

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 22

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.1801 [ARM 2.43.5101	)	AMENDMENT
effective December 1, 2008, pursuant	)	
to MAR Notice No. 2-43-403]	)	NO PUBLIC HEARING
pertaining to the adoption by	)	CONTEMPLATED
reference of the State of Montana	)	
Public Employee Deferred	)	
Compensation Plan Document,	)	
January 1, 2008, edition	)	

TO: All Concerned Persons

1. On January 30, 2009, the Montana Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employees' Retirement Board no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-9174; fax (406) 444-5428; TDD (406) 444-1421; or e-mail msymons@mt.gov.

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

2.43.1801 [2.43.5101] ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT

(1) The board adopts and incorporates by reference the State of Montana Public Employee Deferred Compensation Plan Document (~~August 1, 2005~~ January 1, 2008, edition), that was approved by the board on ~~July 28, 2005~~ August 14, 2008, and September 11, 2008, and Trust Agreement (January 1, 2002, edition), that was approved by the board on February 22, 2001, and September 28, 2001.

(2) Copies of the Deferred Compensation Plan Document, Trust Agreement, and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@mt.gov, and are available on MPERA's web site at www.mpera.mt.gov.

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

STATEMENT OF REASONABLE NECESSITY: The Pension Protection Act of 2006 and other recent congressional enactments, including the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), require changes to the State of Montana Public Employee Deferred Compensation Plan Document (457 Plan Document). The revised 457 Plan Document is being submitted to the Internal Revenue Service for a Private Letter Ruling in November 2008. If any portion of the document is not acceptable to the IRS, a revised 457 Plan Document will be adopted by the board and referenced in an amended version of this rule. The State of Montana Public Employee Deferred Compensation Plan is not a qualified plan. Therefore, the board sees no reason to reference private letter ruling dates within this rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; fax (406) 444-5428; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov), and must be received no later than 5:00 p.m., December 31, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Roxanne M. Minnehan at the above address no later than 5:00 p.m., December 31, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 833 persons based on 8334 participants in the Deferred Compensation Plan as of October 1, 2008.

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

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version

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

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

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

/s/ John Paull  
John Paull  
President  
Montana Public Employees' Retirement  
Board

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

Certified to the Secretary of State November 17, 2008.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.1001 [ARM 2.43.3501	)	AMENDMENT
effective December 1, 2008, pursuant	)	
to MAR Notice No. 2-43-403]	)	NO PUBLIC HEARING
pertaining to the adoption by	)	CONTEMPLATED
reference of the State of Montana	)	
Public Employee Defined	)	
Contribution Plan Document,	)	
January 1, 2008, edition	)	

TO: All Concerned Persons

1. On January 30, 2009, the Montana Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employees' Retirement Board no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-9174; fax (406) 444-5428; TDD (406) 444-1421; or e-mail msymons@mt.gov.

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

2.43.1001 [2.43.3501] ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board ~~hereby~~ adopts and incorporates by reference the following:

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

(b) State of Montana Public Employee Defined Contribution Plan Trust Agreement (July 1, 2002, edition), that was approved by the board on April 26, 2001, and September 28, 2001, and approved by the Internal Revenue Service on September 24, 2001.

(2) Copies of the Defined Contribution Plan Document, Trust Agreement, and related materials may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@mt.gov, and are available on MPERA's web site at [www.mpera.mt.gov](http://www.mpera.mt.gov).

AUTH: 19-3-2104, MCA



IMP: 19-3-2102, MCA

STATEMENT OF REASONABLE NECESSITY: The Pension Protection Act of 2006 and other recent congressional enactments, including the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), require changes to the Montana Public Employees' Retirement System's (PERS) Defined Contribution Plan Document (Plan Document) to ensure the Plan Document remains qualified for tax purposes under the Internal Revenue Code. The Montana Public Employees' Retirement Board is also taking this opportunity to eliminate possible confusion by removing sections of the Plan Document that pertain solely to the initial window (July 1, 2002 through June 30, 2003) during which existing PERS members had one year to elect whether to stay in the PERS Defined Benefit Retirement Plan or the PERS Defined Contribution Retirement Plan. That window has expired.

The revised Plan Document was submitted to the Internal Revenue Service (IRS) for approval on October 31, 2008. This rule will be amended to reflect the date the Plan Document is approved. If any portion of the document is not accepted by the IRS, a revised Plan Document will be adopted by the board and referenced in an amended version of this rule. The Trust Agreement remains the same as initially adopted. The board is proposing to reference the two documents separately as the Plan Document will be revised more frequently than the Trust Agreement, and will therefore be updated and ultimately approved by the IRS on a different schedule.

MPERA's web site address has changed.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; fax (406) 444-5428; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov), and must be received no later than 5:00 p.m., December 31, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Roxanne M. Minnehan at the above address no later than 5:00 p.m., December 31, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 214 persons based on 2147 participants in the Defined Contribution Retirement Plan as of September 2008.

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

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

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

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

/s/ John Paull  
John Paull  
President  
Montana Public Employees' Retirement  
Board

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

Certified to the Secretary of State November 17, 2008.

BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of ARM 2.55.320 pertaining to	)	AMENDMENT
classifications of employments and	)	
ARM 2.55.327A pertaining to the	)	NO PUBLIC HEARING
construction industry premium credit	)	CONTEMPLATED
program	)	

TO: All Concerned Persons

1. On January 23, 2009, the Montana State Fund proposes to amend the above-stated rules.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on December 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual effective July 1, ~~2007~~ 2008, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA  
IMP: 39-71-2311, 39-71-2316, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual that are now available up to July 1, 2008. The updates are made to the manual each year to reflect changes to the classifications that are made from time to time by the Classification Review Committee established in Title 33, chapter 16, MCA, and which classification changes are adopted by the State Fund.

In accordance with 39-71-2316(1)(e), MCA, "After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates." The manual is an administrative manual used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. These classifications each have a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This rule update and amendment are made each year to adopt the current version of the manual.

2.55.327A CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) and (2) remain the same.

(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

3365	5059	5215	5445	5506	5645	6204	6365	8227
3719	5069	5221	5462	5507	5651	6217	6400	9521
3724	5102	5222	5472	5508	5703	6229	7538	9534
3726	5146	5223	5473	5511	5705	6233	7601	9552
5020	5160	5348	5474	<u>5535</u>	6003	6251	7605	
5022	5183	5402	5478	<del>5537</del>	6005	6252	7611	
5037	5188	5403	5479	<del>5538</del>	6017	6306	7612	
5040	5190	5437	5480	5551	6018	6319	7613	
5057	5213	5443	5491	5610	6045	6325	7855	

(4) through (6) remain the same.

AUTH: 39-71-2315, 39-71-2316, MCA

IMP: 39-71-2211, 39-71-2311, 39-71-2316, 39-71-2330, MCA

STATEMENT OF REASONABLE NECESSITY: Montana law, 39-71-2211, MCA, provides for a construction industry premium credit program. The statute provides that State Fund may adopt the plan filed by the advisory organization designated in 33-16-1023, MCA, which is the National Council on Compensation Insurance (NCCI). The installation of sheet metal products was previously assigned to classification code #5538, which was discontinued, and classification code #5535 was erected in its place. NCCI recommended the change as part of its national research project to ensure that the classification system remains healthy, viable, and responsive to the needs of the workers' compensation industry. The class code change was adopted by the Montana Classification and Review Committee for use in Montana. The change must be made to allow classification code #5535 to be available for the next fiscal year's construction credit program participants.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov. Any comments must be received no later than January 5, 2009.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than January 5, 2009.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,700 persons based on 27,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana, 59604-4759; faxed to the office at (406) 444-1493; e-mail [nbutler@mt.gov](mailto:nbutler@mt.gov); or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment 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 if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Nancy Butler  
Nancy Butler, General Counsel  
Rule Reviewer

/s/ Joe Dwyer  
Joe Dwyer  
Chairman of the Board

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

Certified to the Secretary of State November 17, 2008.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 6.6.2101,	)	PROPOSED AMENDMENT,
6.6.2102, 6.6.2103, and 6.6.2104,	)	AMENDMENT AND TRANSFER,
the proposed amendment and	)	AND REPEAL
transfer of ARM 6.6.1201, and the	)	
proposed repeal of ARM 6.6.1202	)	
and 6.6.1203 pertaining to	)	
Discrimination	)	

TO: All Concerned Persons

1. On December 18, 2008, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment, amendment and transfer, and repeal of the above-stated rules.

2. The State Auditor and Commissioner of Insurance 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., December 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.2101 DEFINITIONS (1) The term "insurer" as used in this subchapter means any financial institution, or person, as those terms are defined in 49-2-101, 33-1-201, and 33-1-202, MCA, that issues, ~~operates, transacts, sells,~~ or otherwise provides any type of insurance policy, plan, certificate, membership contract, or coverage ~~or any pension or retirement plan, program, or coverage to another person or persons, except that an employer or organization which provides to its employees or members a group insurance policy, plan, or coverage or pension or retirement plan, program, or coverage purchased from or provided by an insurer is not an insurer.~~

AUTH: 33-1-313, MCA  
IMP: 33-1-502, 49-2-309, MCA

6.6.2102 RATES AND PREMIUMS; PROPERTY AND CASUALTY INSURANCE (1) and (2) remain the same.

- (a) the age of the driver;
- (b) the length of driving experience;
- (c) the number of years licensed to operate a motor vehicle;
- (d) a determination of which driver, among several insured individuals, is the primary driver of a covered vehicle, based upon the proportionate use of each vehicle insured under the policy by individual drivers insured or to be insured under the policy;
- (e) average number of miles driven over a period of time;
- (f) type of use, such as business, farm, or pleasure use;
- (g) vehicle characteristics, features, and options such as engine displacement, ability of vehicle and its equipment to protect passengers from injury, vehicle make and model, and design characteristics related to damageability of the vehicle;
- (h) commuting mileage over a period of time;
- (i) the number of cars insured or number of licensed operators in the household, without regard to the sex or marital status of the licensed operators. An insurer may not utilize a policy of establishing insurance rates for an individual based upon the driving record of a spouse who is a licensed operator but not a primary driver of the vehicle to be insured unless the policy is applied in the same manner to households of individuals not married to each other;
- (j) the amount of insurance;
- (k) the anticipated cost of vehicle repairs or replacement, which may be measured by age, price, cost, or value of the insured automobile, and other related factors;
- (l) geographic location;
- (m) the accident record of the insured, including accidents for which the insured, although not cited, was substantially at fault; and
- (n) remains the same.

AUTH: 33-1-313, MCA  
IMP: 33-1-502, 49-2-309, MCA

6.6.2103 PAYMENT OR BENEFITS (1) No payments, ~~or~~ benefits, rates, or premiums of any insurance policy, certificate, membership contract, plan, subscriber agreement, statement of coverage, binder, rider, or endorsement or other coverage or pension or retirement plan, program, or coverage shall be based on sex or marital status.

AUTH: 33-1-313, MCA  
IMP: 33-1-502, 49-2-309, MCA

6.6.2104 JURISDICTION AND APPLICABILITY DATE (1) Section 49-2-309, MCA, and this subchapter are applicable to all insurance policies, plans, and coverages ~~and pension or retirement plans, programs, or coverages~~ subject to the laws of Montana and issued or entered into on or after October 1, 1985.

(2) Any term, payment, or benefit of an insurance policy, plan, or coverage ~~or pension or retirement plan, program~~ in effect prior to October 1, 1985, may be



exercised in accordance with the terms of that policy, plan, ~~program~~, or coverage. Options to increase or decrease coverage, annual rate adjustments, and settlement options in life insurance policies are examples of terms which if included in a policy, plan, ~~program~~ or coverage in effect prior to October 1, 1985, may be exercised without regard to 49-2-309, MCA, or these rules.

(3) Section 49-2-309, MCA, and these rules, are applicable to any agreement whereby an insurer and an insured agree to an extension or continuation of a pre-October 1, 1985, insurance policy plan or coverage when no consideration was given in the pre-October 1, 1985, contract for the right to extend or continue upon the same terms. The fact that the contract formed by extension or continuation is identical to the pre-October 1, 1985, contract is not material if no consideration for the right to extend or continue the pre-October 1, 1985, terms was given.

~~(4) Section 49-2-309, MCA, and these rules do not apply to any insurance policy, plan, or coverage or pension or retirement plan, program or coverage issued to or provided to a person who resided in a state other than Montana at the time the policy, plan, program or coverage became effective.~~

AUTH: 33-1-313, MCA

IMP: 33-1-502, 49-2-309, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to these rules are necessary to clarify that the insurance commissioner does not regulate pension plans and to clarify that these rules apply to all types of insurance issued to Montana residents.

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

6.6.1201 (6.6.2106) UNFAIR DISCRIMINATION ON THE BASIS OF BLINDNESS (1) ~~ARM 6.6.1201-6.6.1203 is promulgated pursuant to the authority granted by section 33-1-313, MCA.~~

~~(2) The purpose of ARM 6.6.2101-6.6.2103 is to identify specific acts or practices which are prohibited by Section 33-18-206, MCA, concerning unfair discrimination in life insurance, annuities, and disability contracts.~~

~~(3) The following are hereby identified as acts or practices which constitute unfair discrimination between individuals of the same class:~~ Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness, is an act or practice that constitutes unfair discrimination between individuals of the same class, except where the refusal, limitation, or rate differential is based on sound actuarial principles, or is related to actual or reasonably anticipated experience.

AUTH: 33-1-313, MCA

IMP: 33-18-206, 33-18-210, ~~33-7-519~~, 33-30-306, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to ARM 6.6.1201 are necessary to reflect the proposed repeal of other rules in this subchapter. Additionally, it is necessary to delete rule text indicating applicability only to life insurance, annuities, and disability insurance because the statutes implemented indicate that the rule is intended to prohibit unfair discrimination on the basis of blindness in regard to property, casualty, and surety insurance also. The rule is being transferred so that all the discrimination rules are in one subchapter.

5. The State Auditor proposes to repeal the following rules:

6.6.1202 UNFAIR DISCRIMINATION ON THE BASIS OF SEX OR MARITAL STATUS, found at page 6-181 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA

IMP: 33-7-519, 33-18-206, 33-18-210, 33-30-306, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 6.6.1202 is no longer necessary due to the subsequent enactment of 49-2-309, MCA, which broadly prohibits sex and marital status discrimination in insurance and retirement plans.

6.6.1203 PROHIBITED PRACTICES, found at page 6-181 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA

IMP: 33-7-519, 33-18-206, 33-18-210, 33-30-306, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 6.6.1203 is no longer necessary due to the subsequent enactment of 49-2-309, MCA, which broadly prohibits sex and marital status discrimination in insurance and retirement plans.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, Chief Legal Counsel, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail cgoe@mt.gov, and must be received no later than 5:00 p.m., December 24, 2008.

7. Christina L. Goe, Chief Legal Counsel, has been designated to preside over and conduct this hearing.

8. The department maintains a list of concerned 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 and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601;

telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

/s/ Janice S. VanRiper  
Janice S. VanRiper  
Deputy Insurance Commissioner

Certified to the Secretary of State November 17, 2008.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of New Rule I pertaining to ) PROPOSED ADOPTION  
the administration of the 2009-2010 )  
Federal Community Development )  
Block Grant (CDBG) Program )

TO: All Concerned Persons

1. On December 16, 2008, at 1:30 p.m, the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 9, 2008, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; TDD 841-2702; fax (406) 841-2771; or e-mail gbyrom@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2009-2010 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program Federal Fiscal Year (FFY) 2010 Application Guidelines for Housing and Neighborhood Renewal Projects; the Montana Community Development Block Grant Program FFY 2010 Application Guidelines for Public Facilities Projects; the Montana Community Development Block Grant Program FFY 2009 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2009 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2009 Application Guidelines for Planning Projects; the Montana Community Development Block Grant Program FFY 2008 Application Guidelines for the Neighborhood Stabilization Program; and the Montana Community Development Block Grant Program FFY 2010 Grant Administration Manual published by it as rules for the administration of the CDBG program.

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

- (d) procedures for local project start up;
  - (e) environmental review of project activities;
  - (f) procurement of goods and services;
  - (g) financial management;
  - (h) protection of civil rights;
  - (i) fair labor standards;
  - (j) acquisition of property and relocation of persons displaced thereby;
  - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
  - (l) project audits;
  - (m) public relations;
  - (n) project monitoring; and
  - (o) planning assistance.
- (3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or from the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the FFY 2008, 2009, and 2010 CDBG program and 90-1-103, MCA, require the department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, planning, housing and neighborhood renewal, public facility, and neighborhood stabilization projects.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; fax (406) 841-8771; e-mail gbyrom@mt.gov, or to the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; fax (406) 841-2731; e-mail karyl@mt.gov, and must be received no later than 5:00 p.m., December 24, 2008.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

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

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

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

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State November 17, 2008.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 8.99.901,	)	PROPOSED AMENDMENT
8.99.903, 8.99.904, 8.99.905,	)	
8.99.907, 8.99.908, 8.99.910,	)	
8.99.911, 8.99.912, and 8.99.914	)	
pertaining to the award of grants and	)	
loans under the Big Sky Economic	)	
Development Program	)	

TO: All Concerned Persons

1. On January 6, 2009, at 1:30 p.m, the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 30, 2008, to advise us of the nature of the accommodation that you need. Please contact Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2792; TDD (406) 841-2702; fax (406) 841-2731; or e-mail anelson@mt.gov.

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

8.99.901 DEFINITIONS (1) through (9) remain the same.

(10) "Eligible economic development organization" means an economic development organization that is located in a county that is not part of a certified regional development corporation region, and which meets the eligibility requirements established by the department and published by it in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2008~~ 2009.

(11) and (12) remain the same.

(13) "High-poverty county" means a county in this state in which 14% or more of people of all ages are in poverty as determined by the U.S. Bureau of the Census estimates for the most current year available.

(13) and (14) remain the same, but are renumbered (14) and (15).

~~(15) "Montana Main Street Program" means the state program established in 90-1-151, MCA, and administered by the Department of Commerce that coordinates technical assistance and funding resources for revitalizing and enhancing the economic viability of historic and traditional downtown districts in communities across the state.~~

(16) through (18) remain the same.

AUTH: ~~90-1-204~~ 90-1-201, MCA  
IMP: ~~90-1-204~~ 90-1-201, MCA

8.99.903 PURPOSE OF BIG SKY ECONOMIC DEVELOPMENT PROGRAM

(1) Economic development is a public purpose and the purpose of the program is to assist economic development activities in Montana that:

- (a) through (d) remain the same.
- (e) retain or expand existing businesses; ~~and~~
- (f) provide a better life for future generations through greater economic growth and prosperity in Montana; ~~and~~
- (g) encourage workforce development, including workforce training and job creation, in high-poverty counties by providing targeted assistance.

(2) remains the same.

AUTH: ~~90-1-204~~ 90-1-202, MCA  
IMP: ~~90-1-204~~ 90-1-202, MCA

8.99.904 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS

(1) The department adopts and incorporates by reference the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2008~~ 2009 as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the Department of Commerce, P.O. Box 200505, Helena, MT 59620-0505.

(2) remains the same.

AUTH: 90-1-204, MCA  
IMP: 90-1-204, MCA

8.99.905 DISTRIBUTION OF FUNDS FROM THE BIG SKY ECONOMIC DEVELOPMENT ACCOUNT

(1) Of the funds that are deposited in the account that are not used for administrative expenses:

- (a) remains the same.
- (b) 25% must be distributed to certified regional development corporations and eligible economic development organizations for economic development planning ~~or capacity building~~ activities.

AUTH: ~~90-1-204~~ 90-1-205, MCA  
IMP: ~~90-1-204~~ 90-1-205, MCA

8.99.907 FORM OF FINANCIAL ASSISTANCE

(1) remains the same.

(2) Financial assistance provided to certified regional development corporations and other eligible economic development organizations from the account shall be in the form of negotiated grants for economic development planning ~~or capacity building~~ activities.

AUTH: ~~90-1-204~~ 90-1-203, MCA



IMP: ~~90-1-204~~ 90-1-203, MCA

8.99.908 MAXIMUM AWARD AMOUNT (1) Maximum award amounts to local governments may not exceed \$5,000 for each eligible job to be created by an eligible business, except that funding for a project in a high-poverty county may not exceed \$7,500 for each eligible job.

(2) In appropriate circumstances and with supporting documentation, the department may establish award amounts to local governments that are less than \$5,000 or \$7,500 in a high-poverty county for each new eligible job to be created by an eligible business.

(3) remains the same.

(4) Maximum award amounts to certified regional development corporations and other eligible economic development organizations shall be established and published by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2008~~ 2009.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.910 AWARD MATCH REQUIREMENT (1) Local governments shall provide and document equal matching funds for all awards allocated under the program, except that the department may allow a 50% to 100% match requirement for projects located in a high-poverty county.

(2) remains the same.

(3) Certified regional development corporations and other eligible economic development organizations ~~are not~~ may be required to document or provide matching funds for awards allocated under the program.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.911 ELIGIBLE USES OF AWARDS (1) remains the same.

(2) Uses of awards to certified regional development corporations and other eligible economic development organizations shall include, but are not limited to, the following economic development planning ~~or capacity building~~ activities:

(a) through (c) remain the same.

(d) creation and maintenance of baseline community profiles; and

(e) matching funds for federal funds, including but not limited to brownfields funds and natural resource damage funds; ~~and~~

(f) ~~main street program activities.~~

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.912 ELIGIBLE BUSINESS (1) Basic sector businesses and other businesses identified by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2008~~ 2009 are eligible for financial assistance

from funds that are awarded to local governments under this program.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.914 AWARD DECISION CRITERIA (1) through (3)(c) remain the same.

(d) the economic development planning ~~or capacity building~~ activity as a new "best practice" in economic development at the local, regional, state, or national level.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

REASON: 17-5-703 and 90-1-201, MCA, et seq. created the Big Sky Economic Development Fund and assigned the administration of the fund to the Department of Commerce. The department is proposing these amendments to reflect the updated 2009 Guidelines and the legislative changes to the program contained in House Bill 286 passed by the 2007 Montana Legislature. The Big Sky Economic Fund program is an economic development program that aides in the development of good-paying jobs for Montana residents and promotes long-term, stable economic growth in Montana. Amendments are also reasonably necessary because the Legislature mandated that the department adopt rules to implement the Big Sky Economic Development Program in 90-1-204, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2792; fax (406) 841-2731; or e-mail [anelson@mt.gov](mailto:anelson@mt.gov), and must be received no later than 5:00 p.m., January 14, 2009.

5. Kelly A. Casillas, Legal Counsel, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to [lgregg@mt.gov](mailto:lgregg@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

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

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

/s/ ANTHONY J. PREITE  
ANTHONY J. PREITE  
Director  
Department of Commerce

Certified to the Secretary of State November 17, 2008.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF SECOND PUBLIC
17.56.502, pertaining to reporting of )	HEARING AND EXTENSION OF
suspected releases )	COMMENT PERIOD ON
)	PROPOSED AMENDMENT
)	
)	(UNDERGROUND STORAGE
)	TANKS)

TO: All Concerned Persons

1. On October 23, 2008, the Department of Environmental Quality published MAR Notice No. 17-279 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2232, 2008 Montana Administrative Register, issue number 20. The department held a public hearing on November 12, 2008, and the initial comment period was scheduled to end on November 20, 2008.

2. On December 16, 2008, at 10:30 a.m., the department will hold a second public hearing in Room 216, 1100 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rule. This second hearing will supplement the hearing held on November 12, 2008.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., December 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

4. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Elois Johnson at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on December 24, 2008. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

5. Inadvertently, the initial proposal notice was not sent to persons on the interested persons list for the department's underground storage tank rulemaking proceedings, within three days of the initial publication as required by 2-4-302, MCA. The second hearing and extended comment period are intended to provide these persons with the opportunity to testify and submit written comments.

6. The rules proposed to be amended remain the same as published in MAR

Notice No. 17-279.

7. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

/s/ Richard H. Oppen  
RICHARD H. OPPER, Director

Certified to the Secretary of State, November 17, 2008.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 1.3.201, regarding	)	AMENDMENT
definitions, and 1.3.202, regarding	)	
MAPA	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 26, 2008, the Department of Justice proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov.

3. The rules as proposed to be amended are as follows:

1.3.201 INTRODUCTION AND DEFINITIONS (1) Montana statutes are referred to collectively as the Montana Code Annotated (MCA). ~~The term "MCA" is the abbreviation for Montana Code Annotated.~~

(2) The Montana Administrative Procedure Act is referred to as "~~the Act~~" "MAPA" and includes 2-4-101 through 2-4-711, MCA. ~~The Act~~ MAPA outlines procedures that agencies must follow when:

- (a) adopting, amending, or repealing agency rules;
- (b) hearing contested cases; or
- (c) issuing declaratory rulings.

(3) Each agency subject to ~~the Act~~ MAPA must adopt rules describing its organization and procedures. ~~, per 2-4-201, MCA. Section 2-4-202, MCA, directs the Attorney General Secretary of State to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. It directs the Attorney General to prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings.~~ The model rules have been adopted for that purpose. ~~The model rules may be incorporated by reference to the model rules. Agencies may adopt the model rules by incorporating them by reference.~~ Subsequent amendments may be adopted only by following the rulemaking procedure of ~~the Act~~ MAPA. See 2-4-307, MCA.

(4) The term "register" refers to the Montana Administrative Register.

AUTH: 2-4-202, MCA  
IMP: 2-4-202, MCA

1.3.202 APPLICATION OF MONTANA ADMINISTRATIVE PROCEDURE ACT (1) ~~The Act~~ MAPA applies to all state agencies as defined in 2-4-102, MCA. Note that the state Board of Pardons and Parole is subject to only the sections enumerated in 2-4-103, 2-4-201, 2-4-202, and 2-4-306, MCA, and the requirement that its rules be published.

AUTH: 2-4-202, MCA  
IMP: 2-4-202, MCA

RATIONALE AND JUSTIFICATION: The change to these rules is in response to the statutory change to section 2-4-202, MCA (2008). The statute previously directed the Attorney General to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The amended statute now directs the Secretary of State to do so.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than 5:00 p.m. on December 24, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Stuart Segrest at the above address no later than December 24, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 25.

7. An electronic copy of this Notice is available through the Department of Justice web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may

be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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

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

/s/ Stuart Segrest  
STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State November 17, 2008.



BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed )  
adoption of New Rules I through VI, )  
pertaining to activities that are, and )  
those activities that are not, included )  
in the practice of land surveying )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 18, 2008, at 1:00 p.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on December 12, 2008, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The board determined it is reasonably necessary to adopt the proposed new rules to address requests from within and outside the profession of land surveying for clarification regarding whether certain activities (mostly arising as a consequence of developing technologies) require licensure as a professional land surveyor. In particular, there have been a number of questions and complaints regarding whether individuals using readily available consumer technologies were engaging in the unauthorized practice of land surveying. The board responded by forming an advisory group comprised of land surveyors, state and local government agencies involved in land surveying issues, developers of geographic information systems (GIS), and global positioning system (GPS) users. Over the course of more than 18 months, the advisory group produced a consensus document, which formed the basic text of the proposed rules. The board concluded that there is reasonable necessity for the proposed new rules to provide clarification and guidance to licensees and the public regarding the scope of practice for licensed land surveyors.

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

NEW RULE I PURPOSE (1) This subchapter is an effort by the Board of Professional Engineers and Professional Land Surveyors to clarify whether the performance of certain activities require licensure as a professional land surveyor. The rules in this subchapter were developed with advice from representatives from the land surveying profession, state of Montana government agency representatives, geographic information system (GIS) developers, and global positioning system (GPS) users.

(2) The rules in this subchapter are designed to advise and inform licensed professional land surveyors and unlicensed individuals regarding certain permissible and prohibited activities that relate to the practice of land surveying.

(3) These rules do not preclude surveys performed by professional engineers or other legally recognized professions or trades, as allowed by state law or administrative rule.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, MCA

NEW RULE II DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) "Accuracy" means spatial accuracy, which is an indication of how close a measurement is to the true value of the quantity that has been measured.

(2) "Authoritative" means information for which there has been a certification of accuracy by a person or entity empowered by law to make such a certification.

(3) "Certification" means a written assurance, warranty, guarantee, or official representation that some act has or has not been done, or some event has occurred, or some legal formality has been complied with.

(4) "Control" means establishing horizontal or vertical positions of arbitrary points.

(5) "Expressed accuracy" means designating a numerical value for accuracy or spatial relationship between objects or data.

(6) "Implied accuracy" means designating things such as equipment, equipment operating procedures, field procedures, analysis, methodologies, etc. to support an accuracy expectation.

(7) "Photogrammetry and remote sensing" means the art, science, and technology of obtaining reliable information from noncontact imaging and other sensor systems about the earth and its environment, and other physical objects and processes through recording, measuring, analyzing, and representation.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, MCA

NEW RULE III DETERMINING WHETHER INFORMATION IS CONSIDERED TO BE AUTHORITATIVE (1) Whether information is considered to be authoritative often depends on the intent of the person or entity that supplies the information.

(a) In some cases, the supplier's intent is clear because the supplier makes an express statement to the effect that the information is (or is intended to be) authoritative.

(b) In some cases, the supplier's intent is clear because the supplier expressly states that the information is not intended to be considered authoritative.

(c) In other cases, the supplier's intent can only be inferred from the context in which the information is furnished.

(2) Examples of situations where a person can reasonably infer that the supplier's intent is that the information be considered authoritative include, but are not limited to, the following:

(a) the collection and evaluation of evidence, with the intent to determine land boundary locations;

(b) the collection, analysis, and evaluation of measurements, with the intent to certify the positional relationship of data sets to property boundaries, an elevation datum, or a geodetic control network;

(c) the collection, analysis, and subsequent publication of positional information related to geodetic control; and

(d) meeting or offering to meet a contractual accuracy requirement, express or implied.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, MCA

NEW RULE IV CERTIFICATION (1) As provided in [NEW RULE II], "certification" provides a statement or warranty attesting to the correctness of a document, product, or act.

(2) Certification requires special knowledge, expertise, and/or legal authority. Such legal authority is generally held by a responsible governmental official. Only those persons or entities having specific authority, licensure, or jurisdiction granted by law may provide certification.

(3) Examples of certification include, but are not limited to, the following:

(a) the certification that a professional land surveyor applies to a certificate of survey; and

(b) the certification of the locational accuracy of a GIS product.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, MCA

NEW RULE V CERTAIN ACTIVITIES FOR WHICH A LAND SURVEYOR'S LICENSE IS REQUIRED (1) The following specific activities are part of the practice of land surveying, and the performance of, or offer to perform, these activities in Montana requires a license as a land surveyor:

(a) authoritatively locating a line (including a boundary line), a point (including a boundary corner), or a physical feature on the earth;

(b) making an authoritative description of the location of a given point, physical feature, or parcel of real estate. Such a description is often referred to as a "legal description" of a parcel of real estate;

- (c) monumenting a boundary location, as defined in ARM 24.183.1101;
  - (d) performing an engineering survey, as defined in 37-67-101, MCA;
  - (e) preparing a certificate of survey or subdivision plat;
  - (f) making an authoritative computation of acreage contained within a legal description of a given parcel of real property, including within an easement or other legal interest in the parcel of real property;
  - (g) making an authoritative computation of the volume (sometimes referred to as "pay quantity") of a specifically identified portion of the earth;
  - (h) making the representation that one can personally provide an authoritative location of a line, a point, or physical feature;
  - (i) representing that information provided as survey control is authoritative;
- and
- (j) rendering a professional opinion as a land surveyor.
- (2) The following are examples of activities which involve authoritatively locating a line, point, or physical feature, as provided in (1)(a):
- (a) construction staking from engineering plans;
  - (b) determining the alignment of a right of way, easement, or other legal interest in real property; and
  - (c) preparing an "as-built" survey.
- (3) The following are examples of situations which involve the rendering of a professional opinion as a land surveyor, as provided in (1)(j):
- (a) stating whether the description of a given point's location is authoritative;
  - (b) identifying which, if any, of competing descriptions or competing representations that purport to be authoritative, actually and accurately represent the true location of a given line, point, or physical feature;
  - (c) stating the positional accuracy of a map is accurate;
  - (d) stating the positional accuracy of measured survey data; and
  - (e) determining whether position information offered as survey control is authoritative.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, 37-67-103, 37-67-301, MCA

NEW RULE VI ACTIVITIES FOR WHICH A LAND SURVEYOR'S LICENSE IS NOT REQUIRED (1) A distinction must be made between making and documenting original measurements in the creation of land survey products, versus the copying, interpretation, or representation of those measurements. Further, a distinction must be made according to the intent, use, or purpose of measurement products to determine an authoritative location versus the use of those products as a locational reference for planning, infrastructure management, and general information.

(2) The production of the following items or performance of the following activities do not require licensure as a land surveyor:

- (a) those items and activities specifically exempted in 60-2-209 and 76-3-209, MCA;
- (b) the creation of any maps used for nonauthoritative purposes such as those:

- (i) used to locate parcels;
  - (ii) used to represent the shape or contour of the earth;
  - (iii) used to locate fixed works of engineering;
  - (iv) prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;
  - (v) prepared for publication in a gazetteer or atlas as an educational tool or reference publication;
  - (vi) prepared for or by educational institutions for use in the curriculum of any course of study;
  - (vii) produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; and
  - (viii) prepared by laypersons for conversational or illustrative purposes including advertising material and users guides.
- (c) the transcription of previously georeferenced data into a GIS or land information system (LIS) by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of:
- (i) property or administrative boundaries;
  - (ii) easements, rights of way, or other legal interest in real property;
  - (iii) the definition of the shape or contour of the earth; or
  - (iv) the location of fixed works of engineering.
- (d) the transcription of public record data into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property or administrative boundaries, or easements, rights of way, or other legal interests in real property. Examples of such items include, but are not limited to:
- (i) tax maps;
  - (ii) zoning maps; and
  - (iii) school district maps.
- (e) GIS based parcel or cadastral mapping not used for authoritative boundaries, where land title, zoning, development, or similar legal or regulatory rights for the parcels are not controlled by the GIS map but are instead controlled by a separate document;
- (f) the preparation of any document by any federal government agency that does not define real property boundaries, which include, but are not limited to:
- (i) civilian and military versions of quadrangle topographic maps;
  - (ii) military maps;
  - (iii) satellite imagery;
  - (iv) aerial photography; and
  - (v) orthoimagery.
- (g) the incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, which include, but are not limited to, the following:
- (i) census and demographic data;
  - (ii) quadrangle topographic maps; and
  - (iii) military maps.
- (h) original data acquisition, inventory maps, and databases created by any

individual or organization, in either hardcopy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management or regulatory responsibility;

(i) data acquisition, maps, and databases depicting the distribution of natural resources or phenomena, prepared by:

- (i) foresters;
- (ii) geologists;
- (iii) soil scientists;
- (iv) geophysicists;
- (v) biologists;
- (vi) archeologists;
- (vii) historians;
- (viii) geodesists; or
- (ix) other similar occupations.

(j) maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by law, including georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities;

(k) engineering surveys performed by a professional engineer as allowed by state law or administrative rule;

(l) the preparation of documents that create, assign, reference, or transfer interests in real property by reference to a legal description prepared by a professional land surveyor, which include, but are not limited to, the following:

- (i) contracts;
- (ii) deeds;
- (iii) easements;
- (iv) certificates of location for mining claims;
- (v) rights of way; and
- (vi) similar documents, which may incorporate or make reference to:
  - (A) subdivision plats;
  - (B) certificate of survey;
  - (C) narrative legal descriptions; or
  - (D) exhibits prepared by a professional land surveyor.

(m) operating and publishing data from a continuously operating reference station (CORS);

(n) original data acquisition by contract or second parties for nonauthoritative purposes; and

(o) the acquisition, preparation, processing, manipulation, or certification of final products or original data developed or collected by remote sensing or photogrammetric methods. Control may be derived from existing sources for remote sensing or photogrammetric products, where accuracy is not critical and specific map accuracy standards are not required.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, 37-67-103, 37-67-301, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov), and must be received no later than 5:00 p.m., December 26, 2008.

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

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

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

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
CASEY JOHNSTON, PRESIDING OFFICER

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

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

Certified to the Secretary of State November 17, 2008

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.8.1801, 37.8.1802, ) PROPOSED AMENDMENT  
37.8.1803, and 37.8.1808 pertaining )  
to the Montana central tumor registry )

TO: All Concerned Persons

1. On December 19, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.8.1801 REPORTABLE TUMORS (1) through (2) remain the same.

(3) A tumor which is otherwise reportable, but has been diagnosed and recorded using the words "~~questionable~~", "~~possible~~", "~~suggests~~" or "~~equivocal~~" is not considered a reportable tumor. "apparently", "appears", "comparable with", "compatible with", "consistent with", "favors", "malignant appearing", "most likely", "presumed", "probable", "suspected", "suspicious", or "typical of" with reference to that tumor is considered reportable.

~~(4) Whenever records of a patient with a tumor which would be reportable, if confirmed, contain the words "suspect", "probable", "suspicious", "compatible with" or "consistent with" in reference to that tumor, the tumor is considered reportable.~~

(5) (4) In order for the department to maintain current reporting, hospitals and physicians shall submit to the department information on reportable tumors within six months from the first inpatient or outpatient date of discharge that the patient was seen with cancer; independent laboratories shall submit to the department information on reportable tumors within six months from the date the laboratory service associated with the tumor was rendered.

AUTH: 50-15-706, MCA



IMP: 50-15-703, MCA

37.8.1802 REQUIRED RECORDS, INITIAL ADMISSION AND TREATMENT

(1) Whenever a hospital initially provides medical services to any patient relating to a tumor designated as reportable by ARM 37.8.1801, it must collect, record, and make available to the department the following information about that patient:

- (a) name and current physical address of patient;
- (b) patient's physical address at time of diagnosis;
- (c) through (e) remain the same.
- (f) race, Hispanic origin if applicable, sex, and marital status ~~and religion (optional)~~;
- (g) age at diagnosis, place of birth, and month, day, and year of birth;
- (h) name, address, and phone number of friend or relative to act as contact, plus relationship of that contact to patient;
- (i) through (n) remain the same.
- (o) summary staging, including whether in situ, localized, regional, distant or unstaged, with no information, or whether AJCC or TNM staging is utilized, and, if so, the findings of this staging;
- (p) remains the same.
- (q) ~~whether American joint committee on cancer (AJCC) staging is utilized, and if so, the findings of the staging procedures done to diagnose or stage tumors including dates, procedures, and results (such as physical exams, scopes, x-rays, scans, or lab tests)~~;
- (r) cumulative summary of all therapy directed at the subject tumor, including:
  - (i) date of therapy;
  - (ii) specific type of surgery or radiation therapy, if any; and details of chemical, hormonal, or other kinds of treatment; and
  - (iii) if no therapy given, reason for lack of therapy;
- (s) status at time of latest recorded information, i.e., whether alive or dead, tumor in evidence, or recurring, or status unknown;
- (t) if recurrence of tumor, date, type, and distant sites of first recurrence;
- (u) names of physicians primarily and secondarily responsible for follow up;
- (v) date of each follow up; ~~and~~
- (w) if patient has died, date of death, place, cause, and whether autopsy performed;
- (x) primary payer at diagnosis;
- (y) usual occupation and industry; and
- (z) tobacco and alcohol use history.

AUTH: 50-15-706, MCA

IMP: 50-15-703, MCA

37.8.1803 REQUIRED RECORDS, FOLLOW UP

(1) Whenever a patient for whom information has been provided to the tumor registry is admitted to the hospital providing the information on an inpatient or outpatient basis for further treatment

related to the tumor for which original registration in the tumor registry was made, the hospital must keep on file the following information:

- (a) through (h) remain the same.
- (i) if an autopsy was performed, its findings pertaining to cancer;
- (j) status at time of latest recorded information, i.e., whether alive or dead, tumor in evidence, or has recurred, or status is unknown;
- (k) if recurrence of tumor, date, type, and distant sites of first recurrence; and
- (l) names of those physicians primarily and secondarily responsible for follow up treatment.

AUTH: 50-15-706, MCA

IMP: 50-15-703, MCA

37.8.1808 REQUIRED RECORDS, INDEPENDENT CLINICAL LABORATORIES (1) Whenever a clinical laboratory which is not owned or operated by a hospital provides laboratory services for any patient relating to a tumor designated as reportable by ARM 37.8.1801, it must collect, record, and make available to the department the following information about that patient:

- (a) through (d) remain the same.
- (e) race, sex, and marital status;
- (f) age at diagnosis, month, day, and year of birth;
- (g) through (j) remain the same.
- (k) histology, including dates, place, histologic type, and slide number;
- (l) summary staging, including whether in situ, localized, regional, distant or unstaged, with no information, or whether AJCC or TNM staging is utilized, and, if so, the findings of the staging;
- (m) description of tumor and its spread, if any, including size in centimeters, number of positive nodes, number of nodes examined, and site of distant metastasis;
- (n) status at time of latest recorded information, i.e., whether alive or dead, tumor in evidence, or recurring, or status unknown; and
- (o) remains the same.

AUTH: 50-15-706, MCA

IMP: 50-15-703, MCA

4. The department has reviewed the current administrative rules pertaining to the Montana Central Tumor Registry, ARM 37.8.1801, 37.8.1802, 37.8.1803, and 37.8.1808, and has determined that the following changes need to be made.

These changes are reasonably necessary to update the Montana Central Tumor Registry reporting requirements and guidelines to be consistent with national and international standards. The changes will also allow the tumor registry to be more efficiently administered. Rationales for the specific changes are as follows:

ARM 37.8.1801(3), 37.8.1802(1)(o), and 37.8.1808(1)(l)

Conventions about reporting ambiguous terms are occasionally changed by the North American Association of Central Cancer Registries, the National Program of Cancer Registries, and/or the World Health Organization, publisher of the International Classification of Diseases for Oncology. These rule changes will update the current version to be consistent with national and international terminology for reporting ambiguous terms.

ARM 37.8.1801(4)

The Montana Central Tumor Registry is most effective when information is as current as possible. Discharge dates may be substantially delayed relative to first contact dates and imply that the patient must have been an inpatient to be a reportable case. Adding "outpatient" to the timeframe clears this implication. This change would increase the timeliness of the data.

ARM 37.8.1802(1)(a) and (b)

Data on physical location of residence at time of diagnosis are essential to conduct many epidemiologic investigations. Physical address indicates referral patterns and allows for analysis of cancer clusters or environmental studies. Physical address allows the central registry to assign latitude and longitude to the address and gives the ability to map each location. Accurate geographic information allows a central registry to monitor cancer trends and watch for possible patterns that could be the first hint of an environmental or other geographic focus on increased cancer risk. Mailing addresses consisting of post office boxes and other nonresidential locations are not useful for these investigations. Approximately 25% of recent cases in the Montana Central Tumor Registry do not have information pertaining to the physical address.

ARM 37.8.1802(1)(f)

Requiring information on Hispanic origin would bring the Montana Central Tumor Registry into compliance with other state and federal data collection systems (e.g., birth certificates, death certificates, census, the National Program of Cancer Registries guidelines). Hispanic populations have different patterns of cancer occurrence from other populations that may also be included in the Caucasian race.

ARM 37.8.1802(1)(q)

Information previously obtained from ARM 37.8.1802(1)(q) would be obtained under ARM 37.8.1802(1)(o) in the proposed amendment. Information on procedures used to diagnose and/or stage tumors is essential for quality control and special studies. This information is needed to justify coded values in patients' cancer history, date of diagnosis, clinical findings, treatment plan, treatments provided, stage of cancer, invasion or cancer progression, and diagnostic methods.

ARM 37.8.1802(1)(t) and 37.8.1803(1)(k)

Date of recurrence, with the type of recurrence, is necessary to calculate cancer-free intervals and can be used to measure the efficacy of the first course of treatment.

ARM 37.8.1802(1)(x)

The primary payer information is used in financial analysis and as an indicator for quality and outcome analyses. Health care coverage is an important gateway to cancer diagnosis and care. Payer information (classified by type, not by specific carrier, e.g.: uninsured, private insurance, managed care, fee-for-service, Medicaid, Medicare, IHS, etc.), would allow the Montana Central Tumor Registry to evaluate the impact of insurance coverage or lack of coverage on cancer diagnosis and outcome.

ARM 37.8.1802(1)(y)

Occupation and industry information are essential data elements for many epidemiologic investigations of cancer risk factors and causation. Occupation and industry data are used to identify work-related health hazards, serve as an additional measure of socioeconomic status, and identify occupational and industrial groups in which cancer screening activities may be beneficial. Collection of occupation and industry information can be very beneficial when conducting cluster analysis based on work-related groups.

ARM 37.8.1802(1)(z)

These items are essential data elements for many epidemiologic investigations. They are used to determine if alcohol and tobacco use may have caused a higher than average risk of cancer, or to rule out these common exposures in favor of occupational or environmental exposures as potential causes in individuals who have no history of tobacco use. This information would enhance the epidemiologic utility of the registry, in particular in the investigation of occupational or environmental cancers.

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 Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, Montana, 59604-4210, fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 24, 2008.

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

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

mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Shannon McDonald  
Rule Reviewer

/s/ Hank Hudson for  
Joan Miles, Director  
Public Health and Human Services

Certified to the Secretary of State November 17, 2008.

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

In the matter of the adoption of New Rules I through VII, the amendment of ARM 37.88.101, and the repeal of ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707, and 37.86.3715 pertaining to targeted case management for youth with serious emotional disturbance ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 19, 2008, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; e-mail dphhslegal@mt.gov.

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

RULE I TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS As used in this chapter, the following terms apply:

- (1) "Case management services" means case management as defined in ARM 37.86.3301.
- (2) "Department" means the Department of Public Health and Human Services.
- (3) "Serious emotional disturbance (SED)" is defined in ARM 37.87.303.
- (4) "Youth" is defined in ARM 37.87.102.
- (5) The definitions in ARM 37.86.3301 also apply when not inconsistent with this subchapter.

AUTH: 53-2-201, 53-6-113, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE II TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) If otherwise eligible for Medicaid services, youth with SED may receive medically necessary targeted case management services in the community setting as provided in this subchapter.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE III TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, AUTHORIZATION

REQUIREMENTS (1) To be reimbursed, targeted case management services for youth with SED must be authorized by the department or its designee prior to the delivery of services.

(2) A case manager may request up to 120 units in an initial request for authorization.

(a) A unit of targeted case management services is equal to 15 minutes.

(3) An initial request for authorization must also include:

(a) demographic information about the youth;

(b) the name and mailing address of a responsible party, if any;

(c) the name of the provider and other provider information; and

(d) the youth's DSM-IV diagnosis code.

(4) A case manager may submit an unscheduled revision (continued stay) requesting authorization for continued services of up to 120 units more than the initial number of authorized units. The department or its designee will determine if further targeted case management services are medically necessary. The unscheduled revision request must include:

(a) documentation of an SED diagnosis and functional impairment;

(b) documentation of the need for continued targeted case management services;

(c) a case formulation that includes measurable case management goals and objectives;

(d) a complete list of other services currently in place; and

(e) a discharge plan.

(5) Targeted case management services requested in excess of 240 units in a single state fiscal year (July 1 – June 30) must be reviewed by the department or its designee to determine medical necessity. All the requirements of (4) also apply.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE IV TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS

(1) The requirements in this subchapter are in addition to those contained in provisions generally applicable to Medicaid providers.

(2) Targeted case management services for youth with SED must be provided by a licensed mental health center as defined in ARM 37.87.102. A mental health center must:

(a) have a current license endorsement permitting the mental health center to provide targeted case management services;

(b) be enrolled in the Montana Medicaid program as a targeted case management services provider; and

(c) contract with the department to provide targeted case management services for youth with SED.

(3) Targeted case management services for youth with SED must be supported by narrative documentation in accordance with ARM 37.85.414 record keeping requirements.

(4) Targeted case management services for youth with SED must be provided under a case management plan in accordance with ARM 37.86.3305.

(5) In addition, case management plans for youth with SED must be updated at least every 90 days and must include:

(a) an objective to serve each youth in the least restrictive environment;

(b) identification of the strengths of the youth and the youth's family;

(c) a crisis response plan;

(d) a plan for each youth age 16 1/2 and older to transition to adult mental health services; and

(e) a discharge plan from targeted case management services.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE V TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT

(1) Targeted case management services for youth with SED will be reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is a period of 15 minutes.

(a) A unit of service is a period of 15 minutes as follows:

(i) one unit of service is greater than or equal to 8 minutes and less than or equal to 23 minutes;

(ii) two units of service are greater than or equal to 24 minutes and less than or equal to 38 minutes;

(iii) three units of service are greater than or equal to 39 minutes and less than or equal to 53 minutes;

(iv) four units of service are greater than or equal to 54 minutes and less than or equal to 68 minutes;

(v) five units of service are greater than or equal to 69 minutes and less than or equal to 83 minutes;

(vi) six units of service are greater than or equal to 84 minutes and less than or equal to 98 minutes;

(vii) seven units of service are greater than or equal to 99 minutes and less than or equal to 113 minutes; and

(viii) eight units of service are greater than or equal to 114 minutes and less than or equal to 128 minutes.

(2) The department will pay providers of targeted case management services for youth with SED the lesser of:

(a) the provider's actual submitted charge for services; or



(b) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule, adopted at ARM 37.86.2207. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) Targeted case management services may be billed to the department's fiscal agent using a CMS 1500 claim form. The provider must include the youth's DSM-IV diagnosis code on the claim form.

(4) Case managers may not bill for time spent writing progress notes. This activity is included in the rate for TCM services.

(5) Targeted case management services may be billed whether provided face-to-face or by telephone.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

#### RULE VI CASE MANAGEMENT SERVICES, COVERED SERVICES

(1) Case management services include:

(a) comprehensive assessment and periodic reassessment of an eligible individual to determine service needs, including activities that focus on needs identification; and

(b) determination of the need for any medical, educational, social, or other services;

(c) these assessment activities include the following:

(i) taking youth history;

(ii) identifying the needs of the individual, and completing related documentation; and

(iii) gathering necessary information from other sources, such as family members, medical providers, social workers, and educators to make a complete assessment of the eligible individual.

(d) development and periodic revision of a specific care plan based on the information collected through the assessment that includes the following:

(i) specific goals and actions to address the medical, social and educational, and other services needed by the eligible individual;

(ii) activities such as ensuring the active participation of the eligible individual and working with the individual, or the individual's authorized health care decision maker and others to develop those goals; and

(iii) a course of action designed to respond to the assessed needs of the eligible individual.

(e) referral and related activities, such as making referrals and scheduling appointments for the individual, helping eligible individuals obtain needed services, helping to link the individual with medical, social and educational providers, or other programs and services that are capable of providing needed services to address identified needs and achieve goals specified in the care plan; and

(f) monitoring and follow-up activities, including activities and contacts necessary to ensure that the care plan is effectively implemented and adequately

addresses the needs of the eligible individual. This may be with the individual, family members, service providers, or other entities or individuals and may be conducted as frequently as necessary, including at least one annual monitoring review to help determine whether the following conditions are met:

- (i) services are being furnished in accordance with the individual's care plan;
  - (ii) services in the care plan are adequate to meet the needs of the individual;
- and
- (iii) changes in the needs or status of the eligible individual have been accommodated. Monitoring and follow-up activities include making necessary adjustments in the care plan and service arrangements with providers.

(2) Case management may include contacts with noneligible individuals that are directly related to the identification of the eligible individual's needs and care for the purpose of helping the individual access services, identifying needs and supports to assist the eligible individual in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the eligible individual's needs.

(3) Montana Medicaid does not reimburse any of the following activities for case management:

- (a) the direct delivery of a medical, educational, social, or other service to which an eligible individual has been referred;
- (b) transportation services;
- (c) Medicaid eligibility determination and redetermination activities; and
- (d) services provided by the case manager while the youth is in a psychiatric residential treatment facility in accordance with ARM 37.87.1222.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

RULE VII MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

- (a) the youth, defined in ARM 37.87.103, has been determined to have a serious emotional disturbance as defined in ARM 37.87.303;
- (b) the department has determined prior to treatment on a case by case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; and
- (c) for prior authorized services, the serious emotional disturbance has been verified by the department or its designee.

(2) If a youth has a mental health diagnosis designated by the department, the youth is not required to have a serious emotional disturbance to receive the following services:

- (a) group outpatient therapy; and
- (b) the first 24 sessions per state fiscal year of individual and family outpatient therapy.

(3) Prior authorization by the department or its designee is required for the following services for a Medicaid recipient who is a youth:

(a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year, subject to such additional limitations for outpatient therapy services as may be set forth in the Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted at ARM 37.86.2207. This rule does not apply to a session with a physician or midlevel practitioner for the purpose of medication management;

(b) targeted case management in excess of 120 units of service per state fiscal year;

(c) all outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965; or

(d) as provided for in other rules.

(4) The department may waive a requirement for prior authorization when the provider can document that:

(a) there was a clinical reason why the request for prior authorization could not be made at the required time; or

(b) a timely request for prior authorization was not possible because of a failure or malfunction of equipment that prevented the transmittal of the request at the required time.

(5) The prior authorization requirement shall not be waived except as provided in this rule.

(6) Under no circumstances may a waiver under (4) be granted more than 30 days after the initial date of service.

(7) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines (2008). A copy of the clinical management guidelines (2008) can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(8) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(9) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and consumers.

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

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

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS ~~(1) Mental health services for a Medicaid youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:~~

- ~~(a) the client has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, with the following exceptions identified in (1)(b);~~
- ~~(b) a youth is required to have a mental health diagnosis designated by the department, and not required to have a serious emotional disturbance to receive the following services:
  - ~~(i) group outpatient therapy; and~~
  - ~~(ii) the first 24 sessions per state fiscal year of individual and family outpatient therapy.~~~~
- ~~(c) the department has determined prior to treatment on a case by case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; and~~
- ~~(d) for prior authorized services, the serious emotional disturbance has been verified by the department or its designee.~~

~~(2) Prior authorization by the department or its designee is required for the following services for a Medicaid client who is a youth:~~

- ~~(a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year. Additional limitations for outpatient therapy services are set forth in the current fee schedule dated July 1, 2006. This rule does not apply to a session with a physician for the purpose of medication management;~~
- ~~(b) targeted case management in excess of 60 units of services per state fiscal year;~~
- ~~(c) all outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965; or~~
- ~~(d) as provided for in other rules.~~

~~(3) (1) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the following requirement is met:~~

- ~~(a) the client is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502;\_~~

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

~~(5) (3) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of (5)(a) (3)(a) or (b). The person must also meet the requirements of (5)(c) (3)(c). The person has:~~

~~(a) through (c)(iv) remain the same.~~

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

~~(8) (6) Under no circumstances may a waiver under (5) (4) be granted more than 30 days after the initial date of service.~~

~~(9) (7) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines (2006). A copy of the clinical management guidelines (2006) can be obtained from the~~

department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 (for adult services), or to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services) or can be viewed on the department's web site at <http://www.dphhs.mt.gov/amdd/index.shtml>; or: <http://www.dphhs.mt.gov/mentalhealth/children/index.shtml>.

(10) and (11) remain the same but are renumbered (8) and (9).

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

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

5. The department proposes to repeal the following rules:

37.86.3701 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS, is found on page 37-20691 of the Administrative Rules of Montana.

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

IMP: 53-6-101, MCA

37.86.3702 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY, is found on page 37-20695 of the Administrative Rules of Montana.

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

IMP: 53-6-101, MCA

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE, is found on page 37-20701 of the Administrative Rules of Montana.

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

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

37.86.3706 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE REQUIREMENTS, is found on page 37-20702 of the Administrative Rules of Montana.

AUTH: 53-6-113, MCA

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

37.86.3707 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS, is found on page 37-20703 of the Administrative Rules of Montana.

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

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

37.86.3715 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT, is found on page 37-20723 of the Administrative Rules of Montana.

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

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

6. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I through VI pertaining to targeted case management services for youth 17 years of age and younger or up to 20 years of age and enrolled in secondary school with serious emotional disorders (SED); new Rule VII pertaining to Medicaid mental health services for youth, authorization requirements, and the amendment of ARM 37.88.101 pertaining to Medicaid mental health services, authorization requirements. The proposed new rules are intended to replace ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707, and 37.86.3715 that would be repealed. ARM 37.88.101 will be amended to remove references to mental health services for youth. ARM 37.88.101 will pertain to mental health service authorization requirements for adults with severe disabling mental illness. This would continue the department's reorganization of its rules pertaining to mental health services for youth with SED into a single chapter, separating them from rules that pertain to adults with severe disabling mental illness (SDMI).

The department is proposing to increase the number of targeted case management (TCM) services units provided under prior authorization from 60 to 120.

The proposed changes are necessary to implement the reorganization and clarification of applicable rules for mental health services for youth with serious emotional disturbance. The proposed changes also reflect updated Medicaid primary care services rules.

No substantive change to the case management rules is intended, except as described below:

#### RULE I

This proposed new rule corresponds to current rule ARM 37.86.3701, except that definitions that will be relocated in ARM 37.86.3301, Medicaid Primary Care Services, Case Management Services, General Definitions, would be deleted to avoid duplication. Also, the remaining definitions from ARM 37.86.3701 would be updated to refer to definitions adopted elsewhere in ARM Title 37. The definitions in ARM 37.86.3301 would also apply when they do not conflict with the proposed new subchapter.

#### RULE II

This would be a new rule stating the general policy that a youth with SED may receive medically necessary targeted case management services if otherwise eligible for Medicaid services.

### RULE III

The department is also proposing an amendment to increase the allowable number of units on an initial prior authorization request for TCM services.

The department's experience indicates that most youths need 100 to 120 hours of TCM services every six months. At that point, a reviewer should determine the medical necessity of continued TCM services and grant additional units as necessary. The second authorization would cover TCM services to youth, most of whom do not use more than 240 units in a fiscal year. If TCM services are needed beyond 240, the proposal allows a third authorization. The department intends this proposal to reduce the number of reviews while avoiding unnecessary use of TCM services.

### RULE IV

This proposed new rule corresponds to current rules ARM 37.86.3706, Case Management Services for Youth with Serious Emotional Disturbance, Service Requirements and 37.86.3707, Case Management Services for Youth with Serious Emotional Disturbance, Provider Requirements which are proposed to be repealed. It would be updated to refer to ARM 37.85.414, Maintenance of Records and Auditing. In addition, the current practice of maintaining supporting documentation in a narrative case record would be specifically required. A case management plan in accordance with ARM 37.86.3305, Case Management Services, General Provisions, would have to be updated every 90 days. The proposed rule would specifically extend to case managers the department's objective to serve each youth in the least restrictive environment. A case management plan would also include mandatory identification of the strengths of the youth and the youth's family, a crisis response plan, a plan for each youth age 16 1/2 and older to transition to adult mental health services, and a discharge plan.

### RULE V

This proposed rule corresponds to ARM 37.86.3715, Case Management Services for Youth with Serious Emotional Disturbance, Reimbursement which is proposed to be repealed. It would reflect current reimbursement requirements and would refer to the fee schedule adopted in 37.86.2207.

### RULE VI

This proposed rule corresponds to ARM 37.86.3705, Service Coverage which is proposed to be repealed. It would include the same current service coverage provisions but in greater detail.

## RULE VII

Proposed new Rule VII corresponds to the youth mental health services parts of current rule ARM 37.88.101, Medicaid Mental Health Services, Authorization Requirements for mental health services. ARM 37.88.101 would be amended by removing references to mental health service authorization requirements for youth with SED, but would retain the authorization requirements for adults with severe disabling mental illness.

### ARM 37.88.101

The department is proposing to amend this rule to delete mental health service authorization requirements for youth with SED. Those requirements would be moved to new Rule VII. ARM 37.88.101 would retain the authorization requirements for adults with severe disabling mental illness.

### ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.86.3706, 37.86.3707, and 37.86.3715

These rules would no longer be necessary and would be repealed.

### Options considered

The department considered all options, from eliminating the authorization requirement for TCM services to increasing the maximum number units on an initial prior authorization request to 240. It settled on the proposed 120 units as the best compromise between unrestricted access to TCM services and the department's duty to monitor utilization of services so that Medicaid benefits are used only when medically necessary.

### Persons and entities affected

There are ten mental health centers with an endorsement to provide targeted youth case management and approximately 3000 youth receiving case management services in the state of Montana. All could be affected by the proposed changes.

### Fiscal and benefit effects

The department does not expect the changes proposed in this notice to affect the level of TCM services Medicaid recipients would receive. No effects on state or federal Medicaid expenditures are expected.

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



submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 24, 2008.

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

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

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

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

12. The department intends for the proposed amendment of these rules to be effective January 1, 2009. In the event the rules are amended retroactively no negative impact is anticipated.

/s/ John Koch  
Rule Reviewer

/s/ Hank Hudson for  
Joan Miles, Director  
Public Health and Human Services

Certified to the Secretary of State November 17, 2008.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.75.101, 37.75.109, ) PROPOSED AMENDMENT  
37.75.202, 37.75.205, 37.75.206, and )  
37.75.209 pertaining to the Child and )  
Adult Care Food Program (CACFP) )

TO: All Concerned Persons

1. On December 23, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact, initiated by a day care home sponsor, with a provider that is currently participating in the Child and Adult Care Food Program (CACFP) under a current CACFP Sponsor/Provider Agreement, for the purpose of enticing the provider to ~~enroll with or switch~~ the provider's CACFP Sponsor/Provider Agreement to a different sponsor. Examples of such direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through e-mail, by fax, and through a mailing or through a newsletter that is invitational in content disseminated by a sponsor to one or more providers that it does not sponsor.

(2) through (29) remain the same.

AUTH: 52-2-704, MCA  
IMP: 52-2-702, 52-2-704, MCA

37.75.109 AUDIT GRANTS (1) An institution may be eligible to receive a grant from the department for the purpose of reimbursing the institution for all or part of the CACFP portion of an audit. To qualify for a grant, an institution must meet the following minimum requirements:

(a) and (b) remain the same.

(c) Complete and return the annual Audit Questionnaire and Grant Application to be provided by the department for the purpose of complying with the accounting and audit requirements of the federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations", and the provisions of OMB Circular A-122, "Cost Principles for Nonprofit Institutions", concerning the use of the funds provided by the contractual agreement.

~~(e)~~ (d) Prior to beginning an audit, the institution must submit to the department for approval:

(i) a completed request for partial reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal "Office of Management and Budget (OMB)" circular A-133 and the USDA OMB supplement for the "Catalog of Federal Domestic Assistance (CFDA)" 10.558, Child and Adult Care Food Program, dated March 2002; and

(iii) remains the same.

~~(d)~~ (e) Prior to beginning the audit, the institution must:

(i) remains the same.

(ii) obtain prior written approval for the audit from the department.

~~(e)~~ (f) The audit must be completed no later than nine months after the end of the fiscal year being audited.

(2) through (3) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.202 TIERING CHANGES (1) and (2) remain the same.

(3) A day care home may submit a request for a tier change evaluation to its sponsor. If approved, the change will be effective as noted below:

(a) and (b) remain the same.

(c) a change made ~~as a result of an investigation or~~ to correct a tiering error will be retroactive to the first day of the month in which the date of the error occurred.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.205 PROVIDER ENROLLMENT (1) remains the same.

(2) Each sponsor must do the following when enrolling a new day care home for participation in the CACFP:

(a) unless (3) applies, obtain licensing verification in the form of:

(i) through (iii) remain the same.

(iv) a screen print from the ~~virtual pavilion~~ department's web site, [www.childcare.mt.gov](http://www.childcare.mt.gov), under "Programs & Services, Find Child Care" showing that the provider is registered and the effective dates of the registration; and

(b) through (10) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.206 RECRUITMENT (1) remains the same.

(2) A DCH sponsor may not ~~recruit~~ engage in active recruitment as defined in ARM 37.75.101(1) of a provider that is participating in the CACFP under a current CACFP ~~s~~Sponsor/~~p~~Provider aAgreement with any other DCH sponsor.

(3) A sponsor that the Montana CACFP determines has engaged in active recruitment as defined in ARM 37.75.101(1) will be subject to disciplinary action.

(4) Suspected active recruitment violations, if reported, must be submitted to the Montana CACFP staff in writing for investigation.

~~(4)~~ (5) Corrective action will include the following:

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

~~(c) If more than two violations occur, the department will issue written notice to the sponsor that a recruiting violation has occurred, written notice that it is seriously deficient and that, if the serious deficiency is not fully and permanently corrected, an intent to terminate will be issued. The~~ For subsequent violations, the Montana CACFP will issue written notice to the sponsor that the number of DCH providers served by the sponsor will be capped for a minimum of one year, and the sponsor will not be allowed to enroll any new providers or any providers changing sponsors without specific prior written approval from the Montana CACFP.

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

~~(6) A corrective action for active recruitment will remain in effect from the date of violation for three years. Three years after the original violation, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following three year period. An example is:~~

~~(a) an original violation occurs on November 1, 2006;~~

~~(b) a third recruiting violation occurs on October 30, 2009; and~~

~~(c) enrollment is capped from October 30, 2009 through October 30, 2010, extending into the following three year period.~~

~~(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two three year periods, the violation will count as the third violation in the previous three year period and will not count as the first violation in the next three year period.~~

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

37.75.209 SPONSOR CHANGE BY PROVIDER (1) and (2) remain the same.

(3) Except as provided in (5), a participating day care home may change its CACFP sponsor according to these guidelines:

(a) remains the same.

(b) To change sponsors, a provider must notify its current sponsor in writing of its intention to change to another sponsor on or before the ~~fifth~~ final working day of the month prior to the month in which the change to a new sponsor is to be effective. The current sponsor must submit a copy of the written notification to the department.

(4) through (6) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.75.101, 37.75.109, 37.75.202, 37.75.205, 37.75.206, and 37.75.209.

#### ARM 37.75.101

ARM 37.75.101(1) is revised to clarify the definition of "Active Recruitment" to reflect more accurately the intent in the federal guidelines and to match the language in ARM 37.75.206.

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

#### ARM 37.75.109

ARM 37.75.109(1)(c) has been updated to include among the minimum requirements for an institution to be eligible for an Audit Grant the submission of a completed Audit Questionnaire and Grant Application form. This form enables the department to determine how many A-133 audits the department may expect to conduct and to identify which contractors may be requesting partial audit reimbursement. The department has always required this form to be completed and submitted, but inadvertently did not include it in the list of required documents under this rule.

ARM 37.75.109(1)(d)(i) has been updated to specify that institutions meeting the audit requirement stipulated in OMB Circular A-133 may qualify to receive CACFP partial reimbursement of the actual direct cost of auditing the CACFP.

ARM 37.75.109(1)(e)(ii) has been updated to clarify that prior written approval is required from Montana CACFP before any firm conducts an audit under this rule so

that eligibility to do so can be determined using the web based "Excluded Parties List System" located at [www.epls.gov](http://www.epls.gov). Audit reimbursement is not available to those institutions that are not required to have an A-133 audit.

The changes will apply to and should not adversely affect approximately 30 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

#### ARM 37.75.202

ARM 37.75.202(3)(c) is revised to clarify that if a sponsor approves a request by a day care home for a tier change evaluation to correct a tiering error, the change will be retroactive to the first day of the month in which the error occurred. This clarification is needed to reflect the prohibition in federal law of a mid-month tier change.

The change will apply to and should not adversely affect approximately 850 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

#### ARM 37.75.205

ARM 37.75.205(2)(a)(iv) is revised to specify that contractors may use a screen print from the department's web site, [www.childcare.mt.gov](http://www.childcare.mt.gov), under "Programs & Services, Find Child Care" showing that the provider is registered and the effective dates of the registration, rather than the previous reference to "virtual pavilion". "Virtual pavilion" was a database that allowed contractors to verify provider registrations.

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

#### ARM 37.75.206

ARM 37.75.206(2) is revised to clarify the wording of and to match the definition in ARM 37.75.101(1) of "active recruitment".

ARM 37.75.206(4) is revised to clarify language so it does not require reporting of suspected violations.

ARM 37.75.206(5)(c) is revised to set forth more concisely the consequences of subsequent violations of active recruitment and includes the provision of written notice as used in previous sections of this rule.

ARM 37.75.206(7) and (8) are deleted as superfluous in light of the clarification set forth in ARM 37.75.206(5)(c).

The change will apply to and should not adversely affect approximately 11 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

#### ARM 37.75.209

ARM 37.75.209(3)(b) has been updated by changing the term "fifth" to "final" so a provider is not restricted from making a timely decision to change its sponsor.

The change will apply to and should not adversely affect approximately 853 CACFP participants currently receiving reimbursement. It is estimated that 100% of the above-mentioned participants will meet eligibility criteria for this program.

There will not be additional cost to the state. No controversy is anticipated over this change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 24, 2008.

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

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

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

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

/s/ Francis X. Clinch  
Rule Reviewer

/s/ Hank Hudson for  
Joan Miles, Director  
Public Health and Human Services

Certified to the Secretary of State November 17, 2008.



BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 38.5.2102 pertaining to electric	)	AMENDMENT
utility voltage and ARM 38.5.2202,	)	
38.5.2302, pertaining to pipeline	)	NO PUBLIC HEARING
safety	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 30, 2008, the Department of Public Service Regulation (PSC) proposes to amend the above-stated rules.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 4:00 p.m. on December 19, 2008, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail [vstewart@mt.gov](mailto:vstewart@mt.gov).

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

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in American National Standards Institute (ANSI) C84.1 ~~1995~~ 2006. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, Operations, 25 West 43rd Street, 4th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601. (2) remains the same.

AUTH: 69-3-103, MCA  
IMP: 69-3-108, MCA

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 31, 2007~~ October 31, 2008. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety,

Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 31, 2007~~ October 31, 2008. A copy of the referenced CFRs is available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

4. Amendment of ARM 38.5.2102 (periodic update) is necessary to allow the PSC to administer the most recent version of the American National Standards Institute regulations. The PSC is required to update the standards to the most recent edition of the national electrical safety code to comply with the statutory mandate in 69-4-201(2), MCA. Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the PSC to administer the most recent version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their written data, views, or arguments (original and 10 copies) to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than December 26, 2008, 1:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later than December 26, 2008. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-08.10.1-RUL.")

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Justin Kraske, Legal Division, Public Service Commission, 1701

Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 1:00 p.m., December 26, 2008.

8. If the PSC receives requests for a public hearing on the proposed action from either 10% 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 more than 25 based on 27 entities affected.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to vstewart@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Greg Jergeson  
Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State, November 14, 2008.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC  
ARM 42.4.201, 42.4.203, 42.4.204, and ) HEARING ON PROPOSED  
42.4.206 relating to Individual Energy ) AMENDMENT  
Conservation Installation Credit )

TO: All Concerned Persons

1. On December 18, 2008, at 1:00 p.m., a public hearing will be held in the 4-East Conference Room (Fourth Floor) 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., December 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.201 DEFINITIONS (1) through (9) remain the same.

(10) "IECC" means the ~~2003~~ current International Energy Conservation Code, which is the current energy code version adopted by the state of Montana and enforced statewide as adopted by the Montana Department of Labor and Industry.

(11) through (14) remain the same.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.201 to amend the definition of IECC so that the term does not have to be amended each time the term is redefined by the International Energy Conservation Code and to clarify that the version of the code to be used by the Department of Revenue is the code that has been adopted by the Department of Labor and Industry.

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

(1) and (1)(a) remain the same.

(b) The purchase by the first owner or construction of a new ENERGY STAR Qualified site-built home can be considered the equivalent of investing \$2,000 for

energy conservation purposes resulting in a total credit of \$500 ( $\$2,000 * 25\%$ ). The \$500 may be allocated among the individuals who purchased the home. Verification must be made by a third party accredited by the federal Environmental Protection Agency to rate homes under the ENERGY STAR program. The resale of an ENERGY STAR home does not qualify for the credit.

(c) The purchase by the first owner or construction of a new site-built home certified as attaining a Silver or Gold level under the Montana Building Industry Association Green Building program and having an ENERGY STAR heating system can be considered the equivalent of investing \$2,000 for energy conservation purposes resulting in a total credit of \$500 ( $\$2,000 * 25\%$ ). The \$500 may be allocated among the individuals who purchased the home. Certification must be made by a National Green Building Certification verifier accredited by the National Association of Home Builders. The resale of a Montana Building Industry Association Green Building certified home does not qualify for the credit.

(2) remains the same.

(3) A credit under 15-32-109, MCA, will not be allowed for an investment for which a credit under 15-32-115 or 15-32-201, MCA, is claimed.

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

AUTH: 15-1-201, MCA

IMP: 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.203 to provide another alternative for calculating the credit when constructing a new home. Certification of a new home as attaining a Silver or Gold level under the Montana Building Industry Association Green Building program demonstrates the home meets or exceeds the new construction standards as outlined in ARM 42.4.206. The department is adding new (3) because the three energy-related credits appear to be similar, leading to confusion among taxpayers. New (3) is necessary to clarify that each credit is distinct and only one of the credits can be claimed for each investment.

42.4.204 CAPITAL INVESTMENTS FOR QUALIFYING ENERGY CONSERVATION CREDIT (1) through (1)(b) remain the same.

(c) insulation of heating and air conditioning pipes, and insulation and sealing of heating, ventilation, and air conditioning (HVAC) ducts, located in nonheated areas and insulation of hot-water heaters and tanks;

(d) through (h) remain the same.

(i) ~~waste~~ heat recovery devices ventilators (HRV);

(j) through (n) remain the same.

(o) installation of new domestic water heaters, heating or cooling systems, so long as the replacement or installation of the new system reduces the waste or dissipation of energy, or reduces the amount of energy required. has an efficiency rating higher than the prior system.

(2) remains the same.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.204 to provide clarity through an objective standard for eligible equipment and to align the terms in the rules with those used by industry.

42.4.206 NEW CONSTRUCTION STANDARDS (1) For new construction, the energy-conserving expenditure must meet or exceed the following equipment standards:

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

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.206 to clarify that new construction must meet the standards listed in ARM 42.4.206(1) in order to conform to Montana building codes.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 30, 2008.

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) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on October 31, 2008 by electronic mail. For previous rule projects involving the same bill, the primary sponsor was give appropriate notice.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 17, 2008

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of ) NOTICE OF PUBLIC  
New Rules I and II relating to property tax ) HEARING ON PROPOSED  
for privately owned landfills ) ADOPTION

TO: All Concerned Persons

1. On December 18, 2008, at 3:00 p.m., a public hearing will be held in the 4-East Conference Room (Fourth Floor) 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., December 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The department conducted an informal negotiated rulemaking meeting with the privately owned landfills throughout the state on July 2, 2008. The proposed rules contained in this notice are the result of that meeting. 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 LANDFILL VALUATION DEFINITIONS The following definitions apply to terms contained in this subchapter:

(1) "Appraisal period" means the reappraisal cycle provided for in 15-7-111, MCA.

(2) "Compaction ratio" refers to the ratio that expresses the relationship of the number of tons that will fill one cubic yard of capacity. For example, if the compaction ratio is .70, then 70% of one ton, 1,400 pounds of waste, can be deposited into one cubic yard of capacity. Compaction ratios for landfills are typically in the .50 to .70 range. Unless the landfill owner or its agent can provide by a preponderance of evidence to the contrary, the compaction ratio will be .70.

(3) "Cover materials" means at least six inches of dirt or a dirt-like substance. It does not mean a tarp or tarp-like product.

(4) "Discount rate" is a rate expressed in a percentage that is used to discount the annual royalty payments over the projection period to a present value. The majority of the discount rates for landfills are in the 20% to 30% range. Unless the landfill owner or its agent can provide by a preponderance of evidence to the contrary, a discount rate of 20% will be used.



(5) "Improvements" means buildings, scales, and other structures permanently affixed to the ground necessary to operate a landfill.

(6) "Other property related income" means landfill income generated by the property, such as land/dirt farms and methane gas collection.

(7) "Reversionary value" means the market value of the landfill after it is closed.

(8) "Royalty rate" means a rate applied to the annual gross receipts that results in the estimated royalty payment for each year of the projection period. Unless the landfill owner or its agent or the department can provide by a preponderance of evidence to the contrary, the royalty rate will be 10%.

(9) "Royalty method" means a discounted cash flow analysis based on the premise that a landowner would lease land to a licensed landfill operator for a set percentage of the tipping fees received for dumping at the site. The present value of the annual royalty rate of payments must be estimated over the projected economic life of the licensed landfill, plus the present value of the landfill after it is closed.

(10) "Licensed Landfill" means an area of land or an excavation where wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile. Licensed landfills are subject to federal regulations of the Environmental Protection Agency (EPA) and law as "permitted landfills" under Subtitle D of the Resource Conservation and Recovery Act of 1976 (RCRA) and state regulations through the Department of Environmental Quality (DEQ).

(11) "Tipping fees" are the dollar charge per ton for dumping municipal solid waste and other approved waste at the licensed landfill. Any mandatory property related fees or property related taxes imposed by regulatory or taxing authorities shall not be included.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-111, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define the terms that are contained in New Rule II.

#### NEW RULE II METHOD FOR VALUATION OF LICENSED LANDFILLS

(1) The market value of licensed landfills for each reappraisal cycle shall be determined through use of the royalty method. If during the course of a reappraisal cycle it becomes necessary, pursuant to 15-7-111, MCA, to adjust the market value of the licensed landfill to account for the addition, deletion, or retirement of property, the market value shall be determined through use of the same royalty method.

(2) The royalty method that will be used to determine the market value of licensed landfills will be applied using the following steps:

(a) The department shall estimate the amount of waste coming into the landfill for the appraisal period. The owner of the licensed landfill or its agent shall provide copies of its Department of Environmental Quality, Solid Waste Management System License Renewal Application for each of the immediate five years prior to the appraisal period. The amount of tonnage reported on the applications for the referenced five-year time period will be reviewed to estimate the annual increase of

waste tonnage for the remaining economic life of the licensed landfill.

(i) The following calculation will be used to estimate annual incoming waste tonnage:

tons from the most recent year  
x (1 + estimated annual increase)  
= estimated first year tonnage.

(b) The department shall estimate the licensed landfill owner's annual tipping fees less any bulk discounts for the appraisal period. To accomplish this, the licensed landfill owner or its agent shall identify its annual tipping fees rate for compactor vehicles for the immediate five years prior to the appraisal period. The landfill owner shall identify its annual bulk discount rate by providing copies to the department of all of its annual disposal contracts. The discounted tipping fees for the immediate five years prior to the appraisal period will be reviewed to estimate the annual increase in the discounted tipping fees for the appraisal period. When calculating the discounted tipping fees, the department shall be aware of any potential aberrations identified by the licensed landfill owner or its agent that may exist in the documentation submitted by the landfill owner or its agent pursuant to this section. The department shall take those aberrations under consideration when calculating the discounted tipping fees.

(i) The discounted tipping fees will be calculated as follows:

most current year tipping fees  
x (1 - most current year bulk discount)  
x (1 + estimated annual increase)  
= discounted tipping fees for the projected remaining economic life of the

licensed landfill.

(c) The department shall calculate the remaining capacity of the licensed landfill for each tax year. To accomplish this, the existing capacity at the beginning of the projection period will be taken from the estimate recorded on the landfill owner's most recent Solid Waste Management System License Renewal Application.

(i) To compute the remaining capacity for each tax year, the tonnage received during the year must be converted into cubic yards of landfill that would be filled. The compaction ratio is used to make the conversion.

(ii) The number of cubic yards used during each year is calculated as follows:

tons received  
÷ compaction ratio  
= cubic yards used.

(iii) The remaining capacity shall be calculated as follows:

total landfill capacity  
- cubic yards used  
= airspace capacity before accounting for cover materials.

(iv) If cover materials are used in the landfill, the remaining capacity shall be calculated by multiplying the airspace capacity above-computed by .85 to account for the industry standard of reduction of remaining airspace by 15% for cover materials, otherwise no adjustment for cover material will be made.

(d) The department will use a royalty rate to calculate the estimated royalty payment for each tax year.

(i) The first year's royalty payment is computed as follows:  
tons received first year  
x discounted tipping fees  
x royalty rate  
= royalty payment.

(3) The discount rate shall be applied to each year's royalty payment as determined in (2)(d).

(4) The department shall estimate the reversionary value of the closed landfill. To accomplish this, the landfill owner or its agent shall provide the department with a projected closure date. The reversionary value will be discounted to the present worth.

(5) Any other property related income not included in the above calculations shall be added to the overall property value. The department shall consider the cost approach, the sales comparison approach and the income approach to value and use the most defensible approach in estimating the value of the other property related income.

(6) The market value of any improvements to real property owned by the lessee, and not included in the royalty agreement between the lessee and the land owner, will be added to the overall property value.

(7) The department shall calculate the final valuation for each tax year in the appraisal period applying this rule.

(8) Any information required to be supplied by the licensed landfill owner shall be held as confidential by the department.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-111, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to explain the method that the department will use to value licensed landfills. The rule addresses the steps that will be applied to determine the royalty value during a reappraisal cycle. The rule outlines the responsibility of the licensed landfill owner to identify its annual tipping fees rate for compactor vehicles for the immediate five years prior to the appraisal period. The rule directs the department to estimate the reversionary value of the closed landfill.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than December 30, 2008.

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) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor notice 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 November 17, 2008

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.12.204 pertaining to the	)	AMENDMENT
payment threshold--inflation	)	
adjustment for lobbyists	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 26, 2008, the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on December 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail [dunsworth@mt.gov](mailto:dunsworth@mt.gov).

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

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2007~~ 2009 and ~~2008~~ 2010 is ~~\$2,300~~ 2,400.

AUTH: 5-7-111, MCA  
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because section 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail [dunsworth@mt.gov](mailto:dunsworth@mt.gov), and must be received no later than 5:00 p.m., December 24, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Unsworth at the above address no later than 5:00 p.m., December 24, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 50 persons based on the 500 lobbyists who registered to lobby in 2007-2008.

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

/s/ Jim Scheier  
Jim Scheier  
Rule Reviewer  
Assistant Attorney General

/s/ Dennis Unsworth  
Dennis Unsworth  
Commissioner

Certified to the Secretary of State November 17, 2008.

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

In the matter of the adoption of NEW ) NOTICE OF ADOPTION,  
RULES I through XIII; the ) AMENDMENT AND TRANSFER,  
amendment and transfer of ARM ) REPEAL, AND TRANSFER  
2.43.203 through 2.43.205, 2.43.301 )  
through 2.43.303, 2.43.308 through )  
2.43.310, 2.43.402 through 2.43.408, )  
2.43.410, 2.43.418, 2.43.420 through )  
2.43.424, 2.43.426, 2.43.432, )  
2.43.433, 2.43.437, 2.43.440, )  
2.43.451, 2.43.452, 2.43.502 through )  
2.43.506, 2.43.508 through 2.43.511, )  
2.43.514, 2.43.515, 2.43.603, )  
2.43.604, 2.43.607, 2.43.611, )  
2.43.617, 2.43.801 through 2.43.804, )  
2.43.905, 2.43.914, 2.43.1002 )  
through 2.43.1004, 2.43.1010 through )  
2.43.1012, 2.43.1015, 2.43.1017, )  
2.43.1020, 2.43.1031, 2.43.1032, )  
2.43.1045, 2.43.1046, 2.43.1101, )  
2.43.1104, 2.43.1111, 2.43.1112, )  
2.43.1210 through 2.43.1212, )  
2.43.1701, 2.43.1703, 2.43.1704, )  
2.43.1802, 2.43.1803, and 2.43.1810 )  
through 2.43.1812; the repeal of ARM )  
2.43.409, 2.43.425, 2.43.428 through )  
2.43.430, 2.43.520, 2.43.605, )  
2.43.606, 2.43.609, 2.43.610, and )  
2.43.1030; and the transfer of ARM )  
2.43.201, 2.43.202, 2.43.304, )  
2.43.512, 2.43.513, 2.43.901, )  
2.43.902, 2.43.909 through 2.43.911, )  
2.43.1001, 2.43.1005, 2.43.1023 )  
through 2.43.1025, 2.43.1040, )  
2.43.1105, 2.43.1108, 2.43.1110, )  
2.43.1113, 2.43.1115, 2.43.1118, )  
2.43.1119, 2.43.1702, 2.43.1705, and )  
2.43.1801, all pertaining to the )  
operation of the retirement systems )  
and plans administered by the )  
Montana Public Employees' )  
Retirement Board )

TO: All Concerned Persons

1. On September 11, 2008, the Public Employees' Retirement Board published MAR Notice No. 2-43-403 pertaining to the public hearing on the proposed adoption, amendment and transfer, repeal, and transfer of the above-stated rules at page 1852 of the 2008 Montana Administrative Register, Issue Number 17.

2. The board has adopted, amended and transferred, repealed, and transferred the following rules as proposed:

ADOPT:

NEW RULE II 2.43.2116  
NEW RULE III 2.43.2110  
NEW RULE IV 2.43.3402  
NEW RULE V 2.43.2301  
NEW RULE VI 2.43.2304  
NEW RULE VII 2.43.2311  
NEW RULE VIII 2.43.2324  
NEW RULE X 2.43.4803  
NEW RULE XI 2.43.4003  
NEW RULE XII 2.43.5008  
NEW RULE XIII 2.43.5109

AMEND AND TRANSFER:

<u>OLD</u>	<u>NEW</u>
2.43.203	2.43.1501
2.43.204	2.43.1502
2.43.205	2.43.1503
2.43.301	2.43.1301
2.43.302	2.43.1302
2.43.303	2.43.1405
2.43.308	2.43.1406
2.43.309	2.43.1407
2.43.310	2.43.1408
2.43.402	2.43.2104
2.43.403	2.43.2102
2.43.404	2.43.2114
2.43.405	2.43.2101
2.43.406	2.43.2105
2.43.407	2.43.2106
2.43.408	2.43.2109
2.43.410	2.43.2302
2.43.418	2.43.3401
2.43.420	2.43.2317
2.43.421	2.43.2315
2.43.422	2.43.2308
2.43.423	2.43.2303
2.43.424	2.43.2323
2.43.426	2.43.4807



2.43.432	2.43.2318
2.43.433	2.43.2310
2.43.437	2.43.2316
2.43.440	2.43.2309
2.43.451	2.43.2319
2.43.452	2.43.2609
2.43.502	2.43.2602
2.43.503	2.43.2601
2.43.504	2.43.2603
2.43.505	2.43.3403
2.43.506	2.43.2608
2.43.508	2.43.2701
2.43.509	2.43.2702
2.43.510	2.43.2703
2.43.511	2.43.2704
2.43.514	2.43.2707
2.43.515	2.43.2711
2.43.603	2.43.2901
2.43.604	2.43.2902
2.43.607	2.43.2903
2.43.611	2.43.4603
2.43.617	2.43.2607
2.43.801	2.43.5001
2.43.802	2.43.5002
2.43.803	2.43.5006
2.43.804	2.43.5007
2.43.905	2.43.2205
2.43.914	2.43.2214
2.43.1002	2.43.3502
2.43.1003	2.43.3503
2.43.1004	2.43.3504
2.43.1010	2.43.3510
2.43.1011	2.43.3511
2.43.1012	2.43.3512
2.43.1015	2.43.3515
2.43.1017	2.43.3517
2.43.1020	2.43.3520
2.43.1031	2.43.3531
2.43.1032	2.43.3532
2.43.1045	2.43.3545
2.43.1046	2.43.3546
2.43.1101	2.43.4606
2.43.1104	2.43.4609
2.43.1111	2.43.4616
2.43.1112	2.43.4617
2.43.1210	2.43.4203
2.43.1211	2.43.4204

2.43.1212	2.43.4207
2.43.1701	2.43.3001
2.43.1703	2.43.3005
2.43.1704	2.43.3008
2.43.1802	2.43.5102
2.43.1803	2.43.5103
2.43.1810	2.43.5110
2.43.1811	2.43.5111
2.43.1812	2.43.5112

REPEAL:

2.43.409  
2.43.425  
2.43.428  
2.43.429  
2.43.430  
2.43.520  
2.43.605  
2.43.606  
2.43.609  
2.43.610  
2.43.1030

TRANSFER:

<u>OLD</u>	<u>NEW</u>
2.43.201	2.43.1401
2.43.202	2.43.1402
2.43.304	2.43.1306
2.43.512	2.43.2705
2.43.513	2.43.2706
2.43.901	2.43.2201
2.43.902	2.43.2202
2.43.909	2.43.2209
2.43.910	2.43.2210
2.43.911	2.43.2211
2.43.1001	2.43.3501
2.43.1005	2.43.3505
2.43.1023	2.43.3523
2.43.1024	2.43.3524
2.43.1025	2.43.3525
2.43.1040	2.43.3540
2.43.1105	2.43.4610
2.43.1108	2.43.4613
2.43.1110	2.43.4615
2.43.1113	2.43.4618
2.43.1115	2.43.4620
2.43.1118	2.43.4623

2.43.1119	2.43.4624
2.43.1702	2.43.3004
2.43.1705	2.43.3009
2.43.1801	2.43.5101

3. The board has adopted the following rules as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I [2.43.2115] CORRECTION OF DEFINED BENEFIT RETIREMENT SYSTEM REPORTING ERRORS

(1) through (5) remain as proposed.

(6) The employer must correct its payroll records and pay the refund to the DCRP participant.

NEW RULE IX [2.43.2610] DESIGNATION OF BENEFICIARY BY MEMBERS, RETIREES, ALTERNATE PAYEES, AND CONTINGENT ANNUITANTS

(1) and (2) remain as proposed.

4. The board thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: An individual acting on behalf of the State Administration and Veterans' Affairs Interim Committee commented that while the proposal is very well written, some of the statements of reasonable necessity contain explanations of what the proposed rule does and also fail to explain the reason for the "particular approach" taken in the rule as required by section 2-4-305(6)(b), MCA.

RESPONSE 1: Although a statement that merely explains what a rule provides is not an adequate statement of reasonable necessity, nothing in statute or rule prohibits incorporating explanations of what a proposed rule amendment does to further the understanding of why the rule or amendments to the rule are necessary. Comment 2 provides an example of where an explanation of the proposed amendment may have been helpful.

The board has thoroughly reviewed the statements of reasonable necessity. The board is satisfied those statements provide adequate statements of reasonable necessity and explain the board's particular approach when adopting mandated rules. The board further believes that, when taken as a whole, the statements of reasonable necessity demonstrate the reason for the approach taken by the board in amending its rules. Specifically, paragraph 6 of the proposed notice advises the reader that the board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the statutes administered by and the service provided by the board. MPERA employees, covered employers, and retirement system members will be better able to locate rules applicable to their needs and situation.

Additionally, the board supplemented the statements of reasonable necessity in the information prepared to be read and made available at the hearing on the proposal.

COMMENT 2: The same individual, again acting on behalf of the Interim Committee, commented that there appears to be no statement of reasonable necessity addressing the proposed new final sentence to ARM 2.43.801(1).

RESPONSE 2: The statement of reasonable necessity for ARM 2.43.801(1) does not contain an explanation of what the proposed amendment does. Perhaps it should have. Section (1) limits Volunteer Fire Company Act (VFCA) membership to volunteer firefighters active in a "qualifying volunteer fire company". The board believes that term requires further explanation, so proposed the final sentence to direct the reader to 19-17-402, MCA when determining whether a volunteer fire company is qualified to participate in the VFCA. This reason for the language is adequately addressed in the last sentence of the statement of reasonable necessity: "The term 'qualifying volunteer fire company' is vague and requires further explanation."

COMMENT 3: The final comment received on behalf of the Interim Committee addresses the use of section 19-3-304, MCA, as authority for several rules being repealed even though that section was repealed in 1993.

RESPONSE 3: The board contacted the Secretary of State's Office both before publication of the Notice of Proposal and after receipt of this comment. On both occasions, the board was instructed to retain repealed rules when citing the authority and the implementing authorities of a repealed rule.

COMMENT 4: New Rules I and II address correction of reporting errors for defined benefit plans and the defined contribution plan respectively. Both rules provide that excess employee contributions will be returned to the employer. Rule II also states that the employer is responsible for correcting its payroll records and paying the refund to the DCRP participant. Rule I is silent regarding this responsibility. It should be addressed in Rule I as well as in Rule II.

RESPONSE 4: The board agrees. New Rule I is amended accordingly.

COMMENT 5: New Rule IX does not address the designation of beneficiaries by members. Therefore, the word "member" should be removed from the catchphrase.

RESPONSE 5: The board agrees and amends the catchphrase accordingly.

5. An electronic copy of this Adoption Notice is available through the Montana Public Employee Retirement Administration web site at <http://mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration 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 Montana Public Employee Retirement Administration 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.

6. These rule actions are effective December 1, 2008.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

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

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

Certified to the Secretary of State November 17, 2008.

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

In the matter of the amendment and ) NOTICE OF AMENDMENT AND  
transfer of ARM 2.43.427 pertaining ) TRANSFER  
to reinstatement credit for lost time )

TO: All Concerned Persons

1. On September 11, 2008, the Public Employees' Retirement Board published MAR Notice No. 2-43-404 pertaining to the public hearing on the proposed amendment and transfer of the above-stated rule at page 1946 of the 2008 Montana Administrative Register, Issue Number 17.

2. A public hearing was scheduled on October 3, 2008, but there were no attendees. No comments or testimony were received.

3. The board has amended and transferred the following rule as proposed:

2.43.427 [2.43.2120] REINSTATEMENT -- CREDIT FOR LOST TIME

4. An electronic copy of this Adoption Notice is available through the Montana Public Employee Retirement Administration web site at <http://mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration 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 Montana Public Employee Retirement Administration 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.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

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

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

Certified to the Secretary of State November 17, 2008.



BEFORE THE TRANSPORTATION COMMISSION  
DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION,  
Rules I, II, III, IV, V, and VI, the ) AMENDMENT, AND REPEAL  
amendment of ARM 18.6.202, )  
18.6.203, 18.6.211, 18.6.212, )  
18.6.213, 18.6.214, 18.6.221, )  
18.6.231, 18.6.241, 18.6.243, )  
18.6.244, 18.6.245, 18.6.246, )  
18.6.247, 18.6.248, 18.6.251, )  
18.6.262, 18.6.263, 18.6.264, and the )  
repeal of ARM 18.6.242 pertaining to )  
outdoor advertising control )

TO: All Concerned Persons

1. On August 28, 2008, the Transportation Commission published MAR Notice No. 18-120 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 1747 of the 2008 Montana Administrative Register, Issue Number 16.

2. The Transportation Commission has adopted and amended the following rules as proposed: ARM New Rules I (18.6.204), III (18.6.215), and IV (18.6.239), 18.6.213, 18.6.214, 18.6.241, 18.6.243, 18.6.244, 18.6.245, 18.6.246, 18.6.247, 18.6.248, 18.6.263, and 18.6.264.

3. The Transportation Commission has repealed the following rule as proposed: ARM 18.6.242.

4. The Transportation Commission has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (18.6.205) OFF-PREMISE SIGNS - LOCATIONS - COMPLIANCE WITH STATUTES, RULES, ORDINANCES (1) through (4) remain as proposed.

(a) the proposed sign location shall exhibit ~~a minimum of three~~ one conforming ~~businesses within 1600 feet of each other~~ business;

(b) through (8) remain as proposed.

AUTH: 75-15-121, MCA

IMP: 75-15-111, MCA

NEW RULE V (18.6.252) REPAIR, RECONSTRUCTION, UPGRADE OR RELOCATION OF CONFORMING SIGNS (1) ~~Repair, reconstruction, Upgrade or~~



relocation of a conforming sign which results in a change from that shown on the last approved permit application will require a new application for upgrade of the existing permit ~~and~~ but will not be charged ~~the appropriate~~ additional fees. Failure to obtain a permit upgrade prior to performing the ~~repair, reconstruction,~~ upgrade or relocation may result in revocation of the permit. Changes requiring a permit upgrade include changes in:

(a) through (g) remain as proposed.

(2) Any application for relocation, ~~revision,~~ or upgrade must meet the standard of lawful ordinance, regulation, or resolution of county or local government and the upgrade application must be approved by the county or local government, and approved by the landowner, before consideration by the department.

(3) and (4) remain as proposed.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-121, MCA

NEW RULE VI (18.6.240) TEMPORARY SIGNS (1) remains as proposed.

(2) Temporary signs must be removed within the time limits set forth for the sign category in this rule. The department shall notify the landowner, and where appropriate, the real estate agent listed on the sign, of illegal signs which are not removed within ten days of the time limit expiration. The signs shall be removed by the department 24 hours after notification to the landowner and agent.

(3) and (3)(a) remain as proposed.

(b) Temporary real estate sale or lease directional signs erected for the purpose of directing interested persons to the location of a property actively listed for sale or lease. Real estate directional signs may only be erected during the period of a ~~realtor's~~ real estate agent's listing agreement for sale or lease of real property, or for 120 days of active sale activities without a listing agreement. The signs must be removed from the subject site no later than 15 days after the sale of the listed property or expiration of the listing agreement.

(c) remains as proposed.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-121, MCA

18.6.202 DEFINITIONS (1) and (1)(a) remain as proposed.

(b) the sign has been without a message for a period of at least ~~three~~ six months;

(c) through (4) remain as proposed.

(5) "Blank sign" means a sign structure that has no face or has faces without 100 percent advertising copy cover. ~~The term includes all faces not leased, rented, or otherwise occupied by commercial advertising or a public service message.~~ The term also includes signs containing notices the sign is for rent or lease.

(6) through (12) remain as proposed.

(13) "Destroyed sign" means a sign that is no longer in existence due to factors other than vandalism or other criminal or tortious acts. The term includes a sign which has been blown down by the wind and sustains damage in excess of 50

60 percent.

(14) "Dilapidated sign" means a sign which is ~~shabby~~, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, or intended messages that cannot be interpreted by the motoring public, ~~or a sign which is blocked by overgrown vegetation outside the highway right-of-way.~~

(15) through (31) remain as proposed.

(32) "Panel" means a portion of a billboard face, ~~but can also refer to a single sign structure.~~

(33) through (41) remain as proposed.

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

#### 18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) through (1)(i) remain as proposed.

(j) a commercial activity shall include two or more customary facilities such as indoor restrooms, running water, functional electrical connections, and adequate heating and shall be equipped with a permanent flooring from material other than dirt, gravel, or sand;

(k) through (3)(b) remain as proposed.

~~(e) commercial or industrial activities are incidental to or different from primary land uses in the immediately adjacent surrounding area;~~

(d) and (e) remain as proposed but are renumbered (c) and (d).

(4) remains as proposed.

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-113, MCA

#### 18.6.211 PERMITS (1) remains as proposed.

(2) A check payable to the Montana Department of Transportation in the amount of the nonrefundable inspection fee and the ~~nonrefundable~~ initial permit fee must accompany the sign permit application.

(3) through (11) remain as proposed.

AUTH: 75-15-121, 75-15-122, MCA

IMP: 75-15-122, MCA

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) through (4)(h) remain as proposed.

(5) Applications for permits must be accompanied by the following:

(a) both the nonrefundable inspection fee and the ~~nonrefundable~~ initial permit fee;

(b) through (7) remain as proposed.

AUTH: 75-15-121, MCA  
IMP: 75-15-122, MCA

18.6.221 NEW SIGN ERECTION - CONSTRUCTION STANDARDS

(1) Within ~~three~~ six months of the date of issuance of the permit, which is the date the application was approved, the sign owner will:

(a) through (e) remain as proposed.

(2) When construction has been delayed through no fault of the applicant, an extension of time to erect the structure may be granted upon written request from the sign owner which explains the reason for the request. Extensions may be granted at the discretion of the department. ~~In no instance will the availability of materials or contract problems qualify for a time extension.~~

(3) through (5) remain as proposed.

AUTH: 75-15-121, MCA  
IMP: 75-15-113, 75-15-122, MCA

18.6.231 OFF-PREMISE SIGN STANDARDS (1) through (3) remain as proposed.

(4) Off-premise permitted signs on controlled routes which have any of the following characteristics shall not be erected ~~nor maintained~~:

(a) through (k) remain as proposed.

(l) signs located within ten feet of a property line of a residential zoning district or an existing residential use, ~~or within ten feet of a public right-of-way~~ which do not aim the light fixture away from the property line, residential use area, or right-of-way line and shield the side closest to the property line, residential use area, or right-of-way line so that the light fixture illuminates only the face of the sign;

(m) through (o) remain as proposed.

AUTH: 75-15-121, MCA  
IMP: 75-15-113, 75-15-121, MCA

18.6.251 REPAIR OF NONCONFORMING SIGNS (1) through (4) remain as proposed.

(5) Nonconforming signs may be repaired only if such repair and maintenance is reasonably necessary to maintain the sign's appearance and structural integrity. In no case may the repair, maintenance, or re-erection of a sign result in a substantial upgrading of the type or value of the sign.

(6) Nonconforming signs which are destroyed, abandoned, or discontinued may not be re-erected except in instances of vandalism or other criminal or tortious acts. The work must be accomplished within ~~60 days~~ six months or the permit may be revoked.

(7) and (8) remain as proposed.

(9) A nonconforming sign which has displayed obsolete or damaged advertising matter, or has not displayed advertising matter for a period of 45 90 days subsequent to receipt of written notice from the department, shall be considered as a discontinued sign and shall be removed by the owner without compensation.

(10) Nonconforming signs which are in need of substantial repair either to the face or support structure, and are not repaired within a period of ~~45~~ 90 days after receipt of written notice from the department, shall be considered an abandoned sign and shall be required to be removed by the owner without compensation.

~~(11) Any increase in nonconforming sign value resulting from maintenance, repair, or illumination as provided in this rule will be deducted if the sign is purchased by the department.~~

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-121, MCA

18.6.262 SIGN STRUCTURES THAT ARE BLANK, ABANDONED, DILAPIDATED, DISCONTINUED, OR IN DISREPAIR (1) When the department determines a sign structure has been blank, abandoned, dilapidated, discontinued, or in disrepair for a period of 60 days, the department shall notify the sign owner of the violation and require remedial action within ~~45 days~~ six months. If such action is not taken, the permit will be revoked and action for the removal of the sign will be taken as provided in 75-15-131, MCA.

(2) A sign is in disrepair if the structure is unsafe or if the sign face is ~~unreadable or~~ not visible to the traveling public.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, 75-15-121, 75-15-131, MCA

5. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

#### COMMENT NO. 1

Two comments were received asking whether the proposed outdoor advertising rule changes would affect existing on-premise signs along a controlled route.

#### RESPONSE

The commission appreciates these inquiries in response to the proposed rules, and notes existing on-premise signs will not be affected by these rule changes. The commission further notes each person who had a question on a specific sign has already been contacted by Outdoor Advertising Control (OAC) staff to respond to the questions on the specific signs and locations.

#### COMMENT NO. 2

One comment was received stating New Rule VI(1)(f) on Temporary Signs and ARM 18.6.246(1)(d) on Political Signs should not prohibit the placement of temporary or political signs within 500 feet of an intersection or interchange. The comment stated this requirement would force all temporary signs away from intersections to areas

which are inaccessible and possibly invisible to the traveling public, making the signs confusing and ineffective.

### RESPONSE

The commission notes the requirement for a 500 foot distance from an intersection or interchange is found in statute at 75-15-113, MCA, on Standards for Permitted Advertising. The statutory requirement is based on safety issues and critical points along a road where drivers must make decisions without distractions. This requirement therefore affects all types of outdoor advertising signs in Montana, and it is not possible to make an exception for certain types of signs such as temporary or political signs.

### COMMENT NO. 3

One comment was received stating ARM 18.6.231(4)(g) and (m) on Off-premise Sign Standards should not restrict intermittent lights or "wind operated devices." The comment stated wind powered lights might be the wave of the future and limits on billboard intermittent lighting is of the same mentality as outlawing computers in schools back in the 1970s.

### RESPONSE

The commission notes these prohibitions have always been in place in Outdoor Advertising administrative rules as the restrictions are based on the wording of the State-Federal Agreement signed with the federal Secretary of Transportation when the original federal Highway Beautification Act was passed by Congress, and the wording of 75-15-113(10), MCA. The restrictions have been moved to ARM 18.6.231 as part of these rule amendments to better organize the rules and place all off-premise sign standards in one place.

### COMMENT NO. 4

One comment was received stating New Rule II(4)(a) on Off-premise Sign Locations should not require a minimum of three qualifying businesses in proximity to a proposed sign location, as only one business is necessary to qualify a legal location under current Montana statutes.

### RESPONSE

The commission agrees with the comment and notes the comment is correct in that 75-15-103(14), MCA, states an "unzoned commercial or industrial area" means an area occupied by *one or more* commercial or industrial activities. The rule will be amended to change the three business requirement to one business, as shown above.

### COMMENT NO. 5

Two comments were received stating ARM 18.6.221(1) and (2) on New Sign Erection should not require a new sign to be erected within three months of the date of the permit issuance as it is almost impossible to order and build a structure from start to finish within three months. The comments noted it usually takes over two months just to receive the materials once they have been ordered. The comments suggest the time period remain at six months, and the nonavailability of materials continue to qualify for a time extension.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to retain the time period for erection of a new sign at six months.

#### COMMENT NO. 6

One comment was received stating New Rule VI(2) on Temporary Signs should state that in the case of real estate temporary signs, MDT will notify both the landowner and the real estate agent who owns and is listed on the temporary sign when the signs have not been removed within ten days of the expiration of the time limit.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to allow notification of both the landowner and real estate agent.

#### COMMENT NO. 7

One comment was received stating New Rule VI(3)(b) on Temporary Signs should not use the term "realtor," as that is a trademarked term and denotes a real estate salesperson or a broker who is a member of the National Association of Realtors, which does not include all real estate brokers or salespersons. The comment requested the term be changed to "real estate agent."

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to use the term "real estate agent."

#### COMMENT NO. 8

One comment was received stating New Rule V on Repair, Reconstruction, or Relocation of Conforming Signs should not include new permit requirements or fees for ordinary repairs or reconstruction, but only upgrades or relocations. The comment noted 75-15-111, MCA, addresses restrictions on repair of nonconforming signs only, but places no restrictions on repair of conforming signs.

RESPONSE

The commission agrees with the comment, and will amend the rule as shown above to require a new permit application only for upgrade or relocation of a conforming sign. The permit upgrade will continue to be required for substantial changes on conforming signs in location, height, width, area, illumination, and other factors listed in the rule.

COMMENT NO. 9

One comment was received stating ARM 18.6.202(1)(b) on definition of "abandoned sign" should change the period of time without a message to six months, instead of three months because three months is not enough time to replace all copy on all signs.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change "three months" to "six months."

COMMENT NO. 10

One comment was received stating ARM 18.6.202(5) on definition of "blank sign" should say a face without 100% "cover" instead of "copy" and delete the sentence on inclusion of all sign faces not leased or rented. The comment stated "copy" refers to the actual words of the message, but does not include background and other parts of the total sign face which "cover" the face. Also, the term should not refer to sign faces not leased or rented.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change "copy" to "cover" and delete the sentence on signs not leased or rented.

COMMENT NO. 11

One comment was received stating ARM 18.6.202(13) on definition of "destroyed signs" should state damage in excess of "60%" instead of "50%" to allow more signs to be salvaged after a sign has been damaged by weather or other factors.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change "50%" destroyed to "60%" destroyed.

COMMENT NO. 12

One comment was received stating ARM 18.6.202(14) on definition of "dilapidated sign" should not use the word "shabby," as the word is too vague and open to interpretation. The definition should also delete the phrase that the term includes signs blocked by overgrown vegetation, as this is not consistent with a dilapidated sign.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to delete the word "shabby" and the phrase regarding overgrown vegetation.

#### COMMENT NO. 13

One comment was received stating ARM 18.6.202(32) on definition of "panel" should state that panel means a "portion of" a billboard, and should delete the phrase on single sign structure, as the definition would then more closely meet industry meaning and use of the term.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to state a panel is a portion of a billboard, and to delete the phrase on single sign structure.

#### COMMENT NO. 14

One comment was received stating ARM 18.6.203(1)(j) on unzoned commercial or industrial activity customary facilities should insert the phrase "two or more" of the customary facilities, as many commercial activities in Montana do not have all of the facilities listed such as restrooms, and running water, but the businesses should have at least two of the facilities listed to qualify the location for a sign site under this rule.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to insert the phrase "two or more" of the customary facilities listed.

#### COMMENT NO. 15

One comment was received stating ARM 18.6.203(3)(c) stating unzoned commercial or industrial areas are not created when an activity is incidental to or different from primary land uses in the immediately adjacent surrounding area because this requirement is not found in the federal statutes or rule, nor in Montana statutes or rules, and will create a requirement not supported by statute.



RESPONSE

The commission agrees with the comment and will amend the rule as shown above to delete the subsection on activity incidental to or different from primary land uses in the immediate adjacent surrounding area.

COMMENT NO. 16

One comment was received stating ARM 18.6.212(5)(a) on Permit Applications should change the wording to eliminate the word "both" and the second occurrence of "non-refundable" to make the subsection more readable.

RESPONSE

The commission notes the proposed wording is actually clearer as is, and less susceptible to misinterpretation as to which fees must be sent immediately upon application, and the status of both fees as nonrefundable.

COMMENT NO. 17

One comment was received stating ARM 18.6.231(4) and (4)(l) on off-premise sign standards should delete the phrase "or maintained" as a part of the list of characteristics of signs so the rule would refer to signs being erected only, and should remove reference to prohibitions on signs being within ten feet of a public right-of-way. The comment stated that maintenance of signs is allowed by statute and is not appropriately listed in the rule. The comment also stated signs are often placed in close proximity to a right-of-way line, but are allowed if all required distances from the roadway are met, so the ten foot distance language should be deleted.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to remove the words "or maintained" and delete the ten foot from the right-of-way language.

COMMENT NO. 18

One comment was received stating ARM 18.6.251(6) on repair of nonconforming signs should change the time required for completion of work from 60 days to six months, as was previously stated in the rule. The comment stated it is difficult to obtain repair materials and supplies in a timely manner, so a 60 day requirement to complete sign repairs will likely never be possible.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change the deadline for repair from 60 days to six months.

COMMENT NO. 19

One comment was received stating ARM 18.6.251(9) on repair of nonconforming signs should extend the deadlines for failure to display advertising matter from 45 days to 90 days because it is difficult to inventory every sign and arrange for a new display within 45 days of damage.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change "45 days" to "90 days."

COMMENT NO. 20

One comment was received stating ARM 18.6.251(10) on repair of nonconforming signs should change the time required for repair from 45 days to 90 days, as it is difficult to obtain repair supplies and complete repairs within the shorter time frame.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to change "45 days" to "90 days."

COMMENT NO. 21

One comment was received stating ARM 18.6.251(11) on repair of nonconforming signs should delete section (11) entirely, as it deals with payment for purchase of a nonconforming sign by the department. The comment noted the department does not buy nonconforming signs, so this section is unnecessary.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above to delete (11) on payment for department purchase of nonconforming signs.

COMMENT NO. 22

One comment was received stating ARM 18.6.262(1) on sign structures that are blank or in disrepair for 60 days, the deadline for requiring remedial action should be changed from "45 days" to "six months," because materials for repair of signs is often difficult to obtain in a timely manner.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above, to change "45 days" to "six months."

#### COMMENT NO. 23

One comment was received stating ARM 18.6.262(2) on describing when a sign is in disrepair should delete the word "unreadable" because it is redundant. The remainder of the sentence already states the sign "is not visible to the traveling public."

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to delete the word "unreadable" from (2).

#### COMMENT NO. 24

One comment was received stating New Rule I(1) regarding on-premise signs should not state the "department is the sole determinant as to whether a sign qualifies as an on-premise sign" because the language implies or requires some type of review by MDT. The comment suggested the qualifications be listed and the determination derived from that list without MDT review or approval. The comment stated this designation is controlled and regulated at the local level.

#### RESPONSE

The commission notes MDT is the agency charged with regulating outdoor advertising in this state, thus MDT is the correct entity to determine whether rule requirements have been met. Secondly, the entire New Rule I lists the qualifications of on-premise signs, in accordance with and in addition to 75-15-111, MCA, thus any determination of the status of a sign as on- or off-premises would be made by reviewing New Rule I. Finally, MDT and local governments share jurisdiction of outdoor advertising where controlled routes run through local government areas, thus MDT remains a player in determinations regarding on-premise signs.

#### COMMENT NO. 25

One comment was received stating New Rule I regarding on-premise signs should not use the term "principal" in (3), (5), and (6) to describe the "principal establishment," the "principal activity" and the "principal products or services." The comment stated this word adds subjectivity to the determination. The comment recommended all references to "principal" be removed in favor of allowing any advertising display representing goods or services offered on the property.

#### RESPONSE

The commission initially notes the language of the rule using the word "principal" to define on-premise establishment, activities, and products is taken directly from the federal regulation on this point found at 23 CFR §750.709 which states "When ... the product or service advertised is only incidental to the *principal* activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign." Additionally, MDT has increasingly encountered business locations which include any number of incidental activities such as an ATM machine at a convenience store, which does not qualify the premise to erect an advertisement for the bank which runs the ATM machine. New Rule I will help clarify on-premise sign determinations.

#### COMMENT NO. 26

One comment was received stating New Rule I(6)(d) and (e) on land situations which are not considered on-premise advertising should not have qualifications which are based on the proximity of the advertising to the target audience. The comment states development of property should be controlled at a local level, including distance relationships between structures, landscape, and roadways. The comment also did not agree with integrating land use to the goods and services.

#### RESPONSE

The commission noted (6) contains a list of situations in which use of land will not qualify for on-premise advertising. Included in the list are land located more than 1/4 mile from the principal activity, or in closer proximity to the highway than the principal activity, and land occupied solely by structures which serve no purpose to the principal activity. These restrictions are necessary to address situations where landowners try to claim a sign is on-premise when it is not due to distance or sham activities used solely to qualify a sign location as on-premise. New Rule I does not set up qualifications based on proximity of the advertising to the target audience, nor control development of property. Instead, the rule clarifies qualifications for on-premise signs while informing the public of types of land use situations which do not qualify.

#### COMMENT NO. 27

One comment was received stating ARM 18.6.251(6) on repair of nonconforming signs should not have eliminated the sentence "In no case may the repair, maintenance or re-erection of a sign result in a substantial upgrading of the type or value of the sign," as this requirement is found in federal regulation at 23 CFR §750.707.

#### RESPONSE

The commission agrees with the comment and will amend the rule as shown above to re-insert the sentence at (5).

COMMENT NO. 28

One comment was received stating ARM 18.6.211 and 18.6.212 should not have stated the initial permit fee was "nonrefundable." Although both that fee and the separate inspection fee must be submitted with an application, only the inspection fee is nonrefundable. The initial permit fee would be refunded if an application is denied, as no "initial permit" would be issued.

RESPONSE

The commission agrees with the comment and will amend the rule as shown above.

/s/ Lyle Manley \_\_\_\_\_  
Lyle Manley  
Rule Reviewer

/s/ Nancy Espy \_\_\_\_\_  
Nancy Espy  
Chair  
Transportation Commission

Certified to the Secretary of State November 17, 2008

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT,
24.29.1402, 24.29.1404, 24.29.1406,	)	AMENDMENT AND TRANSFER,
24.29.1416, 24.29.1427, 24.29.1430,	)	AND ADOPTION
24.29.1431, and 24.29.1522, the	)	
amendment and transfer of 24.29.1504,	)	
and the adoption of NEW RULE I, all	)	
related to the workers' compensation	)	
medical fee schedule for facilities	)	

TO: All Concerned Persons

1. On August 28, 2008, the Department of Labor and Industry (department) published MAR Notice No. 24-29-231 regarding the public hearing on the proposed amendment, amendment and transfer, and adoption of the above-stated rules at page 1779 of the 2008 Montana Administrative Register, issue no. 16.

2. On September 19, 2008, the department held a public hearing in Helena at which time members of the public made oral comments. Additional written comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: The Montana Hospital Association (MHA) recommends the department adopt the proposed facility fee schedule using a phase-in approach to protect against unintended shifts in payment amounts and to allow all parties to become more familiar with the proposal by gaining experience with payment calculations. It recommends that a cross section of payers price a sample of claims and share them with the hospitals to verify that the calculations can be accomplished accurately.

Response 1: Because the department has designed the changes to be budget neutral to the overall system, because workers' compensation cases are a relatively small percentage of the total caseload for hospitals, and because hospitals and some payers are already familiar with Medicare billing methods, the department believes a phase-in approach is not necessary. The department has communicated with as many of the payers as possible and believes payers are ready to implement the proposed fee schedule as noticed. In order to provide affected parties lead time to prepare for the new system, the department is extending the effective date of the proposed rules to December 1, 2008 and amends rules 24.29.1427, 24.29.1431, and proposed New Rule I as indicated below to reflect this change. The department notes that recourse concerning disputes as they arise between providers and payers are handled through the mediation process.

Comment 2: The MHA and Community Medical Center (CMC) are concerned whether the new system will provide adequate payments or will cause payments to drop from existing levels. The groups further comment they believe that the department's data are inadequate and that calibration of a new payment system to determine whether the new system results in adequate payments requires more analysis than is allowed using the few hundred claims used by the department.

Response 2: The department renoticed the proposed fee schedule in an effort to allow hospitals additional time to analyze its financial impacts. As a result, the department received data from a total of five hospitals. All the data received were in line with the department's analysis. The department also received anecdotal responses which are not amenable to analysis. In trying to ensure a reasonable profit over cost, the department has set the overall reimbursement at 65 percent above Medicare. This reimbursement level considers the combination of payments under MS-DRGs, the payments for outliers and the payments for implants. The department believes that setting the reimbursement at this rate assures that any additional financial burden is minimal. Additionally, the National Council of Compensation Insurers (NCCI) has analyzed the proposed fee schedule and determined hospital outpatient reimbursements will not decrease overall. However, the department acknowledges that Ambulatory Surgery Centers will experience a decrease as they were previously reimbursed at 100 percent of charges.

Comment 3: The MHA and CMC comment that both believe expensive cases and implantable devices will always be substantially underpaid. It also asserts that any new system should not pull more funds out of the hospitals in order to avoid cost shifting to other types of patients. CMC further notes that the proposed regulations are absent of an outlier policy for outpatient cases. CMC requests the department to prepare a detailed analysis by facility showing the differences in payments from the current methodology versus the proposed payment system.

Response 3: The department notes that the previous discount factor system for hospital facilities did not address equity of services across the state. In an attempt to level the playing field from the existing reimbursement system, the department has developed the proposed fee schedule to reimburse all facilities based on costs rather than charges for services. The intent in adopting the MS-DRG and APC system is to obtain equitable payments across the system rather than on an individual hospital or ambulatory surgery center basis. The department acknowledges that some facilities will have increases and some will have decreases. Because the reimbursement is 65 percent above Medicare, the department does not believe the fee schedule will cause cost shifting to other patients. However, the department intends to evaluate and review any impact or unintended consequences and will consider changes at a later date if the data indicate any changes are necessary. Finally, the department removed outliers for outpatient cases because feedback from ASCs indicated that cases that would meet the threshold for an outlier payment become inpatient.

Comment 4: The MHA recommends that the department specify in ARM 24.29.1406 which version of the MS-DRG is included in the regulation.

Response 4: The department agrees that the version should be specified, but believes New Rule I (ARM 24.29.1432) and the department's web site are more appropriate places. Certain rules are designed to be updated annually and ARM 24.29.1406 is not one of those rules. The department has placed the appropriate version it is adopting on its web site and amended New Rule I as indicated below.

Comment 5: The MHA believes the proposed outlier threshold of three times the base price in New Rule I(11)(d) is inadequate. The group believes this method transfers the risk for expensive medical care to a hospital and does not consider whether the burden of outlier cases falls on a few particular hospitals.

Response 5: The department notes that outlier cases, by definition, are unusual and the frequency of outlier cases is low. The department concludes that using the data available to the department, the proposed rates, including the outlier threshold, provide (in the aggregate) a reasonable rate of reimbursement for facilities. The department believes that the proposed rates (including the outlier threshold) represent a reasonable approach to setting reimbursement levels and methods, even if the approach is not viewed by all system participants as the ideal approach. The department intends to evaluate and review any impact or unintended consequences and will consider changes at a later date if the data indicate any changes are necessary.

Comment 6: The MHA comments the method proposed to reimburse for high cost implantable devices poses problems as it imposes a disclosure requirement on the hospitals that is prohibited under their purchasing contracts. The group states device manufacturers provide discounts to hospitals, but the amount of discount is a trade secret. The group suggests the proposal poses a considerable barrier to service and that a hospital that is barred from disclosing its discount might provide an implantable device acquired outside of its contract, which would cost the payer a much higher cost. MHA recommends the department modify New Rule I(11)(e) to provide a standard discounted charge payment for implantable devices.

Response 6: The department believes it is reasonable to require invoices for implantable devices and has developed the proposed fee schedule based on cost rather than a discount from charges. The department notes that workers' compensation jurisdictions in nine other states require an invoice to allocate payment based on cost. The department notes that insurers are subject to privacy laws concerning disclosure of any health information or proprietary trade secret information they receive. The department has amended New Rule I by adding a statement similar to other states to clarify that private information must remain private when obtained by an insurer. The department has been assured by several hospital and ACS representatives that submission of invoices would not violate their contracts.



Comment 7: CMC suggests the complexity of the proposed rules will lead to manual review of payments which increases labor costs for manual pricing, coding, monitoring, billing, and follow up. The group also points out the department will be asked to intervene and enforce regulations. The group requests the department to provide facilities with assurances that the reviews will be conducted in an expedient manner, have experts available who understand the system, and devote the necessary amount of time to the inquiries, as well as provide education to the payer community regarding proper processing and payments.

Response 7: The department will devote the necessary amount of resources to assist providers and payers in understanding the new system and in resolving disputes.

Comment 8: CMC requests the department to consider alternatives to the proposed rules that would be more in line with commercial insurance payers and suggests this may include accessing preferred provider organization ("PPO") networks or developing a similar network.

Response 8: The department notes that under current law, insurers may contract with PPOs, and that PPO contracts are not subject to the department's fee schedules. The department has chosen the alternative adopted after a review of numerous options because it is based on costs rather than charges. The department believes this approach will lessen the growth in medical costs in years to come. The department does not have statutory authority to establish its own PPO alternative.

Comment 9: The Montana State Fund (MSF) comments that ARM 24.29.1406(3) allows for a delay in payment while (4) requires payment in 30 days. The group suggests adding the language "Except as provided in (3)" to subparagraph (4) would eliminate any confusion.

Response 9: The department agrees and amends the rule as indicated below.

Comment 10: The MSF comments it would be helpful to clarify that the focus on bill payment is based on the insurer's liability for the condition versus the claim as insurers are not liable for unrelated conditions even though the injury or occupational disease is accepted. It suggests adding "for the condition" to ARM 24.29.1406(4) in the second sentence so it reads: "In cases where there is not dispute over liability for the condition, the insurer must...".

Response 10: The department agrees and amends the rule as indicated below.

Comment 11: The MSF suggests ARM 24.29.1406(5) be amended to clarify that insurer-initiated medical necessity review involves audits of bills not claims. The group comments it views a "claim" as an injury or condition, not a charge for medical services. Changing "claim" to bill audit in (5) makes this distinction.

Response 11: The department agrees and amends the rule as indicated below.

Comment 12: The MSF suggests ARM 24.29.1406 be amended to add the following: "(6) Facilities must within 30 days of receipt of a request from an insurer, return any overpayment due the insurer as the result of an audit or review procedure, unless mediation is initiated within the 30 days." The group explains the addition of (6) ensures the time value of money for both insurers and providers is considered in payments or refunds.

Response 12: The department agrees that both providers and payers have an interest in the time value of money. However, the department's proposed rule was designed to address the problem of delays in payment by insurers to providers that were brought to the attention of the department by providers. Further, the department is proposing legislation to address this issue for both providers and payers in the next session of the Legislature because the provision of any penalty for nonpayment must be authorized by statute.

Comment 13: The MSF comments there is a potential for implant overpayment based on the proposed payment methodology and suggests the following additions to New Rule I:

For those device intensive procedures listed on the OPPS 2008 Device Intensive Table 56, the following applies:

- (1) Determine the portion of the APC payment that is allocated to the device from Table 56.
- (2) Multiply the APC payment posted for the appropriate place of service (hospital outpatient or ambulatory surgery center) by the device percentage from Table 56.
- (3) Remove the device portion from the total APC payment.
- (4) The result is the "service" portion of that APC payment. (Unless the APC is status T, no further reductions to the APC payment apply.)
- (5) Payment for the device is made by multiplying the invoice cost by 115 percent.
- (6) The appropriate payment for the procedure, then, is the sum of step 4 and step 5.

Response 13: The department acknowledges that the fee schedule reimbursement procedure for implants with a cost over the threshold does not remove a portion of the payment from the APC or MS-DRG reimbursement amount to compensate for the additional reimbursement for the implant. However, the department chose the adopted procedure without the above modification in order to simplify the procedure. The department also intended to assure adequate compensation for providers as some providers indicated that devices are not adequately accounted for in the APCs. The budget neutral design of the fee schedule assumes that separate reimbursements for implants will not be subtracted from the CMS codes. The department will monitor this issue in the future.

Comment 14: The Montana Contractors Compensation Fund (MCCF) and Midland Claims Service (MCS) commented that they are opposed to mandatory electronic billing because they believe it will be too difficult for self insured entities. They assert it would place an undue financial burden on small claims processing operations by having to upgrade software and hardware.

Response 14: The intent of the rule is to encourage electronic billing as much as possible, but the rule also makes clear that electronic billing is not mandatory. Payers who currently receive billing manually will continue to do so.

Comment 15: The MCCF comments that not providing medical notes with billing takes away the payer's right to determine compensability and places it in the hands of the medical providers whose only obligation is to treat injured people. Paying without knowing what is being paid is not good business and has the potential to force payers into hiring additional personnel or paying third party providers to process information based on the rule change. MCCF also recommends tabling the rule until the issues it raises have been resolved and self insureds are not placed in a disadvantaged position by default.

Response 15: The commenter's assumption that a facility does not have to provide medical notes is incorrect. Insurers may request that notes or reports be sent. The department notes that the physician(s), who bills separately with a CPT code, will routinely be providing notes. The department also notes that in many instances, the procedures performed at a facility will have been pre-approved by the insurer, and thus should not come as a surprise. The department concludes that the rule changes being adopted do not take away any of the rights of any party. Insurers (payers) will still have an opportunity to dispute liability for a given procedure. The department notes that insurers and providers who have disputes that cannot be settled informally currently have the ability to have the dispute resolved via an adjudicatory process, and that does not change as a result of the adoption of the proposed rule changes. Because the underlying premise of the commenter is erroneous, the department declines to "table" the rules package.

Comment 16: The MCCF and MSC comment the rules do not have a mechanism or provision for timely refund from medical providers and that most Plan 1 organizations, whether self-administered or by TPAs, have no accounts receivable staff for pursuing collection of monies from hospitals and surgery centers. The groups point out this process, which does not exist under current rules, will be necessary to pursue 'timely' reimbursement of overpayments. When requiring payments be made within 30 days with no supporting documentation (medical reports), the number of overpayment reimbursements will rise dramatically. They also assert this creates a potential for placing payers in a disadvantaged position as payers will have to make all requests for records when it should be provided as a matter of course. The groups further comment the requirement to timely pay providers has the potential of tying up large amounts of funds for months and in some cases years for any disputes.

Response 16: The department notes that currently, under 39-71-608, MCA, and 39-71-615, MCA, payers are already allowed to pay medical claims without assuming liability. See also the response to Comment 12.

Comment 17: The MCCF states the new system shifts compensability determinations to a hospital to find the best code in order to get a bill paid and it creates a presumption of liability when the payer in order to comply pays for treatment that may not have been compensable. This creates a new set of issues if the claimant is represented and in fact will send more claims to litigation over bill confusion. The group further comments the change is one-sided and the only group benefiting is the medical providers.

Response 17: The department notes that when liability is accepted, the choice of coding does not create presumption of liability. Further, many workers' compensation procedures are preauthorized and therefore the records are not always necessary for bill payment. In addition, the department notes that ARM 24.29.1404 allows payers to obtain any necessary records when there is a dispute regarding the amount payable to medical providers, the access to medical records, the timeliness of payments to medical providers, or the requirements for documentation from medical providers. Finally, the department notes it believes the advantages of switching to a cost based system outweigh the disadvantages. See also response to Comment 16.

Comment 18: MCS comments the proposed rules will cause a significant hardship and potential liability exposure for Plan No. 1 self-insured and other self-administered workers' compensation programs. It further comments that paying medical bills without the notes and invoices may cause TPAs to be in violation of their contracts. The group recommends that the rule change be stopped and significant amendments to the facility fee schedule rules be considered prior to implementation. The group cites the following issues of concern or objections: medical reports not transmitted with medical billing; requirement that facility medical bills be paid within 30 days of receipt; presumption that the only fee audit be conducted postpayment; no express requirement for audit adjustments to be reimbursed by facility; no time requirements for audit adjustment reimbursements; no time requirements for billing by facilities (date of service to billing date); no tracking of or administrative or legal recourse for facility bill coding errors or fraud; no express requirement that medical reports be provided by facilities; no requirement that medical reports to support facility bills be provided by facilities at no charge; no funding mechanism to reimburse self-insured and self-administered Montana WC programs for additional costs for staffing, software, and other related costs of implementing the system as proposed; and no immunity or legal presumptions to protect payers from allegations that a claim is "deemed accepted" simply because a facility bill was paid pursuant to the proposed rules.

Response 18: The department rejects the suggestion of the commenter that the proposed rule changes will somehow more significantly affect Plan No. 1 self-insured employers and groups than they will affect other insurers. The department

notes that the provisions of the existing statutes and medical services rules address a variety of the commenter's concerns, including 39-71-604, MCA, ARM 24.29.1404, 24.29.1406, and 24.29.1513 among others. In addition, by reference to other responses (see Responses 9, 10, 11, 12, 14, 15, 16, and 17), the department believes that the commenter's concerns have generally been addressed. The department intends to monitor the implementation and application of the facility rules to determine what, if any, modifications to the rules appear appropriate and necessary.

Comment 19: The MHA commented that it supports switching to an MS-DRG and APC type system. However, it asserts the proposed fee schedule based on CMS coding would be easier to implement if the Montana MS-DRG and APC codes were updated in sync with the Medicare annual and quarterly code updates.

Response 19: The department agrees and is pursuing legislation in the next session to allow the medical coding updates to occur automatically in Montana. Further, the department has updated its web site reimbursement tables to include the most recently adopted CMS codes. The changes from the initial proposal include splitting one MS-DRG into two separate MS-DRGs. Because the weights of the DRGs are relative, this also changed the relative weights and reimbursement amounts of all the final adopted DRGs. Finally, the department has added minor changes on its web site regarding the status indicator codes to make clear that although some CMS status indicator codes that the department has not adopted appear on the tables, those codes are not to be used in calculating reimbursement.

Comment 20: The MHA has requested to see the data that the department is using to design the fee schedule.

Response 20: The department will provide appropriate data that do not include proprietary information.

Comment 21: One commenter suggested that facilities be defined using FEIN numbers rather than following the statutory definition in Title 50, MCA. The commenter asserted that the definition in Title 50, MCA, is a long all-inclusive list that is complex.

Response 21: The department disagrees with using FEIN numbers because that would include facilities the department does not intend to include with acute care hospitals. Further, the chosen definition is consistent with current Montana law and is understood and used by providers. The department will consider issues with other types of facilities providing workers' compensation care as those issues arise.

Comment 22: MCS comments that it is concerned the new system will encourage fraudulent provider billing and that it has no protection from such a problem. It argues that it does not have the same protections as Plan 2 and 3 insurers.

Response 22: The department believes there is sufficient protection from fraud in the criminal code. The department notes there is no specific protection for private insurers in the Workers' Compensation Act. The department also notes that such an issue would have to be addressed statutorily if problems do arise.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

24.29.1406 FACILITY BILLS (1) Facility bills should be submitted when the injured worker is discharged from the facility or every 30 days.

(2) To the extent possible, electronic billing must be utilized by both providers and payers in the billing and reimbursement process to facilitate the rapid transmission of data, lessen the opportunity for errors, and lessen system costs.

(3) It is the responsibility of the facility to use the proper service codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.

(4) Except as provided in (3), ~~Insurers~~ insurers must make timely payments of facility bills. In cases where there is no dispute over liability for the condition, the insurer must, within 30 days of receipt of a facility's charges, pay the charges according to the rates established by these rules.

(5) Insurer-initiated medical necessity review, ~~claim~~ bill audits, and other administrative review procedures may only be conducted on a postpayment basis.

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA

24.29.1427 HOSPITAL SERVICE RULES FOR SERVICES PROVIDED FROM JANUARY 1, 2008, THROUGH ~~OCTOBER 31, 2008~~ NOVEMBER 30, 2008

(1) This rule applies to services provided from January 1, 2008, through ~~October 31, 2008~~ November 30, 2008.

(2) and (3) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

24.29.1431 HOSPITAL RATES FROM JULY 1, 2001, THROUGH ~~OCTOBER 31, 2008~~ NOVEMBER 30, 2008 (1) through (3) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

5. The department has adopted the following rule as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 24.29.1432) FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER ~~NOVEMBER~~ DECEMBER 1, 2008

(1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided at a facility when a person is discharged on or after ~~November~~ December 1, 2008. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charges are less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules, available on-line via the internet at <http://erd.dli.mt.gov/wcregs/medreg.asp>, are comprised of the following elements:

(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule, based on CMS version 26;

(b) through (10)(b) remain as proposed.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective ~~November~~ December 1, 2008, the base rate is \$7,735.

(b) through (d)(ii) remain as proposed.

(e) Where an implantable exceeds \$10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Any implantable that costs less than \$10,000 is bundled in the implantable charge included in the MS-DRG payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) through (g)(iii) remain as proposed.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The department may establish the base rate for outpatient service at acute care hospitals annually.

(i) Effective ~~November~~ December 1, 2008, the base rate for hospital outpatient services is \$105.

(b) The department may establish the base rate for ASCs annually.

(i) Effective ~~November~~ December 1, 2008, the base rate for ASCs is \$79, which is 75 percent of the hospital base rate.

(c) through (e) remain as proposed.

(f) Where an outpatient implantable exceeds \$500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill CPT code L 8699, and the status indicator code "N" may not be used by a payer to determine the amount of the payment. Any implantable that costs less than \$500 is bundled in the APC payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) through (g)(iii) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-704, MCA

6. The department has amended ARM 24.29.1402, 24.29.1404, 24.29.1416, 24.29.1430, and 24.29.1522 exactly as proposed.

7. The department has amended and transferred ARM 24.29.1504 to ARM 24.29.1401A exactly as proposed.

8. The amendments, amendments and transfer, and adoption are effective December 1, 2008.

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on November 17, 2008.



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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.78.102, 37.78.415, )  
37.78.506, and 37.78.833 pertaining )  
to Temporary Assistance for Needy )  
Families (TANF) )

TO: All Concerned Persons

1. On September 11, 2008 the Department of Public Health and Human Services published MAR Notice No. 37-451 pertaining to the proposed amendment of the above-stated rules at page 1970 of the 2008 Montana Administrative Register, Issue Number 17.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. The rule changes in ARM 37.78.415 are applied retroactively to October 1, 2008. The rule changes in ARM 37.78.102, 37.78.506, and 37.78.833 will be effective on January 1, 2009.

/s/ Francis X. Clinch  
Rule Reviewer

/s/ Hank Hudson for  
Joan Miles, Director  
Public Health and Human Services

Certified to the Secretary of State November 17, 2008.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.21.113, 42.21.123,	)	
42.21.131, 42.21.137, 42.21.138,	)	
42.21.139, 42.21.140, 42.21.151,	)	
42.21.153, 42.21.155, 42.21.156, and	)	
42.22.1311 relating to personal,	)	
industrial, and centrally assessed	)	
property taxes	)	

TO: All Concerned Persons

1. On October 9, 2008, the department published MAR Notice No. 42-2-799 regarding the proposed amendment of the above-stated rules at page 2134 of the 2008 Montana Administrative Register, issue no. 19.

2. A public hearing was held on November 3, 2008, to consider the proposed amendment. No one appeared at the hearing to testify. The department noted, for the record, that the third sentence of the reasonable necessity statement for ARM 42.22.1311 should have included the words "and industrial" after "centrally assessed". No other comments were received.

3. The department amends ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, and 42.22.1311 as proposed.

4. An electronic copy of this Adoption Notice 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 Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 17, 2008

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 1.2.419 regarding the )  
scheduled dates for the 2009 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On October 9, 2008, the Secretary of State's office published MAR Notice No. 44-2-149 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2162 of the 2008 Montana Administrative Register, Issue Number 19.

2. No comments or testimony were received.

3. The rule is amended exactly as proposed and appears in its entirety below:

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2009 Schedule

<u>Filing</u>	<u>Publication</u>
January 5	January 15
January 20	January 29
February 2	February 12
February 17	February 26
March 2	March 12
March 16	March 26
April 6	April 16
April 20	April 30
May 4	May 14
May 18	May 28
June 1	June 11
June 15	June 25
July 6	July 16
July 20	July 30
August 3	August 13
August 17	August 27
August 31	September 10
September 14	September 24

October 5	October 15
October 19	October 29
November 2	November 12
November 16	November 25
November 30	December 10
December 14	December 24

(2) All material to be published must be submitted by noon on the scheduled filing date. All material submitted after the scheduled filing deadline will not be published until the next scheduled publication date.

AUTH: 2-4-312, MCA  
IMP: 2-4-312, MCA

/s/ Brad Johnson  
BRAD JOHNSON  
Secretary of State

/s/ Janice Doggett  
JANICE DOGGETT  
Rule Reviewer

Dated this 17th day of November 2008.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2008. This table includes those rules adopted during the period September 1, 2008, through December 31, 2008, 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 September 30, 2008, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2008 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 October 2008 appear. Vacancies scheduled to appear from December 1, 2008, through February 28, 2009, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2008.

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 OCTOBER 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>9-1-1 Advisory Council</b> (Administration)			
Mr. Leo Dutton Helena	Director	Liedle	10/6/2008 10/6/2010
Qualifications (if required): Montana Sheriffs and Peace Officers Association's representative			
<b>Alternative Health Care Board</b> (Labor and Industry)			
Dr. Margaret Beeson Billings	Governor	reappointed	10/24/2008 9/1/2012
Qualifications (if required): naturopathic physician			
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry)			
Ms. Jamie Ausk Crisafulli Glendive	Governor	reappointed	10/24/2008 10/1/2013
Qualifications (if required): public representative			
Mr. William Graves Great Falls	Governor	Dutton	10/24/2008 10/1/2013
Qualifications (if required): barber			
Mr. Wendell Petersen Missoula	Governor	reappointed	10/24/2008 10/1/2013
Qualifications (if required): cosmetologist			
<b>Board of Personnel Appeals</b> (Labor and Industry)			
Mr. Quinton Nyman Helena	Governor	Audet	10/2/2008 1/1/2009
Qualifications (if required): full-time employee of a labor union			

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2008**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Heritage Preservation and Development Commission (Commerce)</b>			
Ms. Carol Swanson Glendive	Governor	Schmidt	10/2/2008 5/23/2011
Qualifications (if required): public representative			
Mr. Paul Tuss Havre	Governor	Hucke	10/2/2008 5/23/2011
Qualifications (if required): Tourism Advisory Council representative			
General James Womack Dillon	Governor	Wicks	10/2/2008 5/23/2011
Qualifications (if required): Montana historian			
<b>Public Defender Commission (Administration)</b>			
Mr. Richard E. Gillespie Helena	Governor	Holton	10/24/2008 7/1/2010
Qualifications (if required): attorney nominated by the State Bar who represents criminal defense lawyers			

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Agriculture Land Valuation Advisory Council (Revenue)</b>		
Mr. Melvin Goffena, Wilsall Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Jim Johnson, Bozeman Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Al Kington, Helena Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. John Lawyer, Plains Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Jerry Nielsen, Bozeman Qualifications (if required): member of the Montana State University College of Agriculture staff	Governor	12/31/2008
Mr. Richard O'Brien, Great Falls Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Ms. Rhonda Pimley, Chester Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Ernie Ratzburg, Ledger Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. John Schutter, Manhattan Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Agriculture Land Valuation Advisory Council</b> (Revenue) cont.		
Ms. Helen (Jo) Shipman, Lewistown Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Ms. Kathy Sikorski, Baker Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
Mr. Lon Withrow, Geraldine Qualifications (if required): knowledge in agriculture and agricultural economics	Governor	12/31/2008
<b>Alternative Livestock Advisory Council</b> (Governor)		
Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock representative	Governor	1/1/2009
Mr. Victor Workman, Whitefish Qualifications (if required): Fish, Wildlife and Parks Commission representative	Governor	1/1/2009
<b>Board of Chiropractors</b> (Labor and Industry)		
Dr. John Sando, Butte Qualifications (if required): practicing chiropractor	Governor	1/1/2009
Ms. Lucy Heger, Livingston Qualifications (if required): public representative	Governor	1/1/2009
<b>Board of Crime Control</b> (Justice)		
Mr. Steve McArthur, Butte Qualifications (if required): community corrections representative	Governor	1/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Crime Control</b> (Justice) cont. Mayor Pam Kennedy, Kalispell Qualifications (if required): representative of both local government and the Youth Justice Council	Governor	1/1/2009
Mr. Nickolas C. Murnion, Jordan Qualifications (if required): local law enforcement representative	Governor	1/1/2009
<b>Board of Environmental Review</b> (Environmental Quality) Mr. Don Marble, Chester Qualifications (if required): having expertise or background in local government planning	Governor	1/1/2009
Ms. Robin Shropshire, Helena Qualifications (if required): having expertise or background in hydrology	Governor	1/1/2009
Ms. Gayle Skunk Cap, Browning Qualifications (if required): having expertise or background in environmental science	Governor	1/1/2009
<b>Board of Horse Racing</b> (Livestock) Mr. Mike Tatsey, Valier Qualifications (if required): resident of district 3	Governor	1/20/2009
Ms. Mary Ogdahl, Miles City Qualifications (if required): resident of district 1	Governor	1/20/2009
<b>Board of Investments</b> (Governor) Mr. James Turcotte, Helena Qualifications (if required): TRS representative	Governor	1/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Occupational Therapy Practice</b> (Labor and Industry)                      Ms. Sue Furey, Missoula                      Qualifications (if required): Public Representative</p>	Governor	12/31/2008
<p><b>Board of Oil and Gas Conservation</b> (Natural Resources and Conservation)                      Sen. Linda J. Nelson, Medicine Lake                      Qualifications (if required): landowner with minerals</p>	Governor	1/1/2009
<p>Commissioner Joan Stahl, Forsyth                      Qualifications (if required): public member</p>	Governor	1/1/2009
<p>Mr. Donald D. Bradshaw, Fort Benton                      Qualifications (if required): representative of the oil and gas industry</p>	Governor	1/1/2009
<p>Mr. Wayne Smith, Valier                      Qualifications (if required): representative of the oil and gas industry</p>	Governor	1/1/2009
<p><b>Board of Personnel Appeals</b> (Labor and Industry)                      Ms. Alice Whiteman, Bonner                      Qualifications (if required): full-time management employee in an organization with a collective bargaining unit</p>	Governor	1/1/2009
<p>Mr. Quinton Nyman, Helena                      Qualifications (if required): full-time employee of a labor union</p>	Governor	1/1/2009
<p><b>Board of Public Education</b> (Education)                      Mr. Kirk J. Miller, Havre                      Qualifications (if required): representative of District 3 and a Republican</p>	Governor	2/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Capital Investment Board</b> (Commerce)		
Ms. Ellen Feaver, Helena Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2009
Mr. Robert Pancich, Great Falls Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2009
Mr. Lawrence A. Anderson, Great Falls Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2009
<b>Children's Trust Fund</b> (Governor)		
Ms. Nancy Anderson, Great Falls Qualifications (if required): public representative	Governor	1/1/2009
Ms. Mylene M. Widner, Billings Qualifications (if required): public representative	Governor	1/1/2009
<b>Coal Board</b> (Commerce)		
Mayor John Williams, Colstrip Qualifications (if required): resident of an impact area/District 2	Governor	1/1/2009
Mr. Dan Dutton, Belfry Qualifications (if required): resident of District 1	Governor	1/1/2009



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Coal Board</b> (Commerce) cont. Mr. Gerald Navratil, Sidney Qualifications (if required): resident of District 2	Governor	1/1/2009
Mr. Chad Fenner, Hardin Qualifications (if required): resident of an impact area/District 2	Governor	1/1/2009
<b>Fetal Alcohol Spectrum Disorder Advisory Council</b> (Public Health and Human Services) Mr. Thomas Price, Eureka Qualifications (if required): parent	Governor	2/22/2009
Ms. Mary Behrendt, Whitefish Qualifications (if required): educator	Governor	2/22/2009
Ms. Allison Failing, Poplar Qualifications (if required): tribal community representative	Governor	2/22/2009
Dr. John Johnson, Helena Qualifications (if required): medical geneticist	Governor	2/22/2009
Dr. Ted Laine, Missoula Qualifications (if required): neonatologist	Governor	2/22/2009
Ms. Irene Lake, Saint Ignatius Qualifications (if required): prevention program representative	Governor	2/22/2009
Ms. Linda Tarinelli, Bozeman Qualifications (if required): educator	Governor	2/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Fetal Alcohol Spectrum Disorder Advisory Council</b> (Public Health and Human Services) cont. Ms. Margaret Ann Yellow Kidney, Browning Qualifications (if required): tribal community representative	Governor	2/22/2009
Ms. Cheryl Jill Plumage, Harlem Qualifications (if required): tribal community representative	Governor	2/22/2009
Ms. Kay Flinn, Helena Qualifications (if required): family and addiction specialist	Governor	2/22/2009
Ms. Bonnie Stout, Kalispell Qualifications (if required): prevention program representative	Governor	2/22/2009
<b>Governor's Advisory Council on Economic Security for Montana Families</b> (Governor) Ms. Sheila Hogan, Butte Qualifications (if required): public representative	Governor	2/22/2009
Ms. Minkie Medora, Missoula Qualifications (if required): public representative	Governor	2/22/2009
Rep. Shannon Augare, Browning Qualifications (if required): public representative	Governor	2/22/2009
Ms. Lori Brengle, Glendive Qualifications (if required): public representative	Governor	2/22/2009
Ms. Mary Danford, Bigfork Qualifications (if required): public representative	Governor	2/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's Advisory Council on Economic Security for Montana Families</b> Ms. Bethany Letiecq, Bozeman Qualifications (if required): public representative	(Governor) cont. Governor	2/22/2009
Mr. Everall Fox, Billings Qualifications (if required): public representative	Governor	2/22/2009
Ms. Elaine Topsky, Box Elder Qualifications (if required): public representative	Governor	2/22/2009
Ms. Barb Stiffarm, Havre Qualifications (if required): public representative	Governor	2/22/2009
Mr. Robert Young, Bozeman Qualifications (if required): public representative	Governor	2/22/2009
Ms. Angie Wasia, Bozeman Qualifications (if required): public representative	Governor	2/22/2009
<b>Human Rights Commission</b> (Labor and Industry) Ms. Emorie Davis-Bird, Browning Qualifications (if required): public representative	Governor	1/1/2009
Ms. Maria E. Beltran, Worden Qualifications (if required): public representative	Governor	1/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Labor-Management Advisory Council on Workers' Compensation</b> (Labor and Industry)		
Mr. Don Judge, Helena Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Bill Dahlgren, Missoula Qualifications (if required): representing employers	Director	12/1/2008
Lt. Governor John Bohlinger, Helena Qualifications (if required): none specified	Director	12/1/2008
Mr. Riley Johnson, Helena Qualifications (if required): representing employers	Director	12/1/2008
Mr. Jerry Keck, Helena Qualifications (if required): ex-officio	Director	12/1/2008
Ms. Connie Welsh, Helena Qualifications (if required): representing employers	Director	12/1/2008
Ms. Jacquie Helt, Missoula Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Doug Buman, Seattle Qualifications (if required): representing injured workers	Director	12/1/2008
Mr. Dan Lee, Missoula Qualifications (if required): representing injured workers	Director	12/1/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Labor-Management Advisory Council on Workers' Compensation</b> (Labor and Industry) cont. Mr. Jason Miller, Helena Qualifications (if required): representing injured workers	Director	12/1/2008
Ms. Annette Hoffman, Billings Qualifications (if required): representing employers	Director	12/1/2008
Mr. Bob Worthington, Helena Qualifications (if required): representing employers	Director	12/1/2008
<b>Livestock Loss Reduction and Mitigation Board</b> (Livestock) Mr. James Cross, Kalispell Qualifications (if required): wildlife conservation representative	Governor	1/1/2009
Ms. Janelle Holden, Livingston Qualifications (if required): wildlife conservation representative	Governor	1/1/2009
Mr. Brad Radtke, Drummond Qualifications (if required): livestock industry representative	Governor	1/1/2009
Ms. Whitney Wankel, Bozeman Qualifications (if required): livestock industry representative	Governor	1/1/2009
<b>Montana Alfalfa Seed Committee</b> (Agriculture) Mr. James Whitmer, Glendive Qualifications (if required): alfalfa seed grower	Governor	12/21/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Alfalfa Seed Committee</b> (Agriculture) cont. Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower	Governor	12/21/2008
Mr. Marvin Frank, Joliet Qualifications (if required): alfalfa seed grower	Governor	12/21/2008
<b>Montana Council on Developmental Disabilities</b> (Commerce) Rep. Carol Lambert, Broadus Qualifications (if required): legislator	Governor	1/1/2009
Director Joan Miles, Helena Qualifications (if required): agency representative	Governor	1/1/2009
Ms. Sarah Casey, Helena Qualifications (if required): agency representative	Governor	1/1/2009
Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2009
Mr. Roger Holt, Billings Qualifications (if required): advocacy representative	Governor	1/1/2009
Mr. Don Berryman, Anaconda Qualifications (if required): secondary consumer representative	Governor	1/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Council on Homelessness</b> (Public Health and Human Services) Mr. Nicholas Peterson Vrooman, Helena Qualifications (if required): public representative	Governor	12/21/2008
Mr. Eric Sells, Missoula Qualifications (if required): public representative	Governor	12/21/2008
Mr. Thomas Huddleston, Helena Qualifications (if required): public representative	Governor	12/21/2008
Ms. Gloria O'Rourke, Anaconda Qualifications (if required): public representative	Governor	12/21/2008
Ms. Trish Flynn, Billings Qualifications (if required): public representative	Governor	12/21/2008
Mr. Doug Overman, Kalispell Qualifications (if required): public representative	Governor	12/21/2008
Ms. Mary Guokas, Helena Qualifications (if required): public representative	Governor	12/21/2008
Mr. Robert Buzzas, Bozeman Qualifications (if required): public representative	Governor	12/21/2008
Ms. Mary Berg, Butte Qualifications (if required): public representative	Governor	12/21/2008

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Council on Homelessness</b> (Public Health and Human Services) cont. Mr. Eric Berger, Great Falls Qualifications (if required): public representative	Governor	12/21/2008
Ms. Judy Stewart, Billings Qualifications (if required): public representative	Governor	12/21/2008
Mr. Lafe Haugen, Lame Deer Qualifications (if required): public representative	Governor	12/21/2008
<b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation) Mr. Leo Solf, Winnett Qualifications (if required): grazing district director	Governor	1/1/2009
Mr. Alvin Windy Boy Sr., Box Elder Qualifications (if required): public representative	Governor	1/1/2009
<b>Montana Pulse Crop Advisory Committee</b> (Agriculture) Ms. Kim Murray, Froid Qualifications (if required): Producer	Director	2/14/2009
Mr. Michael Ehlers, Oilmont Qualifications (if required): Producer	Director	2/14/2009
Mr. Perry Miller, Bozeman Qualifications (if required): Research	Director	2/14/2009



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Public Safety Officer Standards and Training Council</b> (Justice)            Sheriff Tony Harbaugh, Miles City            Qualifications (if required): sheriff</p>	Governor	1/1/2009
<p>Captain Dennis McCave, Billings            Qualifications (if required): detention center representative</p>	Governor	1/1/2009
<p>Mr. Steve Barry, Helena            Qualifications (if required): Department of Corrections representative</p>	Governor	1/1/2009
<p>Mr. Raymond Murray, Missoula            Qualifications (if required): public member</p>	Governor	1/1/2009
<p>Ms. Bonnie Wallem, Kalispell            Qualifications (if required): Board of Crime Control representative</p>	Governor	1/1/2009
<p>Sergeant Mike Reddick, Helena            Qualifications (if required): state government law enforcement representative</p>	Governor	1/1/2009
<p>Ms. Hannah Tillman, Crow Agency            Qualifications (if required): public member</p>	Governor	1/1/2009
<p><b>Publishing Policy Committee</b> (Administration)            Director Jim Lynch, Helena            Qualifications (if required): department director</p>	Governor	1/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Rail Service Competition Council</b> (Transportation)		
Mr. William Fogarty, Anaconda	Governor	1/1/2009
Qualifications (if required): knowledgeable of class I railroads		
Mr. Michael O'Hara, Fort Benton	Governor	1/1/2009
Qualifications (if required): farm commodity producer		
Mr. Doug Miller, Troy	Governor	1/1/2009
Qualifications (if required): knowledgeable of transportation for the mineral industry		
Mr. John DeMichiei, Billings	Governor	1/1/2009
Qualifications (if required): knowledgeable of transportation for the coal industry		
<b>Small Business Health Insurance Pool Board</b> (State Auditor)		
Ms. Connie Welsh, Helena	Governor	1/1/2009
Qualifications (if required): management level individual with knowledge of state employee health benefit plans		
<b>Speech-Language Pathologists and Audiologists</b> (Labor and Industry)		
Ms. Lynn Harris, Missoula	Governor	12/31/2008
Qualifications (if required): speech-language pathologist		
Ms. Tina Hoagland, Billings	Governor	12/31/2008
Qualifications (if required): audiologist		
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration)		
Ms. Joy McGrath, Helena	Director	2/14/2009
Qualifications (if required): federation/independent representative		

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2008 THROUGH FEBRUARY 28, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration) cont. Mr. Matthew Dale, Helena Qualifications (if required): employee representative	Director	2/14/2009
Ms. Mary Wright, Helena Qualifications (if required): employee representative	Director	2/14/2009
Ms. Marcia Armstrong, Helena Qualifications (if required): employee representative	Director	2/14/2009
Ms. Kathy Miller, Helena Qualifications (if required): Independent Charities Representative	Director	2/14/2009
Mr. Gary Owen, Great Falls Qualifications (if required): federation/independent representative	Director	2/14/2009
Mr. Jack Lynch, Helena Qualifications (if required): employee representative	Director	2/14/2009
Mr. Rick Bush, Helena Qualifications (if required): employee representative	Director	2/14/2009
Mr. Marty Roos, Helena Qualifications (if required): employee representative	Director	2/14/2009
Mr. Rob Mayer, Helena Qualifications (if required): employee representative	Director	2/14/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration) cont. Ms. Candy Kirby, Helena Qualifications (if required): employee representative	Director	2/14/2009
Ms. Marie Matthews, Helena Qualifications (if required): employee representative	Director	2/14/2009
<b>State Employee Group Benefits Advisory Council</b> (Administration) Sen. Mike Cooney, Helena Qualifications (if required): representing Legislature	Director	12/31/2008
Mr. Thomas Schneider, Helena Qualifications (if required): representing Labor Organization	Director	12/31/2008
Ms. Mary Dalton, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008
Mr. Steve Barry, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008
Mr. John McEwen, Helena Qualifications (if required): representing Retired State Employees	Director	12/31/2008
Mr. Richard Cooley, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008
Mr. Monte Brown, Helena Qualifications (if required): representing State Employees/Executive Branch Agencies	Director	12/31/2008

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Employee Group Benefits Advisory Council</b> (Administration) cont. Ms. Connie Welsh, Helena Qualifications (if required): Ex-Officio Member and Presiding Officer	Director	12/31/2008
Mr. Tom Bilodeau, Helena Qualifications (if required): representing Labor Organization	Director	12/31/2008
Ms. Christi Jacobsen, Helena Qualifications (if required): representing State Employees/ICCW	Director	12/31/2008
Ms. Kelly DaSilva, Helena Qualifications (if required): Legislative branch agency representative	Director	12/31/2008
<b>State Tax Appeals Board</b> (Administration) Ms. Karen Powell, Helena Qualifications (if required): public representative	Governor	1/1/2009
<b>Transportation Commission</b> (Transportation) Ms. Barb Skelton, Billings Qualifications (if required): resident of District 5	Governor	1/1/2009
Ms. Diann Seymour-Winterburn, Helena Qualifications (if required): resident of District 3 and an Independent	Governor	1/1/2009
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services) Ms. Julia Hammerquist, Kalispell Qualifications (if required): traumatic brain injury survivor	Governor	1/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services) cont. Mr. Lucas Foust, Bozeman Qualifications (if required): representative of Injury Control or Prevention Programs	Governor	1/1/2009
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) Mr. Larry Curran, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. John Hollenback, Gold Creek Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Sally Johnson, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Barbara Evans, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Director Jeff Hagener, Helena Qualifications (if required): Director of the Department of Fish, Wildlife and Parks	Governor	12/31/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	12/31/2008
Mr. James Dinsmore, Hall Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Upper Clark Fork River Basin Remediation and Restoration Advisory Council</b> (Justice) cont. Director Richard Opper, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	12/31/2008
Mr. Dennis Daneke, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. Paul Babb, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. Milo Manning, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Robbie Taylor, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Mr. James Yeoman, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008
Ms. Rebecca Guay, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	12/31/2008