(b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;~~

~~(c) the names of all labor organizations known to the petitioner who claims to represent employees in the proposed unit;~~

~~(d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;~~

~~(e) the approximate number of employees in the proposed unit; and~~

~~(f) any other relevant facts.~~

~~(5) The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition that the desire for organization represents 30 percent of the employees in the proposed unit.~~

~~(6) (2) The division board shall serve a copy of the petition upon the other party to the petition.~~

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.305 EMPLOYER COUNTER PETITION (1) ~~The A party served by the division shall have five ten working days from receipt of the petition after the date the~~

board mails the petition for new unit determination in which to file a counter petition with the division board in accordance with ARM 24.26.614.

~~(2) The party served shall file a counter petition when the party served disagrees with the appropriateness of the proposed unit as described in the petition.~~

~~(3) The petition shall contain:~~

~~(a) discussion of the nature of the disagreement with the petitioner(s) proposed appropriate unit;~~

~~(b) description of the served party's proposed appropriate unit;~~

~~(c) the number of employees in the served party's proposed unit;~~

~~(d) the expiration dates and brief description of any contracts covering any employees in the served party's proposed unit; and~~

~~(e) any other relevant facts.~~

~~(4) (2) The division board shall serve a copy of the counter petition upon the petitioner.~~

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS (1) The division board shall require the employer to post in a conspicuous manner a notice of unit determination proceedings. Such notice shall be provided by the division board and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the division board that it has received, posted, and shall continue posting of the notice for the required 20 days.

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.307 PETITION TO INTERVENE (1) Within 20 days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene. The petition to intervene will be processed in accordance with ARM 24.26.618.

~~(2) The petition shall contain the name and address of petitioner.~~

~~(3) The petition shall be accompanied by proof of interest consisting of authorization cards, or copies thereof, which have been signed and dated within six months prior to the filing of the petition representing ten percent of the employees in the unit.~~

~~(4) The petition to intervene shall conform in all other respects to the requirements for a petition for new unit determination and election.~~

~~(5) (2) The division board shall serve a copy of the petition to intervene upon all other parties.~~

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) The division board shall direct an

investigation of all questions and facts concerning the proposed unit in accordance with ARM 24.26.620, and shall have the following options:

- ~~(a) to direct a unit determination hearing within 20 days after time for intervening has passed; or~~
- ~~(b) to dispense with a unit determination hearing at its sole discretion, under the following conditions:
  - ~~(i) there has been no counter petition filed;~~
  - ~~(ii) no intervenors contest the petitioner's proposed unit structure.~~~~
- ~~(2) After a hearing, the division shall issue its determination of the appropriate unit. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefore. If the unit is found to be appropriate, the division shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party.~~

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

#### 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT

~~(1) A Petition for Clarification of Bargaining Unit may be filed with the division board in accordance with ARM 24.26.630 only by a bargaining representative of the unit in question or by an employer and only if:~~

- ~~(a) there is no question concerning representation;~~
- ~~(b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement;~~
- ~~(c) a petition for clarification has not been filed with the division concerning substantially the same unit within the past 12 months immediately preceding the filing of the petition; and~~
- ~~(d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the petition.~~

~~(2) A copy of any such petition shall be served by the division board upon the bargaining representative if filed by the employer and upon the employer if filed by a bargaining representative.~~

~~(3) A petition for clarification of an existing bargaining unit shall contain the following:~~

- ~~(a) the name and address of the bargaining representative;~~
- ~~(b) the name and address of the public employer involved;~~
- ~~(c) the identification and description of the existing bargaining unit;~~
- ~~(d) a description of the proposed clarification of the unit;~~
- ~~(e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;~~
- ~~(f) a statement setting forth the reasons why petitioner desires a clarification of the unit;~~
- ~~(g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;~~
- ~~(h) a brief and concise statement of any other relevant facts; and~~
- ~~(i) the name, affiliation, if any, and the address of petitioner.~~

~~(4) (3) The A party on whom the petition was served shall have 20 days after the board mails the petition to file a response with ~~this division~~ the board.~~

~~(5) Upon a determination that a question of fact exists, this division may set the matter for hearing. Upon completion of the hearing this division may:~~

- ~~(a) grant the petitioned for clarification in whole or in part; or~~
- ~~(b) deny the petitioned for clarification in whole or in part.~~

AUTH: 39-32-103, MCA

IMP: 39-32-106, MCA

24.25.501 PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organizations, provided that 12 months have elapsed since the last election. The petition must be filed in accordance with ARM 24.26.643.

~~(2) The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the terminal date thereof. A contract whose duration is more than two years shall not be a bar to a decertification proceeding after the expiration of the second year.~~

~~(3) The original petition shall be signed by the petitioner(s) or their authorized representative.~~

~~(4) The original petition and five copies of the petition shall be filed with the division.~~

~~(5) The petition shall contain:~~

- ~~(a) the name and address of petitioner(s);~~
- ~~(b) a statement that the labor organization that has been certified or is currently being recognized by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit;~~
- ~~(c) the name of the labor organization, if any, which claims to be the majority representative;~~
- ~~(d) a description of the bargaining unit involved and the approximate number of employees; and~~
- ~~(e) any other relevant facts.~~

~~(6) The petition shall be accompanied by proof that 30 percent of the employees in the unit do not desire to be represented by the existing exclusive representative. This proof will consist of authorization cards, or copies thereof, which have been individually signed and dated within six months prior to the filing of the petition.~~

~~(7) (2) The ~~division~~ board shall serve a copy of the petition upon the labor organization(s) concerned, and upon the employer.~~

AUTH: 39-32-103, MCA

IMP: ~~39-32-108(3)~~ 39-32-113, MCA

24.25.502 ANSWER (1) Each party may file an answer to the petition for decertification within five ten working days after receipt thereof the date the board mailed a copy of the petition for decertification.



(2) remains the same.

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108(3)~~ 39-32-113, MCA

24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS (1) The ~~division~~ board shall require the employer to post in a conspicuous manner, a notice of decertification proceedings. Such notice shall be provided by the division and shall remain posted for a period of 20 days.

(2) The employer shall confirm in writing to the ~~division~~ board that it has received, posted, and shall continue posting of the notice for the required 20 days.

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108(3)~~ 39-32-113, MCA

24.25.504 PETITION TO INTERVENE (1) Any labor organization or group of employees may file a petition to intervene within 20 days of the first day of posting of the notice of decertification proceedings in accordance with ARM 24.26.646.

~~(2) The original petition shall be signed by the petitioner(s) or their authorized representative.~~

~~(3) The original petition and five copies of the petition shall be filed with the division.~~

~~(4) The petition shall contain the name and address of petitioner(s).~~

~~(5) The petition shall be accompanied by proof of interest representing ten percent of the employees in the unit. This proof will consist of authorization cards, or copies thereof, which have be individually signed and dated within six months prior to the filing of the petition.~~

~~(6) The petition to intervene shall conform in all other respects to the requirements for a petition for decertification.~~

~~(7) (2) The division board shall serve a copy of the petition to intervene upon all other parties.~~

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108(3)~~ 39-32-113, MCA

24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION (1) The ~~division~~ board shall direct an investigation of all questions and facts concerning the proposed decertification in accordance with ARM 24.26.647, and shall have the following options:

~~(a) to direct a hearing if deemed appropriate, after which the election and pre-election conference shall be scheduled; or~~

~~(b) to schedule the election and pre-election conference.~~

AUTH: 39-32-103, MCA  
IMP: ~~39-32-108(3)~~ 39-32-113, MCA

24.25.601 ELECTION DIRECTED (1) When a petition for an election has been filed, the board ~~The division~~ shall direct an election to be held in accordance with 39-31-207 through 39-31-210, MCA, and ARM 24.26.655 through 24.26.666 ~~conducted by an employee of the division where an appropriate unit has been determined and a question of representation exists or where a petition for an election has been filed. The election shall be conducted under the direction and supervision of the division with all determinations made by an employee.~~

AUTH: 39-32-103, MCA

IMP: ~~39-32-108(3)~~ 39-31-207, 39-31-208, 39-31-209, 39-31-210, 39-32-113, MCA

24.25.701 COMPLAINT (1) A complaint alleging that a person or organization has engaged in or is engaging in an improper employment unfair labor practice may be filed by an employee, or a group of employees, or a labor organization within six months of the asserted unfair labor practice.

(2) A complaint shall be in writing. The original shall be signed and verified by the complainant or his the authorized representative. The original and five three copies of the complaint shall be filed with the division board. The division board shall serve one copy of the complaint on each party named in the complaint.

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

(4) The board shall conduct an investigation in accordance with ARM 24.26.280B.

(4) (5) If the division board determines that the facts alleged in the complaint do not constitute an improper employment unfair labor practice under section 39-32-109, MCA, it shall dismiss the charge.

AUTH: 39-32-103, MCA

IMP: 39-32-109, 39-32-112, MCA

REASON: The existing rule for filing a complaint on an unfair labor practice in Title 24, chapter 25, does not contain a time limitation, nor does the controlling statute. However, there is a statute (39-32-112, MCA) that contains a provision that states that unfair labor practice complaints "are remediable by the board...in the same manner as provided for in Title 39, chapter 31, part 4." Section 39-31-404, MCA, and the corresponding rules contain language that an unfair labor practice charge must be filed within six months. Therefore, for consistency, the board will continue the six month limitation to Title 24, chapter 25.

24.25.702 ANSWER (1) The party named in the complaint shall file a formal, written verified answer within ten days after the board has mailed a copy of the notice finding probable merit ~~service of the complaint.~~

(2) One copy of the answer shall be served on the complainant, and the original, with proof of due service and five three copies, shall be filed with the division board.

(3) remains the same.

(4) If the party charged fails to file a timely answer, the division board may consider it an admission of material facts and waiver of a hearing.

AUTH: 39-32-103, MCA  
IMP: 39-32-109, 39-32-112, MCA

24.25.703 NOTICE OF HEARING (1) After the time for filing an answer has passed, the ~~division board~~ shall serve a notice of hearing upon the parties. The hearing date shall not be less than five nor more than 20 ~~working~~ days from the date of service. The notice shall include all those items listed in ~~section 2-4-601~~, MCA, and shall state who will hear the complaint.

AUTH: 39-32-103, MCA  
IMP: 39-32-109, 39-32-112, MCA

24.25.704 PROPOSED FINDINGS (1) The ~~hearing examiner board~~ may request proposed findings of fact and conclusions of law from the parties.

AUTH: 39-32-103, MCA  
IMP: 39-32-109, 39-32-112, MCA

24.25.801 PETITION (1) In the event of an impasse, a petition, in writing, requesting assistance of the ~~division board~~, may be filed with the ~~division board~~ by an employee or group of employees, a labor organization, or an employer. The original of the petition shall be signed by the petitioner or ~~his~~ the authorized representative, and the original and ~~five~~ three copies thereof shall be filed with the ~~division board~~. The petitioner shall serve a copy of the petition simultaneously upon any party in the petition. The petition shall contain:

- (a) through (g) remain the same.
- (2) A petition may be withdrawn with the consent of the ~~division board~~.

AUTH: 39-32-103, MCA  
IMP: ~~39-32-110~~ 2-4-201, MCA

24.25.802 MEDIATION (1) Upon petition, the ~~division board~~, any member or employee thereof designated by the ~~division board~~ or any other competent, impartial, disinterested person designated by the ~~division board~~ may act as the mediator in a dispute or, ~~if available, the division may request a mediator from the Federal Mediation and Conciliation Service or from the American Arbitration Association.~~

(2) Any information disclosed to the mediator in the performance of ~~his~~ these duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. Such matters shall not be disclosed to anyone without the prior consent of the ~~division board~~.

(3) The mediator shall not produce any confidential records or testimony with regard to any mediation conducted ~~by him~~ on behalf of ~~the~~ a party to any case pending in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the ~~division board~~.

(4) remains the same.

~~(5) The mediator shall, within 30 days of his designation, report in writing the progress of his mediation efforts, as well as the terms of the settlement of the dispute, if any, to the division.~~

AUTH: 39-32-103, MCA

IMP: ~~39-32-110~~ 2-4-201, MCA

24.25.803 FACT FINDER (1) Either party to a dispute may petition the division ~~board~~ to initiate fact-finding in accordance with ARM 24.26.697 or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the ~~division board~~ may initiate fact-finding.

~~(2) Within three days of receipt of a petition for fact finding, the division shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.~~

~~(3) Within five days of receipt of the list, the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.~~

~~(4) The parties shall immediately notify the division of the name of the fact finder. The board shall notify the fact finder and request him to immediately establish dates and places of hearings.~~

~~(5) Within 20 days from his notification by the division, the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the division.~~

~~(6) The fact finders may request the division to make the report public five days after the parties are served with the findings.~~

~~(7) Fifteen days after the parties are served the division shall provide that the report is open to public inspection.~~

~~(8) The fact finder shall submit his costs and fees to the division which shall send copies of an invoice to both parties on which they will be billed for one third of the total. The parties shall pay the division within five days and the division shall forward the total amount to the fact finder.~~

AUTH: 39-32-103, MCA

IMP: ~~39-32-110~~ 2-4-201, MCA

24.25.804 ARBITRATION (1) The parties may, at any period in the negotiations, agree to submit the issues to binding arbitration in accordance with ARM 24.26.698.

~~(2) Both parties shall jointly notify the division in writing of this decision and of the identity of the arbitrator.~~

~~(3) The parties may petition the division to assist in the selection of the arbitrator in accordance with rule 24.25.801.~~

~~(4) The arbitrator shall render a decision within 30 days of his appointment.~~

AUTH: 39-32-103, MCA

IMP: ~~39-32-110~~ 2-4-201, MCA

24.26.102 BOARD MEETINGS, QUORUM (1) The Board of Personnel Appeals shall meet upon the call of the ~~chairman~~ chair or at the written request of three members at a time and place designated by the ~~chairman~~ chair or members calling the meeting.

(2) A majority of the membership, provided that the chairperson is present, constitutes a quorum to do business. ~~In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision. A representative quorum of at least three members is required to adopt any resolution, motion, or other decision that is not purely procedural in nature. For the purpose of this rule, the term "representative quorum" means at least one of the appointed management board members, one of the appointed labor union or association members, and the chair or his or her substitute.~~

(3) The board shall select a member or an agent to act as administrator of the board.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-4-201, 2-15-124, 2-15-1705, MCA

24.26.201 ADOPTION OF ATTORNEY GENERAL MODEL RULES

(1) ~~Pursuant to the authority vested in the~~ To the extent that they do not conflict with statute or rule, the Board of Personnel Appeals of the Department of Labor and Industry, this board adopts the model rules proposed by the Attorney General as adopted by the Department of Labor and Industry.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.26.202 BOARD ~~BUSINESS~~ OF PERSONNEL APPEALS ADDRESS

(1) All requests, petitions, and other correspondence to the board should be addressed to the Board of Personnel Appeals, ~~P.O. Box 6518, Helena, MT 59604-6518~~ P.O. Box 201503, Helena, MT 59620-1503. ~~The board's physical location is 1805 Prospect Avenue, Helena, MT 59601.~~

(2) ~~Any complaint, answer, petition or other document required or allowed to be filed with the board or served on a party may be filed or served by means of a telephonic facsimile communication device (fax). The board fax number is (406) 444-7071.~~

(3) ~~Filings with the board by fax are subject to the following conditions:~~

(a) ~~a filing must conform with all applicable rules, except that only one copy of a document need be filed by fax even when multiple copies otherwise would be required;~~

(b) ~~when a document is received after 5:00 p.m. mountain time, the date of filing of that document, for purposes of board rules, will be the date of the next regular work day;~~

(c) ~~the original document and any copies must be received by the board within five days of the fax transmittal or the filing will not be recognized as timely; and~~

~~(d) the board's failure to receive a fax, for any reason, including but not limited to the unavailability or failure of fax equipment or transmission lines, does not excuse the late filing of documents.~~

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

24.26.203 SERVICE OF PROCESS AND FILING (1) ~~All service and computation of time in proceedings before the board shall be bound by the Montana Rules of Civil Procedure. Unless otherwise provided by statute, service shall be accomplished by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on a party to the action. Each party shall inform the board of any change of address within five days of the change.~~

~~(2) Any document required or allowed to be filed with the board may be filed or served by means of telephonic facsimile (fax). The board fax number is (406) 444-7071.~~

~~(3) Any document required or allowed to be filed with the board may be filed or served by means of electronic mail (e-mail). It is incumbent upon the party that is filing a document electronically to inquire and confirm the appropriate board staff person to whom the document should be electronically sent prior to filing the document. The document must be received in a recognizable format and the party e-mailing the document must confirm receipt.~~

~~(4) Filings with the board by fax or electronic mail are subject to the following conditions:~~

~~(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed even when multiple copies otherwise would be required;~~

~~(b) when a document is received after 5:00 p.m. mountain time, the date of filing of that document, for purposes of board rules, will be the date of the next regular work day;~~

~~(c) the original document and any copies must be received by the board within five days of the fax or electronic mail transmittal or the filing will not be recognized as timely; and~~

~~(d) the board's failure to receive a fax or electronic mail, for any reason, including but not limited to the unavailability or failure of equipment or transmission lines, does not excuse the late filing of documents.~~

AUTH: 2-4-201, 39-31-107, MCA  
IMP: 2-4-201, 39-31-107, MCA

24.26.206 COMPUTING COMPUTATION OF TIME FOR RESPONSES

(1) Unless otherwise specifically provided in these rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a legal holiday, Saturday, or Sunday, in which case the last day also is excluded. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the

computation. For the purposes of these rules, the term "days" means calendar days, unless otherwise specified.

~~(2) When a document is personally delivered, the time period specified for a response is counted starting the day after the delivery is made.~~

~~(3) When a document is mailed, the time period specified for a response is counted starting three days after the date of the postmark on the envelope.~~

~~(4)~~ (2) Mailed documents are presumed to be mailed on the day they are dated. That presumption may be rebutted by a showing of the postmark. The burden of proof for showing that a document was mailed on a date different than the document's date rests with the person who claims that it was mailed on the different date. A party which alleges that it did not receive notice by mail of a board proceeding has the burden of proof in showing that the party ought to be granted relief. The party must present clear and convincing evidence to rebut the statutory presumption contained in 26-1-206, MCA, that a letter duly directed and mailed was received in the regular course of the mail.

(3) All questions regarding alleged nonreceipt of mail, or whether an appeal was timely made must be resolved by the board.

(4) If a rule requires a response within a certain number of days after the board mails a document, the party responding is not afforded any additional time for mailing in responding to the board. The response must be received by the board within the time allotted by rule. As provided for in ARM 24.26.203, both facsimile and electronic mail filing is accepted.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.26.212 MOTIONS (1) All motions other than those made during a hearing shall be made in writing and submitted to the board or the board's agent. They shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file ~~with the board~~ the original with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed ~~with the board~~ within five days after service of the moving papers, unless ~~the board directs~~ directed otherwise. The board or the board's agent may decide to hear oral argument or testimony thereon.

(2) Motions for postponements of hearing ~~or conference scheduled by the division~~ will not be granted unless good and sufficient cause is shown and the following requirements are met:

(a) The request must be in writing directed to the ~~administrator~~ chair of the board if the matter is before the board or directed to the attention of the assigned hearing examiner officer if the matter is before the Hearings Bureau.

(b) through (3) remain the same.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

24.26.215 HEARINGS BEFORE THE HEARINGS BUREAU (1) The board shall may defer to a board agent from the department's Hearings Bureau or its designee to conduct its hearing hearings in accordance with the appropriate provisions of the Administrative Procedure Act.

~~(2) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding findings of fact, conclusions of law and recommended order, which shall be filed with the board, and if no written exceptions specifically stating to which part of the recommended order exception is being taken are filed with this board within 20 days after service of the recommended order upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.~~

~~(3) If the board refuses to adopt a board appointed examiner's proposal for decision (findings of fact, conclusions of law, and recommended order) as its final decision or order and, instead, remands the proposal or portion thereof to the examiner for further consideration pursuant to board direction, the examiner shall conduct whatever proceedings are necessary and conform the proposal for decision to board direction.~~

~~(a) The examiner shall serve the conformed proposal on all parties as well as upon the board's administrative assistant. The board shall then consider the conformed proposal at a regularly scheduled meeting prior to issuing a final decision.~~

~~(b) Parties may file exceptions to any new material contained within the conformed proposal for decision. Exceptions must be filed, in writing, with the administrative assistant to the Board of Personnel Appeals at P.O. Box 6518, Helena, MT 59604-6818. To be considered, exceptions must be postmarked by no later than 20 days from the service of the conformed proposal for decision. If no exceptions are filed, the board will rule on the record before it, including the conformed proposal for decision. If exceptions are filed, the parties shall be afforded an opportunity to appear before the board prior to issuance of a final board order.~~

~~(4) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order.~~

(2) All documents, pleadings, and papers to be filed with the Hearings Bureau shall be eight and one-half inches by eleven inches (8 1/2" x 11") in size, standard quality, opaque, unglazed paper, with a minimum 50 percent recycled content, of which at least ten percent shall be postconsumer waste, and be printed on both sides (double sided). Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. A hearing officer may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(3) The place of filing documents with the Hearings Bureau is the offices of the Hearings Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or during a hearing, by personal delivery to the presiding hearing officer.

(4) Filing with the Hearings Bureau is effective upon actual receipt at the offices of the department or by the hearing officer at the hearing and not upon mailing.



(5) Copies of all submissions filed must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes, and all submissions must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made. Service of copies of submissions upon parties shall be made in accordance with the Montana Rules of Civil Procedure and may be made by means of first class mail, postage prepaid, unless the hearing officer designates another manner of service.

(6) The hearing officer may accept telephonic or oral filings of motions or requests for procedural relief, subject to recording by means of minute entry, note, or the subsequent filing of a true and accurate recording of such matters, upon fair and timely notice to all parties of record.

(7) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies.

(8) The board agent shall issue a recommended order and serve a copy on each party.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-4-201, 39-31-105, MCA

24.26.501 PURPOSE (1) The purpose of these regulations is to provide all classified employees of the state of Montana an orderly and uniform method to file and process appeals arising from the operation of the state employees' broadband classification and pay plan Title 2, chapter 18, MCA.

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

24.26.502 DEFINITIONS ~~(4)~~ (6) "Employee" means any person employed by the state of Montana, except: ~~electd officials and their chief deputy and executive secretary; officers and employees of the legislative branch; judges and employees of the judicial branch; members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials, officers or members of the militia; agency heads appointed by the governor; academic and professional administrative personnel with individual contracts under the authority of the Board of Regents of Higher Education; personal staff of the executive officials enumerated in article VI, section one of the constitution of Montana~~ persons exempt from policy under 2-18-103 and 2-18-104, MCA.

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

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

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

(5) remains the same, but is renumbered as (3).

(6) ~~(10)~~ "State Human Resources Personnel Division" means the ~~Personnel~~ State Human Resources Division of the Department of Administration.

(7) remains the same, but is renumbered as (9).

~~(8)~~ (2) "Appeal" means any complaint filed with the Board of Personnel Appeals relating to the operation of the ~~state employees'~~ broadband classification and pay plan, Title 2, chapter 18, MCA.

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

~~(10)~~ (7) "Form" means the state employees classification ~~and wage~~ appeal form ~~BPA-C(1)~~.

(11) remains the same, but is renumbered as (8).

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

24.26.503 INFORMAL RESOLUTION OF APPEALS (1) The board encourages the ~~personnel~~ State Human Resources Division and state employees to attempt to resolve appeals through an informal procedure as prescribed by the ~~personnel~~ State Human Resources Division before initiating the formal appeals procedure. Every attempt should be made to resolve an appeal at the earliest possible stage of the appeals process, preferably between the employee and their immediate supervisor.

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

24.26.508 GRIEVANCE PROCEDURE (1) Any employee, group of employees not represented by a labor organization, or an appropriately designated representatives, may utilize this formal grievance procedure. Employees must obtain a state employee classification ~~and wage~~ appeal form and follow the accompanying instructions. Appeal forms may be obtained from the Board of Personnel Appeals, P.O. Box ~~6548~~ 201503, Helena, Montana, ~~59604-6548~~ 59620-1503, from the ~~personnel~~ human resource office of any department within the executive branch, or from the department's web site at: [erd.dli.mt.gov/laborstandard/wagehrbpa.asp](http://erd.dli.mt.gov/laborstandard/wagehrbpa.asp).

(a) and (b) remain the same.

(c) If a number of appeals affect multiple employees in the same manner, the appeals may be consolidated at any step of the grievance process by the employees, by an appropriately designated representative, by the department, by the ~~State Personnel~~ Human Resources Division, or by the Board of Personnel Appeals. If the appeals are consolidated, the timelines in this rule will run from the dates associated with the latest appeal included in the consolidation. If an employee who is not represented by a labor organization opposes consolidation, that employee's appeal will not be consolidated absent a board order. However, an employee represented by a labor organization may not contradict the employee's appropriately designated representative and either consolidate an appeal or opt out of a consolidated appeal unless by board order. Consolidation of appeals will be by written stipulation of the parties or by board order. A consolidation may be altered or amended at any time before the final order of the board. If an employee opposes altering or amending the consolidation, the employee may request a hearing to be held before the final order of the board is issued.

(d) Pursuant to ~~section~~ 2-18-203(2), MCA, the grade pay band assigned to a ~~class~~ an occupation and benchmarks ~~is are~~ not an appealable subjects. The appeal shall be described in terms of the following appealable issues:

(i) substantial changes have occurred in this position to warrant reclassification. Specifically, this position should be allocated to (list ~~class code~~ band level and class occupation title);

(ii) this position was incorrectly allocated to (list ~~class code~~ band level and class occupation title) and should be allocated to (list ~~class code~~ band level and class occupation title);

~~(iii) pursuant to point factoring methodology, inappropriate levels have been assigned to the following factors: (list all applicable factors);~~

~~(iv) (iii)~~ The pay plan the classification rules have been incorrectly applied to this position (specific rule(s) should be cited); and

~~(v) (iv) Other— "other", but the~~ issue must specifically relate to position classification.

(2) Step one:

(a) remains the same.

(b) The department head or designee is not limited to the issues raised by the employee in the appeal form, but may address any other classification issue listed in (1)(c) ~~above~~, deemed by the department head or designee to be important to the appeal.

(c) If the employee does not accept the findings of the department head or designee, the employee shall have 15 working days to forward the appeal to the State ~~personnel~~ Human Resources Division, step two. The employee must identify and explain, in writing, how he or she disagrees with the findings of the department head or designee.

(3) Step two:

(a) The State ~~personnel~~ Human Resources Division shall have 30 working days to review the matter, record its findings in the appropriate section of the form, and return it to the employee or the proper representative.

(b) The State ~~personnel~~ Human Resources Division's review and findings are not limited to the issues raised by the employee in the appeal form, but may address any other classification issues listed in (1)(c) ~~above~~, deemed by the State ~~personnel~~ Human Resources Division to be important to the appeal.

(c) The State ~~personnel~~ Human Resources Division must prepare clear written findings explaining its position regarding each relevant issue.

(d) If the employee accepts the State ~~personnel~~ Human Resources Division's findings and recommendations, the formal appeals procedure is concluded upon the implementation of the State ~~personnel~~ Human Resources Division's findings and recommendations.

(e) If the employee rejects the State ~~personnel~~ Human Resources Division's findings and recommendations or if the State ~~personnel~~ Human Resources Division fails to make its findings within 30 working days, the employee shall have 15 working days to forward the appeal to the Board of Personnel Appeals at step three.

(4) Step three:

(a) The employee must identify and explain, in writing, how the employee disagrees with the State ~~personnel~~ Human Resources Division's findings.

(b) remains the same.

(i) The board or its designee shall examine the issue(s) identified by the employee in the appeal form and the issues, findings, and explanations addressed by the department head or designee, or the State ~~personnel~~ Human Resources Division in steps one and two. If the issue(s), findings, and explanations are adequately addressed, the board or its designee will accept the appeal at step three and serve notice of acceptance on the State ~~personnel~~ Human Resources Division and the employee within ten working days. The board's notice to the State ~~personnel~~ Human Resources Division will include a copy of the employee's written explanation of why the employee disagrees with the State ~~personnel~~ Human Resources Division's step two response.

(ii) If the board or its designee finds that the issues, findings, or explanations raised by the employee, the department head or designee, or the State ~~personnel~~ Human Resources Division are not adequately addressed, the board or its designee shall return the appeal to the appropriate party. In such case, the party will expand its issues, findings, or explanations and refile them with the board within 15 working days.

(c) If, in the discretion of the board or its designee, a decision is made to conduct a preliminary investigation of the appeal, it shall have 20 working days to investigate and issue a preliminary decision. The board or its designee may carry out any investigation deemed necessary for resolution of the appeal or complaint. The employee or group of employees and the State ~~personnel~~ Human Resources Division shall have 15 working days to accept or reject the preliminary decision. If the employee or group of employees and the State ~~personnel~~ Human Resources Division accept the preliminary decision, it shall be final and binding.

(d) If the employee, group of employees, or the State ~~personnel~~ Human Resources Division rejects the preliminary decision; or the board or its designee, in its discretion, decides not to conduct a preliminary investigation, the board or its designee shall conduct a hearing in accordance with Title 2, chapter 4, MCA.

(e) through (h) remain the same.

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

24.26.518 FAILURE OF DEPARTMENT HEAD, DESIGNEE, OR STATE PERSONNEL HUMAN RESOURCES DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT (1) If the department head or designee, or the State ~~personnel~~ Human Resources Division does not respond to an employee's appeal within the prescribed time limits in the appeals procedure, the employee may advance the appeal to the next step in the appeal procedure by forwarding ~~his or her~~ the employee's original copy of the form and a new copy of the form to the next step within 15 days of the expiration of the time limit.

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

24.26.614 EMPLOYER COUNTER PETITION (1) The employer shall have ~~five ten~~ working days ~~from receipt of~~ after the date the board mailed the petition in which to file a counter petition with the board.

(2) through (4) remain the same.

(5) If an employer fails to file a timely counter petition, the board or its agent shall direct an election after the time for intervention has past provided the board or its agent have determined the unit as described by the petitioner is appropriate under 39-31-202, MCA.

(6) If the board directs an election, and provided the employer has not previously done so, the employer must provide an eligible voter list to the board's agent and the petitioner within five days of the notice of the board directed election. If the eligible voter list is not provided by the employer, then the board or its agent may ask the petitioner to determine the list of eligible voters in consultation with the board or its agent.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: There is reasonable necessity to amend the current rule because there is no language to explain what happens when an employer does not respond to a petition. The suggested amendments extend the amount of time an employer has to respond, but in the event that there is no response, the board has the option of defaulting to direct an election using the petitioner's excelsior list (in consultation with the board).

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION (1) and (2) remain the same.

~~(3) The parties may waive a hearing and enter into a consent election agreement after the time to intervene has past. Such agreement shall be drafted by the board's election judge and must include a description of the unit and the time and place for the election. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when it is signed by the parties and approved by the election judge.~~

~~(4)~~ (3) After a hearing, the board shall issue its determination of the appropriate ~~unity~~ unit. If a unit petitioned for is found not to be appropriate, the findings and conclusions shall give specific reasons therefore. If the unit is found to be appropriate, the board shall schedule the election and a pre-election conference at which time challenges for individual inclusions and exclusions shall be made by either party.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT

(1) through (4) remain the same.

(5) The A party on whom the petition was served shall have 20 days after the date the board mailed the petition to file a response with the board. Absent an

agreed upon stipulation of the parties to extend the response time, failure to respond will result in the agent of the board issuing a recommended order granting the relief requested by the petitioner. The recommended order is subject to board review if appealed within ten business days. If not appealed, the recommended order is the final board order.

(a) through (6)(b) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

24.26.644 ANSWER (1) Each party may file an answer to the petition for decertification within ~~five ten working~~ days after receipt thereof the date the board mailed the petition for decertification.

(2) remains the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

24.26.655 ELECTION DIRECTED (1) When a petition for an election has been filed, the board shall direct an election be held, if an appropriate unit has been determined or if no question of representation exists. The election shall be conducted under the direction and supervision ~~of the board with all determinations of~~ the board's agent. Determinations made by an the board's agent are subject to review by the Board of Personnel Appeals ~~by an aggrieved party at the board's~~ discretion.

AUTH: 39-31-104, MCA

IMP: 39-31-208, MCA

24.26.666 BALLOT TALLY AND OBJECTIONS (1) remains the same.

(2) Objections by a party to the election relating to the conduct of the election or the conduct affecting the results of the election shall be in writing and shall contain a brief statement of the facts upon which the objections are based. An original and three copies of such objections shall be signed and filed with the board, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election.

AUTH: 39-31-104, MCA

IMP: 39-31-208, MCA

24.26.680 COMPLAINT (1) A complaint alleging that a person or organization has engaged in or is engaging in an unfair labor practice may be filed by an employee, a group of employees, a labor organization, or a public employer within six months ~~thereof~~ of the asserted unfair labor practice.

(2) through (4) remain the same.

(5) The board shall serve a copy of the complaint to each party charged with unfair labor practice.

AUTH: 39-31-104, MCA  
IMP: 39-31-406, MCA

24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT (1) ~~The board shall serve one a copy of the complaint upon each party charged with the unfair labor practice.~~

~~(2)~~ A party ~~so~~ charged with an unfair labor practice shall file a response with the board to the complaint within ten days after the board has mailed the complaint. A response is a letter setting forth in detail facts relevant to the complaint which the respondent wishes to bring to the board's attention including a specific reply to each factual allegation made in the complaint.

~~(3)~~ (2) As provided for in 39-31-405(1), MCA, after receipt of the response, the board shall appoint an investigator to investigate the alleged unfair labor practice. In making a determination of probable merit, the investigator must determine whether there is substantial evidence to support the allegation(s). In reaching this decision, the board's agent shall rely on the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Substantial evidence is something more than a scintilla of evidence but may be less than a preponderance of the evidence.

~~(4)~~ (3) As provided for in 39-31-405(2), MCA, if after the investigation, the agent designated by the board determines that the charge is without probable merit the board shall issue ~~and cause to be served upon the complaining party and the person being charged~~ a notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a board review of the decision to dismiss the complaint. The request for a review must be made in writing within ten days ~~of receipt of~~ from the date the board mailed its notice of intention to dismiss decision. This rule requires that the request for review must clearly set forth the specific factual and/or legal reasons indicating how the investigator's finding of no probable merit is in error. At the discretion of the board, interested parties will be afforded an opportunity to respond to a request for review.

(4) In considering a request to review a notice of intent to dismiss, the board will consider the record as prepared by the board's agent in reaching his or her decision of no probable merit, any report detailing the investigation and analysis of the board's agent, and any argument set forth by interested parties. At the discretion of the board, the board will allow interested parties to present oral argument. Following consideration, the board will determine whether the investigator erred in concluding that there was not substantial evidence to support a determination of probable merit or the investigator's determination was based on an error of law.

(5) As provided for in 39-31-405, MCA, if after the investigation or after the appeal provided for in ~~subsection (2) of 39-31-405(2)~~, MCA, the investigator or the board determines that there is probable merit for the charge, the board shall issue ~~and cause to be served upon the complaining party and any party charged~~ a notice of finding of probable merit.

(6) As provided for in 39-31-405(4), MCA, if a finding of probable merit is made, the person or entity against whom the charge is filed shall file an answer to

the complaint. The answer must be made in writing within ten days ~~of receipt of~~ after the date the board mailed notice of finding of probable merit.

(7) remains the same.

AUTH: 39-31-104, MCA

IMP: 39-31-405~~(1), (2), (3), (4)~~, MCA

REASON: There is reasonable necessity to amend the rule to clarify the role and standard of review of the board's agent in reviewing an unfair labor practice charge.

24.26.681 ANSWER (1) The party named in the complaint shall file a formal, written, verified answer within ten days ~~after service of~~ from the date the board mailed notice of finding of probable merit.

(2) through (4) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-406, MCA

24.26.682 NOTICE OF HEARING (1) After the time for filing an answer has passed, the board shall serve a notice of hearing upon the parties. The hearing date shall not be less than five ~~working~~ days after the date of service. The notice shall include all those items listed in ~~section~~ 2-4-601, MCA, and shall state whether the board or an agent of the board will hear the complaint.

AUTH: 39-31-104, MCA

IMP: 39-31-406, MCA

24.26.684 EXCEPTIONS (1) ~~If a majority of the board have not heard the case, the person who conducted the hearing shall serve a~~ Following the contested case proceeding or summary disposition before the board's agent, the board's agent will serve a copy of the proposed decision and recommended order upon the parties. ~~who~~ The parties shall have 20 days from the date the proposed decision and recommended order is mailed to file exceptions with the board.

(2) remains the same.

AUTH: 39-31-104, MCA

IMP: 39-31-406, MCA

24.26.685 DISQUALIFICATION OF HEARING EXAMINER OFFICER

(1) A party desiring to disqualify a hearing examiner officer on an unfair labor practice case must, within five days from receipt of information notifying that party of the appointment of the hearing examiner officer, file with the board a written request to disqualify the appointed hearing examiner officer.

(2) If several parties to an unfair labor practice proceeding disqualify the first appointed hearing examiner officer, then all parties, other than the party who first exercises the right, shall still retain their right to disqualify one succeeding, appointed hearing examiner officer, subject to the conditions of ~~subsection (1), of this rule.~~



Upon the filing of a timely, written request to disqualify a hearing ~~examiner~~ officer, the hearing ~~examiner~~ officer shall take no further action in that case.

~~(3) If several unfair labor practices are being heard together in one proceeding, each party still has only one peremptory challenge to a hearing examiner for each proceeding.~~

AUTH: 39-31-104, MCA

IMP: 39-31-405(5), MCA

6. The proposed new rules of the board provide as follows:

NEW RULE I EXCEPTIONS (1) If a majority of the board has not heard the case, the hearing officer who conducted the hearing shall serve proposed finding of fact and conclusions of law along with the recommended order upon the parties who shall have 20 days to file exceptions with the board in conformance with ARM 24.26.684.

AUTH: 39-32-103, MCA

IMP: 39-32-112, MCA

NEW RULE II DEFINITIONS (1) "Board" means the Board of Personnel Appeals and in the appropriate context may also mean an agent appointed by the board to perform certain board functions.

(2) "Board Agent" means any person designated by the board to act in its behalf.

(3) "Date of Filing" means the date of receipt by the board.

(4) "Day" means calendar day unless otherwise specified.

(5) "Party" is any person, labor organization, or employer filing a petition, complaint, charge, or appeal with the board; any person, labor organization, or employer named as a party in a petition, complaint, charge, or appeal, or any other person, labor organization, or employer whose timely motion to intervene has been granted.

(6) "Party to an election" means a labor organization or employer.

(7) "Petitioner" means a party who files a petition with the board.

(8) "Recommended Order" means the order of a hearing officer or other board agent consisting of proposed rulings on motions and evidentiary matters, findings of fact, conclusions of law, and a recommended order.

(10) "Respondent" means a party who is required to respond to a complaint, petition, or charge.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-4-201, MCA

NEW RULE III NOTICE OF HEARINGS (1) The time and place of hearing will be set by the board or its agent and notice thereof mailed at least ten days in advance of the hearing date.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-4-201, MCA

NEW RULE IV LAY REPRESENTATION BEFORE THE BOARD OR BOARD AGENT (1) A lay representative, authorized by a party to the proceedings, may be permitted to appear in proceedings before the board or before an agent of the board on behalf of interested parties so long as this lay representative does not charge a fee to provide representation and is not otherwise compensated for the representation except for the remuneration that he or she may receive as a permanent employee of the party to the proceedings.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-4-201, MCA

NEW RULE V BRIEFS (1) Where briefs are required, or permitted, they must be captioned with the board case title and number, and must be typewritten or printed with double spacing on letter-sized paper.  
(2) Briefs must substantially comply with the following format:  
(a) brief statement of pertinent facts;  
(b) statement and discussion of disputed issues supported by available precedent; and  
(c) concise summary of reasons for granting requested relief.  
(3) Briefs shall not exceed 20 pages, unless expressly permitted by the board or its agent.  
(4) Copies of briefs must be served on the other party(ies) in the case, and proof of such service must accompany the brief when filed.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-4-201, MCA

NEW RULE VI OBJECTIONS TO BOARD'S AGENT'S RECOMMENDED ORDER (1) The parties shall have 20 days from the issuance of a recommended order to file specific written objections with the board. Upon good cause shown, the board may extend the time within which the objections shall be filed. When objections are filed, the party making the objections shall serve a copy of the objections on all parties of record in the case and provide the board with proof of service. A failure to so serve, and provide proof of service shall in the absence of good cause shown, invalidate any such objections as being untimely and the board may disregard same in making a final determination in the case.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-4-201, MCA

NEW RULE VII BOARD REVIEW (1) If timely objections are filed following the issuance of a recommended order, the parties will be given an opportunity to present oral argument to the board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the board not less than ten days before the

date set for argument and the party filing the written argument shall serve a copy on parties of record.

(2) If parties wish to submit written memoranda in aid of oral argument in addition to argument, such written memoranda must be filed with the board not less than ten days before the date set for oral argument and copies must be served upon parties of record.

(3) Review by the board of a hearing officer's proposed rulings on motions and evidentiary matters, findings of fact, conclusions of law, and/or a recommended order shall be confined to the record. The order of the board shall be in writing and shall be sent to the parties.

(4) If the board refuses to adopt a recommended order of a hearing officer as its final decision or order and, instead, remands the proposal or portion thereof to the hearing officer for further consideration pursuant to board direction, the officer shall conduct whatever proceedings are necessary and conform the proposal for decision to board direction.

(5) The hearing officer shall serve the conformed proposal on all parties as well as upon the board's administrative assistant. The board shall then consider the conformed proposal at a regularly scheduled meeting prior to issuing a final decision.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-4-201, MCA

NEW RULE VIII EX PARTE COMMUNICATIONS (1) At any time that petitions, complaints, objections, election challenges, or other contested case matters have been set for hearing by the board or its agents, if any party or counsel in the case communicates with the board, board member, or the board agent assigned to such case, concerning any fact in dispute in the case, the board, board member or board agent, as appropriate, shall notify all other parties and counsel in the case of such communications, either orally or in writing, and shall expressly include a statement of such communication, notification to other parties and counsel, and responses received thereto in the record of the case.

(2) The mere noting of such ex parte communications in the record will not be considered evidence of the facts in dispute unless otherwise agreed by all parties to the case. The board and its agents shall rely only on the admissible evidence of record in determining the merits of any disputed issue in a case.

(3) This rule shall not apply to matters presented or obtained during preliminary investigation of the petition, complaint, objections, or challenge, made by board agents prior to the service of the notice of hearing in a case, and shall not apply to requests for subpoenas.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-4-201, MCA

NEW RULE IX CONSENT ELECTIONS (1) The parties may waive a hearing and enter into a consent election agreement after the time to intervene has past. Such agreement shall be drafted by the board's election judge and must

include a description of the unit and the time and place for the election. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit when it is signed by the parties and approved by the election judge.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-4-201, MCA

7. The board proposes the repeal of the following rules:

24.25.106 MOTIONS found at ARM page 24-1605.

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

24.25.108 EXTENSION OR WAIVER OF TIME LIMITS found at ARM page 24-1606.

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

24.25.109 SUSPENSION found at ARM page 24-1606.

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

24.25.120 SEVERABILITY found at ARM page 24-1606.

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

24.25.202 FILING OF NEGOTIATED AGREEMENTS found at ARM page 24-1609.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.602 CONDITIONS found at ARM page 24-1625.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.603 SECRET BALLOT found at ARM page 24-1625.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.604 ELIGIBLE VOTERS found at ARM page 24-1625.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.605 NOTICE found at ARM page 24-1625.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.606 BALLOTS found at ARM page 24-1626.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.607 POLL WATCHERS found at ARM page 24-1626.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.608 POLLING AREA ELECTIONEERING found at ARM page 24-1626.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.609 CHALLENGES found at ARM page 24-1626.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.610 MAJORITY found at ARM page 24-1627.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.611 OBJECTIONS found at ARM page 24-1627.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.25.612 CERTIFICATION found at ARM page 24-1627.

AUTH: 39-32-103, MCA  
IMP: 39-32-108, MCA

24.26.213 MOTIONS FOR SUMMARY JUDGMENT found at ARM page 24-1669.

AUTH: 2-4-201, 39-31-104, MCA  
IMP: 2-18-1001, 2-18-1011, 2-18-1012, 87-1-205, MCA

24.26.216 DECLARATORY RULINGS found at ARM page 24-1671.

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

24.26.217 EXTENSION OR WAIVER OF TIME LIMITS found at ARM page 24-1672.

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

24.26.701 PURPOSE found at ARM page 24-1851.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.702 DEFINITIONS found at ARM page 24-1851.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.705 RIGHT TO APPEAL found at ARM page 24-1851.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.706 NOTICE OF REVIEW found at ARM page 24-1852.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.707 REVIEW PROCEDURE found at ARM page 24-1852.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.710 DECISION OF THE BOARD found at ARM page 24-1852.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.711 BOARD'S RECONSIDERATION OF ITS DECISIONS found at ARM page 24-1853.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

24.26.712 CHALLENGES TO AND DISQUALIFICATIONS OF BOARD MEMBERS found at ARM page 24-1853.

AUTH: 2-4-201, MCA  
IMP: 39-3-217, MCA

8. 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: Marieke Beck, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-2917; or by e-mail to mabeck@mt.gov, and must be received no later than 5:00 p.m., September 2, 2010.

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

10. The department and the board both maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by each agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ JACK HOLSTROM  
Jack Holstrom, Chair,  
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State July 19, 2010



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM            ) NOTICE OF PUBLIC  
42.18.205, 42.18.206, 42.18.207, 42.18.208    ) HEARING ON PROPOSED  
relating to Appraiser Certification            ) AMENDMENT

TO: All Concerned Persons

1. On August 24, 2010, at 9:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 16, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.18.205 DEFINITIONS The following definitions apply to this subchapter:

(1) "Agricultural appraiser" means a person who has completed the necessary training and is certified to appraise agricultural and forest property in Montana.

(2) "Agricultural land classification/appraisal (ALCA) training" means specific training outlined by the department to meet the certification requirements necessary to appraise agricultural and forest property in Montana.

(3) ~~"Agricultural timber classifier" means a person who has completed the necessary training and is certified to appraise agricultural and forest property in Montana.~~ "Appraiser Qualifications Board" means the federal regulatory agency responsible for establishing qualifications nationwide for fee appraisers.

(4) "Commercial appraiser" means a person who has completed the necessary training and is certified to appraise commercial property in Montana.

(5) "Failure to perform the appraisal work satisfactorily" refers to the work that is ~~completed~~ produced by the appraiser and is determined to be unsatisfactory by the area manager and/or regional manager. At a minimum, that determination will include areas such as:

(a) continued inability by the employee to complete the planned amount of appraisal work;

(b) consistently making errors in following the appraisal process;

- (c) failing to consider all approaches to value; and
- (d) inability to defend appraisal work before taxpayers and appeal boards.
- (6) "~~Industrial appraiser~~" means ~~a person who has completed the necessary training and is certified to appraise industrial property in Montana.~~
- (7) "International Association of Assessing Officers (IAAO)" means the professional organization for advancement of appraisers.
- (8)(7) "Multiple certification" means holding more than one type of certification to appraise property.
- (9)(8) "On-the-job appraisal work" means conducting the actual work required to complete the job for appraisers who are new to a specific appraisal classification.
- (10)(9) "Residential appraiser" means a person who has completed the necessary training and is certified to appraise residential property in Montana.
- (11)(10) "Successful completion of the required training session" means satisfactorily passing the written examination conducted at the conclusion of the training sessions.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.205 to update the terms to reflect changes in the subsequent rules related to the Montana appraisal certification requirements. The proposed amendments remove language contained in (3) because it is redundant. The proposed amendments also renumber the remaining sections. Industrial appraiser certification requirements are now found in ARM 42.22.1316. Therefore (6) is being deleted to remove the reference to industrial appraisal. The department is also proposing to add clarifying language in (10) that is further addressed in ARM 42.18.206, 42.18.207, and 42.18.208.

#### 42.18.206 RESIDENTIAL PROPERTY CERTIFICATION REQUIREMENTS

- (1) All residential appraisers must receive specific training and testing to certify that they possess the required knowledge, skills, and abilities to perform residential property appraisals as outlined in this rule.
- (2) Training and testing criteria shall be as follows:
  - (a) International ~~a~~Association of ~~a~~Assessing ~~o~~Officers (IAAO) certified training sessions will be offered annually if funding is available and if there are sufficient numbers of field staff who require the course.
  - (b) Employees shall attend the first residential training session offered by the department after commencement of employment. Satisfactory completion of the residential training session shall include successful completion of the written IAAO residential examination. If the employee fails to successfully complete the first written examination, attendance at the next residential IAAO training session shall be required. Failure to successfully complete the second written IAAO examination ~~shall~~ may result in the immediate termination of employment. The department may choose to demote the employee to a property valuation specialist, if the position is available and the individual is qualified to perform in that position. The employee will

be notified of exam results directly by IAAO.

~~(3) After successful completion of the residential training session, the employee shall prepare a written residential demonstration appraisal narrative report (residential narrative report). Employees will be granted a maximum of 40 hours of administrative leave to complete the report. The report must be submitted to the department within six months after successful completion of the training session, or within 30 days after using the administrative leave granted, whichever occurs first.~~

~~(a) The residential narrative report must include:~~

- ~~(i) title page;~~
- ~~(ii) letter of transmittal;~~
- ~~(iii) table of contents;~~
- ~~(iv) assumptions and limiting conditions;~~
- ~~(v) photographs of subject property;~~
- ~~(vi) identification of property;~~
- ~~(vii) purpose of appraisal;~~
- ~~(viii) definition of market value;~~
- ~~(ix) date of appraisal;~~
- ~~(x) assessment and taxes;~~
- ~~(xi) city data;~~
- ~~(xii) neighborhood data;~~
- ~~(xiii) site data;~~
- ~~(xiv) plot plan;~~
- ~~(xv) zoning;~~
- ~~(xvi) description of improvements;~~
- ~~(xvii) construction features;~~
- ~~(xviii) property history;~~
- ~~(xix) highest and best use;~~
- ~~(xx) estimate of remaining economic life;~~
- ~~(xxi) cost approach with summary;~~
- ~~(xxii) market data approach with summary;~~
- ~~(xxiii) income approach with summary;~~
- ~~(xxiv) correlation and final estimate of value;~~
- ~~(xxv) certification;~~
- ~~(xxvi) qualification of appraiser; and~~
- ~~(xxvii) addenda and exhibits.~~

~~(b) Within two months after submission of the residential narrative report, the department shall advise the employee, in writing, whether the report is satisfactory. If the report is unsatisfactory, the employee shall have two months from the date of notification to correct and resubmit the report to the department. Additional administrative leave will not be granted for this purpose. Failure to successfully complete a written narrative report shall result in immediate termination of employment. Upon final acceptance, the residential narrative report shall become the property of the department.~~

~~(c) The required timeframes for submitting reports may be extended upon written request by the employee's direct supervisor. Written requests shall be directed to the appropriate regional manager for consideration. The regional manager will approve or deny the request. Copies of the regional manager's~~

determination will be distributed to the employee, the employee's immediate supervisor, and the administrator.

(4) Upon commencement of employment with the department as a residential appraiser, the employee shall undertake a one-year period of on-the-job residential appraisal work during which time the employee will begin the process of meeting the requirements set forth in (1) and (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic six-month probation period set forth in department policy 3.1.4. The commencement of the year experience requirement will coincide with the employee's notification of being assessed residential appraisal responsibilities. All work will be supervised by the department. During this period, in order to ensure that the employee has the aptitude for appraisal work, the employee shall be in a probationary status. Failure to perform the appraisal work satisfactorily at any time during the one-year probationary period shall may result in immediate termination of employment. The department may choose to demote the employee to a property valuation specialist position, if the position is available and the individual is qualified to perform in that position.

(5)(4) The department may waive the criteria set forth in (2), (3), or (4) if sufficient proof is provided within six months of hire that the employee has previously fulfilled those requirements. Evidence of fulfilling the requirements may include, but is not limited to providing proof of For example, the employee may have having successfully completed a course of instruction from the society of real estate appraisers whose complexity was a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of IAAO course † 101. An employee who is a Licensed Real Estate Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or another state in accordance to the Appraisal Qualifications Board (AQB) is also eligible for a waiver under this rule.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend the residential property appraiser certification requirements in ARM 42.18.206. The proposed amendments strike current language that requires employees seeking residential property appraiser certification to successfully submit a demonstration residential narrative appraisal. The examination requirement comports with similar testing requirements that are currently part of the overall requirements for achieving certification and/or licensing through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry for fee appraisers. These proposed amendments will better meet the needs of the Property Assessment Division and will also provide a more timely means of attaining certification by its residential property appraisers.

#### 42.18.207 AGRICULTURAL PROPERTY CERTIFICATION

REQUIREMENTS (1) ~~The An~~ employee seeking to obtain certification as an agricultural appraiser must be ~~previously certified by the department~~ as a residential appraiser by pursuant to the standards set forth in ARM 42.18.206.

(2) Training and testing criteria shall be as follows:

(a) Department training sessions will be offered annually if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) The employee shall attend the first scheduled ~~a~~Agricultural L~~and~~ e~~Classification/a~~Appraisal (ALCA) training session after being assigned ALCA responsibilities. Satisfactory completion of the ALCA training session shall include successful completion of the written examination conducted at the conclusion of the ALCA training session. If the employee fails to successfully complete the first written examination, attendance at the next ALCA training session shall be required. Failure to successfully complete the second written examination shall may result in immediate termination of employment. The department may choose to ~~or demotion~~ demote the employee to a residential appraisal position, if the position is available and the individual is certified to perform in that position. The employee will be notified of exam results within one month of completion of the exam.

(3) ~~After successful completion of the ALCA training session, the employee shall prepare a written ALCA demonstration narrative report (agricultural narrative report) as specified by the department's requirements. The department will allow up to 40 hours of administrative leave to each employee in order to complete each required report. The report shall be submitted to the department within six months after successful completion of the training session, or within 30 days after using the administrative leave granted, whichever occurs first.~~

~~(a) The report must consist of at least one completed appraisal (classification) of an ownership large enough and diverse enough to adequately demonstrate the ability to differentiate between classes and productive grades of land. The report may be completed on an ownership containing many different agricultural land classifications. At a minimum, the report must consider an ownership with at least two different agricultural land classifications, one of which must be grazing. Materials submitted for this demonstration appraisal shall include:~~

- ~~(i) a copy of ownership plat in which property is situated;~~
- ~~(ii) a copy of property record card (AB-9) properly completed;~~
- ~~(iii) a copy(ies) of field notes properly completed;~~
- ~~(iv) copies of soil survey information utilized;~~

~~(v) a copy of mylar overlay or GIS map of area (ownership) and comparable adjoining properties. This will show the number of acres in each class and grade of land by 40-acre tract or fractional lot for both the subject property and comparables;~~

~~(vi) copies of other pertinent data utilized in classifying and grading the property, including precipitation information; and~~

~~(vii) a detailed narrative explaining and justifying the classifications and grading established.~~

~~(b) Within two months after submission of the report by the employee, the department shall advise the employee in writing whether the report is satisfactory. If the report is unsatisfactory, the employee shall have two months from the date of notification to correct and resubmit the report. No additional administrative leave shall be granted for this purpose. Failure to successfully complete a written~~

narrative report shall result in immediate termination of employment or demotion to a residential appraisal position, if the position is available and the individual is certified to perform in that position. Upon final acceptance, the agricultural narrative report shall become the property of the department.

~~(c)~~ Extensions of the timeframes for submitting the reports may be requested in writing by the employee's direct supervisor. The written request shall be directed to the appropriate regional manager for consideration. The regional manager will then be responsible for approving or denying the request, with copies of the action taken being distributed to the employee, the employee's immediate supervisor, and the administrator.

~~(4)~~ Upon successful attainment of the criteria set forth in ~~(1), (2), and (3)~~, commencement of employment with the department as an agricultural appraiser, the employee shall undertake a one-year period of on-the-job agricultural appraiser ALCA work during which time the employee will begin the process of meeting the requirements set forth in (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic six-month probation period set forth in department policy 3.1.4. The commencement of the year experience requirement will coincide with the employee's notification of being assigned ALCA responsibilities. All work will be supervised by the department. Failure to perform the classification/appraisal work satisfactorily at any time during the one-year period ~~shall~~ may result in immediate termination. The department may choose to demote the employee ~~or demotion~~ to a residential appraisal position, if the position is available and the individual is certified to perform in that position.

~~(5)~~(4) The department may waive the criteria set forth in ~~(1), (2), (3), or (4)~~ if sufficient proof is presented within six months of hire that the employee has previously fulfilled such criteria. Evidence of fulfilling the requirements may include but is not limited to providing proof of ~~For example, the employee may have previously worked as an agricultural fee appraiser and prepared demonstration agricultural appraisal reports for clients. A copy of one of those reports would suffice for the criteria in (3).~~ having successfully completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of the department's ALCA course. An employee who is a Certified Residential Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or in another state in accordance to the Appraisal Qualifications Board (AQB), is also eligible for a waiver under this subsection.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend the agricultural/forest land property appraiser certification to ARM 42.18.207. The proposed amendments strike current language that requires employees seeking agricultural/forest land property appraisal certification to successfully submit a demonstration agricultural narrative appraisal. The examination requirement

comports with similar testing requirements that are currently part of the overall requirements for achieving certification and/or licensing through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry for fee appraisers. These proposed amendments will better meet the needs of the Property Assessment Division and will also provide a more timely means of attaining certification by its agricultural property appraisers.

42.18.208 COMMERCIAL PROPERTY CERTIFICATION REQUIREMENTS

(1) ~~The~~ An employee seeking to obtain certification as a commercial appraiser must be previously certified by the department in the appraisal of as a residential property and agricultural land appraiser.

(2) Training and testing criteria shall be as follows:

(a) International ~~a~~Association of aAssessing ~~e~~Officers (IAAO) certified training sessions will be offered annually if funding is available and if there are sufficient numbers of field staff who require the course.

(b) The employee shall attend the first scheduled commercial training session after being assigned commercial appraisal responsibilities. Satisfactory completion of the commercial training session shall include successful completion of the written IAAO commercial examination conducted at the conclusion of the commercial training session. If the employee fails to successfully complete the first written IAAO examination, attendance at the next IAAO commercial training session shall be required. Failure to successfully complete the second written IAAO examination ~~shall may~~ result in immediate termination of employment. The department may choose to or demotion demote the employee to a residential appraisal position or a residential/agricultural appraisal position, if such a position is available and the individual is certified to perform the duties necessary for that position. The employee will be notified directly of the exam results by IAAO.

(3) ~~After successful completion of the commercial training session, the employee shall prepare a written commercial demonstration appraisal narrative report (commercial narrative report). The department will allow up to 40 hours of administrative leave to each employee in order to complete the report. The report must be submitted to the department within six months after successful completion of the training session, or within 30 days after using the administrative leave granted, whichever occurs first.~~

~~(a) The commercial narrative report must include:~~

- ~~(i) title page;~~
- ~~(ii) letter of transmittal;~~
- ~~(iii) table of contents;~~
- ~~(iv) assumptions and limiting conditions;~~
- ~~(v) photographs of subject property;~~
- ~~(vi) identification of property;~~
- ~~(vii) purpose of appraisal;~~
- ~~(viii) definition of market value;~~
- ~~(ix) date of appraisal;~~
- ~~(x) assessment and taxes;~~
- ~~(xi) city data;~~

- ~~(xii) neighborhood data;~~
- ~~(xiii) site data;~~
- ~~(xiv) plot plan;~~
- ~~(xv) zoning;~~
- ~~(xvi) description of improvements;~~
- ~~(xvii) construction features;~~
- ~~(xviii) property history;~~
- ~~(xix) highest and best use;~~
- ~~(xx) estimate of remaining economic life;~~
- ~~(xxi) cost approach with summary;~~
- ~~(xxii) market data approach with summary;~~
- ~~(xxiii) income approach with summary;~~
- ~~(xxiv) correlation and final estimate of value;~~
- ~~(xxv) certification;~~
- ~~(xxvi) qualification of appraiser; and~~
- ~~(xxvii) addenda and exhibits.~~

~~(b) The commercial narrative report can be completed on any commercial property, including apartment buildings, but if done on an apartment building, the structure must be a four-plex or larger.~~

~~(c) Extensions of the timeframes for submitting the reports may be requested in writing by the employee's direct supervisor. The written request shall be directed to the appropriate regional manager for consideration. The regional manager will then be responsible for approving or denying the request, with copies of the action taken being distributed to the employee, the employee's immediate supervisor, and the administrator.~~

~~(d) Within two months after submission of the report by the employee, the department shall advise the employee in writing whether the report is satisfactory. If the report is unsatisfactory, the employee shall have two months from the date of notification to correct and to resubmit the report. No additional administrative leave shall be granted for this purpose. Failure to successfully complete a written commercial narrative report shall result in immediate termination of employment or demotion to a residential appraisal position or a residential/agricultural appraisal position, if the position is available and the individual is certified to perform the duties of that position. Upon final acceptance, the commercial narrative report shall become the property of the department.~~

~~(4) Upon successful attainment of the criteria set forth in (1), (2), and (3), commencement of employment with the department as a commercial appraiser, the employee shall undertake a one-year period of on-the-job commercial appraisal work during which time the employee will begin the process of meeting the requirements set forth in (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic six-month probation period set forth in department policy 3.1.4. The commencement of the year experience requirement will coincide with the employee's notification of being assigned commercial appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily shall result in immediate termination or demotion to a residential appraisal position or residential/agricultural appraisal position, if such a position is available and the~~



individual is certified to perform the duties necessary for that position.

~~(5)~~(4) The department may waive the criteria set forth in ~~(1), (2), (3), or (4)~~ if sufficient proof is presented within six months of hire that the employee has previously fulfilled such criteria. Evidence of fulfilling the requirements may include, but is not limited to providing proof of having successfully ~~For example, the employee may have e~~Completed a course of instruction from the appraisal institute a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be whose complexity was equal to or greater in complexity than that of IAAO course # 102. An employee who is a Certified General Appraiser through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry or another state in accordance to the Appraisal Qualifications Board (AQB), is also eligible for a waiver under this subsection.

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend the commercial property appraiser certification requirements to ARM 42.18.208. The proposed amendments strike current language that requires employees seeking commercial property appraiser certification to successfully submit a demonstration commercial narrative appraisal. The examination requirement comports with similar testing requirements that are currently part of the overall requirements for achieving certification and/or licensing through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry for fee appraisers. These proposed amendments will better meet the needs of the Property Assessment Division and will also provide a more timely means of attaining certification by its commercial property appraisers.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than September 3, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a

discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I     )     NOTICE OF PUBLIC  
and amendment of ARM 42.22.101 and            )     HEARING ON PROPOSED  
42.22.1316 relating to centrally assessed       )     ADOPTION AND  
appraiser certification requirements            )     AMENDMENT

TO: All Concerned Persons

1. On August 24, 2010, at 10:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 16, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I UNIT VALUATION OR CENTRALLY ASSESSED PROPERTY APPRAISER CERTIFICATION REQUIREMENTS (1) The employee must hold a bachelor degree from an accredited college or have at least five years experience in the business or centrally assessed property valuation field.

(2) Training and testing criteria shall be as follows:

(a) The employee will be required to take the International Association of Assessing Officers (IAAO) Courses I and II or their equivalents. The employee will be required to take the American Society of Appraisers (ASA) Courses BV201N, BV202N, and BV203N1 or their equivalents. The employee will be required to take the Uniform Standards of Professional Appraisal Practices (USPAP) course. An USPAP refresher will be required every five years thereafter. The employee will be required to attend the Western States Association of Tax Administrators, Committee on Centrally Assessed Properties (WSATA-CCAP) Courses 101, 102, and 103 or their equivalents. These courses will be made available annually if funding is available.

(b) The employee shall attend the first scheduled WSATA-CCAP course after accepting the unit valuation or centrally assessed appraiser responsibilities.

Satisfactory completion of the unit valuation training session shall include successful completion of the written examination conducted at the conclusion of the unit valuation training session. If the employee fails to successfully complete the first written examination, attendance at the next unit valuation training session shall be required. Failure to successfully complete the second written examination shall result in immediate termination of employment. Previous appraisal designations may be considered as substitutes for this course as determined by the Unit Manager. The appraiser shall attend either the first scheduled IAAO Courses I and II, or ASA Courses BV201N, BV202N, and BV203N. Satisfactory completion of the IAAO or ASA training session shall include successful completion of the written examination conducted at the conclusion of the unit valuation training session. If the employee fails to successfully complete the first written examination, attendance at the next IAAO or ASA training session shall be required. Failure to successfully complete the second written examination shall result in immediate termination of employment. Previous appraisal courses may be considered as substitutes for these courses as determined by the Unit Manager.

(3) Upon commencement of employment with the department as a unit valuation or centrally assessed appraiser, the employee shall undertake a one-year period of on-the-job appraisal work during which time the employee will begin the process of meeting the requirements set forth in (1) and (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic six-month probation period set forth in department policy 3.1.4. The commencement of the year experience requirement will coincide with the employee's notification of being assigned unit or centrally assessed appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily shall result in immediate termination.

(4) The department may waive the criteria set forth in (1) and (2) if sufficient proof is presented that the employee has previously fulfilled such criteria. For example, the employee may have completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102(3), MCA. The course must be equal to or greater in complexity than that of courses required above. An employee who has attained a Certified General License through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry is also eligible for a waiver under this subsection.

AUTH: 15-23-108, 15-53-155, 15-72-117, MCA

IMP: 15-23-101, 15-23-104, 15-23-211, 15-23-213, 15-53-145, 15-53-147, 15-72-104, MCA

REASONABLE NECESSITY: The department is proposing to adopt new rule I which creates a formal certification process for the department's centrally assessed property appraisers. The process includes time lines and specific classes that must be taken and concluded with a passing grade. Specifically a department centrally assessed appraiser must take and pass courses from the International Association of Assessing Officers (IAAO), the American Society of Appraisers, the Uniform

Standards of Professional Appraisal Practices (USPAP), and the Western States Association of Tax Administrators Committee on Centrally Assessed Properties (WSATA-CCAP).

Miscellaneous topics in new rule I include: (1) if a prospective centrally assessed appraiser does not pass a course in two test opportunities, the prospective appraiser will be dismissed from their position; (2) the required unit valuation courses are available annually provided there is sufficient funding; and (3) the department will review and possibly accept training course equivalents such as appraisal designations as substitutes for completed courses.

Part 4 of the new rule I outlines what qualifications will replace the completion of the courses required to be completed in parts 2 and 3.

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

42.22.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (13) remain the same

(14) "Nonoperating property" is all property owned or leased from others which is not a necessary for the conduct part of a centrally assessed company's inter-county or interstate business.

(15) through (31) remain the same

(32) "Unit valuation or centrally assessed appraiser" means a person who has completed the necessary training and is certified to appraise centrally assessed properties in Montana.

(32) remains the same but is renumbered (33).

AUTH. 15-23-108, 15-53-155, 15-72-117, MCA

IMP: 15-6-156, 15-23-101, 15-23-104, 15-23-211, 15-23-213, 15-53-145, 15-53-147, 15-72-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.101 to include a definition for unit valuation or centrally assessed appraiser to inform the reader that these appraiser positions are required to be certified and meet various governing criteria.

42.22.1316 INDUSTRIAL PROPERTY CERTIFICATION REQUIREMENTS

(1) ~~The employee must be previously certified in appraisal of residential property and appraisal of commercial property~~ hold a bachelor degree from an accredited college or have at least five years experience in the industrial or complex property valuation field.

(2) ~~Training and testing criteria requires the employee to successfully complete courses I and II of the appraisal institute, and write a comprehensive examination in industrial appraisal~~ shall be as follows:

(a) The employee will be required to take the International Association of Assessing Officers (IAAO) Courses I and II or their equivalents. The employee will be required to take the Appraisal Institutes (AI) Courses 101, 102, 201, and 202 or their equivalents. The employee will be required to take the Uniform Standards of

Professional Appraisal Practices (USPAP) course. A USPAP refresher will be required every five years thereafter. These courses will be made available annually if funding is available.

(b) The employee shall attend the first scheduled IAAO courses after accepting the industrial property responsibilities. Satisfactory completion of the IAAO training session(s) shall include successful completion of the written examination conducted at the conclusion of the IAAO training session(s). If the employee fails to successfully complete the first written examination, attendance at the next unit valuation training session(s) shall be required. Failure to successfully complete the second written examination(s) shall result in immediate termination of employment. Previous appraisal designations may be considered as substitutes for this course as determined by the unit manager. The appraiser shall attend the first scheduled AI Courses 101,102, 201, and 202. Satisfactory completion of the AI training session shall include successful completion of the written examination(s) conducted at the conclusion of the unit valuation training session(s). If the employee fails to successfully complete the first written examination(s), attendance at the next AI training session(s) shall be required. Failure to successfully complete the second written examination(s) shall result in immediate termination of employment. Previous appraisal courses may be considered as substitutes for these courses as determined by the unit manager.

(3) The employee must write an abbreviated narrative appraisal report defining the particular industrial process, explaining the depreciation used, and substantiating the value conclusion. Upon acceptance, the industrial narrative report shall become the property of the department. Upon commencement of employment with the department as a unit valuation or centrally assessed appraiser, the employee shall undertake a one-year period of on-the-job appraisal work during which time the employee will begin the process of meeting the requirements set forth in (1) and (2). For employees new to state government, this one-year period will run concurrently with and in addition to the automatic six-month probation period set forth in department policy 3.1.4. The commencement of the year experience requirement will coincide with the employee's notification of being assigned unit or centrally assessed appraisal responsibilities. All work will be supervised by the department. Failure to perform the appraisal work satisfactorily may result in immediate termination of employment.

(4) The employee must:

(a) complete one year of responsible industrial property appraisal; and

(b) appraise or assist in the appraisal of at least three separate plants in different industrial processes department may waive the criteria set forth in (1) and (2) if sufficient proof is presented that the employee has previously fulfilled such criteria. For example, the employee may have completed a course of instruction from a professional appraisal and real estate related organization, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102, MCA. The course must be equal to or greater in complexity than that of courses required above. An employee who has attained a Certified General License through the Board of Real Estate Appraisers of the Business and Occupational Licensing Bureau of the Montana Department of Labor and Industry is also eligible for a waiver under this subsection.

~~(5) Individual steps may be waived by the department if sufficient proof is given that the employee has previously met such requirements.~~

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.1316 to inform the reader of the changes in the requirements to become an industrial appraiser.

The stricken language is the elimination of the old requirements for an industrial appraiser. The subsequent new language to the amended rule is the new requirements of an industrial appraiser.

Specifically, to be an industrial appraiser, the prospective appraiser must take and pass courses from the International Association of Assessing Officers (IAAO), the Appraisal Institute, and the Uniform Standards of Professional Appraisal Practices (USPAP).

The amended rule states that the industrial appraiser must successfully complete the above courses in two or less test opportunities. Failure to receive a passing grade from any of these tests will result in termination of the employee. The department will review and possibly accept training course equivalents such as appraisal designations as substitutes for completed courses.

Part 3 of new rule I establishes that there is a one-year training program. Upon the completion of the one-year training program, the prospective appraiser will be required to complete all required work satisfactorily or be dismissed.

Part 4 of the new rule I outlines what qualifications will replace the completion of the courses required to be completed in parts 2 and 3.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than September 3, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods,

due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC  
42.12.401, 42.12.405, 42.12.406, 42.12.408, ) HEARING ON PROPOSED  
42.12.412, and 42.12.414 relating to ) AMENDMENT  
restaurant beer and wine licenses and lottery )  
process )

TO: All Concerned Persons

1. On August 19, 2010, at 2:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.12.401 DEFINITIONS The following terms will be used in this subchapter.

(1) The following terms apply to all lottery processes:

(a) "Available license" means a newly created license which can be issued by the department or an existing license that can be transferred between quota areas because of:

(i) a population increase verified by the most recent census population figures; or

(ii) a lapse or revocation of an existing license.

(b) "Conditional approval letter" is defined in ARM 42.12.106.

(c) "Continuously open to the public" means open during designated business hours on a weekly basis with no interruption in those business hours. Documented exceptions not causing unreasonable closure that would be considered are:

(i) acts of nature, such as a flood, earthquake, tornado, or blizzard;

(ii) other acts beyond the owner's control; or

(iii) a remodeling project of no greater than a one-month duration.

(d) "Existing beer/wine/all-beverages license" means either an on-premises or off-premises consumption retail license that is either currently being used at the

location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.

(e) "Irrevocable letter of credit" means a letter of credit in which the issuing bank guarantees that it will not withdraw the credit or cancel the letter. A letter of credit may not be modified or revoked without the customer's consent.

~~(d)(f)~~ "Lottery" means an objective mechanical process to randomly select persons eligible to submit applications for available licenses.

~~(e)(g)~~ "Lottery application" means a brief ~~one-sheet~~ application for an available license stating the applicant's name, mailing address, type of license, and quota area. ~~If more lottery applications than the number of licenses available for any given quota area have been submitted, a lottery will be held.~~

~~(f)(h)~~ "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(2) The following terms specifically apply to ~~the restaurant beer/~~ and wine lottery process licenses:

~~(a) "Existing beer/wine/all beverages license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.~~

~~(i) A license in nonuse status does not constitute an existing license if the licensee does not own or control the applicant entity, the applicant and the licensee are not related, and the applicant and licensee are independent business entities.~~ "Evening dinner meal" means individually priced meals served at least four days a week for at least two hours a day between the hours of 5 p.m. and 11 p.m.

~~(b) "Existing preference Preference" means a preference that will be given to a restaurant owner/operator that has either existed for one year prior to the lottery deadline or was an unsuccessful lottery applicant from a previous priority provided to a restaurant beer/ and wine lottery applicant based upon eligibility. Either circumstance will give it a priority in the final ranking. An applicant with both preferences must be awarded a license before any applicant with only one preference. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.~~

~~(c) "Restaurant beer/ and wine license" means a license which must be attached to a restaurant and can only be used in conjunction with a restaurant where beer and wine can only be served to patrons who order food service or who are waiting to be seated. The licensee must agree to forego any kind of gambling, maintain 65% of business income from food sales, and must only have table service of beer and wine to those customers who are eating or waiting to be seated to eat.~~

~~(d) "Seasonal restaurant" means one that is only open during one, two, or three seasons of any year. Seasonal restaurants can be open any part of a season or the full season, as long as the restaurant is not open year-round.~~

~~(e) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar.~~

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.401 to enhance the public's understanding of the lottery and restaurant beer and wine (RBW) license terms. The amendment also seeks to conform these rules to rulemaking standards by removing more detailed language from the definitions and placing that language in other sections of the rules. These amendments are necessary to bring the rule into compliance with changes made by the 2007 Legislature in House Bill 633. In addition, the rule changes are necessary based on the changes to the restaurant beer and wine license lottery preferences and definition changes in House Bill 195 of the 2009 legislative session.

42.12.405 RESTAURANT BEER AND WINE LICENSE APPLICATION FEES

(1) and (2) remain the same.

(3) If an application is terminated, the \$100 processing fee will be retained by the department.

(4) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.405 because the processing fee for the license appears in ARM 42.12.111 and there is no need for duplication.

42.12.406 LOTTERY APPLICATION PROCESS (1) through (3) remain the same.

(4) Lottery applications must state the name of the applicant(s). All potential owners ~~including all stockholders of a corporation, all partners of a partnership, and all members of a limited liability company~~ with an ownership interest of 10% or more must be noted on the initial lottery application form as required for an applicant in ARM 42.12.101.

(5) ~~If a retail license is currently issued to the location, no restaurant beer/wine license will be considered for this location.~~ For the purposes of 16-4-204, MCA, the previous 12 months is considered the period from previous lottery publications until the new estimated census in July. Only one application per lottery offering per year is allowed for licenses issued by lottery under 16-4-204, MCA.

(6) ~~Seating capacity will be a factor in determining the allocation of the restaurant beer/wine licenses and the appropriate fees.~~

(a) ~~Using the following categories, a lottery application for the restaurant beer/wine lottery must state the exact seating capacity of the restaurant:~~

~~(i) 60 persons or less;~~

~~(ii) 61 to 100 persons; or~~

~~(iii) 101 or more persons.~~

~~(7) Lottery applications to be included in the license lotteries can be acquired through the department.~~

~~(8)~~ Answers to questions in the initial lottery application must be identical to answers in the subsequent application for a license. Failure to produce identical information on both documents will cause disqualification of the applicant(s).

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

(8) The following applies only to restaurant beer and wine lottery applicants:

(a) if any on-premises retail license is currently issued to the location, no restaurant beer and wine license will be considered for this location;

(b) seating capacity will be a factor in determining the allocation of the restaurant beer and wine licenses and the appropriate fees; and

(c) using the following categories, a lottery application for the restaurant beer and wine lottery must state the exact seating capacity of the restaurant:

(i) 60 persons or less;

(ii) 61 to 100 persons; or

(iii) 101 or more persons.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.406 to clearly outline the lottery process to the public and to address legislative changes made by the 2007 Legislature in Senate Bill 296 and House Bill 113. The proposed amendments separate the requirements for restaurant beer and wine lotteries and lotteries for other licenses awarded through the lottery process.

The amendment to (4) addresses changes from HB 113 (2007). House Bill 113 updated statutory language to reflect all types of common business entities, not just corporations.

The current language in (5) was moved to the new subsection to make the rule more easily understood.

New (5) addresses new statutory changes from legislative changes made by the 2007 Legislature in Senate Bill 296. Senate Bill 296 places requirements on the lottery process for licenses issued by lottery under 16-4-204, MCA.

42.12.408 FINAL APPLICATION PROCESS FOLLOWING SUCCESSFUL APPOINTMENT UNDER A LOTTERY (1) The application process for a restaurant beer/ and wine license is the same as the process outlined in subchapter 1 of this chapter except for the initial licensing fee which ranges from \$5,000 to \$20,000 depending on the size seating capacity of the restaurant.

(2) Applicants must also meet:

(a) premises suitability requirements;

(b) investigation requirements; ~~and~~

(c) public notice requirements; and

(d) eligibility claimed for a preference.

(3) remains the same.

(4) For on-premises retail consumption beer license applications with premises that are under construction or are being remodeled, the applicant must complete the premises within a reasonable time as stated in ARM 42.12.207.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to add ARM 42.12.408(2)(d) to include the existing requirements of the law. If the applicant claims a preference in the lottery, the department will verify that the applicant meets the eligibility claimed for the preference prior to the application being approved.

New (4) is being proposed to include the time period a successful lottery applicant has to complete their licensed premises. The licenses are available for the benefit of the public and therefore the premises needs to be put into use within a reasonable time as outlined in ARM 42.12.207 and consistent with other licensed premises construction and remodel requirements.

42.12.412 WHEN LOTTERY WILL BE HELD (1) and (2) remain the same.

(3) The lottery process will be verified by a third party, not employed or associated with by the department as well as by the public who may attend the lottery drawings.

(4) remains the same.

~~(5) In the case of a restaurant beer/wine application, if the number of larger restaurants with seating of 101 or more exceeds the 25% maximum limit for this size restaurant a lottery will be held in order to determine which applicant will be afforded the opportunity to apply for the license. Each applicant must still meet minimum qualifications for applicants of the restaurant beer/wine license.~~

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.412(3) because the department will contract with another state agency to be the third party to verify lotteries. In addition, the department is proposing to delete ARM 42.12.412(5). By removing this rule language and providing all lottery applicants equal opportunity, the department believes it provides more flexibility for restaurant business opportunities within Montana. A successful lottery applicant who initially sought a license with seating of 101 or more will be afforded the opportunity to apply for a license of lesser seating if the 25% maximum for licenses with seating of 101 or more has been met.

42.12.414 HOW APPLICANTS WILL BE CHOSEN (1) remains the same.

~~(2) In addition, successful applicants for a restaurant beer/wine license will be chosen based upon:~~

~~(a) qualified seating capacity:~~

~~(i) 60 persons or less;~~

~~(ii) 61 to 100 persons; or~~

~~(iii) 101 or more persons; and~~

~~(b) whether the applicant is eligible for an existing preference.~~

~~(3) The department will construct a list of the applicants in the order in which they were drawn in the lottery.~~

(a) For a restaurant beer/ and wine lottery applicant, the department personnel will ~~then look to see,~~ determine within this ordering, which ~~restaurants applicants~~ have an existing claimed a preference and the seating capacity of the restaurant.

(b) A preference must be given to any applicant who:

(i) does not have a restaurant beer and wine license or a retail beer license in any quota area; and

(ii) operates a restaurant for at least 12 months immediately prior to filing of an application in that quota area. This preference will be verified at the time of license application.

(c) An applicant with a preference will be given a priority in the final ranking.

(d) A preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

~~(b)~~(e) A final ranking of applicants will then be made.

~~(e)~~(f) The department will not issue to the restaurants shown in ~~(2)(a)(iii)~~ with a seating capacity greater than 101 more than 25% of the available restaurant beer/ and wine licenses in any given quota area. This may result in a quota area not being able to immediately award all of its available restaurant beer/ and wine licenses. This could also result in larger restaurants who have received a preference being unable to receive a restaurant beer/ and wine license for seating capacity greater than 101 if many larger restaurants apply to the initial lottery in a given area.

(g) A successful lottery applicant that requested to have a restaurant with seating capacity greater than 101 but the seating quota is full may elect to apply for a license with less seating capacity.

~~(4)~~(3) A successful applicant cannot sell his ranking nor can the applicant transfer his ranking to another.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.414 to enhance the public and applicant's understanding on how lotteries are conducted, preferences will be applied, and the 25% seating quota is administered for seating capacity over 101.

The department is proposing to delete the language in (2) to allow more flexibility and fairness to restaurant business. A successful lottery applicant who initially sought a license with seating of 101 or more will be afforded the opportunity to apply for a license of lesser seating if the maximum licenses have been met for seating over 101. New (2) is necessary to bring the rule into compliance with changes to the lottery preferences made by the 2009 Legislature in House Bill 195.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than September 3,

2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for SB 296 (2007), Senator Weinberg was notified by regular mail on August 10, 2007. The primary following bill sponsors were all notified by electronic mail on March 6, 2010: Representative McChesney for HB 113 (2007); Representative Dutton for HB 633 (2007); and Representative Hamilton for HB 195 (2009).

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I ) NOTICE OF PUBLIC  
through V relating to the Montana school ) HEARING ON PROPOSED  
districts' election to waive protested taxes ) ADOPTION

TO: All Concerned Persons

1. On August 20, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to rules found in this subchapter.

(1) "All protested taxes" means all taxes in all funds, under protest, for the given tax year a school district is electing to waive protested taxes as stated in 15-1-409, MCA.

(2) "Election to Waive Protested Taxes form" means the form to be filed with the department by the school districts that choose to waive protested taxes authorized by 15-1-409, MCA. This form includes: school district legal entity number, board chair signature, a description of relevant policies, and mailing addresses for submission to the Department of Revenue and the Superintendent of Public Instruction.

(3) "Protested School Tax Remittance form" means the form to be submitted with each remittance payment to the Department of Revenue by the county treasurer. This form tabulates total taxes assessed, protested, and attributable to the levy district by: school district, parcel owner, and property identification.

(4) "Property identification" means geocode, county assessor code, or parcel identification code.



AUTH: 15-1-201, MCA

IMP: 15-1-409, 20-9-369, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to give guidance to the affected school districts to enable them to properly elect to waive protested taxes under 15-1-409, MCA.

NEW RULE II ELECTION TO WAIVE PROTESTED TAXES - SCHOOL DISTRICTS NOTIFICATION REQUIREMENTS (1) School districts electing to waive their protested taxes as provided in 15-1-409, MCA, shall submit the Election to Waive Protested Taxes form to the Department of Revenue, county treasurer, and Superintendent of Public Instruction by the third Monday in January.

AUTH: 15-1-201, MCA

IMP: 15-1-409, 20-9-369, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to provide a reasonable amount of time for county treasurers to calculate protested taxes and remit the Protested School Tax Remittance form and remittance payment to the department. New Rule II will also provide a reasonable amount of time for the department to provide adjusted taxable value data to the Superintendent of Public Instruction. This timetable will, in turn, provide the Superintendent of Public Instruction with a reasonable amount of time to provide each school district and county superintendent preliminary statewide and district guaranteed tax base ratios by March 1st of each calendar year as set forth by 20-9-369, MCA.

NEW RULE III COUNTY TREASURERS NOTIFICATION REQUIREMENTS

(1) For each school district electing to waive protested taxes, the applicable county treasurer shall submit the Protested School Tax Remittance form and the protested tax remittance to the Department of Revenue by the first Monday in February and as appropriate for subsequent remittance payments.

AUTH: 15-1-201, MCA

IMP: 15-1-409, 20-9-369, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to provide a reasonable amount of time for the Department of Revenue to provide adjusted taxable value data to the Superintendent of Public Instruction. This timetable will, in turn, provide the Superintendent of Public Instruction with a reasonable amount of time to provide each school district and county superintendent preliminary statewide and district guaranteed tax base ratios by March 1st of each calendar year as set forth by 20-9-369, MCA.

NEW RULE IV DEPARTMENT OF REVENUE NOTIFICATION REQUIREMENTS (1) The Department of Revenue shall submit adjusted taxable value information to the Superintendent of Public Instruction, for each school district electing to waive their protested taxes, as provided in 15-1-409, MCA, by the second

Monday in February.

AUTH: 15-1-201, MCA  
IMP: 15-1-409, 20-9-369, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to provide the Superintendent of Public Instruction with a reasonable amount of time to provide each school district and superintendent preliminary statewide and district guaranteed tax base ratios by March 1st of each calendar year as set forth by 20-9-369, MCA.

NEW RULE V ELECTION REQUIREMENT (1) A school district electing to waive their protested taxes shall elect to waive all taxes in all funds under protest for the given tax year.

AUTH: 15-1-201, MCA  
IMP: 15-1-409, 20-9-369, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to aid county treasurers in the timely and accurate accounting of taxes under protest being waived by a school district, and to aid the Superintendent of Public Instruction in providing timely and accurate preliminary statewide and district guaranteed tax base ratios to each school district and county superintendent by May 1st of each year as set forth by 20-9-369, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than September 1, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 13, 2010, by regular mail and a subsequent notification including draft rules was submitted on July 8, 2010.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I	)	NOTICE OF PUBLIC
and amendment of ARM 42.12.312,	)	HEARING ON PROPOSED
42.12.313, and 42.12.323 relating to special	)	ADOPTION AND
licenses and permits	)	AMENDMENT

TO: All Concerned Persons

1. On August 19, 2010, at 3:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I RESTAURANT BEER AND WINE SERVICE OPERATIONS

(1) All beer and wine must only be served to patrons who order food or are waiting to be seated.

(2) All beer and wine purchases must be stated on the food bill. Beer or wine may not be purchased separately.

(3) Beer or wine may not be sold, offered for sale, or given away before 11:00 a.m. or after 11:00 p.m.

(4) On-premises consumption and possession shall not be permitted before 11:00 a.m. or after 11:00 p.m. The licensee shall be responsible for removing all alcoholic beverages from patrons' possession prior to 11:00 p.m., in order to comply with this provision.

(5) Beer and wine may not be sold for off-premises consumption.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to enhance the liquor licensee's and the public's understanding of the service

operations of restaurant beer and wine licenses in Montana.

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

42.12.312 LIQUOR MANUFACTURER'S LICENSE (1) Any person or corporation, licensed to operate under the provisions of the laws of the United States, may apply to the department for a license to engage in the manufacture of liquor in the state of Montana. ~~The application must be accompanied by a \$600 license fee, to be paid annually upon renewal of the license.~~ The applicant shall submit satisfactory evidence of good moral character and that he the applicant is qualified to operate under the laws of the United States.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-1-201, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.312 by removing the license fee because the fee is included in 16-4-501, MCA, and it is not necessary to duplicate the fee in an administrative rule.

42.12.313 PUBLIC WINE OR BEER TASTINGS (1) ~~Wine~~ Beer or wine tastings must be conducted by a an on-premises consumption retail licensee, special permittee, or an on-premises consumption retail licensee with catering endorsement permittee.

(2) In no case can a table wine distributor, a beer wholesaler, a winery/wine importer or a brewer/beer importer sponsor a wine or beer tasting other than at:

- (a) a licensed retail premises that permits on-premises consumption except for ~~or other than~~ a domestic winery as allowed under 16-3-411, MCA;
- (b) a domestic winery as allowed under 16-3-411, MCA;
- (c) a brewery as allowed under 16-3-213, MCA;
- (d) a special event with a special permit; or
- (e) a catered premise from an on-premises consumption retail licensee with a catering endorsement.

(3) A wine distributor, a beer wholesaler, a wine importer, or a beer importer sponsoring a tasting:

(a) must purchase the products to be used for the tasting from the on-premises consumption retail licensee, special permittee, or an on-premises consumption retail licensee with catering endorsement at the ordinary retail price; and

(b) can participate only by providing advice or information about the products.

(4) A winery or brewer sponsoring a tasting is required to comply with (3). In addition, the winery or brewer can participate in serving the product.

(5) An off-premises retail licensee may only participate in a wine tasting conducted by an on-premises consumption retail licensee by providing advice or information about the products. The off-premises consumption licensee may take orders for products to be picked up and paid for at the off-premises consumption licensee's premises.

(6) All beer and wine provided to the public at a tasting conducted by an on-premises consumption licensee must be purchased by the on-premises consumption retail licensee from a licensed table wine distributor, beer wholesaler, brewery, or winery. Beer and wine must be served by the on-premises consumption licensee with the exception of beer and wine manufacturers. Beer or wine may not be provided by another retail licensee.

~~(3)~~ (7) This rule shall not apply to beer or wine tastings which are held in a private home wherein no consideration, remuneration, contribution, donation, gift, or any other money or thing of value is solicited or charged for entry or attendance and which do not violate the provisions of 16-6-306, MCA. In addition, the rule does not apply to industry sampling where alcoholic beverage product samples are provided by the manufacturer or distributor of the products to a licensed distributor or retailer solely for the purpose of soliciting sales of the product to such distributors or retailer.

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-411, 16-4-105, 16-6-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.313 to increase the understanding by liquor licensees and the public on how and where beer and/or wine tastings may be conducted. Wine and/or beer tastings conducted at on-premises consumption establishments and breweries are allowed according to the law. The rule outlines how table wine distributors, beer wholesalers, and off-premises retailers can be involved in the tastings. The department had past violation cases where off-premises retailers stated that the rules were not clear on this subject matter. The department has made a good faith effort to respond to the complaint.

Section (1) outlines which types of licensees can conduct tastings.

Section (2) adds the provision that brewers are allowed to provide beer tastings under 16-3-213, MCA.

Section (3) addresses those allowed to sponsor the tastings must purchase the beer and/or wine from the on-premises licensee but may not pay more than the normal price.

In addition, the rule outlines that those allowed to sponsor the tasting can only provide advice or information about the product. Only wineries and brewers are allowed to serve the product. Distributors and wholesalers are not allowed to assist in serving of the product.

Section (5) addresses that off-premises licensees can only participate in the tasting by providing advice or information on the samples. They may take orders, but the orders must be picked up and paid for at the off-premises licensed location.

Section (6) states that all products at the tasting must be purchased by the on-premises licensees from a licensed distributor, wholesaler, brewer, or winery.

Section (7) adds "beer" to the language to make it consistent for all the sections in this rule. It also exempts out industry-to-industry sampling from the rules.

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES

(1) remains the same.

(2) A special event may only last for a maximum of three days except that

each permit holder may have one special event per year that lasts up to seven days for a fair if it is a county, state, or regional fair that occurs no more than once per year, is held on a publicly-owned fairgrounds, and is officially sanctioned by a government entity.

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

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-3-241, 16-4-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.323 to ensure consistent and equitable treatment of liquor control laws by adding parameters for a special permit and the length of a special event. Without parameters a special event could in fact be a season; for example, the summer. These permits were established to allow for the sale of alcohol on an unlicensed premises for a designated official event.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than September 3, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM            ) NOTICE OF PUBLIC  
42.5.201,42.5.202, and 42.5.213 relating to        ) HEARING ON PROPOSED  
electronic funds filing and remittance            ) AMENDMENT

TO: All Concerned Persons

1. On August 18, 2010, at 1:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.5.201 ELECTRONIC PAYMENT (1) The department's ability to accept electronic payments is constantly evolving. Taxpayers should check the department's web site at www.discoveringmontana.com/revenue www.mt.gov/revenue to determine which types of electronic payments the department will accept.

(2) through (5) remain the same.

AUTH: 15-1-803, MCA

IMP: 15-1-231, 15-1-801, 15-1-802, 15-1-803, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.201 to update the web address.

42.5.202 ELECTRONIC RETURNS, REPORTS, AND SIGNATURES

(1) through (6) remain the same.

AUTH: 15-1-803, MCA;

IMP: 15-1-231, 15-1-801, 15-1-802, 15-1-803, ~~15-30-142, 15-30-305,~~ 15-30-2602, 15-30-2620, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.202 to update the statutory references in the authority and implementing cites to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.5.213 BACKUP SITUATION (1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: 15-1-802, ~~15-30-210~~, 15-30-2510, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.5.213 as reflected in the reasonable necessity statement for ARM 42.5.202.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than August 27, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM            ) NOTICE OF PUBLIC  
42.18.121 and 42.18.122 relating to the         ) HEARING ON PROPOSED  
Montana appraisal manual for residential,     ) AMENDMENT  
commercial, and industrial property            )

TO: All Concerned Persons

1. On August 25, 2010, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 16, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.18.121 VALUATION ADOPTION OF THE MONTANA APPRAISAL MANUALS (1) For the each reappraisal period January 1, 1993 through December 31, 1996, the 1992 Montana Appraisal Manual is used for valuing residential and agricultural/forest lands new construction and use changes the department shall develop and adopt the Montana Appraisal Manual to be used during the reappraisal cycle. The cost base schedules reflect January 1, 1992, cost information Montana Appraisal Manual will be used for valuing residential, commercial, and industrial land and improvements, new construction, and use changes.

(2) For the reappraisal cycle beginning January 1, 1997, the 1996 The Montana Appraisal Manual is used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year provides details on the valuation processes the department uses.

(3) For the period January 1, 1993, through December 31, 1996, the 1992 The Montana Appraisal Manual is used for valuing commercial and industrial new construction and use changes. If the property is not listed in the 1992 Montana Appraisal Manual, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled

~~"Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, 1992, cost information incorporates the department's duties as provided in 15-1-701 through 15-7-103, MCA, and the department shall consider the manual when performing these duties.~~

~~(4) For the reappraisal cycle beginning January 1, 1997, the 1996 The Montana Appraisal Manual is used for valuing commercial and industrial real property. If the property is not listed in the 1996 Montana Appraisal Manual, other construction cost manuals such as Boeckh; Marshall Valuation Service; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" is used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules reflect January 1, 1996, cost information. Reappraisal values were used for property tax purposes for the 1997 tax year shall guide department appraisers in the application of approved appraisal practices, including but not limited to the three approaches to property valuation: market, cost, and income.~~

~~(5) For the reappraisal cycle beginning January 1, 2003, the 2002 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the 2002 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service; Boeckh; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the 2002 Montana Appraisal Manual as possible. The cost base schedules reflect January 1, 2002, cost information.~~

~~(6) Copies of the valuation manuals used by the department may be reviewed in the department field office or purchased from the department by writing to Department of Revenue, P.O. Box 8018, Helena, Montana 59604-8018.~~

~~(7) This rule applies to tax years January 1, 1993, through December 31, 2008.~~

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.121 to reflect the department's usability of the appraisal manual.

42.18.122 REVALUATION MONTANA APPRAISAL MANUALS - RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL (1) ~~For residential, and agricultural/forest lands new construction, the 2002 The Montana Appraisal Manual as adopted on August 25, 2010, shall be known as the 2008 Montana Appraisal Manual is used through tax year 2008.~~

(2) ~~For the reappraisal cycle beginning January 1, 2009, and ending on December 31, 2014, the department shall use the 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing residential land and agricultural/forest lands real property improvements, commercial land and~~

improvements, industrial land and improvements, and new construction. The cost base schedules reflect July 1, 2008, cost information.

~~(3) For commercial and industrial new construction, the 2002 Montana Appraisal Manual will be used through tax year 2008. If the property is not listed in the 2002 Montana Appraisal Manual, other construction cost manuals, such as Marshall Valuation Service or Means, will be used with a publication date as close to the 2002 Montana Appraisal Manual as possible. If the 2008 Montana Appraisal Manual does not provide information necessary to value a specific property, the department shall use other construction cost manuals with a publication date as close to the 2008 Montana Appraisal Manual as possible, such as Marshall Valuation Service; Richardson Engineering Services, Inc., or R.S. Means Company, Inc. The cost base schedules set out in those publications will be considered to reflect July 1, 2008, cost information.~~

~~(4) For the reappraisal cycle beginning January 1, 2009, the 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the 2008 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the 2008 Montana Appraisal Manual as possible. The cost base schedules reflect July 1, 2008, cost information.~~

~~(5) Copies of the 2008 Montana Appraisal Manual valuation manuals used by the department may be reviewed in the department's field offices, at the central office at 125 North Roberts Street, or purchased from the department by writing to the Department of Revenue, P.O. Box 8018, Helena, Montana, 59604-8018 or on the department's web site at <http://revenue.mt.gov/publications>.~~

~~(5) A taxpayer may purchase the CD containing a PDF version of the manual for \$3 by sending a written request to the Department of Revenue, Property Assessment Division, P.O. Box 8018, Helena, Montana 59604-8018.~~

~~(6) A taxpayer may purchase copies of any portion of the manual for \$.50 per page by sending a written request to the Department of Revenue, Property Assessment Division, P.O. Box 8018, Helena, Montana 59604-8018.~~

~~(6) (7) This rule applies to tax years January 1, 2009, through December 31, 2014.~~

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.122 to reflect the usability of the 2008 Montana Appraisal Manual for valuing residential land and improvements, commercial land and improvements, industrial land and improvements, and new construction for the reappraisal cycle beginning January 1, 2009 and ending December 31, 2014.

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

submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than September 3, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State July 19, 2010

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

In the matter of the proposed ) NOTICE OF AMENDMENT  
amendment of ARM 2.43.3502 )  
pertaining to the investment policy )  
statement for the Defined )  
Contribution Retirement Plan and )  
ARM 2.43.5102 pertaining to the )  
investment policy statement for the )  
457 Deferred Compensation Plan )

TO: All Concerned Persons

1. On April 29, 2010, the Montana Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-434 pertaining to the proposed amendment of the above-stated rules at page 937 of the 2010 Montana Administrative Register, Issue Number 8. On May 27, 2010, the PER Board published a notice extending the comment period at page 1227 of the 2010 Montana Administrative Register, Issue Number 10.

2. The PER Board has amended ARM 2.43.3502 and 2.43.5102 as proposed.

3. Interested parties were given until June 14, 2010, to comment on the proposed amendment. No comments were received.

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

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

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

Certified to the Secretary of State July 19, 2010.



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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I pertaining to the adoption by	)	AMENDMENT
reference of the State of Montana	)	
Public Employees Pooled Trust, and	)	
the amendment of ARM 2.43.3501	)	
and 2.43.5101 pertaining to the	)	
adoption by reference of the State of	)	
Montana Public Employee Defined	)	
Contribution Plan Document and the	)	
State of Montana Public Employee	)	
Deferred Compensation (457) Plan	)	
Document, respectively	)	

TO: All Concerned Persons

1. On April 29, 2010, the Montana Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-435 pertaining to the proposed adoption and amendment of the above-stated rules at page 941 of the 2010 Montana Administrative Register, Issue Number 8. On May 27, 2010, the PER Board published a notice extending the comment period at page 1229 of the 2010 Montana Administrative Register, Issue Number 10.

2. The PER Board has adopted New Rule I (2.43.5104) and amended ARM 2.43.3501 and 2.43.5101 as proposed.

3. Interested parties were given until June 14, 2010, to comment on the proposed adoption and amendment. No comments were received.

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

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

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

Certified to the Secretary of State July 19, 2010.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.11.202, 12.11.205, 12.11.207, )  
12.11.210, 12.11.212, 12.11.215, and )  
12.11.220 regarding recreational water )  
use of the Beaverhead and Big Hole )  
Rivers )

TO: All Concerned Persons

1. On April 29, 2010 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-362 pertaining to the public hearings on the proposed amendment of the above-stated rules at page 968 of the 2010 Montana Administrative Register, Issue Number 8.

2. The commission has amended the following rules as proposed: ARM 12.11.205, 12.11.207, 12.11.212, 12.11.215, and 12.11.220.

3. The commission has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) through (5) remain as proposed.

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

(a) through (g) remain the same.

(h) Maiden Rock BLM ~~fishing access~~ recreation site;

(i) Divide Bridge ~~fishing access~~ BLM recreation site;

(j) remains the same.

(k) George Grant/Dewey fishing access site;

(l) Jerry Creek Bridge ~~fishing access~~ BLM recreation site;

~~(m) Mallons fishing access site;~~

~~(n)~~ (m) Dickie Bridge ~~fishing access~~ BLM recreation site;

~~(o)~~ (n) East Bank BLM ~~fishing access~~ recreation site;

(p) and (q) remain the same but are renumbered (o) and (p).

~~(r)~~ (q) Mudd Creek Bridge BLM ~~fishing access~~ recreation site.

(7) through (9) remain the same.

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

IMP: 87-1-303, MCA

4. The commission has amended the following rule to be consistent with the amendments to ARM 12.11.202:

12.11.210 BIG HOLE RIVER RECREATIONAL USE RESTRICTIONS

(1) remains the same.

(a) all seven days of the week, the river reach from the headwaters to Mudd Creek Bridge ~~fishing access~~ BLM recreation site is closed to any float outfitting;

(b) each Sunday, the river reach from Divide ~~Bridge fishing access~~ BLM recreation site to Salmon Fly fishing access site is closed to any float fishing by nonresidents and to any float outfitting;

(c) remains the same.

(d) each Tuesday, the river reach from Mudd Creek Bridge ~~fishing access~~ BLM recreation site to Fishtrap fishing access site is closed to any float outfitting;

(e) each Wednesday, the river reach from East Bank ~~BLM fishing access~~ recreation site to Jerry Creek ~~Bridge fishing access~~ BLM recreation site is closed to any float outfitting;

(f) each Thursday, the river reach from Fishtrap fishing access site to East Bank ~~BLM fishing access~~ recreation site is closed to any float outfitting;

(g) remains the same.

(h) each Saturday, the river reach from Jerry Creek ~~Bridge fishing access~~ BLM recreation site to Divide ~~Bridge fishing access~~ BLM recreation site is closed to any float fishing by nonresidents and to any float outfitting.

(2) remains the same.

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

IMP: 87-1-303, MCA

5. The commission received a total of 23 comments and has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT 1: Department of Fish, Wildlife and Parks (department) personnel stated ARM 12.11.210 needed to be amended to be consistent with the amendments to ARM 12.11.201.

RESPONSE 1: The commission has amended ARM 12.11.210 to reflect the amendment to ARM 12.11.201.

COMMENT 2: The commission received six comments in general support of all the amendments.

RESPONSE 2: The commission appreciates the interest in this rulemaking process.

COMMENT 3: The commission received three comments in general opposition of the amendments. Opposition was given because during the open house review session the majority of participants commented that the rules are

working well and requested no changes to the rules; the public is mostly limited to using the rivers on weekends and therefore it is important to retain all of restrictions on outfitters; the outfitters don't need any more concessions that might allow them to justify historical usage in the future; and the rules should be amended to further restrict outfitters and nonresident recreationists.

RESPONSE 3: The commission adopted changes intended to improve the effectiveness of the rules without substantively altering the major components of the rules that the public expressed support for during the open houses. This includes retention of the rules restricting float outfitting on different days of the week, including weekends. The adopted changes could lead to an increase in the number of outfitters using the lower section of the Beaverhead River and the upper section of the Jefferson but this does not imply or guarantee future opportunities to conduct outfitting on either of these two rivers. After reviewing the rules the commission did not conclude that further restrictions on outfitters or nonresident float anglers were warranted.

COMMENT 4: One person stated the Department of Fish, Wildlife and Parks needed to provide more enforcement on the Beaverhead River.

RESPONSE 4: The commission agrees enforcement of rules and regulations is important and the department frequently patrols the Beaverhead River, via boat, foot, and vehicle, and consistently performs numerous permit, license, and rule compliance checks.

COMMENT 5: Three people supported the amended Beaverhead River definition allowing any licensed outfitter to use the lower Beaverhead River beginning at Jessen Park to gain access to the Jefferson River.

RESPONSE 5: The commission appreciates the interest in this rulemaking process.

COMMENT 6: Five people opposed the amended Beaverhead River definition allowing any licensed outfitter to use the lower Beaverhead River beginning at Jessen Park. Opposition was given because allowing the increased use of the lower portion of the Beaverhead River by outfitters could create a degraded experience for other recreationists and also increase fishing pressure from outfitters on the upper section of the Jefferson River.

RESPONSE 6: The section of the Beaverhead River below Jessen Park is approximately 2.4 mile, which represents a relatively short section of the entire river. There are other sections of the river that will remain closed to float outfitting. Enabling outfitters to use the lower Beaverhead River to gain access to the upper Jefferson River is a reasonable compromise that does not have a significant impact on the general recreating public. The river recreation rules are largely intended to affect recreation on the Beaverhead and Big Hole rivers. Fishing pressure on the

Jefferson River, whether from outfitters or other members of the angling public, are addressed via the department's fishing regulations.

COMMENT 7: Three people stated support for the five-year review of the recreational use rules for the Beaverhead and Big Hole Rivers.

RESPONSE 7: The commission appreciates the interest in this rulemaking process.

COMMENT 8: Six people expressed opposition to the five-year review of the recreational use rules for the Beaverhead and Big Hole Rivers. Reasons for the opposition include: reviewing the rules every five years is unnecessary, expensive, and places a burden on the public to participate in the review process and the past two reviews have yielded relatively few changes, evidence that a mandatory five-year review is not a good use of resources. It was suggested a ten-year review cycle would be more appropriate and consistent with other department plans.

RESPONSE 8: Reviewing the rules allows the commission to consider whether the rules are accomplishing their intended purpose and reflect changes that may have occurred. Doing so on a five-year basis provides frequent enough analysis to be responsive to changes but not so frequent as to place an unreasonable demand upon the participating public and department resources.

COMMENT 9: The Fishing Outfitters Association of Montana expressed support for all four of the proposed rule changes and commented that a periodic review is a good compromise between requiring a complete river management plan and no review at all. The association commented that continuing the rules without a review process would perpetuate controls on outfitters and nonresident float anglers based on conditions and use patterns labeled as crowding that existed over a decade ago and would ignore any trends or use patterns that have lessened since the original rules were adopted. The association expressed regret that the department's recent review process did not conduct an objective analysis of recreation use trend data than may have warranted discussion of reduced restrictions, but instead used a review process that was relatively subjective and opinion-driven.

RESPONSE 9: The commission appreciates the association's interest in this rulemaking process. In regard to examining recreation use trend data, the department has fishing pressure estimates for the entire Beaverhead River and three sections of the Big Hole River. The river recreation rules apply to more specific sections of the two rivers, which make it difficult to use the fishing pressure estimates to assess the effect of the rules on recreation trends. The commission also questions whether trend information alone is sufficient for reviewing the rules. The rules are intended to improve the recreation experience. The recent review process solicited public input on whether the rules have been effective in achieving their intended purpose. The public responded that the rules have improved their recreation experience.

COMMENT 10: One person asked for assurance that nonfishing individuals are allowed to launch up to six kayaks or canoes per party for safety purposes. They commented that a typical rescue situation may require a minimum of four persons.

RESPONSE 10: ARM 12.11.210(2) states that all float users, including each float outfitter, are limited to a total of two launches at or near each official access site per day on the Big Hole River. This rule regulates the number of launches an individual may conduct on a daily basis, but does not prohibit a group of kayakers or other boats from floating together.

/s/ Bob Ream  
Bob Ream, Chairman  
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter  
Rebecca Jakes Dockter, Rule Reviewer  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State July 19, 2010

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION AND  
Rules I through VI and the ) AMENDMENT  
amendment of ARM 18.2.101 )  
pertaining to incorporation of model )  
rules and contested case procedures )

TO: All Concerned Persons

1. On June 10, 2010 the Department of Transportation published MAR Notice No. 18-127 pertaining to the proposed adoption and amendment of the above-stated rules at page 1387 of the 2010 Montana Administrative Register, Issue Number 11.

2. The department has adopted the above-stated rules as proposed: New Rule I (18.2.102), II (18.2.103), Rule III (18.2.104), Rule IV (18.2.105), Rule V (18.2.106), and Rule VI (18.2.107).

3. The department has amended the above-stated rule as proposed.

4. No comments or testimony were received.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Jim Lynch  
Jim Lynch  
Director  
Department of Transportation

Certified to the Secretary of State July 19, 2010.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
23.16.116 and 23.16.122 concerning )  
transfer of interest among licensees and )  
loan evaluation )

TO: All Concerned Persons

1. On June 10, 2010, the Department of Justice published MAR Notice No. 23-16-217, regarding the public hearing on the proposed amendment of the above-stated rules at page 1393, 2010 Montana Administrative Register, Issue Number 11.

2. The Department of Justice has amended ARM 23.16.116 exactly as proposed.

3. The department amends the remaining rule with the following changes, stricken matter interlined, new matter underlined:

23.16.122 LOAN EVALUATION - INSTITUTIONAL LENDER SECURITY INTERESTS – GUARANTOR PAYMENTS (1) through (4) remain as proposed.

(a) if the guarantor is an owner of the applicant/licensee, i.e., partner, shareholder, member, and payment is made with the owner/guarantor's own funds or funds borrowed from an institutional or division approved noninstitutional source;

(b) through (5) remain as proposed.

AUTH: 23-5-115, MCA

IMP: 16-4-801, 23-5-115, 23-5-118, 23-5-176, MCA

4. A public hearing was held on July 1, 2010. Oral comments were received from Neil Peterson, executive director, Gaming Industry Association of Montana, Inc. (GIA). Oral testimony was also received from Mark Staples, Montana Tavern Association (MTA). Written comments were received from Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA). No adverse comments or suggestions were offered at the public hearing or in writing. Mr. Peterson, Mr. Staples, and Ms. Wiggers all supported the proposed amendment which was added to allow for the possible non-institutional loan from a non-owner guarantor mentioned in (4)(b) as a source of funding to make a payment. In (4)(b) the non-owner cannot make a direct payment on the loan, he can only loan money to the borrower/licensee or the owner guarantor who can then make the payment with the money.

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General, Department of Justice  
Certified to the Secretary of State July 19, 2010.

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.301.131 incorporation by	)	ADOPTION
reference of international building	)	
code, 24.301.138 and 24.301.139	)	
fees, 24.301.142 and 24.301.146	)	
building code modifications,	)	
24.301.171 incorporation by	)	
reference of international existing	)	
building code, 24.301.172	)	
incorporation by reference of	)	
international mechanical code,	)	
24.301.173 incorporation by	)	
reference of international fuel gas	)	
code, 24.301.301, 24.301.351, and	)	
24.301.371 plumbing requirements,	)	
24.301.401, 24.301.402, 24.301.411,	)	
24.301.421, 24.301.431, 24.301.441,	)	
and 24.301.451 electrical	)	
requirements, 24.301.461 inspection	)	
fees, 24.301.491 refunds or credits,	)	
and the adoption of NEW RULE I	)	
definitions	)	

TO: All Concerned Persons

1. On May 27, 2010, the Department of Labor and Industry (department) published MAR notice no. 24-301-246 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1244 of the 2010 Montana Administrative Register, issue no. 10.

2. On June 17, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. One comment was received by the June 25, 2010, deadline.

3. The department has thoroughly considered the comment received. A summary of the comment received and the board's response is as follows:

COMMENT 1: One commenter suggested that the department amend the rules to repeal or modify the "low-voltage exemption" to address instances where the raceways or wire for cabling projects have been run on top of acoustical ceiling tile grid or tied off to the grid support system contrary to code and adversely affecting the fire-resistive rating of a structure. The commenter stated that rules should require review of such installations in the plans stage and require a permit and inspection for cable and other low-voltage work as it is installed.

RESPONSE 1: The department recognizes the request to include certain types of low-voltage installations into the original or subsequent permitting of projects, in order to have the opportunity to inspect those installations. Currently, the Montana Code Annotated, not these rules, qualifies some exemption to low-voltage installations. Therefore, any changes to such exemptions must be achieved via the legislative process, not through administrative rulemaking.

The department does, however, recognize that not all low-voltage installations qualify for the exemption to permitting, and will work further with stakeholders on developing possible strategies to clarify permit requirements for those nonexempt installations.

4. The department has amended ARM 24.301.131, 24.301.138, 24.301.139, 24.301.142, 24.301.146, 24.301.171, 24.301.172, 24.301.173, 24.301.301, 24.301.351, 24.301.371, 24.301.401, 24.301.402, 24.301.411, 24.301.421, 24.301.431, 24.301.441, 24.301.451, 24.301.461, and 24.301.491 exactly as proposed.

5. The department has adopted NEW RULE I (24.301.109) exactly as proposed.

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

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

Certified to the Secretary of State July 19, 2010

BEFORE THE BOARD OF LAND COMMISSIONERS AND  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

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

To: All Concerned Persons

1. On April 29, 2010, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-145 regarding a notice of public hearing on the proposed repeal and amendment of the above-stated rules at page 988 of the 2010 Montana Administrative Register, Issue No. 8. On May 27, 2010, the department published a Notice of Second Public Hearing and Extension of Comment Period on the proposed repeal and amendment at page 1269 of the 2010 Montana Administrative Register, Issue No. 10.

2. The department has repealed ARM 36.11.111 as proposed.

3. The department has amended ARM 36.11.450 as proposed.

4. No comments or testimony were received on the rules.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Mark Phares  
Mark Phares  
Rule Reviewer

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

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

### Use of the Administrative Rules of Montana (ARM):

- |               |   |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

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

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2010 Montana Administrative Register.

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 2010 appear. Vacancies scheduled to appear from August 1, 2010, through October 31, 2010, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2010.

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



**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Architects and Landscape Architects (Labor and Industry)</b>			
Ms. Janet Cornish Billings	Governor	Wilson	6/4/2010 3/27/2013
Qualifications (if required):	public representative		
Ms. Maire O'Neill Bozeman	Governor	reappointed	6/4/2010 3/27/2013
Qualifications (if required):	registered architect with the MSU School of Architecture		
Mr. David Owen Helena	Governor	reappointed	6/4/2010 3/27/2013
Qualifications (if required):	licensed landscape architect		
Mr. Carl A. Thuesen Billings	Governor	reappointed	6/4/2010 3/27/2013
Qualifications (if required):	licensed landscape architect		
<b>Board of Real Estate Appraisers (Labor and Industry)</b>			
Mr. Jeffrey Fleming Huntley	Governor	Rose	6/14/2010 5/1/2013
Qualifications (if required):	public representative		
Mr. Dennis Hoeger Bozeman	Governor	reappointed	6/14/2010 5/1/2013
Qualifications (if required):	real estate appraiser		

## BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Real Estate Appraisers</b> (Labor and Industry) cont.			
Ms. Jennifer McGinnis Polson	Governor	reappointed	6/14/2010 5/1/2013
Qualifications (if required): real estate appraiser			
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education)			
Mr. Gene Jarussi Billings	Governor	Zander	6/1/2010 7/1/2012
Qualifications (if required): public representative			
<b>Montana Potato Commodity Committee</b> (Agriculture)			
Mr. Pat Fleming Pablo	Director	Vehnuizen	6/25/2010 6/25/2013
Qualifications (if required): none specified			
Mr. Brad Haidle Fallon	Director	Steinbeisser	6/25/2010 6/25/2013
Qualifications (if required): none specified			
<b>Montana State University - Billings</b> (Governor)			
Ms. Kris Carpenter Billings	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			
<b>Montana State University - Bozeman</b> (Governor)			
Mr. Paul Gatzemeier Billings	Governor	McDonald	6/24/2010 4/15/2013
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana State University - Great Falls College of Technology</b> (Governor)			
Ms. Joan Bennett Great Falls	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			
<b>Noxious Weed Summit Advisory Council</b> (Agriculture)			
Ms. Lindy Garner Great Falls	Governor	Olivarez	6/3/2010 0/0/0
Qualifications (if required): representative of a federal agency			
Ms. Sarese Pankratz Dodson	Governor	Briese	6/3/2010 0/0/0
Qualifications (if required): representative of irrigation districts			
Mr. Jim Schillinger Baker	Governor	reappointed	6/4/2010 1/1/2013
Qualifications (if required): public member			
Dr. Tracy Sterling Bozeman	Governor	Wraith	6/3/2010 0/0/0
Qualifications (if required): representative of MSU agricultural experiment stations			
<b>Postsecondary Scholarship Advisory Council</b> (Governor)			
Ms. Connie Wittak Flaxville	Governor	reappointed	6/24/2010 6/20/2013
Qualifications (if required): having experience in secondary education			

**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs)</b>			
Commissioner Ed Tinsley Fort Harrison	Governor	Mesch	6/1/2010 10/1/2011
Qualifications (if required): representative of the Disaster and Emergency Services			
<b>Telecommunications Access Services for Persons with Disabilities Committee (Public Health and Human Services)</b>			
Mr. Ron Bibler Great Falls	Governor	reappointed	6/14/2010 7/1/2013
Qualifications (if required): hearing disabled			
Ms. Chris Caniglia Helena	Governor	reappointed	6/14/2010 7/1/2013
Qualifications (if required): a non-disabled business person			
Ms. Linda Kirkland Helena	Governor	reappointed	6/14/2010 7/1/2013
Qualifications (if required): agency representative			
Mr. James Marks Helena	Governor	Bugni	6/14/2010 7/1/2010
Qualifications (if required): agency representative			
<b>University of Montana (Governor)</b>			
Ms. Ann Boone Missoula	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			

**BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>University of Montana - Helena College of Technology (Governor)</b>			
Mr. Pat Clinch Helena	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			
<b>University of Montana - Montana Tech (Governor)</b>			
Mr. Tony Laslovich Anaconda	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			
<b>University of Montana - Western (Governor)</b>			
Mr. William Kriegel Dillon	Governor	reappointed	6/24/2010 4/15/2013
Qualifications (if required): public representative			
<b>Vocational Rehabilitation Council (Public Health and Human Services)</b>			
Ms. Shaunda Albert Pablo	Governor	Perez	6/1/2010 10/1/2011
Qualifications (if required): business representative			
Ms. Mona Amundson Glasgow	Governor	Straley	6/1/2010 10/1/2012
Qualifications (if required): business representative			
Ms. Andrea Falcon Kalispell	Governor	reappointed	6/1/2010 10/1/2012
Qualifications (if required): business representative			

## BOARD AND COUNCIL APPOINTEES FROM JUNE, 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services) cont.			
Ms. Char Harasymczuk Billings	Governor	Corrao	6/1/2010 10/1/2012
Qualifications (if required): representative of the disabilities community			
Ms. Christina Mattlin Clancy	Governor	reappointed	6/1/2010 10/1/2012
Qualifications (if required): representative of the disabilities community			
Mr. Quentin Schroeter Helena	Governor	Mills	6/1/2010 10/1/2012
Qualifications (if required): representative of the disabilities community			
<b>Western Interstate Commissioner for Higher Education</b> (Governor)			
Mr. Clayton Christian Missoula	Governor	Melvin	6/24/2010 6/19/2011
Qualifications (if required): public representative			
Sen. Kim Gillan Billings	Governor	Harrington	6/24/2010 6/19/2014
Qualifications (if required): legislator			
Ms. Sheila Stearns Helena	Governor	Moe	6/24/2010 6/19/2013
Qualifications (if required): representative of higher education			

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>9-1-1 Advisory Council</b> (Administration) Mr. Leo C. Dutton, Helena Qualifications (if required): Montana Sheriff's and Peace Officers Association's representative	Director	10/6/2010
<b>Alternative Health Care Board</b> (Labor and Industry) Ms. Mary Anne Brown, Great Falls Qualifications (if required): midwife	Governor	9/1/2010
Mr. Tom Mensing, Red Lodge Qualifications (if required): public representative	Governor	9/1/2010
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry) Ms. Delores Lund, Plentywood Qualifications (if required): public representative	Governor	10/1/2010
Ms. Maxine Collins, Helena Qualifications (if required): manicurist	Governor	10/1/2010
<b>Board of Medical Examiners</b> (Labor and Industry) Dr. Michael LaPan, Sidney Qualifications (if required): podiatrist	Governor	9/1/2010
Dr. Arthur K. Fink, Glendive Qualifications (if required): osteopath	Governor	9/1/2010
Dr. Anna Earl, Chester Qualifications (if required): doctor of medicine	Governor	9/1/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Private Security</b> (Labor and Industry)                      Mr. Mark Chaput, Billings                      Qualifications (if required): electronic security company</p>	Governor	8/1/2010
<p><b>Board of Psychologists</b> (Labor and Industry)                      Ms. Bonnie Hyatt Murphy, Livingston                      Qualifications (if required): public representative</p>	Governor	9/1/2010
<p><b>Board of Veterans' Affairs</b> (Military Affairs)                      Sen. Joe Tropila, Great Falls                      Qualifications (if required): representative of the State Administration and Veterans' Affairs Committee</p>	Governor	8/1/2010
<p>Ms. Sylvia Beals, Forsyth                      Qualifications (if required): Veteran and resident of Region 4</p>	Governor	8/1/2010
<p>Ms. Kelly Williams, Helena                      Qualifications (if required): representative of the Department of Public Health and Human Services</p>	Governor	8/1/2010
<p>Ms. Teresa Bell, Fort Harrison                      Qualifications (if required): representative of the U.S. Department of Veterans' Affairs</p>	Governor	8/1/2010
<p>Mr. Harry LaFriniere, Florence                      Qualifications (if required): Veteran and resident of Region 1</p>	Governor	8/1/2010
<p>Ms. Mary Creech, Butte                      Qualifications (if required): Veteran and resident of Region 2</p>	Governor	8/1/2010



**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Veterans' Affairs</b> (Military Affairs) cont. Mr. Thomas Huddleston, Helena Qualifications (if required): experience with veterans' issues	Governor	8/1/2010
Mr. James English, Helena Qualifications (if required): individual with experience with veterans' issues	Governor	8/1/2010
<b>Burial Preservation Board</b> (Administration) Mr. Robert P. Four Star, Poplar Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2010
Mr. Linwood Tall Bull, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2010
Mr. Reuben Mathias, Pablo Qualifications (if required): representative of the Salish-Kootenai Tribes	Governor	8/22/2010
Mr. William Big Day, Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2010
Mr. Morris Belgard, Hays Qualifications (if required): representative of the Fort Belknap Indian Community	Governor	8/22/2010
Mr. Videll Stump Sr., Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe	Governor	8/22/2010
Mr. Rusty Randolph, Havre Qualifications (if required): representative of the Little Shell Tribe	Governor	8/22/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Burial Preservation Board</b> (Administration) cont.                      Dr. Ruthann Knudson, Great Falls                      Qualifications (if required): representative of the archaeological association</p>	Governor	8/22/2010
<p>Mr. Terry Bullis, Hardin                      Qualifications (if required): representative of the coroner's association</p>	Governor	8/22/2010
<p><b>Historical Preservation Review Board</b> (Historical Society)                      Ms. Rebecca Hanna, Choteau                      Qualifications (if required): paleontologist</p>	Governor	10/1/2010
<p>Ms. Rosalyn LaPier, Missoula                      Qualifications (if required): historical researcher</p>	Governor	10/1/2010
<p><b>Kindergarten to College Work Group</b> (Governor)                      Director Keith Kelly, Helena                      Qualifications (if required): ex-officio member</p>	Governor	9/11/2010
<p>Rep. David Ewer, Helena                      Qualifications (if required): ex-officio member</p>	Governor	9/11/2010
<p>Rep. Jonathan Windy Boy, Box Elder                      Qualifications (if required): representative of the governor</p>	Governor	9/11/2010
<p>Mr. Evan Barrett, Butte                      Qualifications (if required): ex-officio member</p>	Governor	9/11/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Kindergarten to College Work Group</b> (Governor) cont.		
Ms. Sheila Stearns, Helena Qualifications (if required): Commissioner of Higher Education	Governor	9/11/2010
Mr. Dick Clark, Helena Qualifications (if required): ex-officio member	Governor	9/11/2010
Ms. Jan Lombardi, Helena Qualifications (if required): representative of the governor	Governor	9/11/2010
Director Anthony Preite, Helena Qualifications (if required): ex-officio member	Governor	9/11/2010
Ms. Janine Pease, Billings Qualifications (if required): Board of Regents representative	Governor	9/11/2010
Ms. Erin Williams, Missoula Qualifications (if required): parent representative	Governor	9/11/2010
Mr. Steve Meloy, Helena Qualifications (if required): Board of Public Education executive secretary	Governor	9/11/2010
Mr. Steve Gettel, Great Falls Qualifications (if required): School for the Deaf and Blind representative	Governor	9/11/2010
Ms. Anna Whiting-Sorrell, Helena Qualifications (if required): ex-officio member	Governor	9/11/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Kindergarten to College Work Group</b> (Governor) cont. Supt. Denise Juneau, Helena Qualifications (if required): Superintendent of Public Instruction	Governor	9/11/2010
Mr. Bernard Olsen, Lakeside Qualifications (if required): Board of Public Education representative	Governor	9/11/2010
Ms. Kelly Chapman, Helena Qualifications (if required): Student Assistance Foundation representative	Governor	9/11/2010
Ms. Mara Menehan, Helena Qualifications (if required): student representative	Governor	9/11/2010
<b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture) Mr. Dennis Cash, Bozeman Qualifications (if required): ex-officio non-voting member representing Montana State University Extension	Director	9/17/2010
Mr. Charles Miller, Hamilton Qualifications (if required): forage producer	Director	9/17/2010
Mr. Keith Brophy, Valier Qualifications (if required): pellets cubes or related products processor	Director	9/17/2010
Mr. Richard Maki, Belt Qualifications (if required): forage producer	Director	9/17/2010
Mr. Miles Hutton, Turner Qualifications (if required): outfitter or guide	Director	9/17/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture) cont. Mr. David Wichman, Moccasin Qualifications (if required): ex-officio non-voting member representing Montana State University Agriculture	Director	9/17/2010
Ms. Stacey Barta, Big Timber Qualifications (if required): from an Eastern weed district	Director	9/17/2010
<b>Montana Wheat and Barley Committee</b> (Agriculture) Mr. Donald Fast, Glasgow Qualifications (if required): resident of District 2	Governor	8/20/2010
Mr. Arlo Skari, Chester Qualifications (if required): resident of District 3	Governor	8/20/2010
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services) Mr. Lynn Winslow, Helena Qualifications (if required): advocacy program representative	Governor	10/1/2010
Rep. Carol Lambert, Broadus Qualifications (if required): statewide independent living council representative	Governor	10/1/2010
Ms. Claudette Vance, Kalispell Qualifications (if required): community rehabilitation program representative	Governor	10/1/2010
Ms. Nina Cramer, Missoula Qualifications (if required): representative of organized labor	Governor	10/1/2010

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2010 THROUGH OCTOBER 31, 2010**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services) cont. Mr. Dick Trerice, Helena Qualifications (if required): state education agency representative	Governor	10/1/2010
Ms. Mary Hall, Missoula Qualifications (if required): parent organization representative	Governor	10/1/2010
Ms. Chanda Hermanson, Helena Qualifications (if required): advocacy program representative	Governor	10/1/2010