

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

COMMERCE, Department of, Title 8

8-111-74 (Board of Housing) Notice of Proposed Amendment - Low Income Housing Tax Credit Program. No Public Hearing Contemplated. 952-953

ENVIRONMENTAL QUALITY, Department of, Title 17

17-285 (Board of Environmental Review) (Air Quality) Notice of Public Hearing on Proposed Amendment - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules. 954-957

17-286 (Board of Environmental Review ) (Air Quality) Notice of Public Hearing on Proposed Amendment - Definitions - Permit Application Fees - Operation Fees - Open Burning Fees. 958-963

17-287 (Board of Environmental Review) (Solid Waste) Notice of Proposed Amendment - Definitions - Annual Operating License Requirements. No Public Hearing Contemplated. 964-967

17-288 (Board of Environmental Review and the Department) (Water Quality) (Subdivisions/On-Site Subsurface Wastewater Treatment) (Public Water and Sewage Systems Requirements) (CECRA Remediation) Notice of Public Hearing on Proposed Amendment and Adoption - Department Circular DEQ-4 and Gray Water Reuse. 968-984

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-475 Notice of Public Hearing on Proposed Adoption and Amendment - Medicaid Mental Health Center Services for Adults with Severe Disabling Mental Illness.	985-996
37-476 Notice of Public Hearing on Proposed Amendment - Medicaid Nursing Facility Reimbursement.	997-1002
37-477 Notice of Public Hearing on Proposed Amendment and Repeal - Implementation of the Montana Clean Indoor Air Act (CIAA).	1003-1006
37-478 Notice of Public Hearing on Proposed Amendment - Grandparents and Relative Caregivers Access to Birth Records.	1007-1009

RULE ADOPTION SECTION

ADMINISTRATION, Department of, Title 2

2-43-412 (Public Employee's Retirement Board) Notice of Amendment - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan.	1010
--	------

ENVIRONMENTAL QUALITY, Department of, Title 17

17-283 (Board of Environmental Review and the Department) (Model Rules) Notice of Amendment - Model Rules.	1011
--	------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-467 Notice of Amendment - Resource Based Relative Value Scale (RBRVS) Medicaid Provider Rates and Mid-Level Practitioner's Reimbursement for Services to Medicaid Clients Under Age 21.	1012-1016
37-468 Notice of Amendment - Medicaid Dental Service Providers' Reimbursement Rates.	1017-1018
37-469 Notice of Amendment - Components of Quality Assessment Activities.	1019
37-470 Notice of Amendment - Temporary Assistance for Needy Families (TANF).	1020

REVENUE, Department of, Title 42

42-2-804 Notice of Amendment - Small Brewery Closing Time Restrictions.	1021-1027
---	-----------

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1028-1029
How to Use ARM and MAR.	1030
Accumulative Table.	1031-1037
Boards and Councils Appointees.	1038-1044
Vacancies on Boards and Councils.	1045-1065

BEFORE THE BOARD OF HOUSING  
DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 8.111.602 pertaining to the low ) AMENDMENT  
income housing tax credit program )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On July 28, 2009, the Board of Housing proposes to amend the above-stated rule.

2. The 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 Department of Commerce no later than 5:00 p.m. on July 9, 2009, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD (406) 841-2702; or e-mail plovling@mt.gov.

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

8.111.602 DEFINITIONS

(1) and (2) remain the same.

(3) "QAP" means the "Low Income Housing Qualified Allocation Plan–200810", ~~Amended" and the "Low Income Housing Qualified Allocation Plan–2009"~~, which sets forth the selection criteria used by the board for determining housing priorities and the allocation of tax credits for calendar years 200810, and 2009, ~~respectively~~, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) remains the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The Board of Housing is proposing the amendment to the rule to amend the years in which the plans are to be implemented.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gerald Watne, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena,

Montana, 59620-0528; telephone (406) 841-2838; fax (406) 841-2841; or e-mail gewatne@mt.gov, and must be received no later than 5:00 p.m., July 23, 2009.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Gerald Watne at the above address no later than 5:00 p.m., July 23, 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 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 25 persons based on the number of individuals who are interested in low income housing tax credits.

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 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ 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 June 15, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.102, 17.8.302, 17.8.767, 17.8.802, )  
17.8.822, 17.8.902, and 17.8.1002 )  
pertaining to incorporation by reference )  
of current federal regulations and other )  
materials into air quality rules )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 27, 2009, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) ~~Unless expressly provided otherwise, in this chapter where the board~~ has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2007~~ 2008, edition of the Code of Federal Regulations (CFR);

(b) remains the same.

(c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2007~~ 2008, edition of the Administrative Rules of Montana (ARM).

(2) For purposes of this chapter, ~~the~~ following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:

(a) 40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999, or for which Modification or Reconstruction is Commenced on or After June 1, 2001 (40 CFR 60.2000 through 60.2265, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit, ruling; and

(b) 40 CFR Part 60, Subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units.

(3) For purposes of this chapter, ~~the~~ following subparts, or portions thereof,

of 40 CFR Part 63 are excluded from incorporation by reference:

(a) through (d) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources and modifications, with the following exceptions:

(i) 40 CFR 60.1500 through 1940 and tables 1 through 8 (subpart BBBB), emission guidelines for existing small municipal waste combustion units, are not incorporated by reference; and

~~(ii) 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(b) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference:

(a) and (b) remain the same.

(c) 40 CFR Part 60, specifying standards of performance for new stationary sources, ~~except for 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(d) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-215, MCA

17.8.802 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) and (b) remain the same.

~~(c) 40 CFR Part 58, Appendix B, pertaining to quality assurance requirements for prevention of significant deterioration air monitoring;~~

~~(d) (c) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(e) through (g) remain the same, but are renumbered (d) through (f).

(2) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.822 AIR QUALITY ANALYSIS (1) through (8) remain the same.

~~(9) The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B, during the operation of~~

~~monitoring stations for purposes of satisfying this rule.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, ~~except for 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, ~~except for 40 CFR 60.4141-4142, pertaining to mercury allowance allocations;~~

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal regulations and state rules that are incorporated by reference. The board is proposing to amend ARM 17.8.102(1) to adopt revisions to federal regulations published in the July 1, 2008, edition of the Code of Federal Regulations (CFR) and revisions to state rules published in the December 31, 2008, edition of the Administrative Rules of Montana. The board adopts and incorporates by reference federal regulations, including emission standards, to ensure that Montana's air quality rules are at least as stringent as federal air quality regulations, in order to maintain primacy and federal delegation of Montana's air quality program, and in order to timely implement emission standards that have been developed on the federal level pursuant to a federal program of emissions control.

The board is proposing to delete references to 40 CFR Part 60, Subpart HHHH, EPA's Clean Air Mercury Rule (CAMR), which was vacated by the D. C. Circuit Court of Appeals on February 8, 2008. Effective April 17, 2009, the board excluded CAMR from incorporation by reference of 40 CFR Part 60, in ARM 17.8.102, which applies to the entire chapter of air quality rules. References to CAMR being excepted from incorporation by reference of 40 CFR Part 60 remain in certain individual subchapters of the air quality rules, including ARM 17.8.302, 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. The board is proposing to delete those references because they are no longer necessary. This proposed amendment is not intended to have any substantive effect, as the board intended for its April 2009 amendment of ARM 17.8.102 to delete CAMR from applicability to the



Montana air quality rules.

The board also proposes amendments to ARM 17.8.102(1), (2), and (3) to clarify that these provisions apply to the entire chapter, and the board proposes to delete ARM 17.8.802(1)(c) and 17.8.822(9), which require compliance with the ambient monitoring requirements of 40 CFR Part 58, Appendix B, because that appendix no longer exists.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., August 3, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. 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 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 supply; 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, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, June 15, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )           NOTICE OF PUBLIC HEARING ON  
17.8.501, 17.8.504, 17.8.505, and           )           PROPOSED AMENDMENT  
17.8.514 pertaining to definitions, permit )  
application fees, operation fees, and           )           (AIR QUALITY)  
open burning fees                                    )

TO: All Concerned Persons

1. On July 27, 2009, at 1:45 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, 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).

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

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

(1) remains the same.

(2) "Modified source" means a facility for which an application to modify, as defined in ARM Title 17, chapter 8, subchapter 7, is submitted to the department.

(3) "New source" means a source, as defined in ARM Title 17, chapter 8, subchapter 1, for which the department has not previously issued a Montana air quality permit.

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

(6) "Source type A" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 12.

(7) "Source type B" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 7.

(8) "Source type NSR/PSD" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10.

(9) "Source type S/SM" means a facility subject to the provisions of ARM 17.8.1204(3).

~~(4) "Wildland fire use" means the management of naturally-ignited fire to accomplish specific resource management objectives in predefined geographic areas. The term does not include fire on agricultural land.~~

AUTH: 75-2-111, MCA  
IMP: 75-2-211, MCA

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) An applicant submitting a Montana air quality permit application, as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, shall submit an application fee as provided in (1)(a), and (b), and (c):

(a) ~~\$3,000 for an application subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10 for a facility for which the department has not previously issued a Montana air quality permit; or the following table sets forth source types and associated fees:~~

<u>Source Type</u>	<u>New Source</u>	<u>Modified Source</u>
<u>NSR/PSD</u>	<u>\$15,000</u>	<u>\$500</u>
<u>A</u>	<u>\$1,200</u>	<u>\$500</u>
<u>S/SM</u>	<u>\$1,000</u>	<u>\$500</u>
<u>B</u>	<u>\$800</u>	<u>\$500</u>

(b) ~~\$500 for an application not included in (1)(a) for a portable facility;~~ and  
(c) ~~\$500 for an application to register an oil and gas well facility.~~

(2) through (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA  
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain the same.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~\$600~~ 800, plus ~~\$31-29~~ [an amount within the range of \$36 to \$41, to be determined by the board based on the hearing record] per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(8) The air quality operation fee for portable facilities is ~~\$600~~ 800.

(9) The air quality operation fee for registered oil and gas well facilities is ~~\$600~~ 800.

(10) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA  
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (4) remain the same.

(5) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (6):

(a) a fee calculated using the following formula:  
tons of total particulate emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$17.40~~ 20.60; plus  
tons of oxides of nitrogen emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$4.35~~ 5.15; plus  
tons of volatile organic compounds emitted in the  
previous appropriate calendar year,  
multiplied by ~~\$4.35~~ 5.15; or

(b) remains the same.

~~(6) To conduct wildland fire use burning, an applicant for an air quality major open burning permit shall, in addition to submitting the fees specified in (5), submit a fee of \$1,000.~~

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

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board. The amount of money the department needs to generate through the collection of air quality operation fees depends primarily on the legislative appropriation and to a lesser extent various factors regarding the evaluation of the recently-received legislative appropriation and the department concluding its budget process. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

Annual air quality operation fees are required for all facilities that hold an air quality permit, that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program, or that are registered oil and gas well facilities. For facilities other than portable facilities and registered oil and gas well facilities, for which a flat administrative fee is assessed, the air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter having an aerodynamic diameter less than or equal to 10 microns), sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

For fiscal year 2010, the board is proposing to establish a five-class schedule of application fee charges. The schedule is intended to move toward a system that creates more equity among fee payers than the current flat rate application fee structure. The board estimates the new class schedule for permit application fees would affect approximately 23 source applications.

The board is proposing to set the air quality operation fees to be billed in calendar year 2009 to fund the department's activities in fiscal year 2010. These fees would be based on emissions reported from calendar year 2008.

The exact appropriation is not known at this time as the legislative session recently concluded and the department is engaged in its budgeting process. However, the appropriation for fiscal year 2010 is approximately \$4.87 million, an increase of \$.91 million from fiscal year 2009. The total amount of pollutants reported for 2008 is 85,376 tons. The total amount of pollutants for 2007 was 98,374 tons. Based upon the estimated increase in the appropriation and the decrease in the emission inventory, in order to cover the department's costs of developing and administering the air quality permitting program, the board proposes to amend ARM 17.8.505(7) by (1) increasing the fee for portable and registered oil and gas well facilities and (2) establishing a fee assessed on a per-ton basis that would not exceed the approximate appropriation. That fee will be set between \$36 and \$41 per ton of emissions depending upon the results of the department's budgeting process. In calendar year 2009, operation fees would be assessed for an estimated 1400 emitting facilities. The cumulative amount of the application and operating fees would approximately equal the appropriation.

In addition, the board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2010. Each year, in consultation with the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions from the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2008, the major open burners reported 621,595 tons of emissions, compared to 890,885 tons for calendar year 2007, or a decrease of 269,290 tons.

The operating budget for the 11 major open burners in fiscal year 2010 is \$71,300, compared to a budget of \$79,285 for fiscal year 2009. The decrease of \$7,985 in major open burning funding reflects a decrease of \$1,069 in personnel costs for services related to an information technology feasibility inquiry that is now concluded. The budget also reflects a corresponding decrease of \$281 in associated benefits. The budget reflects a reduction of \$5,100 in technical support costs expended in the last fiscal year to assess the feasibility of migrating the Airshed Management System (AMS) database to a state-owned server and to assess the eventual maintenance of the database. A continuation of that assessment and the migration of the AMS database are no longer necessary as the feasibility study concluded no reliable resources or IT expertise exist to support migration or ongoing AMS database maintenance. Other reductions include the elimination of the satellite communications service (\$4,550) because other free services are publicly available. The department also no longer pays the \$340 permit notice publication fee. The budget includes an increase of \$1,000 for the cost of an internet connection for the use of the AMS database. The budget also reflects a net increase in personnel services indirect costs in the amount of \$1,888 as the personnel services indirect rate rose from 21% to 24%. However, the indirect costs associated with operating costs fell \$349 as a result of operating cost decreases.

The board is proposing to increase the permit fees from \$17.40 per ton of particulate, \$4.35 per ton of oxides of nitrogen, and \$4.35 per ton of volatile organic compounds emitted to \$20.60, \$5.15, and \$5.15, respectively.

In addition, the board proposes to repeal the definition of "wildland fire use" in ARM 17.8.501(4). The board is advised the term is no longer used to describe the management activities regarding naturally-ignited fire to accomplish specific resource management objectives in predefined geographic areas. Therefore, the fee formerly assessed for this activity as a separate provision at ARM 17.8.514(6) is also necessarily proposed for repeal.

The cumulative amount of the fees to be collected from the major open burners would equal the department's direct costs to operate the major open burning program (\$71,300). This amount would be distributed among the 11 major open burners. The department approved claims for nonmonetary contributions to the major open burning program equivalent to \$19,624 pursuant to ARM 17.8.514(7). The department developed the proposed major open burning fee levels based on these approved claims and reported emissions from each of the major open burners in the last calendar year.

The board also is proposing minor editorial amendments to ARM 17.8.501, 17.8.504, and 17.8.505 that are not intended to have any substantive effect.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., August 3, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. 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 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 supply; 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, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406)

444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF  
Rule Reviewer

BY: /s/ Joseph W. Russell

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

Certified to the Secretary of State, June 15, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PROPOSED
17.50.403 and 17.50.410 pertaining to )	AMENDMENT
definitions and annual operating license )	
requirements )	(SOLID WASTE)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On July 27, 2009, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) through (5) remain the same.

(6) "Contaminated soil" means soil, rocks, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. ~~The term~~ This definition does not include soils contaminated solely by inorganic metals, ~~or soils that meet the definition of hazardous waste under ARM 17.54.204 Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.~~

(7) through (12) remain the same.

(13) "Interim closure" means the period of time from the department's receipt of the certification required in ~~ARM 17.50.530(1)(h)~~ [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009] until the department ~~verifies closure compliance under ARM 17.50.530~~ approves that certification.

(14) through (54) remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-221, MCA

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) through (6)(c)



remain the same.

(7) ~~Fees at a facility in interim closure must be held in abeyance by the department. Once a facility is in interim closure, its duty to pay license fees is suspended. If the department determines, pursuant to ARM 17.50.530 [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009], that not to approve certification of closure was not completed in compliance with the closure plan, the owner or operator shall pay to the department the suspended fees held in abeyance to the department. An owner or operator of a facility for which the department has determined by the department not to have completed closure in compliance with the facility's closure plan approve certification of closure shall, after the owner or operator believes that closure has been completed in compliance with the closure plan, submit a new certification as required in ARM 17.50.530(1)(h) under [NEW RULE XLIX(10) published in MAR Notice 17-284 on February 26, 2009]. The facility is then again in interim closure, pending re-inspection and verification of closure compliance approval of closure certification by the department.~~

Tables 1 through 3 remain the same.

AUTH: 75-10-106, 75-10-115, 75-10-204, 75-10-221, MCA

IMP: 75-10-115, 75-10-204, 75-10-221, MCA

REASON: The department is proposing to amend the definition of "contaminated soil" in ARM 17.50.403(6). The current definition cites a rule of the department, ARM 17.54.201, that was repealed in 2001. That rule was repealed at p. 169, 2001 Montana Administrative Register, issue number 2, effective January 26, 2001, and new Montana hazardous waste rules were adopted. One of those new rules, ARM 17.53.301, incorporates by reference a regulation of the federal Environmental Protection Agency (EPA), 40 CFR 260.10, that defines contaminated soils that constitute hazardous waste. ARM 17.50.403(6) has not previously been updated to cite the proper hazardous waste rule. It is necessary to change the citation in that rule so that it refers to the current definition in the hazardous waste rules. In addition, a definition of "contaminated soil" is being proposed to be added to ARM 17.50.502, by the department in a separate rulemaking. This definition explicitly excludes soils contaminated by polychlorinated biphenyls (PCBs). Because the phrase "contaminated soils, defined in ARM 17.50.403," is used in ARM 17.50.410 to establish the licensing fee for a landfarm that could treat contaminated soils and that would be regulated under ARM Title 17, chapter 5, subchapter 5, it is necessary to have the definitions be identical. So, it is necessary to amend ARM 17.50.403 to have the same definition of "contaminated soil" as in ARM 17.50.502.

Existing ARM 17.50.410, which uses the definition of "interim closure" from existing ARM 17.50.403(13), requires the department to hold in abeyance fees owed by a solid waste management facility after the facility's engineer certifies that the facility has been closed according to its approved closure plan, but before the department has inspected the facility and approved the certification. The proposed amendments to ARM 17.50.403 and 17.50.410, which would substitute references to New Rule XLIX published in MAR Notice 17-284 on February 26, 2009 for the reference to ARM 17.50.530, the existing closure rule, are necessary because ARM

17.50.530 is being proposed to be repealed by the department in a separate rulemaking, with similar closure requirements being proposed in New Rule XLIX published in MAR Notice 17-284 on February 26, 2009. No substantive change is intended. The board also is proposing minor editorial revisions that are not intended as substantive changes.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, 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), no later than July 23, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 Elois Johnson at Department of Environmental Quality, 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), no later than July 23, 2009.

6. If the board 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 7 based on the 71 licensees in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this entity. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; 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 at Department of Environmental Quality, 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), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Joseph W. Russell

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

Chairman

Certified to the Secretary of State, June 15, 2009.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.30.702, 17.36.101, 17.36.102, )	PROPOSED AMENDMENT AND
17.36.103, 17.36.104, 17.36.323, )	ADOPTION
17.36.345, 17.36.911, 17.36.912, )	
17.36.914, 17.36.916, 17.36.918, )	(WATER QUALITY)
17.36.922, 17.38.101, 17.55.102, and )	(SUBDIVISIONS/ON-SITE
the adoption of New Rules I and II )	SUBSURFACE WASTEWATER
pertaining to Department Circular DEQ-4)	TREATMENT)
and gray water reuse )	(PUBLIC WATER AND SEWAGE
)	SYSTEMS REQUIREMENTS)
)	(CECRA REMEDIATION)

TO: All Concerned Persons

1. On July 24, 2009, at 9:00 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board and 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., July 6, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, 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).

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

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (25) remain the same.

(26) The board adopts and incorporates by reference:

(a) remains the same.

(b) ~~d~~Department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems" (~~2004~~ 2009 edition), which establishes technical standards for construction of subsurface wastewater treatment systems; and

(c) and (d) remain the same.

AUTH: 75-5-301, 75-5-303, MCA  
IMP: 75-5-303, MCA

REASON: The department is proposing to revise Department Circular DEQ-4 to include a new chapter on gray water reuse. The proposed amendment to this rule is necessary to adopt the revised DEQ-4 for purposes of the nondegradation rules adopted under the provisions of the Montana Water Quality Act, Title 75, chapter 5, MCA. The proposed revisions to Circular DEQ-4 are summarized in the Reason for New Rule II. The complete text of the proposed new DEQ-4 chapter is available on the department's web site at <http://www.deq.mt.gov/wqinfo/Sub/Index.asp>.

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) through (15) remain the same.

(16) "Gray water" means wastewater that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(16) remains the same, but is renumbered (17).

~~(17)~~ (18) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of [NEW RULE I].

(18) through (64) remain the same, but are renumbered (19) through (65).

AUTH: 76-4-104, MCA  
IMP: 76-4-104, MCA

REASON: The proposed new definition of "gray water" is the definition of the term as set out in statute at 75-5-325, MCA. A definition of "gray water" in this rule is necessary to implement New Rule I, which identifies requirements for use of gray water for irrigation in subdivisions reviewed by the department under the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. Repeating the statutory definition in the rules will facilitate the implementation of New Rule I. The proposed modification to the definition of "holding tank" is necessary to clarify that tanks in gray water systems that comply with New Rule I are not subject to the restrictions on holding tanks set out elsewhere in the subdivision rules.

17.36.102 APPLICATION--GENERAL (1) through (5) remain the same.

(6) If a proposed subdivision includes facilities for subsurface wastewater disposal, including gray water irrigation facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

AUTH: 76-4-104, MCA  
IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to ARM 17.36.102 is necessary to clarify that gray water irrigation systems addressed in New Rule I are a type of subsurface wastewater disposal system for which notice to the local board of health is required before submitting a subdivision application to the department. As provided in New Rule I, gray water irrigation systems that comply with the requirements of New Rule I are not subject to other wastewater system requirements in the subdivision rules except where those other requirements are expressly referenced by New Rule I.

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

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

(i) if gray water irrigation systems are proposed:

(i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Appendix B of Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and

(ii) the location and design of the proposed systems;

(i) through (q) remain the same, but are renumbered (j) through (r).

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendments to ARM 17.36.103 require that subdivision applications contain soil information when gray water irrigation systems are proposed. Including soil information about the site of a proposed gray water system is necessary to allow the department to evaluate the suitability of the site under the standards in New Rule I and Department Circular DEQ-4.

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) remains the same.

(2) The following information must be provided on the lot layout document. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout document only if the document remains legible:

(a) through (i) remain the same.

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed".

TABLE 1  
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal	Subdivisions served by nonmunicipal	Subdivisions served by municipal water	Subdivisions served by municipal
--	-------------------------------------	-------------------------------------	--	----------------------------------

	wells	wastewater systems		wastewater systems
Existing and proposed wells and 100-ft setback	X	X	X	X
Water lines (suction and pressure)			X	X
Water lines (extension and connections)		X	X	
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections), <u>gray water</u> <u>irrigation systems</u>	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form		X		
Floodplain boundaries	X	X	X	X
Cisterns		X		
Existing building locations		X		

Driveways		X		
Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of ground water flow	X	X		

AUTH: 76-4-104, MCA  
 IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to Table 1 in ARM 17.36.104 requires subdivision applications show, on a lot layout document, the location of proposed gray water irrigation systems. Showing the location of a proposed gray water system is necessary to assist the department in evaluating the suitability of the site under the standards in New Rule I and Department Circular DEQ-4.

17.36.323 SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) Minimum horizontal setback distances (in feet) shown in Table 3 of this rule must be maintained. The setbacks in this rule are not applicable to gray water irrigation systems that meet the requirements of [NEW RULE I].  
 (2) through (4) and Table 3 remain the same.

AUTH: 76-4-104, MCA  
 IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.323 exempts gray water irrigation systems from the setbacks in this rule. The setbacks applicable to gray water irrigation systems in subdivisions are set out in New Rule I, and are discussed in the Reason for New Rule II. This amendment is necessary to implement the specific gray water system setbacks in New Rule I.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) through (c) remain the same.
- (d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2004 2009 edition;
- (e) through (2) remain the same.

AUTH: 76-4-104, MCA  
 IMP: 76-4-104, MCA

REASON: The department is proposing to revise Department Circular DEQ-4



to include a new chapter on gray water reuse. The proposed amendment to this rule is necessary to adopt the revised DEQ-4 for purposes of the subdivision rules adopted under the provisions of the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. A summary of the revisions to DEQ-4 is contained in the Reason for New Rule II. The complete text of the proposed new DEQ-4 chapter is available on the department's web site at <http://www.deq.mt.gov/wqinfo/Sub/Index.asp>.

17.36.911 SCOPE (1) remains the same.

(2) Under 50-2-116, MCA, local boards of health must adopt regulations no less stringent than this subchapter 9 for wastewater treatment systems for private and public buildings ~~installed after October 1, 1991~~ and facilities.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: The rules in ARM Title 17, chapter 36, subchapter 9 contain the Board of Environmental Review's minimum wastewater standards for local boards of health to use when issuing wastewater system permits under 50-2-116, MCA. In 2007 the Legislature added the term "facilities" to section 50-2-116, MCA. The proposed addition of the term "facilities" to ARM 17.36.911 is necessary to conform the rule to the statute. The reference to October 1, 1991, in the rule is proposed to be deleted. Although that was the date that the referenced statute became effective, the date is not set out in the statute itself. Deletion of the date from the rule is necessary to avoid conflict with ARM 17.36.920, which authorizes local boards to require a permit for alteration, repair, or extension of any wastewater system, including those installed before October 1, 1991.

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

(1) through (7) remain the same.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in ~~a Department Circular DEQ-4, 2004 edition, DEQ-2, 1999 edition,~~ or this subchapter.

(9) and (10) remain the same.

(11) "Gray water" means wastewater ~~other than toilet wastes or industrial chemicals including, but not limited to, shower and bath wastewater, kitchen wastewater, and laundry wastewater~~ that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(12) remains the same.

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of [NEW RULE II].

(14) through (34) remain the same.

(35) "Variance" means the grant, pursuant to ARM 17.36.922, by the reviewing authority of an exception to the minimum requirements set out in this

subchapter or ~~Department Circular DEQ-4, 2004 edition.~~  
(36) and (37) remain the same.

AUTH: 75-5-201, MCA  
IMP: 75-5-305, MCA

REASON: Department Circulars DEQ-4 and DEQ-2 are adopted by reference in ARM 17.36.914, where the Circulars are identified by edition date. The edition dates elsewhere in the rules are proposed to be deleted because they are unnecessary at those locations. The proposed new definition of "gray water" is the definition of the term as set out in statute at 75-5-325, MCA. A definition of "gray water" in this rule is necessary to implement New Rule II, which identifies requirements for use of gray water for irrigation. Repeating the statutory definition in the rules will facilitate the implementation of New Rule II. The proposed modification to the definition of "holding tank" is necessary to clarify that tanks in gray water systems that comply with New Rule II are not subject to the restrictions on holding tanks set out elsewhere in ARM Title 17, chapter 36, subchapter 9.

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) Except as provided in ARM 17.36.916, all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in ARM 17.36.913 and in ~~Department Circular DEQ-4, 2004 edition.~~

(2) Department Circular DEQ-4, ~~2004~~ 2009 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 1999 edition, which sets forth design standards for wastewater facilities, is are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA  
IMP: 75-5-305, MCA

REASON: The department is proposing to revise Department Circular DEQ-4 to include a new chapter on gray water reuse. The proposed amendment to this rule is necessary to adopt the revised DEQ-4. The proposed revisions to Circular DEQ-4 are summarized in the Reason for New Rule II. The complete text of the proposed new DEQ-4 chapter is available on the department's web site at <http://www.deq.mt.gov/wqinfo/Sub/Index.asp>. Department Circular DEQ-2 is referred to in the definition of "experimental system" in ARM 17.36.912. Circular DEQ-2 is proposed to be adopted by reference here for the purpose of implementing that definition.

17.36.916 ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS, PIT PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND PROHIBITIONS

(1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:

(a) site constraints prevent the applicant from constructing any system described in ~~dDepartment Circular DEQ-4, 2004 edition~~;

(b) through (2) remain the same.

(3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in ~~dDepartment Circular DEQ-4, 2004 edition~~.

(4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.

(a) remains the same.

(b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in ~~dDepartment Circular DEQ-4, 2004 edition~~.

(5) Holding tank systems may be approved only if the facility to be served is for seasonal use.

(a) remains the same.

(b) Holding tanks must meet the design and construction requirements in ~~dDepartment Circular DEQ-4, 2004 edition~~.

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

(6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.

(a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in ~~dDepartment Circular DEQ-4, 2004 edition~~.

(7) and (8) remain the same.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: Department Circular DEQ-4 is adopted by reference in ARM 17.36.914, where the Circular is identified by edition date. The Circular edition dates elsewhere in the rules are proposed to be deleted because they are unnecessary at those locations.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS (1) through (4) remain the same.

(5) The setbacks in this rule are not applicable to gray water irrigation systems that meet the requirements of [NEW RULE II].

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: The proposed amendment to ARM 17.36.918 exempts gray water irrigation systems from the setbacks in that rule. The setbacks applicable to gray water irrigation systems are set out in New Rule II. This amendment is necessary to

implement the specific gray water system setbacks in New Rule II.

17.36.922 LOCAL VARIANCES (1) through (3) remain the same.

(4) The local board of health's decision regarding a variance of a requirement in this subchapter or in ~~d~~Department Circular DEQ-4, ~~2004 edition~~, may be appealed to the department pursuant to ARM 17.36.924.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: Department Circular DEQ-4 is adopted by reference in ARM 17.36.914, where the Circular is identified by edition date. The Circular edition dates elsewhere in the rules are proposed to be deleted because they are unnecessary at those locations.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (3)(k)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or wastewater system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) through (d) remain the same.

(e) the board adopts and incorporates by reference [NEW RULE I] for purposes of review of public gray water irrigation systems. The design report, plans, and specifications for public gray water irrigation systems must be prepared in accordance with [NEW RULE I], and in accordance with the format and criteria set forth in Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems." For purposes of this chapter, "gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(e) through (i) remain the same, but are renumbered (f) through (j).

(5) through (15) remain the same.

(16) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (c) remain the same.

(d) Department of Environmental Quality Circular DEQ-4, ~~2004~~ 2009 edition, which sets forth standards for subsurface wastewater treatment systems;

(e) through (17) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendments to ARM 17.38.101 adopt New Rule I and the revised Circular DEQ-4 by reference. The amendments are necessary to establish the standards the department will use when it reviews, under the public water and sewer laws in Title 75, chapter 6, MCA, plans and specifications for public gray water irrigation systems. The proposed revisions to Circular DEQ-4 are summarized in the Reason for New Rule II. The complete text of the proposed new DEQ-4 chapter is available on the department's web site at <http://www.deq.mt.gov/wqinfo/Sub/Index.asp>.

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701, MCA:

(1) through (5)(c) remain the same.

(6) The department adopts and incorporates by reference:

~~(a) department Circular DEQ-4, entitled "Montana Standards for Subsurface Wastewater Treatment Systems," 2004 edition, which establishes technical standards for construction of subsurface wastewater treatment systems; and~~

~~(b) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (February 2008 edition).~~

AUTH: 75-10-702, MCA

IMP: 75-10-702, 75-10-704, MCA

REASON: The department is proposing to delete the reference to Department Circular DEQ-4 from the CECRA rules. The incorporation by reference is superfluous because DEQ-4 is not mentioned elsewhere in the CECRA rules.

4. The proposed new rules provide as follows:

NEW RULE I GRAY WATER REUSE (1) This rule applies to gray water reuse on subdivision parcels that are subject to review, or that have been approved, under Title 76, chapter 4, MCA.

(2) Except as provided in (3) and (4), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this chapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without review, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this chapter and applicable department circulars.

(3) Gray water may be used for irrigation as provided in (4). If a gray water irrigation system meets all of the requirements in (4), the system is not subject to the requirements of subchapter 3.

(4) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may

be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must have a permit from the local health department;

(b) gray water irrigation must be subsurface, with a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located within a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.101;

(e) unless a waiver is granted by the department, the following horizontal setback distances must be maintained. Gray water irrigation may not occur within:

- (i) 100 feet of drinking water wells;
- (ii) 50 feet of non drinking water wells;
- (iii) 100 feet of surface water;
- (iv) 100 feet of a floodplain; or
- (v) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) gray water irrigation systems in subdivisions may not be installed unless approved under Title 76, chapter 4, MCA. If a system complies with (4)(a) through (e), review under Title 76, chapter 4, MCA, is not required if the system serves:

- (i) a parcel that has a previous certificate of subdivision approval issued pursuant to Title 76, chapter 4, MCA, if no other changes to the certificate are proposed, except that review under Title 75, chapter 6, MCA, is required before a public wastewater system is modified to include a gray water irrigation system; or
- (ii) a parcel that, when created, was exempt from review under Title 76, chapter 4, MCA, because it was served solely by municipal facilities, as defined in 76-4-102, MCA.

(5) Subdivision applications must contain descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Appendix B of Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.

(6) Gray water irrigation systems with a design flow greater than or equal to 2500 gallons per day must be designed by a professional engineer.

(7) The department may require user agreements for systems that serve more than one user. The department may require easements for systems that cross property lines.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: New Rule I is proposed for adoption by the department under the authority of the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. New Rule I sets out requirements for gray water irrigation systems in subdivisions that are reviewed under the Sanitation Act. Most of the requirements in New Rule I are the same as those in New Rule II, and those provisions are discussed in the Reason for New Rule II. New Rule I(4)(g), which has no parallel provision in New Rule II, provides that department review of proposed gray water systems on subdivision parcels is not required if no other changes are proposed to facilities on the parcel, the proposed gray water system meets the requirements of New Rule II and DEQ-4 as determined through the permit process by the local health department, and the parcel either has prior department approval under the Sanitation Act or was excluded from Sanitation Act review when created because it is served by municipal facilities. These exemptions from department review are necessary to facilitate installation of gray water irrigation systems on existing parcels. Review by the state is not necessary because compliance with the requirements of the new rules and DEQ-4 for proposed systems on these parcels will be achieved through the local permit process.

NEW RULE II GRAY WATER REUSE (1) Except as provided in (2) and (3), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this subchapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without a permit under this subchapter, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this subchapter and applicable department circulars.

(2) Gray water may be used for irrigation as provided in (3). If a gray water irrigation system meets all of the requirements in (3), the system is not subject to the requirements of ARM 17.36.914, 17.36.916, and 17.36.918.

(3) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must obtain a permit under this subchapter;

(b) gray water irrigation must be subsurface, using a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located in a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum vertical separation of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.912;

(e) gray water irrigation may not occur within:

(i) 100 feet of drinking water wells;

(ii) 50 feet of non drinking water wells;

(iii) 100 feet of surface water;

- (iv) 100 feet of a flood plain; or
  - (v) two feet of a property line;
  - (f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;
  - (g) if required under Title 76, chapter 4, MCA, and implementing rules, a gray water irrigation system must obtain subdivision approval from the department.
- (4) Soil descriptions must be provided for each proposed gray water irrigation system. Soils must be described in accordance with Appendix B of Department Circular DEQ-4.
- (5) Gray water irrigation systems with a design flow greater than or equal to 2500 gallons per day must be designed by a professional engineer.
- (6) The reviewing authority may require user agreements for systems that serve more than one user. The reviewing authority may require easements for systems that cross property lines.

AUTH: 75-5-201, MCA  
IMP: 75-5-305, MCA

REASON: Section 75-5-305, MCA, directs the Board of Environmental Review to establish rules for gray water reuse systems. New Rule II is the board's proposed gray water rule, which will be codified in ARM Title 17, chapter 36, subchapter 9, which contains the board's wastewater standards for use by local boards of health. New Rule II sets out requirements for gray water irrigation systems and incorporates additional requirements from a new chapter in Department Circular DEQ-4. The provisions of New Rule II are very similar to those in New Rule I. This Reason for New Rule II addresses the provisions that are common to both New Rule I and New Rule II, as well as provisions unique to New Rule II. Provisions unique to New Rule I are discussed in the Reason for New Rule I.

New Rule II starts with the general requirement that gray water treatment and disposal be achieved by means of a treatment system that meets all of the requirements of this subchapter and applicable department circulars. This provision is necessary to clarify that gray water is wastewater that is subject to the requirements in state and local laws for proper treatment and disposal. New Rule II then provides that, where gray water is used for irrigation, only the requirements of New Rule II and Department Circular DEQ-4 apply. These requirements, which are less restrictive than those for full strength sewage, are intended to facilitate reuse of gray water for irrigation while retaining protections for human health and the environment. The rule does not apply to reuse of gray water for purposes such as toilet flushing, provided that the gray water is ultimately disposed of in an approved system.

Prior to installation, a gray water irrigation system must be permitted by the local health department under the authority in 50-2-116, MCA. This requirement is necessary to meet the requirements in local Title 50 permit rules and to provide a review process that will ensure that the system is designed in accordance with the



standards in New Rule II and Department DEQ-4. For proposed gray water irrigation systems in subdivision parcels subject to the Sanitation Act, New Rule I requires both department and local review of the proposed gray water irrigation system, with some exceptions for department review, as discussed in the Reason for New Rule I.

Gray water irrigation must be subsurface. This requirement is necessary to minimize human and animal exposure to pathogens that may be in gray water. As provided by statute, gray water may not be used to irrigate plants to be consumed by humans. New Rule II interprets the statute to allow gray water irrigation of fruit and nut trees, because the fruit or nut that is consumed by humans is not the same part of the plant that is in direct contact with gray water, and any pollutants or pathogens will not transfer to the fruit or nuts.

New Rule II requires a minimum vertical separation of four feet of natural soil between the gray water application point and a limiting layer such as ground water or bedrock. This requirement is necessary to provide a soil separation and treatment medium for gray water that will remove pathogens before gray water enters ground water or fractures connected to ground water. As discussed below, the proposed revisions to DEQ-4 will allow installation of gray water irrigation systems in fill, as long as the four feet of natural soil separation also exists.

The horizontal setbacks in New Rule II(3)(e) are a partial list of those in ARM 17.36.918 for full-strength wastewater systems. The setbacks in the New Rule are necessary to protect wells and surface waters from contamination by gray water. The setback between gray water irrigation and property lines is reduced to two feet to allow for irrigation of plants on property boundaries. No setback between gray water irrigation and foundation walls is required, in order to allow for irrigation of plants that border buildings. The setbacks in New Rule II do not include those in ARM 17.36.918 for roadcuts, suction lines, or subsurface drains. These setbacks are not needed, since the design of gray water irrigation systems will maximize uptake by plants.

New Rule II prohibits irrigation with gray water from kitchens, except where there is no alternative because the black water disposal system is a dry system, such as a composting, chemical, dehydrating, or incinerator system. The restriction on irrigation with kitchen water is necessary to minimize potential exposure to pathogens that may be in wastewater generated from food preparation.

New Rule II requires that soil descriptions be provided for the site of proposed gray water irrigation systems. A similar requirement is proposed in the subdivision rules at ARM 17.36.103. Including soil information for gray water systems is necessary to allow the reviewing authority to evaluate the suitability of the site under the standards in New Rule II and DEQ-4.

Gray water irrigation systems with a design capacity equal to or greater than 2500 gallons per day must be designed by a professional engineer. The requirement for an engineered design is necessary because of the size and complexity of the larger systems. Where a system serves more than one user, a user agreement may be necessary to establish responsibility for maintenance. The proposed rules allow the reviewing authority to require a user agreement in those circumstances. The proposed rules also allow the reviewing authority to require easements where necessary to provide access for maintenance.

### Proposed Revisions to Department Circular DEQ-4

The department is proposing to issue a new chapter in Department Circular DEQ-4 with design standards for gray water irrigation systems. A summary of the main provisions of the proposed new chapter is set out below. The complete text of the proposed new DEQ-4 chapter is available on the department's web site at <http://www.deq.mt.gov/wqinfo/Sub/Index.asp>.

Section 1 contains general standards applicable to gray water irrigation systems, some of which restate the provisions of the statute and rules. Restatement of these requirements in the Circular is necessary to provide a complete statement of applicable requirements in one place. The requirements of the statute and rules are discussed above.

Section 1 provides that gray water irrigation systems that meet the requirements of this chapter of the Circular are not subject to the requirements in other chapters of the Circular, except as specifically referenced in this chapter. The creation of a "one-stop" chapter for gray water irrigation is necessary to make it easier for system designers to identify and comply with all applicable requirements.

Section 1 requires that gray water irrigation piping be identified as nonpotable through use of purple piping and continuous marking. Tanks, pumps, and other equipment must be labeled as nonpotable. The labeling requirements are necessary to prevent accidental cross-connection between gray water and drinking water lines.

For gray water irrigation systems on parcels served by a public wastewater system, Section 1 requires a letter of approval from the managing entity of the public system. This requirement is necessary to identify any conflicts with municipal ordinances.

Section 1 allows gray water irrigation systems to be augmented with potable water or storm water, but recommends that the Department of Natural Resources be consulted about the need for a water right permit to appropriate storm water for irrigation. This provision is necessary to provide flexibility for gray water designers, and to inform designers of other permits that may be required. Section 3 requires that the volume of any storm water collected from roofs and diverted to the gray water system be included in the design capacity.

Sections 2 and 3 set out more specific design requirements for gray water irrigation systems. Table 1 provides estimated gray water flow rates based on the number of occupants of a building and the source of the gray water. Nonresidential flow rates must be proposed by the designer and approved on a case-by-case basis. Gray water systems must also have minimum absorption areas based on soil types as described in Chapter 8 and Appendix B of DEQ-4. These requirements are necessary to ensure proper system operation and to minimize ponding and runoff.

For gray water systems that augment with potable water, a method of backflow prevention must be used to prevent contamination of potable water lines. This requirement is necessary to protect the potable water system from contamination.

Gray water systems that are not designed to prevent freezing must be used in conjunction with a year-round method of wastewater treatment that is sized to accept both gray water and black water. The gray water system must not adversely

impact the functioning of the year round system. These provisions are necessary to ensure that all wastewater is appropriately treated year-round.

Section 2 allows installation of gray water systems in fill, although there must also be four feet of natural soil separation between the point of gray water application or fill and a limiting layer such as bedrock or groundwater. This provision is necessary to facilitate use of gray water irrigation in raised beds, so long as the four-foot natural soil separation requirement is met. Section 3 prevents use of hose bibs on gray water systems. This is necessary to avoid accidental surface use of gray water.

Surge tanks are not required for gray water irrigation systems unless the system is pressure dosed. Section 3 sets out standards for surge tanks if they are utilized. Surge tanks must be covered, must be plumbed and vented in accordance with the plumbing code, and must be installed in a manner designed for stability and ease of maintenance. Tanks must have an overflow pipe and emergency drain connected to the primary wastewater system, or to a second surge tank if waste segregation systems are used. These requirements are necessary to ensure proper functioning of surge tanks.

For tanks in pressure dosed systems, Section 3 sets out requirements necessary for proper functioning. High water alarms are required for tanks with pumps. Tanks must have a reserve volume equivalent to 25% of the design flow. Cleanouts must be provided at the end of every lateral. Section 3 recommends a minimum dose volume and maximum dose duration, and recommends that dosed irrigation systems be field tested to verify uniform distribution.

Section 4 states that property owners are responsible for proper operation and maintenance of their gray water irrigation systems. This provision is necessary to clarify that the reviewing authority does not assume responsibility for system operation and maintenance. For larger systems, an operation and maintenance manual must be submitted to the reviewing authority in accordance with Appendix D of DEQ-4. This is necessary to ensure that larger systems have a written procedure to ensure proper operation and maintenance.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., July 31, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The Board of Environmental Review will preside over and conduct the hearing.

7. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: 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, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov); or may be made by completing a request form at any rules hearing held by the board or department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The rules in this notice are the first rules to implement HB 259 (2007), which required the Board of Environmental Review to address uses of gray water, and the first to implement HB 285 (2009), which required the gray water rules to address uses other than single-family residential. The sponsor of HB 259 and HB 285 was contacted by a letter dated April 28, 2008, that the Department was beginning to work on the substantive content of the standards for gray water irrigation systems, and was contacted by letter dated May 20, 2009, that the rules were the first to implement HB 285 (2009).

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: /s/ Richard H. Opper  
RICHARD H. OPPER, Director

Certified to the Secretary of State, June 15, 2009.

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

In the matter of the adoption of New Rules I, II, and III and the amendment of ARM 37.88.101, 37.88.901, 37.88.905, 37.88.906, and 37.88.907 pertaining to Medicaid mental health center services for adults with severe disabling mental illness ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 22, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and 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 July 13, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

RULE I MENTAL HEALTH CENTER SERVICES FOR ADULTS, DEFINED

(1) A mental health center must provide:

- (a) adult day treatment services;
- (b) community-based psychiatric rehabilitation and support;
- (c) respite care;
- (d) in-training practitioner services;
- (e) the therapeutic component of crisis intervention services;
- (f) foster care for mentally ill adults;
- (g) mental health group home services; and
- (h) programs of assertive community treatment, as defined at ARM

37.88.901.

(2) All mental health center services must be co-occurring capable as defined at ARM 37.88.901.

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

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

RULE II MENTAL HEALTH CENTER SERVICES FOR ADULTS, PROGRAM OF ASSERTIVE COMMUNITY TREATMENT (PACT) (1) A program of assertive community treatment (PACT) is a self-contained clinical treatment:

- (a) provides needed treatment, rehabilitation, and support services to identified individuals with severe disabling mental illness;
- (b) minimally refers individuals to services outside the program;
- (c) provides services on a long term basis;
- (d) delivers 75% or more of team service time outside program offices;
- (e) serves individuals with severe disabling mental illness who are at least 18 years old, have severe symptoms and impairments not effectively treated by other available, less intensive services, or who have a history of avoiding mental health services;
- (f) provides psychiatric services at the rate of at least 20 hours per week for each 70 persons served;
- (g) maintains a ratio of at least one staff person, not including a psychiatrist, for each nine persons served. Assertive community treatment teams must be approved by the Addictive and Mental Disorders Division; and
- (h) complies with the Montana Program of Assertive Community Treatment (PACT) Standards. The department adopts and incorporates by reference the Montana PACT Standards (2009) which set forth the standards of treatment for adults with SDMI. A copy of the standards may be obtained from the Addictive and Mental Disorders Division, P.O. Box 202905, Helena, MT 59620-2905.

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

RULE III MENTAL HEALTH CENTER SERVICES FOR ADULTS, INTENSIVE COMMUNITY-BASED REHABILITATION FACILITY (1) "Intensive community-based rehabilitation facility" means an adult mental health group home that provides medically necessary rehabilitation services to adults with severe disabling mental illness who have a history of institutional placements due to mental illness and a history of repeated unsuccessful placements in less intensive community-based programs. The provider must provide the following services to individuals:

- (a) close supervision and support of daily living activities;
- (b) assistance with medications including administration of medications as necessary;
- (c) rehabilitation in the following areas as needed by each client:
  - (i) maintenance of physical health and wellness;
  - (ii) personal hygiene;
  - (iii) safety;
  - (iv) symptom management;
  - (v) communication skills;
  - (vi) vocational activities;
  - (vii) community integration;
  - (viii) social skills;

- (ix) leisure and recreation skills;
- (x) establishment and maintenance of a community support network;
- (xi) establishment and maintenance of meaningful daily structure; and
- (xii) management of personal finances;
- (d) case management to assure all necessary community services and supports, including services and supports for nonpsychiatric medical conditions, are available;
- (e) discharge planning for transition to a less restrictive setting when appropriate; and
- (f) transportation to assure appropriate community resources are accessible.

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

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

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) For mental health services provided to an adult Medicaid client under the Montana Medicaid program, ~~prior authorization is not required for the first 16 visits in the 12-month period beginning July 1, 2003 and each 12-month period thereafter for outpatient mental health counseling services~~ a maximum of 24 sessions may be reimbursed per state fiscal year for individual and family outpatient therapy billed under Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90810, 90812, 90846, and 90847 only.

(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 (3)(a) or (b). The person must also meet the requirements of (3)(c). The person has:

(a) a DSM-IV diagnosis with a severity specifier of moderate or severe of mood disorder (293.31, 293.33, 293.34, 293.83, 295.70, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.22, 296.23, 296.24, 296.42, 296.43, 296.44, 296.80, 296.89, 296.90, 396.40); or

(b) a DSM-IV diagnosis borderline personality disorder (301.83), personality disorder {NOS} (301.9) with prominent features of 301.83; and

(c) through (6) remain the same.

(7) Review of authorization requests by the department or its designee will be made with consideration of the adult intensive outpatient therapy services clinical management guidelines (2006). A copy of the adult intensive outpatient therapy services 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.

(8) and (9) remain the same.

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

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

37.88.901 MENTAL HEALTH CENTER SERVICES FOR ADULTS,

DEFINITIONS (1) "Adult" means a person who is ~~not a child or adolescent as defined in this rule~~ 18 years of age or older.

(2) "Adult day treatment" means a program which provides, in accordance with mental health center license requirements, a variety of evidence-based, recovery-oriented mental health services to adults with severe disabling mental illness.

~~(3) "Child or adolescent" means a person 17 years of age and younger or a person who is under 20 years of age and is enrolled in secondary school.~~

~~(4) "Child and adolescent day treatment" means a program which provides, in accordance with mental health center license requirements, an integrated set of mental health, education, and family intervention services to children or adolescents with severe emotional disturbance.~~

(5) (3) "Community-based psychiatric rehabilitation and support" means services provided in home, school, workplace, and community settings for adults with severe and disabling mental illness and ~~youth with serious emotional disturbance~~. Services are provided by trained mental health personnel under the direction of and according to individualized treatment plans ~~prepared by licensed professionals~~. The services ~~are~~ may be provided outside of normal clinical or mental health program settings and are designed to assist individuals in developing the skills, ~~and behaviors, and emotional stability necessary for recovery to live successfully in the community~~. Community-based psychiatric rehabilitation and support services are provided on a face-to-face basis with the ~~recipient~~ individuals, family members, teachers, employers or other key individuals in the ~~recipient's~~ individual's life when such contacts are clearly necessary to meet goals established in the ~~recipient's individual~~ individualized strength-based treatment plan.

(a) Community-based psychiatric rehabilitation and support includes but is not limited to the following services:

(i) remains the same.

(ii) assisting the ~~consumer~~ individual to develop communication skills, ~~develop~~ self-management of psychiatric symptoms, and ~~develop~~ the social networks necessary to minimize social isolation and increase opportunities for a socially integrated life;

(iii) assisting the ~~consumer~~ individual to develop daily living skills and behaviors necessary for maintenance of a home, ~~and family~~ relationships and responsibilities, an appropriate education, employment or vocational situation, and productive leisure and social activities;

(iv) remains the same.

(b) Community-based psychiatric rehabilitation and support does not include the following ~~services~~:

(i) and (ii) remain the same.

(iii) interventions provided by staff of crisis facilities, group homes, or ~~therapeutic~~ adult foster care providers in such facilities, homes, or settings;



~~(iv) services provided as part of the recipient's intensive case management plan case planning activities, including but not limited to attending meetings, completing paperwork and other documentation requirements, traveling to and from the individual's home;~~

~~(v) therapeutic interventions by licensed practitioners, regardless of the location of the service; and~~

~~(vi) activities which are purely recreational in nature; and,~~

~~(vii) services provided within the school classroom that are educational, including, but not limited to educational aides.~~

~~(6) "Community mental health center" means a licensed mental health center, governed by a regional mental health corporation board created by 53-21-204, MCA, that provides the comprehensive mental health services listed in 53-21-201(1), MCA.~~

~~(4) "Co-occurring capability" means a mental health program can:~~

~~(a) screen all individuals for substance use disorders;~~

~~(b) provide access to outpatient therapists trained to diagnose and work with substance abusers;~~

~~(c) explicitly address some specific treatment needs of individuals with substance use disorders; and~~

~~(d) collaborate with another provider to access necessary consultation when an individual also requires services from that provider.~~

~~(7) (5) "Crisis intervention services" means a program which provides, in accordance with mental health center license requirements, emergency short term 24-hour care, treatment and supervision in a crisis intervention stabilization facility or other community setting for persons age 18 or older with mental illness experiencing a mental health crisis.~~

~~(6) "Evidence-based practice" means a practice that, based on research findings and expert or consensus opinion, is expected to produce a specific measurable clinical outcome or change in client status.~~

~~(7) "Illness management and recovery" means a program to help individuals who have experienced psychiatric symptoms to develop personalized strategies for managing their mental illness and moving toward recovery. Such a program can be provided in an individual or group format.~~

~~(8) "Day treatment services" means adult day treatment services and child and adolescent day treatment services.~~

~~(9) "Intensive community based rehabilitation facility" means an adult mental health group home that provides medically necessary rehabilitation services to adults with severe and disabling mental illness who have a history of institutional placements due to mental illness and a history of repeated unsuccessful placements in less intensive community based programs. The provider must provide the following services to residents:~~

~~(a) close supervision and support of daily living activities;~~

~~(b) assistance with medications including administration of medications as necessary;~~

~~(c) rehabilitation in the following areas as needed by each client:~~

~~(i) maintenance of physical health and wellness;~~

~~(ii) personal hygiene;~~

- ~~(iii) safety;~~
- ~~(iv) symptom management;~~
- ~~(v) communication skills;~~
- ~~(vi) vocational activities;~~
- ~~(vii) community integration;~~
- ~~(viii) social skills;~~
- ~~(ix) leisure and recreation skills;~~
- ~~(x) establishment and maintenance of a community support network;~~
- ~~(xi) establishment and maintenance of meaningful daily structure; and~~
- ~~(xii) management of personal finances;~~
- ~~(d) case management to assure all necessary community services and supports, including services and supports for non-psychiatric medical conditions, are available;~~
- ~~(e) discharge planning for transition to a less restrictive setting when appropriate; and~~
- ~~(f) transportation to assure appropriate community resources are accessible.~~

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

~~(12) (10) "Mental health center services" are defined in [RULE I]. means child and adolescent day treatment services, adult day treatment services, community based psychiatric rehabilitation and support respite care, in-training practitioner services, and the therapeutic component of crisis intervention services, foster care for mentally ill adults, and mental health group home services and programs of assertive community treatment, as defined in these rules.~~

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

~~(14) (12) "Program of assertive community treatment or PACT" means a self-contained clinical team that meets the requirements of [RULE II]. which:~~

- ~~(a) provides needed treatment, rehabilitation and support services to identified clients with severe disabling mental illness;~~
- ~~(b) minimally refers clients to outside service providers;~~
- ~~(c) provides services on a long term basis;~~
- ~~(d) delivers 75% or more of team service time outside program offices;~~
- ~~(e) serves individuals with severe disabling mental illness (SDMI) who are at least 18 years old, have severe symptoms and impairments not effectively treated by other available, less intensive services, or who have a history of avoiding mental health services;~~
- ~~(f) provides psychiatric services at the rate of at least 20 hours per week for each 70 persons served; and~~
- ~~(g) maintains a ratio of at least one staff person, not including the psychiatrist, for each nine persons served. Assertive community treatment teams must be approved by the addictive and mental disorders division.~~

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

~~(16) (14) "Practitioner services" means services provided by a practitioner which could be covered and reimbursed by the Montana Medicaid program if the individual practitioner were enrolled in the program and had provided the services according to applicable Medicaid requirements.~~

(15) "Recovery" means a process that enables an individual to live a meaningful life in the community. The fundamental components of recovery include

self-direction, person-centered strength-based treatment, empowerment, respect, responsibility, and hope.

(16) "Recovery-oriented mental health services" means:

(a) respect for and appreciation of the individual that ensures inclusion and participation in all aspects of his or her life;

(b) individualized and person-centered treatment, based on the individual's unique strengths and resiliencies as well as his or her needs, preferences, experiences (including trauma), and cultural background; and

(c) empowerment of the individual to choose from a range of options and to participate in decisions and to receive education and support in so doing, and to promote personal responsibility for his or her own recovery.

(17) "Respite care" means relief services that allow family members, who are regular care givers for an adult with severe disabling mental illness ~~or a youth with serious emotional disturbance~~, to be relieved of their care giver responsibilities for a temporary, short term period.

(18) "Treatment day" means a calendar day, including night, daytime or evening, during which ~~a patient~~ an individual is ~~present~~ at the provider's facility and receiving services according to applicable requirements.

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

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

37.88.905 MENTAL HEALTH CENTER SERVICES FOR ADULTS, REQUIREMENTS (1) remains the same.

(2) Mental health center services may be provided only by a facility ~~which~~ that is licensed as a mental health center by the department in accordance with the provisions of Title 50, chapter 5, part 2, MCA, and implementing administrative rules.

(3) remains the same.

(4) Mental health center services must be available to ~~recipients~~ individuals continuously throughout the year.

(5) Mental health center services must be provided to ~~a recipient~~ an individual in accordance with an individualized strength-based treatment plan developed and maintained in accordance with license requirements.

(6) In addition to the clinical records required by mental health center license rules, the provider must maintain for day treatment services the records required by ARM 37.85.414, which shall include, but are not limited to, documentation of the ~~recipient's~~ individual's attendance and activities for the required period of time for the service billed and entry of progress notes in the ~~recipient's~~ individual's record at least every 30 days and upon any significant change in the ~~recipient's~~ individual's condition.

~~(7) For purposes of Medicaid billing and reimbursement of day treatment services, a half day requires that the recipient has attended the day treatment program for a minimum of two hours during the treatment day.~~

~~(8) For purposes of meeting the minimum hours required in (7), the provider may not include time during which the recipient is receiving practitioner services which are actually billed separately as practitioner services as permitted under ARM 37.88.906, up to a maximum of four hours during the treatment day.~~

~~(9) Services billed as community-based psychiatric rehabilitation and support may not be counted toward the time requirements for any other service or billed by the provider as any other type or category of service.~~

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

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

37.88.906 MENTAL HEALTH CENTER SERVICES FOR ADULTS, COVERED SERVICES (1) Mental health center services, covered by the Medicaid program, include the following:

(a) remains the same.

~~(b) child and adolescent day treatment services;~~

(c) through (g)(iii) remain the same but are renumbered (b) through (f)(iii).

(2) remains the same.

(3) A mental health center may provide case management services for ~~youth with serious emotional disturbance~~ and adults with severe disabling mental illness if enrolled as a provider of such services and in accordance with the requirement of Medicaid rules applicable to those service categories. Case management services will be reimbursed only to the extent allowable and according to the Medicaid rules applicable to the particular category of service.

(4) through (6)(c) remain the same.

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

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

37.88.907 MENTAL HEALTH CENTER SERVICES FOR ADULTS, REIMBURSEMENT (1) Medicaid reimbursement for mental health center services shall be the lowest of:

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

~~(b) for services provided to adults, the department's Medicaid fee for the service as specified in the department's Medicaid Mental Health and or Mental Health Services Plan Fee Schedule for Individuals 18 Years of Age and Older Fee Schedule; or,~~

~~(c) for services provided to children and adolescents, the Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207 for services provided to youths as that term is defined at ARM 37.89.103, and a direct care wage add-on as provided in ARM 37.88.1111, if applicable.~~

(2) For day treatment, program of assertive community treatment, and crisis intervention services, Medicaid will not reimburse a mental health center provider for more than one fee per treatment day per ~~recipient~~ individual. This does not apply to practitioner services to the extent such services are separately billed in accordance with these rules.

(3) For purposes of Medicaid billing and reimbursement of day treatment services, a "half day" means that the individual has attended the day treatment program for a minimum of two hours during the treatment day.

(4) For purposes of meeting the minimum hours required in (3), the provider may not include time during which the individual is receiving practitioner services that are billed separately as practitioner services under ARM 37.88.906, up to a maximum of four hours during the treatment day.

(5) Services billed as community-based psychiatric rehabilitation and support may not be counted toward the time requirements for any other service or billed by the provider as any other type or category of service.

~~(3)~~ (6) Reimbursement will be made to a provider for reserving an adult foster care or mental health adult group home bed only if:

(a) the ~~recipient's~~ individual's plan of care documents the medical need for a therapeutic visit as part of a therapeutic plan;

(b) the ~~recipient individual~~ is temporarily absent on a therapeutic visit;

(c) the provider clearly documents staff contact and ~~recipient individual~~ achievements or regressions during and following the therapeutic visit; and

(d) no more than 14 patient days per ~~recipient individual~~ in each rate year will be reimbursed for therapeutic visits.

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

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

5. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I, II, and III and the amendment of ARM 37.88.101, 37.88.901, 37.88.905, 37.88.906, and 37.88.907 pertaining to Medicaid mental health center services for adults with severe disabling mental illness (SDMI). The amendments are necessary to reflect the transfer of mental health center services for youth with serious emotional disturbance (SED) rules to ARM Title 37, chapter 87 effective February 17, 2009. For more information about the transfer of mental health services for youth with SED, please see MAR Notice Number 37-463, 2008 MAR Notice No. 24 at page 2603 dated December 24, 2008. The amendments proposed in this notice would update ARM 37.88.101 Medicaid Mental Health Services For Adults, Authorization Requirements; 37.88.901, Mental Health Center Services, Definitions; ARM 37.88.905, Service Requirements; ARM 37.88.906, Covered Services; and ARM 37.88.907, Reimbursement for Mental Health Centers. The proposed amendments include the addition of definitions for co-occurring capability, evidence-based practice, illness management and recovery, recovery, and recovery-oriented mental health services. The proposed amendments would also relocate provisions related to billing and reimbursement from ARM 37.88.905 to 37.88.907, where it is more appropriate.

The department is taking this opportunity to reformat the rules to conform to current terminology and rule format standards.

The proposed rule amendments will not increase or decrease Medicaid fees, costs, or benefits. No fiscal or benefit effects are expected as a result of the proposed rules and amendments.

The proposed amendments are described below.

ARM 37.88.101

The department is proposing amendments to this rule governing prior authorization requirements that would remove all references to Medicaid mental health services to youths with Serious Emotional Disturbances (SED). This would continue the department's reorganization of its rules to separate provisions related to adult mental health services and those for youths. Since youth and adult mental health services were administratively separated in 2003, the programs have become distinct, with few common requirements. Separate rules for each population would be easier for providers and consumers to reference and for the department to maintain.

The proposed amendments would also raise the limit for the number of individual and family therapy sessions from 16 to 24 per year. However, the language exempting the first visits from the authorization requirement would be removed. Authorization would be required prior to delivery of these services.

The department is taking this opportunity to delete obsolete Current Procedure Terminology (CPT) codes and to update the title of the clinical management guidelines. The substantive provisions in guidelines will remain the same, but the department believes a more specific title will make it easier to distinguish the guidelines for adults from those for youths.

ARM 37.88.901 and Rules I, II, and III

The department is proposing to amend ARM 37.88.901 containing definitions applicable to mental health center services for adults with SDMI. The proposed amendments would delete the definitions for child or adolescent, child and adolescent day treatment, and day treatment services because they do not apply to adult services. The proposed amendments would also eliminate references to mental health center services for youth with SED. Since youth and adult mental health services were administratively separated in 2003, the programs have become distinct with few common requirements. Separate rules for each population are easier for providers and consumers to reference and for the department to maintain. The definition of community mental health center would be deleted as obsolete. The statute creating community mental health centers, 53-21-204, MCA was repealed by an act of the 2003 Montana Legislature, 2003 Laws of Montana, Chapter 602.

The department is proposing the addition of definitions for co-occurring capability, evidence-based practice, illness management and recovery, recovery, and recovery-oriented mental health services. These terms are related to services provided by mental health centers to adults with SDMI. They have been used in training that was offered to providers over the past four years. The department has proposed the addition of these terms to this rule because it expects providers to use the treatment models introduced during the training. Adoption of the terms would reinforce the department's intention that the new models and concepts be integrated into treatment and services for adults with SDMI. Until now, adoption of these practices

has been voluntary and limited. The Centers for Medicare and Medicaid Services (CMS), the federal agency that oversees administration of the Medicaid program requires states to provide some recovery-oriented services and evidence-based practices. The department intends to implement this requirement through the proposed amendments. The department considered and rejected the alternative of implementing the improved treatment models through voluntary provider participation. The department believes the proposed changes will improve treatment outcomes for adults with severe disabling mental illnesses and should, therefore, be implemented statewide.

The proposed amendments would also move the substantive requirements for mental health centers to a new rule, [Rule I], the requirements for program of assertive community treatment (PACT) teams to new [Rule II] and the service requirements for intensive community-based rehabilitation facilities to new [Rule III]. This should make it easier for the public to access the requirements. The department also proposes the addition of a requirement that all mental health center services have co-occurring capability.

#### ARM 37.88.905 and 37.88.907

The proposed amendments would relocate sections related to billing and reimbursement for mental health center services from ARM 37.88.905 Mental Health Center Services, Requirements to ARM 37.88.907 Mental Health Center Services, Reimbursement. This should make it easier for providers and the public to access and use the rules. No substantive effects on Mental Health Center reimbursement are intended as a result of this proposal.

#### ARM 37.88.906

The department proposes the deletion of child and adolescent day treatment services from this rule listing Mental Health Center covered services. This proposal would make the rule consistent with the elimination of references to Medicaid mental health services for youth with SED.

#### Persons and entities affected

There are ten mental health centers and approximately 3000 individuals eligible for Medicaid mental health 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 mental health services Medicaid individuals would receive. No effects on state or federal Medicaid expenditures or provider reimbursement are expected as a result of the proposed rules and amendments.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 23, 2009.

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

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

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

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.



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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.40.307 and 37.40.361 ) PROPOSED AMENDMENT  
pertaining to Medicaid nursing facility )  
reimbursement )

TO: All Concerned Persons

1. On July 22, 2009, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 13, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

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

(a) through (c) remain the same.

(d) The total payment rate available for the period July 1, ~~2008~~ 2009 through June 30, ~~2009~~ 2010 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2008~~ 2009. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

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

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) Effective for the period July 1, ~~2007~~ 2009 and every ~~for the~~ six months thereafter, nursing facilities must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing types and rates of pay payment for comparable services and tracking distribution of direct care wage funds to designated workers.

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

(a) The department will determine ~~a per day add-on payment,~~ the lump sum payments, twice a year commencing July 1, ~~2007~~ 2009, and again in six months ~~from that date and at the beginning of each state fiscal year thereafter,~~ as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) To receive the direct care ~~add-on~~ lump sum payment, a nursing facility shall submit for approval a request form to the department stating how the direct care ~~add-on~~ and ancillary services lump sum payment will be spent in the facility to comply with all statutory requirements. The facility shall submit all of the information required on a form to be developed by the department in order to continue to receive ~~the additional add-on amount~~ subsequent lump sum payment amounts for the entire rate year. The form for wage and benefit increases will request information including but not limited to:

(i) the number by category of each direct care and ancillary services worker that will receive the benefit of the increased funds, if these funds will be distributed in the form of a wage increase;

(ii) the actual per hour rate of pay before benefits and before the direct care wage increase has been implemented for each worker that will receive the benefit of the increased funds;

(iii) the projected per hour rate of pay with benefits after the direct wage increase has been implemented;

(iv) the number of staff receiving a wage or benefit increase by category of worker, effective date of implementation of the increase in wage and benefit; and

~~(vi)~~ (v) the number of projected hours to be worked in the budget period.

(c) If these funds will be used for the purpose of providing lump sum payments (i.e. bonus, stipend or other payment types) to direct care and ancillary services workers in nursing care facilities the form will request information including, but not limited to:

- (i) the number by category of each direct care and ancillary services worker that will receive the benefit of the increases funds;
  - (ii) the type and actual amount of lump sum payment to be provided for each worker that will receive the benefit of the lump sum funding;
  - (iii) the breakdown of the lump sum payment by the amount that represents benefits and the direct payment to workers by category of worker; and
  - (iv) the effective date of implementation of the lump sum benefit.
- ~~(c)~~ (d) A facility that does not submit a qualifying request for use of the funds distributed under (2), that includes all of the information requested by the department, within the time established by the department, or a facility that does not wish to participate in this additional funding amount shall not be entitled to their share of the funds available for wage and benefit increases or lump sum payments for direct care and ancillary services workers.
- (3) remains the same.

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

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

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.40.307 and 37.40.361 pertaining to Medicaid nursing facility reimbursement. The proposed amendments are necessary to implement legislative funding increases for nursing facility reimbursement for state fiscal year 2010. Funding available July 1, 2009 is currently projected at \$155,121,704 to provide rate increases for nursing facility providers.

The proposed amendments are also necessary to implement funding that allows wage increases for nursing facility direct care workers. Funding available July 1, 2009 provides for a one time direct care worker wage increase. The proposed rate increase for direct care and ancillary staff is limited to the 2010 through 2011 biennium only.

#### ARM 37.40.307

The department does not at the time of publication, have all of the information necessary to calculate final payment rates for nursing facility providers according to the methodology at ARM 37.40.307. This methodology is explained below. The department intends to make rates effective July 1, 2009. The final rates will be set according to final case mix information and the funding appropriated by the 2009 Montana Legislature.

The department will deliver rate sheets to all providers in advance of the rule hearing. The rate sheets will verify proposed rates and are intended to facilitate comments. They will be delivered as soon as case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement rates become available. The rates will distribute the funding as necessary to meet the department goals of a price based system of reimbursement and will be

computed so as to incorporate and implement legislatively appropriated funding levels.

The price based system of reimbursement is intended to address the following issues. Statewide occupancy rates are at 74% in Montana nursing facilities at the current time. At the same time, the care needs of the typical nursing facility resident are increasing. Residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As these trends towards lower occupancy and increased acuity continue, it becomes more important than ever those nursing facility providers receive rate increases that are reflective of the increased cost of doing business. If Medicaid rates do not stabilize, small rural providers of nursing facility services will find it more difficult to keep their doors open. They would be unable to predict the level of funding that would be available in future years and could be unable to plan the best way to provide nursing facility services in their communities. Increased costs due to lower occupancy levels and unpredictability of the system of reimbursement are likely to be passed on to the privately paying individuals and insurers.

For rate year 2010 (July 1, 2009 - June 30, 2010) the nursing facility per diem rate will be computed as follows:

(1) The Medicaid per diem rates will include two components. The operating component (includes both operating and capital combined), is the same rate for all nursing facilities and represents 80% of the overall price. The nursing component will be adjusted for individual nursing facility acuity and is 20% of the overall price.

(2) Medicaid per diem rates will be established annually each July 1st.

(3) The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index will be calculated quarterly based upon a set point in time, using the most recent annual or quarterly MDS information. Nonclassifiable MDS assessment will be excluded from the computation of case mix indexes (CMI) during the transition period. Medicaid case mix for annual rate setting will be based on the most recent four quarter average of Medicaid CMI for each nursing facility.

#### Provider rate increase

Total funding of approximately \$2,981,100 will be available to provide a rate increase for nursing facility providers. This funding will be allocated through the regular reimbursement process as part of the per diem rate calculation. This funding is provided through the American Recovery and Reinvestment Act of 2009 and as such, will not be available in future years after this biennium.

#### ARM 37.40.361

Total funding of approximately \$5,729,330 will be available to provide for a one time direct care worker wage increase. This direct care wage increase is for direct care and ancillary staff for the state 2011 biennium only. This funding will be allocated to facilities in addition to the regular per diem rate, and can only be used to provide for worker wage increases. The department will identify the reporting form that will be used by providers in order to receive this additional funding for wages. The form will identify which workers will receive these funds, if these funds will be distributed in the form of a stipend or bonus or in the form of a wage increase. The funds are available one time only and as such will not be an ongoing reimbursement source after state fiscal year 2011. Providers should be aware that any funds put into their wage structure may not be available in future years after this biennium. The allocation methodology currently proposed by the department will be used to prorate these funds to Medicaid participating nursing facilities.

#### Persons and entities affected

There are 83 nursing facility services providers enrolled in Montana Medicaid. All will be affected by the proposed amendments.

#### Estimated financial /budget impacts

The total state and federal funding available for state fiscal year 2010 is currently projected at \$155,121,704. This is comprised of \$17,279,302 in state special revenue, \$31,743,507 in state general funds and \$106,098,895 in federal funds. This funding includes \$2,981,100 appropriated for the provider rate increase, as well as additional funding for lump sum payments to providers for direct care workers and ancillary staff of \$1,350,430 of general funds and \$4,378,927 in federal funds for a total appropriation of \$5,729,330 for the nursing facility program.

The estimated total funding available for state fiscal year 2010 for nursing facility reimbursement is estimated at approximately \$187,334,042 of combined state funds, federal funds, and \$32,212,338 in patient contributions. These numbers do not include at risk provider funds. Anticipated utilization days for state fiscal year 2010 are 1,133,838 using estimates of caseload adopted by the Legislature.

The estimated total funding effects of the one time payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk", has been appropriated at \$5,125,779 in total funds, \$1,673,022 of which comes from state special revenue funds and approximately \$3,452,757 from federal funding sources.

5. The department intends to apply these rules retroactively to July 1, 2009. The legislative funding increases will be available July 1, 2009 to provide for these increases in reimbursement, as well as other increases, that are being proposed in this rule for fiscal year 2010. This date will comply with legislative directives for funding increases for nursing facilities. If the rules must be applied retroactively, no

harm to providers or recipients of Medicaid services would occur due to the total funding available for reimbursement.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 23, 2009.

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

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

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

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.113.108 and 37.113.112 and ) PROPOSED AMENDMENT AND  
the repeal of ARM 37.113.104 ) REPEAL  
pertaining to the implementation of )  
the Montana Clean Indoor Air Act )  
(CIAA) )

TO: All Concerned Persons

1. On July 16, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 July 7, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.113.108 INSPECTIONS AND ENFORCEMENT (1) The department, a local health board and their respective designees may conduct inspections of:

(a) remains the same.

(b) public school property to determine compliance with 20-1-220, MCA, relating to smoking tobacco use on public school property.

(2) remains the same.

~~(3) An establishment that serves food but purports to qualify as a bar within the definition contained in 50-40-103(5), MCA must upon request submit to the department, a local health board, or the designee of either, the documentation necessary to prove that at least 60% of the establishment's annual gross income comes from the sale of alcoholic beverages, gambling receipts, or both.~~

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

AUTH: 50-40-110, MCA

IMP: 20-1-220, 50-40-104, 50-40-108, MCA

37.113.112 COMPLAINT PROCEDURE REGARDING SMOKING

VIOLATIONS (1) An individual who believes that a violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA has occurred may file a written or electronic complaint with the department or the local health board or its designee that describes the violation, and provides the date of the violation ~~and is signed by the complaining party.~~

(2) If a complaint is filed with the local health board, a written or electronic copy of the complaint must be forwarded within ~~five working~~ 30 days ~~after the end of the month in which it was received~~ to the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) If a complaint is filed initially with the department or a designee of the department, a written or electronic copy will be forwarded within five working days to the local health board of the county in which the violation allegedly occurred.

(4) Once a complaint is filed, the department or a designee of the department, which may include the local health department, ~~will conduct an investigation~~ may conduct an investigation to determine if a violation occurred.

(5) remains the same.

AUTH: 50-40-110, MCA

IMP: 20-1-220, 50-40-104, 50-40-108, MCA

4. The department proposes to repeal the following rule:

37.113.104 BARS, CERTIFICATION OF QUALIFICATION FOR EXCEPTION, is found on page 37-28481 of the Administrative Rules of Montana.

AUTH: 50-40-110, MCA

IMP: 50-40-104, 50-40-108, MCA

5. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.113.108 and 37.113.112 and the repeal of ARM 37.113.104 pertaining to the implementation of the Montana Clean Indoor Air Act (CIAA).

ARM 37.113.108

The proposed rule amendment to ARM 37.113.108(1)(b) would replace the word "smoking" with "tobacco use". The statute indicates that all forms of tobacco use are prohibited on public school property except related to 20-1-220, MCA, and in accordance with the American Indian Religious Freedom Act, 421 USC 1996 and 1996a. Changing the term clarifies that the prohibition is not limited to smoking.

The department has struck out ARM 37.113.108(3) because no exceptions are permitted by law after September 30, 2009.

ARM 37.113.112



The proposed rule amendment to ARM 37.113.112(1) would allow citizens to file anonymous complaints. Mandating that citizen complaints be signed may deter Montana citizens and particularly workers from filing complaints due to the potential for retribution. Local health boards or their designees would need to confirm that a violation of the law has occurred to act on an anonymous complaint. The proposed amendment also allows for electronic complaints to be filed, which makes the complaint process easier and more efficient. The proposed rule amendment to ARM 37.113.112(4) would allow local health boards to determine if an investigation is necessary.

#### ARM 37.113.104

The department is proposing repeal of ARM 37.113.104 because no exceptions are permitted by law after September 30, 2009.

6. The department intends the proposed rule changes to be applied effective October 1, 2009.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 23, 2009.

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

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

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

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

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by letter on April 24, 2009, sent postage prepaid via USPS.

/s/ Shannon McDonald  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.8.126 pertaining to ) PROPOSED AMENDMENT  
grandparents and relative caregivers )  
access to birth records )

TO: All Concerned Persons

1. On July 16, 2009, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 7, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.8.126 ACCESS TO RECORDS (1) and (2) remain the same.

(3) The following people may obtain a certified copy of a birth record:

(a) and (b) remain the same.

(c) a grandparent whose child is listed as a parent on the grandchild's birth certificate upon establishing identification and relationship to the satisfaction of the certifying official;

(d) a caretaker relative providing a medical authorization affidavit issued under 40-6-501 and 40-6-502, MCA, or an educational authorization affidavit issued under 20-50-503, MCA;

(c) through (e) remain the same but are renumbered (e) through (g).

(4) through (10) remain the same.

AUTH: 50-15-103, ~~50-15-113~~, 50-15-121, 50-15-122, MCA

IMP: 20-50-503, 40-6-501, 40-6-502, 50-15-103, ~~50-15-113~~, 50-15-121, 50-15-122, MCA

4. The proposed amendments to ARM 37.8.126 allow relative caretakers, including grandparents, to have access to the birth certificate of that child. Many

times parents may leave their children with other family members without providing any parental authority for the children's care. The circumstances may include parents abandoning their children.

These relative caregivers can consent to the child's medical treatment under 40-6-501 and 40-6-502, MCA, and enrollment in school pursuant to 20-50-503, MCA, without having legal custody or the parents' permission. The caregivers may need copies of the child's birth certificate to further assist in getting medical treatment, education, public assistance, immigration, and for other matters during the time they care for the child.

Currently, these caretakers have no access to the birth records because they are not specifically listed as authorized persons under 50-15-121, MCA. The current form of ARM 37.8.126 allows access only if they have a legal guardianship. The department has also allowed a caretaker to present a parent's power of attorney or a notarized release signed by the parent. These restrictions hinder relative caregivers' needs for birth records that are necessary for the care of the child.

It was decided to use the department's rulemaking authority to add grandparents and relative caretakers as authorized persons. Section 50-15-121, MCA, provides that the "department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter".

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., July 23, 2009.

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

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

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

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

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

/s/ Michelle Maltese  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.43.3502 pertaining to the )  
investment policy statement for the )  
Defined Contribution Retirement Plan )  
and ARM 2.43.5102 pertaining to the )  
investment policy statement for the )  
457 Deferred Compensation Plan )

TO: All Concerned Persons

1. On April 16, 2009, the Public Employees' Retirement Board published MAR Notice No. 2-43-412 pertaining to the proposed amendment of the above-stated rules at page 394 of the 2009 Montana Administrative Register, Issue Number 7.

2. Interested parties were given until May 22, 2009, to comment on the proposed amendments. No comments were received.

3. The board has amended ARM 2.43.3502 and 2.43.5102 as proposed.

/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  
Department of Administration

Certified to the Secretary of State June 15, 2009.



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 37.85.212 and 37.86.205 )  
pertaining to resource based relative )  
value scale (RBRVS) Medicaid )  
provider rates and mid-level )  
practitioner's reimbursement for )  
services to Medicaid clients under )  
age 21 )

TO: All Concerned Persons

1. On April 30, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-467 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 436 of the 2009 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 37.86.205 as proposed.

3. After receiving public comment, the department has amended the following rules that were not in the proposal notice (see comment and response #2 and #3). Matter to be added is underlined. Matter to be deleted is interlined.

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (2)(b) remain the same.

(3) Reimbursement for services of a psychiatrist, except as otherwise provided in this rule, is the lower of:

(a) remains the same.

(b) to address problems of access to mental health services, subject to funding, up to ~~450%~~ 125% of the reimbursement for physicians provided in accordance with the methodologies described in ARM 37.85.212.

(4) through (5) remain the same.

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

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

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT (1) Subject to the requirements of this rule, the Montana Medicaid program pays the following for optometric services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) the provider's usual and customary charge for the service; or

(ii) ~~the reimbursement provided in accordance with the methodologies described in~~ to address problems of access to optometric services, subject to



funding, up to 112% of the reimbursement for allied services provided in accordance with the methodologies described in ARM 37.85.212.

AUTH: 53-6-113, MCA

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

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains as proposed.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to establish the RBRVS fee for a service. Effective July 1, 2008 there are four conversion factor categories. They are:

(i) physician services, which applies to the following health care professionals listed in (2): physicians, mid-levels, podiatrists, public health clinics, independent diagnostic testing facilities, nutrition providers, QMB and EPSDT chiropractors, and dentists rendering medical procedures. The conversion factor for physician services for state fiscal year 2010 is ~~\$38.43~~ \$40.09;

(ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services. The conversion factor for allied services for state fiscal year 2010 is ~~\$30.49~~ \$30.39;

(iii) mental health services, which applies to the following health care professionals listed in (2): psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year 2010 is ~~\$25.95~~ \$24.26; and

(iv) anesthesia services, which applies to anesthesia services. The conversion factor for anesthesia services for state fiscal year 2010 is ~~\$26.25~~ \$27.55.

(c) through (14) remain as proposed.

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

COMMENT #1: The Health Resources Division (division) of the Department of Public Health and Human Services (department) commented that the proposed conversion factors should be changed in the final rule as follows:

Proposed

Final

Physician related services	\$38.43	\$40.09
Allied services	\$30.49	\$30.39
Mental health services	\$25.95	\$24.26
Anesthesia services	\$26.25	\$27.55

The proposed value for the conversion factors were calculated as of April 20, 2009, prior to the end of the 2009 legislative session, to meet publication deadlines for proposed rules to be effective by July 1, 2009. Using data now available regarding the legislative appropriation for state fiscal year (SFY) 2010, historical and projected usage for procedure codes, a 9% increase over 2008 in the aggregate relative value units, a legislative requirement that Medicaid provider rates increase by 2% in the aggregate and the conversion factor for physicians increase by 6%, the division has revised its calculation of the conversion factors.

RESPONSE #1: The department agrees that the conversion factor should be based on the final appropriation for SFY 2010, the most current usage rates and relative value units and the 2009 Legislature's directions regarding provider rates including physicians. It accepts the proposed change and will adopt a conversion factor of:

Physician related services	\$40.09
Allied services	\$30.39
Mental health services	\$24.26
Anesthesia services	\$27.55

COMMENT #2: The Health Resources Division of the department commented that the final change in the conversion factor for physician related services from a proposed conversion factor of \$38.43 to an adopted conversion factor of \$40.09 also impacts ARM 37.86.105. The resource based relative value scale (RBRVS) provider rates established with this conversion factor for psychiatrists is currently increased by a factor of 1.5, as stated in ARM 37.86.105, because of the problem of inadequate access to mental health services for Medicaid clients. These services will continue to have a favorable provider rate adjustment to address access problems but the favorable factor will be reduced from 1.5 to 1.25 to implement the final RBRVS rates for SFY 2010 as directed by the Legislature.

RESPONSE #2: The department agrees with the comment and is amending ARM 37.86.105 to accurately state the current provider rate of reimbursement adjustment.

COMMENT #3: The Health Resources Division of the department commented that the final change in the conversion factor for physician related services from a proposed conversion factor of \$38.43 to an adopted conversion factor of \$40.09 also impacts ARM 37.86.2005. The RBRVS provider rates for optometric services are currently increased by a factor of 1.25 to address the problem of inadequate access to optometric services for Medicaid clients. This provider rate adjustment has not previously been stated in administrative rule. These services will continue to have a favorable provider rate adjustment to address access problems but the favorable

factor will be reduced from 1.25 to 1.12 to implement the final RBRVS rate changes for SFY 2010 as directed by the Legislature.

RESPONSE #3: The department agrees with the comment and is amending ARM 37.86.2005 to accurately state the current provider rate of reimbursement adjustment.

COMMENT #4: The Montana Medical Association (MMA) commented that it supports the increase in the physician services conversion factor in ARM 37.85.212(1). The proposed conversion factor published MAR Notice No. 37-467 (2009 MAR Issue no. 8, page 436) was \$38.43. The final conversion factor for physician services the department is proposing is \$40.09. The MMA commented that a conversion factor of \$40.09 complies with the requirements of §§ 53-6-124 through 53-6-127, MCA.

The MMA commented in opposition to amending ARM 37.86.105(3), which the division proposed as part of its testimony at the May 20, 2009, hearing. ARM 37.85.105(3) establishes a provider rate of reimbursement adjustment for psychiatrists. The adjustment increases the resource based relative value scale (RBRVS) provider rate for psychiatrists' services by a factor of 1.5. The division is proposing to reduce the positive adjustment to 1.25. Psychiatrist services would be paid at the \$40.09 conversion factor rate with a 1.25 adjustment to \$50.11.

The MMA commented that the \$50.11 rate is inadequate and if the amendment results in a lower rate for psychiatrists the change in rule should not be made without published notice in a proposed amendment.

RESPONSE #4: The department gave notice of a rate change, not a rate increase or decrease. The division's proposed change to ARM 37.86.105(3) remains a positive rate adjustment for psychiatrists in relation to other licensed physicians. Using data now available regarding the legislative appropriation for SFY 2010, historical and projected usage for procedure codes, a 9% increase over 2008 in the aggregate relative value units, a legislative requirement that Medicaid provider rates increase by 2% in the aggregate and the conversion factor for physicians increase by 6%, the division had to revise its calculation of the final conversion factors for all providers.

The MMA commented that the \$40.09 conversion factor complies with the requirements of §§ 53-6-124 through 53-6-127, MCA. The department agrees. All licensed physicians, including psychiatrists are receiving that favorable rate change.

Psychiatrist rates are also increased by a provider rate of reimbursement adjustment stated in ARM 37.86.105(3), which the department adopted to implement Montana Medicaid rates. The department considers the adjustment correct because Montana Medicaid recognizes that the unadjusted RBRVS rate for psychiatrists does not provide a sufficient Medicaid reimbursement rate and there are insufficient psychiatrists to treat Medicaid clients, which is an access issue. Statute controls

over any policy decisions by the department, however. The department must comply with the requirements of §§ 53-6-124 through 53-6-127, MCA and the legislative directions in House Bill 2 (HB2), the state appropriation legislation. In order to comply it must reduce the rate adjustment for psychiatrists that it set by administrative rule.

The anticipated increase in relative value units is approximately 9%. Sections 53-6-124 through 53-6-127, MCA require a 6% increase in the physician service conversion factor. The Legislature also requires a 2% overall increase for all Medicaid providers groups which are physicians service, allied services, mental health services, and anesthesia services. In order to balance these legislative directives it is necessary to decrease, but not eliminate, the positive provider rate of reimbursement adjustment for psychiatrists.

COMMENT #5: The Montana Psychiatric Association representative on the Montana Medical Association Board of Trustees commented in opposition to the department's proposed amendment to ARM 37.86.105(3). The board member points out that the conversion factor for physicians must apply to psychiatrists and that an unfavorable provider rate for psychiatrists may result in a decrease in the number of Medicaid patients treated.

RESPONSE #5: The board member is correct that the physician services conversion factor for licensed medical doctors must apply to psychiatrists. The conversion factor established in ARM 37.85.212 for physician services does apply to psychiatrists. Montana Medicaid applies a positive adjustment to the conversion factor for purposes of calculating psychiatrist's reimbursement rate. The proposed adjustment decreases, but does not eliminate, the positive adjustment.

6. These rule amendments are effective July 1, 2009.

/s/ Geralyn Driscoll  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009

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 37.86.1001, 37.86.1004, )  
37.86.1005, and 37.86.1006 )  
pertaining to Medicaid dental service )  
providers' reimbursement rates )

TO: All Concerned Persons

1. On April 30, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-468 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 444 of the 2009 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 37.86.1001, 37.86.1005, and 37.86.1006 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS (RVD) (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) through (b)(v) remain as proposed.

(c) The conversion factor used to determine the Medicaid payment amount for services provided to eligible individuals is ~~\$31.77~~ \$32.75.

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

IMP: 53-6-101, MCA

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

COMMENT #1: The Health Resources Division (division) of the Department of Public Health and Human Services (department) commented that the proposed conversion factor of \$31.77 should be revised to \$32.75. The proposed value of \$31.77 was calculated on April 20, 2009, prior to the end of the 2009 legislative session, to meet publication deadlines for proposed rules to be effective by July 1, 2009. Using data now available regarding the legislative appropriation for state fiscal year (SFY) 2010 and historical and projected dental usage rates, the division revises its calculation of the conversion factor.

RESPONSE #1: The department agrees that the conversion factor should be based on the final appropriation for SFY 2010 and the most current usage rates. It accepts the proposed change and will adopt a conversion factor of \$32.75.

5. These rule amendments are effective July 1, 2009.

/s/ Geralyn Driscoll  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.

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 37.108.507 pertaining to )  
components of quality assessment )  
activities )

TO: All Concerned Persons

1. On April 30, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-469 pertaining to the proposed amendment of the above-stated rule at page 450 of the 2009 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Lisa Swanson  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.

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, 37.78.103, )  
37.78.206, 37.78.220, 37.78.401, )  
37.78.416, and 37.78.506 pertaining )  
to Temporary Assistance for Needy )  
Families (TANF) )

TO: All Concerned Persons

1. On May 14, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-470 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 596 of the 2009 Montana Administrative Register, Issue Number 9.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

4. The effective date of these rules is July 1, 2009.

/s/ Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State June 15, 2009.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.13.601 relating to small )  
brewery closing time restrictions )

TO: All Concerned Persons

1. On December 24, 2008, the department published MAR Notice No. 42-2-804 regarding the proposed amendment of the above-stated rule at page 2613 of the 2008 Montana Administrative Register, issue no. 24.

2. A public hearing was held on January 14, 2009, to consider the proposed amendment. Oral and written testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. John Krempel provided an electronic comment stating that the proposed new regulations for small brewery hours and sales finally seem plain and workable and thanked the department for its work.

RESPONSE NO. 1: The department thanks Mr. Krempel for his supportive comments to this rulemaking process.

COMMENT NO. 2: Mr. Pat Kujawa, Butte, Montana provided an electronic comment stating that he was glad that it was decided to extend consumption hours until 10:00 p.m. rather than 8:00 p.m.

Mr. Kujawa further stated that he believes breweries provide quality goods and services to the state of Montana. Consuming alcohol from growlers or pints filled at a local brewery is much more energy efficient and sustainable practice than buying packaged alcohol from a store.

Mr. Pat Kujawa commented that a brewery is not significantly different from a bar and should be able to, at the owner's discretion, stay open as late as a bar is allowed by law. However, he questioned why breweries were restricted to earlier hours than all-beverage licensees.

RESPONSE NO. 2: The difference in hours for all-beverage licenses and brewery licenses is set by the Montana Legislature. The rule is proposing to clarify when "consumption" must have been completed because the law states that the beer cannot be "provided" after 8:00 p.m. In some cases patrons appear to be consuming the beer as late as 9:30 p.m. and local law enforcement officers are not able to determine if the alcohol was provided after the legal time stated in law.

COMMENT NO. 3: Mr. Curtis Hartman, Livingston, Montana submitted an electronic comment stating that for a brewpub to offer its patrons the same "funtime" as the other bars, they will need to change their licenses and pay more taxes. The main difference from other bars is more than the amount of taxes and licenses

required. Mr. Hartman questioned whether brewpubs pay more in taxes and licenses. He stated that if the answer is yes, that more money is needed from the brewpubs, then they should be regulated the same as other drinking establishments with regard to their closing time. Furthermore, being separated from the bad beer, cigarettes, and hard liquor of other bars, shouldn't cost brewpub patrons their "funtime". Otherwise, they must comply with "brewpub rules," which are more restrictive.

Mr. Curtis Hartman further stated he disagrees with the intent of the Legislature and its negative impact on the brewpub industry. He asked what the vision of the leadership was concerning brewpubs.

RESPONSE NO. 3: The different regulations for an all-beverage license and a brewery license are set by the Montana Legislature. As stated in Response No. 2, the rule is proposing to clarify when "consumption" must have been completed because the law states that the beer cannot be "provided" after 8:00 p.m. The department has not conducted a study of who pays more taxes, the all-beverage licensees or brewers, so the department is not able to respond to Mr. Hartman's tax questions. However, each pays relatively the same in license fees and in most cases the brewers pay less. The vision of the state leadership (legislators) concerning brewpubs is reflected in the language of the brewery laws enacted by the Montana Legislature.

COMMENT NO. 4: Mr. Justin Anthony, Missoula, Montana submitted his comments electronically. He stated that he is opposed to any increase in taprooms for consumption because residents who reside in areas where there are taprooms located have to deal with problems such as: no parking requirements, additional traffic, noise, loud music, litter, fumes from diesel delivery trucks, and the brewing of the beer. The problem seems to grow each and every year. He stated that about 9:30 p.m. it seems to quiet down.

Furthermore, he would not propose making rules without cause but as it is proven time and again, this industry will push for self-regulation and self-interest over the benefits to society. Please do not allow this to happen with the once quiet tasting rooms that are now bars, however restricted, by any definition.

If they want increased liberties to supply alcohol then they need increased regulation to govern its use. This has not happened and the rest of us have to put up with the consequences of this behavior.

RESPONSE NO. 4: The department appreciates Mr. Anthony's comments and the department is trying to adopt rules to meet the intent of the statute enacted by the Montana Legislature. That is why the proposed rule addresses when "consumption" must be completed because the law states that the beer cannot be "provided" after 8:00 p.m. As stated in Response No. 2 above, there is some evidence that patrons, in some establishments, may be consuming the beer as late as 9:30 p.m. This is a problem for local law enforcement since they are not able to determine if the alcohol was provided prior to 8:00 p.m., as required by law. The department's intent is to have clear, understandable, and enforceable rules.

COMMENT NO. 5: Mr. Tony Herbert, Executive Director, Montana Brewers Association (MBA), Helena, Montana presented both oral and written comments to the proposed rule action. Mr. Herbert stated it is important to point out that the members of the MBA respect the intent of the statutes as currently written, and have consistently followed current statutes relating to operating, serving, and consuming hours.

He further stated that during the legislative process in 2005 (HB 315) the department sought change to the statute to reflect a time when consumption should end or adopt a statute similar to one that governs retail on-premise licensees and sets a closing time but it was determined by the Legislature that the legislative intent was clear and no cut-off time for consumption was needed.

Mr. Herbert further stated the MBA members did enter into a negotiated rulemaking process in good faith to consider the department's desire to implement clarification to the statute through rule. The negotiated rulemaking process resulted in the proposed rule which provides for the serving of brewery product samples until 8:00 p.m., and the consumption of those sold or given away to conclude by 10:00 p.m. The settlement on the hour of 10:00 p.m. as the final cut-off point for consumption came more as a result of the department and law enforcement's desire for a 10:00 p.m. cut-off versus a 9:00 p.m. cut-off, than it did from a desire on the part of the brewers for a 10:00 p.m. cut-off versus a 9:00 p.m. cut-off.

Mr. Herbert also stated that the MBA has felt somewhat singled out in this process, in that breweries are not the only entities or licensees that have hour restrictions for serving, yet only brewers' statutes have been subjected to the rule clarification process. As an example, Restaurant, Beer, Wine licensee holders (Cabaret) are not allowed to provide their alcoholic products past 11:00 p.m. The MBA encourages the department to clarify similar regulations over Cabaret license holders.

RESPONSE NO. 5: The department appreciates the Montana Brewers Association (MBA) for participating in the negotiated rulemaking process and at the hearing. During the negotiated rules process, the MBA proposed the 10:00 p.m. deadline and the other members of the rulemaking committee found no merit in rejecting that proposal as a consumption deadline. The law enforcement members of the committee stated it would be easier to enforce if the cut-off were an even hour rather than a half hour.

The department did not single out MBA in this process, the brewers were the only entities that participated in the negotiated rulemaking process, although others were invited to participate. The department admits that it did not consider the Restaurant, Beer, and Wine (Cabaret) licensees consumption period as being a concern during the brewery negotiated rulemaking process. The department is in the process of considering the initiation of rules to set a time limitation of alcoholic beverages for Cabaret establishments.

COMMENT NO. 6: Mr. Herbert stated opponents to the proposed rule have stated the legislative intent was to close brewery sample rooms at 8:00 p.m. However, different parties have different interpretations and recollections of the legislative intent. At the original hearing in 1999, Representative Stovall's bill that

authorized the on-premise sale of brewery samples, it was made clear that breweries could remain open until 2:00 a.m. to sell beer for off-premises consumption, which is why a time for ending of service was used instead of a closing time. The best measure of legislative intent is exactly what is included in the statute, which is that samples may be provided until 8:00 p.m.

RESPONSE NO. 6: The department is trying to adopt a rule to meet the intent of the statute set by the Montana Legislature. The rule is proposing to clarify when "consumption" must have been completed because the law states that the beer cannot be "provided" after 8:00 p.m.

COMMENT NO. 7: Mr. Mark Staples, Legal and Legislative Counsel, representing Montana Tavern Association (MTA), Helena, Montana presented both oral and written comments to the proposed rule action. Mr. Staples offered some background for the legislation which the rules support. MTA was a principal party to the negotiations that led to the statutory exemption these rules are proposed to clarify. He stated that the rationale behind the legislation was unequivocally that the small breweries wanted to be "able to sell" the "samples" they said they were then "giving away." He stated that the breweries insisted they didn't want to compete with the bars and taverns because they were their customers.

Mr. Staples stated that during the original legislative process that enacted the law these rules support some debate occurred but ultimately it was agreed upon by the MTA and the small breweries that an 8:00 p.m. cut-off time for providing samples in the small breweries was acceptable. At that time, it was never contemplated that some brewers would sell their last "samples" just before 8:00 p.m., and then allow imbibing until an undefined time, so it was not necessary to specify in the law that 8:00 p.m. was also the imbibing cut-off. The word "provided" seemed perfectly clear on that point. He further stated that the brewers said at that time that by that hour (8:00 p.m.) they would either want to get back to their evening brewing or home to their families, so they would encourage their "samplers" to go to the nearest bar to enjoy the sampled product there. It was to be a symbolic relationship with the existing on-premise retail licensees, not a competitive one.

Mr. Staples stated that most small breweries still operate within the agreed upon - and legislated - parameters. There are however, outliers, who are obviously opposed to (and abusive of) the characteristics that were meant to distinguish these "sample" rooms from other licensees, and they openly flaunt the intent of the statutory scheme.

Mr. Staples stated, "if 8:00 p.m. is the clear cut-off time for 'providing' beer samples at these 'sample rooms,' yet we're going to suspend the clear meaning of the law and accept the argument that 'providing' doesn't include allowing consumption, then what is a reasonable time to cut-off imbibing those previously 'provided' samples?" He stated that given the legislative intent of this statute, which was clearly an 8:00 o'clock wrap up of "sampling," it would constitute a serious abuse of the public policy intent (and the agreement at its heart to stretch that time beyond the reasonable amount of time it would take to responsibly imbibe the last sample before the 8:00 p.m. cut-off). Anything beyond a half hour (or at the extreme outside, an hour) is just clearly an attempt to skirt the legislative intent of an 8:00

p.m. cut-off for "providing" the "samples."

RESPONSE NO. 7: The department agrees the word "provide" is ambiguous and does not clarify if provide includes consumption, and for that reason, the department is adopting this rule to establish clear, understandable, and enforceable direction for local law enforcement, the establishments, and the department of when "providing" the product must be concluded.

COMMENT NO. 8: Mr. Staples stated that these breweries are supposed to be primarily manufactures of a controlled product in a well-established control lattice know as the 3-tier system. Montana small breweries are already advantaged by the only exception to the prohibition against vertical integration of the manufacturing, distribution, and retail tiers of the Montana alcohol control system. Small breweries can however - within prescribed limits - manufacture, distribute, and retail. That is a very privileged and advantageous position. Any further expansion of those exceptions would not only fly in the face of legislation that created these unique exemptions for these brewers, but would also undermine the 3-tier/nonvertical integration foundation of the Montana entire alcohol control system.

RESPONSE NO. 8: The exceptions for the brewery licenses and their sample rooms are set by the Montana Legislature. The rule is proposing to clarify when "consumption" must have been completed because the law states that the beer cannot be "provided" after 8:00 p.m. The department believes defining when beer consumption must be concluded does not undermine the 3-tier system.

COMMENT NO. 9: Mr. Staples opined that one doesn't have to imagine the abusive consequences of not adhering to the original intent of the limited sample room exemption; they are already manifest. He provided two examples of "small" breweries in Billings that are not compliant with the original intent of the statute. One throws weekly open-air "keggers" for thousands during warmer weather and another is a converted gas station that sells no beer at wholesale whatsoever. It is really nothing more than a bar that makes its own alcohol and only sells it at retail. Mr. Staples asked, "what is next, every neighborhood has a bar in someone's garage where that person distills/brews his/her own and sells it to the neighbors?" He asked the department to consider these scenarios when weighing public safety.

RESPONSE NO. 9: The regulations regarding brewery licenses are set by the Montana Legislature. If violations of the current laws are occurring at some of the breweries in Montana, they will be handled accordingly. The intent of this rule is to clarify when "consumption" must be completed and does not go beyond that purpose. Therefore, it would not address any of the suggested examples provided by Mr. Staples in this comment. The department has considered the public's health, safety, and welfare while proposing this rule.

COMMENT NO. 10: Mr. Staples asked the department to remember there is now also a "micro-distilling" statute that was fashioned after the small brewery laws and if the hours for imbibing are extended for the small breweries, the department

will be hard pressed not to do so for the micro-distilleries. Mr. Staples stated that we already have places that legally allow consumption of beer and/or spirits past 8:00 p.m. and these places are called Montana on-premise, all-beverage, or beer and wine retail licensees. Thousands of Montana businesses that have paid hundreds of millions of dollars for the licenses and their retail selling privileges, and neither small breweries nor micro-distilleries are such licensees.

RESPONSE NO. 10: Liquor licenses are established by the Montana Legislature and that body has directed the department to establish rules to support the various liquor statutes. As far as "micro-distilleries" are concerned, 16-4-312, MCA, clearly outlines that consumption can only occur between the hours of 10 a.m. to 8 p.m. for these types of licenses.

COMMENT NO. 11: Mr. Staples stated that the MTA respectfully asks the department to recognize and uphold the intended clear legal distinctions and separations between alcohol retailers and alcohol manufacturers, as well as the intent of the statute at issue, and adopt rules that reflect both. Any rule that allows alcohol consumption in these places more than a half-hour (or an hour at the extreme outside) after "providing" the alcohol legally ends would only further mutate the statutory exemption.

RESPONSE NO. 11: The department understands the distinction between alcohol retailers and alcohol manufacturers, as well as the intent of the statute at issue. For that reason, the department invited those parties that would be impacted by the outcome of this rulemaking action to participate in the negotiated rulemaking process. The brewery industry and local law enforcement agencies provided participants to this process but there was no representation provided from the Montana Tavern Association.

3. The primary responsibility of the department is to ensure public health, safety, and welfare is protected and to enforce the alcoholic beverages laws enacted by the Legislature. The Legislature has enacted a law limiting the time periods that a brewery may "provide" beer to the public in its taprooms. However, the law is ambiguous as to when consumption must cease. As reflected in the comments from citizens and law enforcement, public health, safety, and welfare concerns - including the expectation of residents to enjoy their residential neighborhoods in peace - requires a reasonable time period for brewery taproom consumption to cease.

The ambiguity in the micro-brewery law (16-3-213, MCA) does not exist in the micro-distilleries law, in as much as the micro-brewery law states the micro-brewery may "provide" samples within a specific time period but does not clarify if "providing" includes having consumed the sample within that same time period. The micro-distillery law (16-4-312, MCA), specifically states "consumption" must have occurred during the time specified in the law.

The term "provides", as stated in the law, does not give clear direction to enforcement officers regarding whether the alcohol must be served or consumed by 8:00 p.m., which is why the department proposed this rule. For clarity and ease of administration to both the department and the local law enforcement officers, it

would be very helpful if the Legislature would consider revisiting this statute and clarify, in the law, when consumption must end.

The local law enforcement representatives who served on the negotiated rulemaking panel and are responsible for determining that the public health, safety, and welfare issues are upheld according to the law, stated they preferred consumption to end on the hour rather than the half hour for ease and effectiveness of local law enforcement agencies administration.

The department appreciates that competition exists between various parts of the alcoholic beverage industries, but the concern of the department is the enforcement of the public, health, safety, and welfare laws as they pertain to the alcoholic beverage laws of the state. The department has considered the issues and attempted to reach a reasonable and fair compromise of the views of the parties involved.

4. Therefore, based on the comments received at the hearing and input from the members of the negotiated rulemaking team, the department amends ARM 42.13.601 as shown below.

42.13.601 SMALL BREWERY RESTRICTIONS (1) through (4) remain as proposed.

(5) On-premises consumption and possession shall not be permitted before 10 a.m. or after ~~10~~ 9 p.m. The brewery shall be responsible for removing all product samples from patrons' possession in order to comply with this provision.

(6) remains as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-214, MCA

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at [www.mt.gov/revenue](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 June 15, 2009

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.



**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

**Use of the Administrative Rules of Montana (ARM):**

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2009. This table includes those rules adopted during the period April 1, 2009, through June 30, 2009, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2009, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2008 and 2009 Montana Administrative Register.

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

### GENERAL PROVISIONS, Title 1

1.3.201 and other rule - Definitions - MAPA, p. 2418, 7

### ADMINISTRATION, Department of, Title 2

I Waiver of In-State Office Requirement, p. 2320, 2621  
2.5.502 and other rule - Contract Security, p. 2310, 2616  
2.59.401 Credit Union Supervisory and Examination Fees, p. 2323, 2620  
2.59.1711 Continuing Education, p. 159, 735

#### (Public Employees' Retirement Board)

2.43.203 and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board, p. 1852, 2467, 78  
2.43.1001 Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document, January 1, 2008, Edition, p. 2396, 82  
2.43.1801 Adoption by Reference of the State of Montana Public Employee Deferred Compensation Plan Document, January 1, 2008, Edition, p. 2393, 81  
2.43.3502 and other rule - (Public Employees' Retirement Board) Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 394

(Teachers' Retirement Board)

2.44.301A and other rules - Administration of the Teachers' Retirement System of the State of Montana, p. 2313, 2619, 3

(State Compensation Insurance Fund)

2.55.320 and other rule - Classifications of Employments - Construction Industry Premium Credit Program, p. 2399, 140

AGRICULTURE, Department of, Title 4

4.9.401 Raising the Wheat and Barley Assessment, p. 2574, 264

4.10.401 Farm Applicator Licensing Schedule, p. 2198, 2557

4.12.1320 and other rules - Quarantines - Pest Management Standards, p. 118, 343

STATE AUDITOR, Title 6

6.6.504 and other rules - Medicare Supplements, p. 506

6.6.2101 and other rules - Discrimination, p. 2403, 83

6.6.3504 and other rules - Annual Audited Reports - Establishing Accounting Practices and Procedures to be Used in Annual Statements - Actuarial Opinion - Annual Audit - Required Opinions - Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis - Additional Considerations for Analysis, p. 2201, 2622

COMMERCE, Department of, Title 8

I Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 2408, 410

8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 2411, 141

8.119.101 Tourism Advisory Council, p. 398, 862

(Montana Coal Board)

8.101.201 and other rules - Policies of the Montana Coal Board - Applications for Montana Coal Board Grant Assistance, p. 2220, 344

EDUCATION, Department of, Title 10

(Board of Public Education)

10.54.4010 and other rules - Math Content Standards and Performance Descriptors, p. 767

10.57.102 and other rules - Educator Licensure, p. 30, 345

10.57.412 and other rule - Mentor Teachers, p. 789

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

- 12.6.1101 and other rules - Falconry Regulation in Montana, p. 792
- 12.11.2204 No Wake Zone on Echo Lake, p. 53, 863

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164
- 17.56.502 Underground Storage Tanks - Reporting of Suspected Releases, p. 2232, 2416, 4

(Board of Environmental Review)

- 17.4.101 and the Department - Model Rules, p. 129
- 17.8.102 Air Quality - Incorporation by Reference, p. 1, 411
- 17.8.308 and other rules - Air Quality - Particulate Matter - Permit Application Fees - General Exclusions for Air Quality Permits - Requirements for Timely and Complete Air Quality Operating Permit Applications, p. 2224, 142
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162
- 17.38.101 and other rules - Public Water Supply - Incorporation by Reference of Current Federal Regulations and Other Materials in the Public Water Supply Rules - Consecutive System Coverage, p. 1731, 2625
- 17.40.318 and other rule - and the Department - Water Treatment Systems and Operators - Public Water and Sewage System Requirements - State Revolving Fund and Public Water and Sewer Projects Eligible for Categorical Exclusion From MEPA Review, p. 55, 412

JUSTICE, Department of, Title 23

- 1.3.201 and other rule - Definitions - MAPA, p. 2418, 7
- 23.19.1001 Consumer Debt Management License Fee, p. 810
- 23.12.1201 and other rules - Attendance at MLEA - Performance Criteria at MLEA, p. 401, 867

(Gambling Control Division)

- 23.16.202 and other rules - Gambling Business License - Approval of Variations of Standard Bingo Cards - Credit Play - Card Dealer Licenses - Card Room Contractors License Requirements - Sports Tab Game Seller License - Distributor Licenses - Route Operator Licenses - Manufacturer Licenses - Accounting System Vendor Licenses - Manufacturer of Illegal Gambling Devices License - Raffle Record Keeping Requirements, p. 912
- 23.16.1802 and other rules - Audit Data Storage Devices - Definitions - Record Keeping Requirements, p. 2540, 84, 143

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Licensee Lookup Database, p. 61  
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services, Heavy Construction Services, Highway Construction Services, and Nonconstruction Services, p. 249, 736, 868

24.29.1533 and other rule - Workers' Compensation Medical Fee Schedule for Nonfacilities, p. 2326, 8

(Human Rights Commission)

24.8.101 and other rules - Allegations of Unlawful Discrimination, p. 2091, 2636

(Alternative Health Care Board)

24.111.2102 and other rule - Continuing Education, p. 2577, 265

(Board of Architects and Landscape Architects)

24.114.101 and other rules - Board Organization - Procedural Rules - Definitions - Fees - Architect Seal - Architect Business Entity Practice - Emergency Use - Licensure By Examination - Unprofessional Conduct - Screening Panel - Architect Partnerships - Landscape Architect Licensure, p. 2545, 413

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923

(State Electrical Board)

24.141.301 and other rules - Definitions - Fees - Applications - Temporary Practice Permits - Examinations - Continuing Education - Master Electrician Qualifications, p. 64

(Board of Medical Examiners)

I Medical Direction, p. 2238, 416  
24.156.2719 Expired License, p. 2235, 415

(Board of Nursing)

24.159.301 and other rules - Definitions - Foreign Educated Applicants for RN Licensure Requirements - APRNs, p. 875, 2346, 2641

24.159.1006 and other rules - Cosmetic Procedure Standards - Nonroutine Applications, p. 252

(Board of Outfitters)

24.171.401 and other rules - Fees - Qualifications, p. 256

(Board of Physical Therapy Examiners)

24.177.405 and other rules - Physical Therapy Aides - Temporary Licenses - Out of State Applicants - Foreign Trained Applicants - Topical Medication Protocols - Continuing Education - Physical Therapists, p. 586

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rules - Definitions - Fees - Private Alternative Adolescent Residential and Outdoor Programs, p. 303

24.181.401 and other rules - Registration Fee Schedule - Licensing Fee Schedule - Renewals - Private Alternative Adolescent Residential and Outdoor Programs, p. 339, 870

(Board of Public Accountants)

24.201.301 and other rules - Accounting, p. 1654, 9

(Board of Realty Regulation)

24.210.301 and other rules - Definitions - Licensure - Unprofessional Conduct - Supervising Broker Endorsement - Citations and Fines, p. 1679, 2558

24.210.301 and other rules - Definitions - Licensing - Renewals - Unprofessional Conduct - Continuing Education, p. 928

24.210.641 Unprofessional Conduct, p. 2580, 748

(Board of Sanitarians)

24.216.402 and other rule - Fees - Sanitarian in Training, p. 75, 455

(Board of Social Work Examiners and Professional Counselors)

24.219.301 and other rules - Definitions - Fees - Application - Licensure - Status Conversion - Application - Continuing Education - Unprofessional Conduct - Social Work Examiners and Professional Counselors, p. 2583, 812

LIVESTOCK, Department of, Title 32

32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 2596, 144

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.10.132 and other rules - Firewarden Qualifications, Duties, and Legal Representation for State Firefighters, p. 2246, 2559

36.12.190 and other rule - Filing a Change Application - Change Application - Historic Use, p. 814

(Board of Land Commissioners)

I-XVIII (Board and Department) Selection, Implementation, and Reporting of Real Estate Projects on State Trust Lands, p. 1955, 2645

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-VI Medical Marijuana Program, p. 2027, 322
- I-IX Mental Health Center Services for Youth With Serious Emotional Disturbance (SED), p. 2603, 272
- I-XXVII Behavioral Health Inpatient Facilities (BHIF), p. 844
- 37.5.117 and other rules - Establishing Hearings for Disputes Related to the Medicaid Drug Rebate Program, p. 2338, 2669
- 37.5.117 and other rules - Swimming Pools, Spas, and Other Water Features, p. 604
- 37.8.1801 and other rules - Montana Central Tumor Registry, p. 2428, 87
- 37.10.101 and other rules - Living Wills, p. 1686, 2356, 86
- 37.30.405 Vocational Rehabilitation Program Payment for Services, p. 407, 941
- 37.52.210 Adjustment of Subsidy Payment, p. 132, 417
- 37.75.101 and other rules - Child and Adult Care Food Program (CACFP), p. 2446, 88
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 596
- 37.81.304 Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 2330, 2670
- 37.85.212 and other rule, Resource Based Relative Value Scale (RBRVS) Medicaid Provider Rates and Mid-Level Practitioner's Reimbursement for Services to Medicaid Clients Under Age 21, p. 436
- 37.85.903 and other rule - General Medicaid Services - Physician-Administered Drugs, p. 2129, 2671
- 37.86.1001 and other rules, Medicaid Dental Service Providers' Reimbursement Rates, p. 444
- 37.86.1801 and other rules - Durable Medical Equipment (DME), p. 2334, 2672
- 37.86.2207 and other rules - Medicaid School-Based Health Services, p. 2251, 2673
- 37.86.2207 and other rules - Medicaid and MHSP Reimbursement for Youth Mental Health Services, p. 1536, 2360, 2674
- 37.86.2405 and other rules - Medicaid Transportation Reimbursement for Mileage, p. 2599, 145
- 37.87.1223 Psychiatric Residential Treatment Facility (PRTF) Services - Reimbursement, p. 261, 418
- 37.88.101 and other rules - Targeted Case Management for Youth With Serious Emotional Disturbance, p. 2434, 266
- 37.106.2301 and other rule - Hospice Facilities, p. 2255, 351
- 37.106.2401 and other rules - Home Infusion Therapy (HIT), p. 827
- 37.108.507 Components of Quality Assessment Activities, p. 450
- 37.111.230 Trailer Courts and Tourist Campgrounds, p. 859



PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.601 and other rules- Motor Carrier Certificates - Electronic Copy of Filings, p. 319
- 38.5.2102 and other rules - Electric Utility Voltage - Pipeline Safety, p. 2453, 90

REVENUE, Department of, Title 42

- I Temporary Emergency Lodging Credit, p. 2262, 12
- I & II Property Tax for Privately Owned Landfills, p. 2460, 751
- 42.4.201 and other rules - Individual Energy Conservation Installation Credit, p. 2456, 459
- 42.4.2501 Biodiesel and Biolubricant Tax Credit, p. 135, 419
- 42.13.601 Small Brewery Closing Time Restrictions, p. 2613
- 42.15.215 Senior Interest Income Exclusions, p. 137, 353
- 42.20.515 Taxable Value of Newly Taxable Property, p. 933
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 2134, 2502, 2561

## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2009 appear. Vacancies scheduled to appear from June 1, 2009, through August 31, 2009, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2009.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Nursing Home Administrators</b> (Labor and Industry)			
Mr. Loren Hines Butte	Governor	reappointed	5/28/2009 5/28/2014
Qualifications (if required): representative of an institution caring for chronically ill or aged			
<b>Board of Real Estate Appraisers</b> (Labor and Industry)			
Mr. Darwin Ernst Hamilton	Governor	reappointed	5/1/2009 5/1/2012
Qualifications (if required): real estate appraiser			
Ms. Kathleen Susan Gallaher Bozeman	Governor	reappointed	5/1/2009 5/1/2012
Qualifications (if required): public representative			
<b>Board of Realty Regulation</b> (Labor and Industry)			
Ms. Lucinda Willis Polson	Governor	reappointed	5/9/2009 5/9/2013
Qualifications (if required): real estate salesperson and a Democrat			
<b>Capital Finance Advisory Council</b> (Administration)			
Secretary of State Linda McCulloch Helena	Governor	Johnson	5/19/2009 11/22/2009
Qualifications (if required): Secretary of State			
<b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services)			
Ms. Diane Cashell Bozeman	Governor	reappointed	5/19/2009 6/16/2010
Qualifications (if required): prevention programs/services experience			

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services) cont.			
Ms. Patty Stevens	Governor	Welker	5/19/2009
Ronan			6/16/2010
Qualifications (if required): prevention programs/services experience			
<b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation)			
Mr. Leo Solf	Governor	reappointed	5/13/2009
Winnett			1/1/2012
Qualifications (if required): grazing district director			
Mr. Alvin Windy Boy Sr.	Governor	reappointed	5/13/2009
Box Elder			1/1/2012
Qualifications (if required): public representative			
<b>Montana Potato Commodity Advisory Committee</b> (Agriculture)			
Mr. Bill Buyan	Director	reappointed	5/20/2009
Sheridan			5/20/2012
Qualifications (if required): not specified			
Mr. Art Mangels	Director	reappointed	5/20/2009
Dillon			5/20/2012
Qualifications (if required): not specified			
<b>State Emergency Response Commission</b> (Military Affairs)			
Mr. Bob Levitan	Governor	Lamson	5/13/2009
Helena			10/1/2011
Qualifications (if required): representative of the Department of Natural Resources and Conservation			

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Interoperability Executive Advisory Council (Administration)</b>			
Commissioner Kathy Bessette Havre Qualifications (if required): county government representative	Governor	reappointed	5/6/2009 11/13/2010
Attorney General Steve Bullock Helena Qualifications (if required): Attorney General	Governor	McGrath	5/6/2009 11/13/2010
Ms. Jodi Camrud Billings Qualifications (if required): federal representative	Governor	not listed	5/6/2009 11/13/2010
Mr. Leo Dutton Helena Qualifications (if required): county law enforcement representative	Governor	Liedle	5/6/2009 11/13/2010
Director Mike Ferriter Helena Qualifications (if required): Director of the Department of Corrections	Governor	reappointed	5/6/2009 11/13/2010
Mr. Ed Joiner Lame Deer Qualifications (if required): tribal government representative	Governor	not listed	5/6/2009 11/13/2010
Director Janet Kelly Helena Qualifications (if required): director of the Department of Administration	Governor	reappointed	5/6/2009 11/13/2010

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Interoperability Executive Advisory Council (Administration) cont.</b>			
Mr. Jeff Logan Missoula	Governor	Winn	5/6/2009 11/13/2010
Qualifications (if required):	paid fire department representative		
Director Jim Lynch Helena	Governor	reappointed	5/6/2009 11/13/2010
Qualifications (if required):	Director of the Department of Transportation		
Mr. Christian Mackay Helena	Governor	not listed	5/6/2009 11/13/2010
Qualifications (if required):	Executive officer of the Board of Livestock		
Mr. Joe Maurier Helena	Governor	Hagener	5/6/2009 11/13/2010
Qualifications (if required):	Director of the Department of Fish, Wildlife and Parks		
Mr. Ken Mesch Helena	Governor	not listed	5/6/2009 11/13/2010
Qualifications (if required):	Administrator of the Disaster and Emergency Services Division		
Chief Alan Michaels Glendive	Governor	Lewis	5/6/2009 11/13/2010
Qualifications (if required):	municipal law enforcement representative		
Ms. Brenna Neinast Havre	Governor	Horsman	5/6/2009 11/13/2010
Qualifications (if required):	federal representative		

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Interoperability Executive Advisory Council (Administration) cont.</b>			
Mr. Rick Poss Lewistown	Governor	Failing	5/6/2009 11/13/2010
Qualifications (if required): emergency medical community representative			
Ms. Heather Roos Miles City	Governor	Lee	5/6/2009 11/13/2010
Qualifications (if required): 9-1-1 community representative			
Director Mary Sexton Helena	Governor	reappointed	5/6/2009 11/13/2010
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Director Anna Whiting-Sorrell Helena	Governor	Miles	5/6/2009 11/13/2010
Qualifications (if required): Director of the Department of Public Health and Human Services			
Ms. Sheena Wilson Helena	Governor	reappointed	5/6/2009 11/13/2010
Qualifications (if required): Governor's office representative			
Mr. Chuck Winn Bozeman	Governor	Tussing	5/6/2009 11/13/2010
Qualifications (if required): municipal government representative			

**BOARD AND COUNCIL APPOINTEES FROM MAY, 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Water Pollution Control Advisory Council</b> (Environmental Quality)			
Mr. Corey Fisher Missoula	Governor	Clifford	5/19/2009 0/0/0
Qualifications (if required): conservation organization representative			
Mr. Richard Hoehne Phillipsburg	Governor	Bengochea	5/19/2009 0/0/0
Qualifications (if required): public works director			



**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Ms. Gladys Considine, Missoula Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Mumby, Kalispell Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Lou Miller, Wolf Point Qualifications (if required): public representative	Governor	7/18/2009
<b>Alternative Health Care Board</b> (Labor and Industry) Ms. Molly Danison, Missoula Qualifications (if required): midwife	Governor	9/1/2009
<b>Board of Banking</b> (Administration) Mr. Russ Ritter, Helena Qualifications (if required): public representative	Governor	7/1/2009
Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2009
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry) Mr. Steve Wilson, Helena Qualifications (if required): hearing aid dispenser (no masters)	Governor	7/1/2009
Ms. Jill Davis, Great Falls Qualifications (if required): public representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Hearing Aid Dispensers</b> (Labor and Industry) cont.            Mr. Brian Bolenbaugh, Missoula            Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2009
<p><b>Board of Medical Examiners</b> (Labor and Industry)            Ms. Carole Erickson, Missoula            Qualifications (if required): public representative</p>	Governor	9/1/2009
<p>Mr. Dwight Thompson, Harlowton            Qualifications (if required): licensed physician assistant</p>	Governor	9/1/2009
<p>Dr. Kris Spanjian, Billings            Qualifications (if required): doctor of medicine</p>	Governor	9/1/2009
<p>Ms. Patricia Bollinger, Helena            Qualifications (if required): nutritionist</p>	Governor	9/1/2009
<p>Mr. Patrick Boylan, Corvallis            Qualifications (if required): public representative</p>	Governor	9/1/2009
<p><b>Board of Nursing</b> (Labor and Industry)            Ms. Connie Reichelt, Havre            Qualifications (if required): advanced practice registered nurse</p>	Governor	7/1/2009
<p><b>Board of Physical Therapy Examiners</b> (Labor and Industry)            Ms. Kim Miller, Virginia City            Qualifications (if required): public member</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Physical Therapy Examiners</b> (Labor and Industry) cont.                      Ms. Patti Jo Lane, Great Falls                      Qualifications (if required): physical therapist</p>	Governor	7/1/2009
<p>Dr. Ron Peterson, Cascade                      Qualifications (if required): doctor of medicine</p>	Governor	7/1/2009
<p><b>Board of Private Security</b> (Labor and Industry)                      Mr. Daniel Taylor, Glasgow                      Qualifications (if required): contract security company representative</p>	Governor	8/1/2009
<p><b>Board of Psychologists</b> (Labor and Industry)                      Dr. George Watson, Bozeman                      Qualifications (if required): psychologist in private practice</p>	Governor	9/1/2009
<p><b>Board of Radiologic Technologists</b> (Labor and Industry)                      Ms. Kelli Bush, Butte                      Qualifications (if required): radiologic technician</p>	Governor	7/1/2009
<p><b>Board of Sanitarians</b> (Governor)                      Ms. Denise Moldroski, East Helena                      Qualifications (if required): sanitarian</p>	Governor	7/1/2009
<p><b>Board of Veterans' Affairs</b> (Military Affairs)                      Mr. Keith Heavyrunner, Browning                      Qualifications (if required): Veteran and Resident of Region 3</p>	Governor	8/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Veterans' Affairs</b> (Governor)            Mr. Byron Erickson, Helena            Qualifications (if required): U.S. Department of Labor representative</p>	Governor	8/1/2009
<p><b>Board of Water Well Contractors</b> (Natural Resources and Conservation)            Mr. Kevin Haggerty, Bozeman            Qualifications (if required): water well contractor</p>	Governor	7/1/2009
<p><b>Burial Preservation Board</b> (Administration)            Mr. Carl Fourstar, Poplar            Qualifications (if required): representative of the Assiniboine-Sioux Tribes (Fort Peck)</p>	Governor	8/22/2009
<p>Dr. Randall Skelton, Missoula            Qualifications (if required): physical anthropologist</p>	Governor	8/22/2009
<p>Mr. Steve Platt, Helena            Qualifications (if required): representative of the State Historic Preservation Office</p>	Governor	8/22/2009
<p>Ms. Sara Young, Lame Deer            Qualifications (if required): public representative</p>	Governor	8/22/2009
<p>Mr. Reuben Mathias, Pablo            Qualifications (if required): representative of the Salish-Kootenai Tribes (Flathead)</p>	Governor	8/22/2009
<p>Ms. Katherine Rink, East Glacier            Qualifications (if required): representative of the Blackfeet Tribe</p>	Governor	8/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Community Health Center Advisory Group</b> (Public Health and Human Services)		
Mr. Larry Putman, Malta Qualifications (if required): public representative	Governor	7/1/2009
Ms. Kathy Kenyon, Billings Qualifications (if required): public representative	Governor	7/1/2009
Mr. Perry Howell, Billings Qualifications (if required): chief financial officer of a community health center	Governor	7/1/2009
Ms. Maria Clemons, Libby Qualifications (if required): executive employee of a community health center	Governor	7/1/2009
Ms. Marge Levine, Helena Qualifications (if required): Montana Primary Care Association's designee	Governor	7/1/2009
<b>Community Service Commission</b> (Labor and Industry)		
Mr. George Dennison, Missoula Qualifications (if required): representative of higher education	Governor	7/1/2009
Mr. Chris Kolstad, Ledger Qualifications (if required): public representative	Governor	7/1/2009
Ms. Karin Billings, Helena Qualifications (if required): agency representative	Governor	7/1/2009
Mr. Gary Pfister, Helena Qualifications (if required): agency representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Community Service Commission</b> (Labor and Industry) cont.            Mr. Jim Murphy, Helena            Qualifications (if required): agency representative</p>	Governor	7/1/2009
<p><b>Economic Development Advisory Council</b> (Commerce)            Mr. Jim Atchison, Colstrip            Qualifications (if required): public representative</p>	Governor	7/23/2009
<p>Ms. Elizabeth Marchi, Whitefish            Qualifications (if required): public representative</p>	Governor	7/23/2009
<p>Mr. Jim Lee, Glendive            Qualifications (if required): public representative</p>	Governor	7/23/2009
<p>Mr. Joe Menicucci, Belgrade            Qualifications (if required): public representative</p>	Governor	7/23/2009
<p>Mr. Richard Sangray, Box Elder            Qualifications (if required): public representative</p>	Governor	7/23/2009
<p><b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education)            Mr. Todd Buchanan, Billings            Qualifications (if required): investment manager</p>	Governor	7/1/2009
<p>Mr. Jon Satre, Helena            Qualifications (if required): public representative</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services)		
Mr. Frank Gary, Butte Qualifications (if required): public representative	Governor	8/29/2009
Mr. David Herrera, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Mary Jane Nealon, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kathy Hall, Billings Qualifications (if required): public representative	Governor	8/29/2009
Ms. Wendy Doely, Kalispell Qualifications (if required): public representative	Governor	8/29/2009
Mr. Andrew Laue, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Rick Holman, Butte Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kelly Parsley, Helena Qualifications (if required): public representative	Governor	8/29/2009
Ms. Vicki Peterson, Pablo Qualifications (if required): public representative	Governor	8/29/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services) cont.		
Mr. Casey Rudd, Belgrade Qualifications (if required): public representative	Governor	8/29/2009
Mr. Walter White Tail Feather, Poplar Qualifications (if required): public representative	Governor	8/29/2009
Ms. Donna Davis, Helena Qualifications (if required): public representative	Governor	8/29/2009
Mr. Jamee Greer, Missoula Qualifications (if required): public representative	Governor	8/29/2009
<b>Historical Records Advisory Board</b> (Historical Society)		
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative	Governor	8/29/2009
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public representative	Governor	8/29/2009
Ms. Samantha K. Pierson, Libby Qualifications (if required): public representative	Governor	8/29/2009
Ms. Donna McCrea, Missoula Qualifications (if required): public representative	Governor	8/29/2009



**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Records Advisory Board</b> (Historical Society) cont. Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	8/29/2009
Ms. Faith Bad Bear-Bartlett, Hardin Qualifications (if required): public representative	Governor	8/29/2009
Mr. Jordan Goffin, Missoula Qualifications (if required): public representative	Governor	8/29/2009
<b>Judicial Standards Commission</b> (Justice) Mr. John Murphy, Great Falls Qualifications (if required): public representative	Governor	7/1/2009
<b>Mental Disabilities Board of Visitors</b> (Governor) Rep. Holly Raser, Missoula Qualifications (if required): consumer of developmental disability services	Governor	7/1/2009
Mrs. Suzanne Hopkins, Lewistown Qualifications (if required): consumer of mental health services	Governor	7/1/2009
Ms. Teresa Lewis, Harlem Qualifications (if required): consumer of mental health services	Governor	7/1/2009
<b>Mint Committee</b> (Agriculture) Mr. Kenneth W. Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Mint Committee</b> (Agriculture) cont. Mr. Larry Brosten, Kalispell Qualifications (if required): mint grower	Governor	7/1/2009
<b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State) Ms. Linda Vaughey, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Lorents Grosfield, Big Timber Qualifications (if required): none specified	Secretary of State	7/10/2009
Attorney General Joseph P. Mazurek, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Debbie Shea, Butte Qualifications (if required): none specified	Secretary of State	7/10/2009
Rep. Cindy Younkin, Bozeman Qualifications (if required): none specified	Secretary of State	7/10/2009
Mr. Steve Brown, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Consensus Council</b> (Administration)            Senator Lorents Grosfield, Big Timber            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Mr. Van Wolverton, Alberton            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Ms. Eleanor Yellowrobe, Havre            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Mr. Nickolas C. Murnion, Jordan            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p><b>Montana Historical Society Board of Trustees</b> (Historical Society)            Mr. Jim Court, Billings            Qualifications (if required): public member</p>	Governor	7/1/2009
<p><b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture)            Mr. John Kelly, Great Falls            Qualifications (if required): livestock/agriculture industry member</p>	Director	9/17/2009
<p>Mr. James Melin, Livingston            Qualifications (if required): forage producer</p>	Director	9/17/2009
<p><b>Montana Wheat and Barley Committee</b> (Agriculture)            Mr. Brian Kaae, Dagmar            Qualifications (if required): resident of District 1</p>	Governor	8/20/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Wheat and Barley Committee</b> (Agriculture) cont.            Mr. Melvin Goffena, Wilsall            Qualifications (if required): resident of District 6</p>	Governor	8/20/2009
<p>Ms. Kim Holzer, Stanford            Qualifications (if required): resident of District 5</p>	Governor	8/20/2009
<p><b>Motorcycle Safety Advisory Commission</b> (Commissioner of Higher Education)            Mr. Steve Hofland, Helena            Qualifications (if required): cycle group member</p>	Governor	7/1/2009
<p><b>Noxious Weed Summit Advisory Council</b> (Agriculture)            Mr. Kevin Chappell, Helena            Qualifications (if required): representative of a state agency</p>	Governor	7/26/2009
<p>Mr. Jerry Marks, Missoula            Qualifications (if required): representative of the MSU Extension Agency</p>	Governor	7/26/2009
<p>Mr. Scott Bockness, Billings            Qualifications (if required): representative of a weed control association</p>	Governor	7/26/2009
<p>Mr. Jim Ghekiere, Chester            Qualifications (if required): representative of a county weed district</p>	Governor	7/26/2009
<p>Mr. Dave Burch, Helena            Qualifications (if required): representative of the Department of Agriculture</p>	Governor	7/26/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Noxious Weed Summit Advisory Council</b> (Agriculture) cont. Mr. Jim Olivarez, Missoula Qualifications (if required): representative of a federal agency	Governor	7/26/2009
Commissioner Dave Schulz, Virginia City Qualifications (if required): representative of the Montana Association of Counties	Governor	7/26/2009
Mr. Jon Wraith, Bozeman Qualifications (if required): representative of the MSU Agricultural Experiment Station	Governor	7/26/2009
Mr. Darrell Briese, Havre Qualifications (if required): representative of an irrigation district	Governor	7/26/2009
Director Ron de Yong, Helena Qualifications (if required): Governor's representative	Governor	7/26/2009
Mr. Doug Dupuis, Pablo Qualifications (if required): Tribal representative	Governor	7/26/2009
Ms. Celestine Duncan, Helena Qualifications (if required): Crop Protection Product Industry representative	Governor	7/26/2009
<b>Poet Laureate</b> (Arts Council) Mr. Greg Pape, Stevensville Qualifications (if required): Montana poet	Governor	7/13/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Security Patrol Officers and Investigators</b> (Labor and Industry)		
Ms. Linda Sanem, Bozeman	Governor	8/1/2009
Qualifications (if required): licensed private investigator		
Mr. Leo Dutton, Helena	Governor	8/1/2009
Qualifications (if required): county sheriff's office representative		
Mr. Shad Foster, Butte	Governor	8/1/2009
Qualifications (if required): proprietary security organization representative		
Lt. Bryan Lockerby, Great Falls	Governor	8/1/2009
Qualifications (if required): city police department representative		
<b>Professional Engineers and Land Surveyors</b> (Labor and Industry)		
Mr. John Neil, Great Falls	Governor	7/1/2009
Qualifications (if required): licensed civil engineer		
Mr. Tom Heinecke, Kalispell	Governor	7/1/2009
Qualifications (if required): licensed mechanical engineer		
<b>Public Defender Commission</b> (Administration)		
Mr. Stephen Nardi, Kalispell	Governor	7/1/2009
Qualifications (if required): attorney nominated by State Bar		
Commissioner Vic Miller, Harlem	Governor	7/1/2009
Qualifications (if required): public representative nominated by Senate President Mike Cooney		

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Public Defender Commission</b> (Administration) cont.                      Ms. Majel Russell, Billings                      Qualifications (if required): member of organization advocating on behalf of racial minorities</p>	Governor	7/1/2009
<p><b>Research and Commercialization Technology Board</b> (Commerce)                      Mr. Jim Davison, Anaconda                      Qualifications (if required): public representative</p>	Governor	7/1/2009
<p><b>State Workforce Investment Board</b> (Labor and Industry)                      Mr. Michael Grove, White Sulphur Springs                      Qualifications (if required): private sector representative</p>	Governor	7/1/2009
<p>Director Keith Kelly, Helena                      Qualifications (if required): veteran and a public sector representative</p>	Governor	7/1/2009
<p>Commissioner Connie Eissinger, Brockway                      Qualifications (if required): private sector representative</p>	Governor	7/1/2009
<p>Secretary of State Linda McCulloch, Helena                      Qualifications (if required): public sector representative</p>	Governor	7/1/2009
<p>Director Joan Miles, Helena                      Qualifications (if required): public sector representative</p>	Governor	7/1/2009
<p>Mr. Michael O'Neill, Butte                      Qualifications (if required): private sector representative</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont. Mr. Evan Barrett, Butte Qualifications (if required): Governor's representative	Governor	7/1/2009
Mr. Michael McGinley, Dillon Qualifications (if required): county commissioner	Governor	7/1/2009
Ms. Linda Woods, Darby Qualifications (if required): public sector representative	Governor	7/1/2009
Director Anthony Preite, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Jeff Rupp, Bozeman Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Dave Crum, Great Falls Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Martina Copps, Broadus Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Thomas Curry, Billings Qualifications (if required): labor representative	Governor	7/1/2009
Mr. Michael DesRosier, Browning Qualifications (if required): county commissioner	Governor	7/1/2009



**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont. Mr. Kirk Hammerquist, Kalispell Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Jacquie Helt, Missoula Qualifications (if required): labor representative	Governor	7/1/2009
Ms. Maureen Kenneally, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Robbe Lindsay, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Dan Miles, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Rodney Miller, Wolf Point Qualifications (if required): Sector 166 representative	Governor	7/1/2009
Ms. Gail Richardson, Bozeman Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Alan Skari, Chester Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Karen Sullivan, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.		
Mrs. Sandi Miller, Helena Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Georgia Gibbs-Atkinson, Poplar Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Thomas McKenna, Lewistown Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. George Kipp, Browning Qualifications (if required): Section 166 representative	Governor	7/1/2009
Mr. Jeff Tochihara, Columbus Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Tyler Trevor, Helena Qualifications (if required): public sector representative (Higher Education)	Governor	7/1/2009
Mr. Brad Eldridge, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
<b>Telecommunications Advisory Council Services for Persons with Disabilities</b> (Public Health and Human Services)		
Ms. Cheryl Gillespie, Helena Qualifications (if required): representative of the largest local exchange company	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Telecommunications Advisory Council Services for Persons with Disabilities</b> (Public Health and Human Services) cont.		
Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission	Governor	7/1/2009
Ms. Christy Keto, Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	7/1/2009
Ms. Julia Saylor, Helena Qualifications (if required): having a hearing disability	Governor	7/1/2009
<b>Tourism Advisory Council</b> (Commerce)		
Mr. Mark Browning, Miles City Qualifications (if required): representative of Custer Country	Governor	7/1/2009
Ms. Cyndy Andrus, Bozeman Qualifications (if required): representative of Yellowstone Country	Governor	7/1/2009
Ms. Dyani Bingham, Billings Qualifications (if required): Tribal Government representative	Governor	7/1/2009
Ms. Marilyn Polich, Butte Qualifications (if required): representative of Goldwest Country	Governor	7/1/2009
Ms. Beverly Harbaugh, Jordan Qualifications (if required): Missouri River Country representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Tourism Advisory Council</b> (Commerce) cont.            Ms. Jackie Yellowtail, Garryowen            Qualifications (if required): resident of Custer Country and a tribal government representative</p>	Governor	7/1/2009
<p><b>Youth Justice Council</b> (Justice)            Rep. Rosalie Buzzas, Missoula            Qualifications (if required): competency in addressing problems facing youth</p>	Governor	9/7/2009
<p>Mr. Dennis Dronen, Belt            Qualifications (if required): juvenile probation officer</p>	Governor	9/7/2009
<p>Judge Pedro Hernandez, Billings            Qualifications (if required): representative of the local court system</p>	Governor	9/7/2009
<p>Mr. Ted Lechner, Billings            Qualifications (if required): competency in addressing problems facing youth</p>	Governor	9/7/2009
<p>Ms. Katie Yother, Bozeman            Qualifications (if required): youth representative</p>	Governor	9/7/2009
<p>Ms. Joy Mariska, Billings            Qualifications (if required): competency in addressing problems facing youth</p>	Governor	9/7/2009
<p>Ms. Jennifer Kistler, Missoula            Qualifications (if required): youth representative</p>	Governor	9/7/2009
<p>Mr. Dale Four Bear, Poplar            Qualifications (if required): competency in addressing problems facing youth</p>	Governor	9/7/2009

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2009 THROUGH NOVEMBER 30, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Youth Justice Council</b> (Justice) cont. Mayor Pamela B. Kennedy, Kalispell Qualifications (if required): local elected official	Governor	9/7/2009
Father Jerry Lowney, Helena Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Mr. Wayne Stanford, Stevensville Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Teri Young, Miles City Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Penny Kipp, Pablo Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Kim Miller, Virginia City Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Donna Falls Down, Hardin Qualifications (if required): tribal court system representative	Governor	9/7/2009
Ms. Chantelle Gournay, Helena Qualifications (if required): youth representative	Governor	9/7/2009
Ms. Tara Houde, Missoula Qualifications (if required): youth representative	Governor	9/7/2009