

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

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

TO: All Concerned Persons

1. On April 29, 2010, the Montana Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-434 pertaining to the proposed amendment of the above-stated rules at page 937 of the 2010 Montana Administrative Register, Issue Number 8.

2. Extending the comment period is necessary to allow sufficient time for interested parties to review the proposed amendment of the above-stated rules that were not previously posted for viewing at the PER Board's web site: <http://mpera.mt.gov/rules.asp>. The original Notice No. 2-43-434 stated that comments must be received no later than 5:00 p.m., May 28, 2010. Written comments must now be received no later than 5:00 p.m., June 14, 2010.

3. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on June 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-2578; TDD (406) 444-1421; fax (406) 444-5428; or e-mail dhelman@mt.gov.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., June 14, 2010.

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

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

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

Certified to the Secretary of State May 17, 2010.

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

In the matter of the adoption of New	)	NOTICE OF EXTENSION OF
Rule I pertaining to the adoption by	)	COMMENT PERIOD ON
reference of the State of Montana	)	PROPOSED ADOPTION AND
Public Employees Pooled Trust, and	)	AMENDMENT
the amendment of ARM 2.43.3501)	
and 2.43.5101 pertaining to the)	
adoption by reference of the State of)	
Montana Public Employee Defined)	
Contribution Plan Document and the)	
State of Montana Public Employee)	
Deferred Compensation (457) Plan)	
Document, respectively)	

TO: All Concerned Persons

1. On April 29, 2010, the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-435 pertaining to the proposed adoption and amendment of the above-stated rules at page 941 of the 2010 Montana Administrative Register, Issue Number 8.

2. Extending the comment period is necessary to allow sufficient time for interested parties to review the proposed adoption and amendment of the above-stated rules that were not previously posted for viewing at the PER Board's web site: <http://mpera.mt.gov/rules.asp>. The original Notice No. 2-43-435 stated that comments must be received no later than 5:00 p.m., May 28, 2010. Written comments must now be received no later than 5:00 p.m., June 14, 2010.

3. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on June 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Roxanne M. Minnehan, Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., June 14, 2010.

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

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

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

Certified to the Secretary of State May 17, 2010.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.99.301, 8.99.302, 8.99.303,) PROPOSED AMENDMENT
and 8.99.305 pertaining to the)
Certified Regional Development)
Corporations Program)

TO: All Concerned Persons

1. On June 21, 2010, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on June 10, 2010, to advise us of the nature of the accommodation that you need. Please contact Fran Viereck, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2736; fax (406) 841-2731; TDD (406) 841-2702; or e-mail fviereck@mt.gov.

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

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

(b) "Assistance grant" means funds awarded by the department to a CRDC for administering economic development ~~programs~~ activities directly related to submitted work plans consistent with strategic plans ~~adopted by a CRDC~~ approved by the department;

(c) and (d) remain the same.

(e) "Certification" means the criteria and process by which an organization obtains certification for a period not to exceed ~~seven~~ five years, ~~annually maintains certification as a CRDC with annual renewals up to a five year period~~, and becomes eligible to participate in the Certified Regional Development Corporations Program and to receive an assistance grant; Continued recertification is conditional on department approval;

(f) remains the same.

(g) "Community" means a county, an incorporated city or town, a Census Designated Place (CDP), or an Indian reservation;

(h) and (i) remain the same.

(j) "Local and regional planning" means a long-range planning process that encourages citizens to develop a mission statement, goals, strategies, and actions used to prioritize the efforts of citizens and communities and guide the development of the economy of a region or a portion of a region;

(k) "Program" means the Certified Regional Development Corporations Program provided for in 90-1-116, MCA;

(l) "Region" means one of not more than 12 service regions. At a minimum, a service region must include two contiguous counties in their entirety;

(m) remains the same.

(n) "Technical assistance" means business-related assistance in a one-to-one setting that includes business plan composition, formation, financing, management, and operation of a small business.

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

8.99.302 CERTIFICATION OF REGIONAL DEVELOPMENT CORPORATIONS (1) The following information shall be presented to the department by applicants that seek certification as a CRDC:

(a) an outline of the region the applicant is proposing to represent that includes a description of the communities, economy, demographics, and culture;

(b) remains the same.

(c) a staffing plan that includes current job titles, job descriptions, and qualifications of primary personnel. At a minimum, the applicant is required to provide 4,160 hours of staff time annually to economic development activities. ~~If the applicant does not currently have the capacity to provide 4,160, which must include at least 2,080 hours of staff time annually to professional economic development activities, staff time. The applicant shall include a hiring plan or a contracting plan to meet in meeting this requirement.~~

(i) for the purpose of this rule, economic development activities means work in the development and management of revolving loan funds, business technical assistance, state and federal grants and programs, local and regional planning, business retention and expansion programs, and business recruitment programs all directly related to regional strategic plans;

(ii) the department may review, approve, and/or veto hiring decisions for professional economic development staff;

(d) documentation of the composition of board(s) of directors;

(d) remains the same but is renumbered (e).

~~(e) (f) evidence of matching funds, including those from local governments, in the ratio of \$1 for every \$1 of assistance grants requested that satisfy the following requirements:~~

(i) through (iii) remain the same.

~~(f) (g) a plan based upon a comprehensive economic development strategic plan model for encouraging and organizing full participation in regional economic development activities, meetings, and projects in the region;~~

~~(g) (h) evidence of written, broad-based community support from the region, at the time of certification, that includes written support from all county governments, a majority of all incorporated cities and towns, and a significant level of support from economic development organizations in the region. Where applicable, evidence of support from tribal governments, and tribal economic development organizations is~~

~~strongly encouraged. In addition, county governments cannot provide multiple letters of support for the same geographic area;~~

(h) remains the same but is renumbered (i).

(~~h~~) (j) a plan for delivery of, and evidence of the ability to administer, a revolving loan fund. To meet a minimum application threshold, the applicant shall include pertinent experience in the management of a revolving loan fund;

(~~h~~) (k) a plan for delivery of, and evidence of the ability to provide, business technical assistance. To meet a minimum application threshold, the applicant shall include pertinent experience in providing business technical assistance;

(~~h~~) (l) ~~a plan for delivery of, and evidence of the ability to apply for, facilitate, and manage, state and federal grants and programs. To meet a minimum application threshold, the applicant shall include pertinent experience in the application and management of state and federal grants and programs~~ grant and loan programs, in particular, department loan and grant programs;

(~~h~~) (m) a plan for delivery of, and evidence of the ability to perform, local and regional planning. To meet a minimum application threshold, the applicant shall include pertinent experience in local and regional planning;

(~~h~~) (n) a plan for performance of a business retention and expansion program (optional);

(~~h~~) (o) a plan for performance of a business recruitment program (optional);
and

(o) remains the same but is renumbered (p).

(2) The procedures for certifying a CRDC are as follows:

(a) the department shall issue a formal request for proposal ~~from any for~~ interested individuals or organizations to respond to;

(b) the department's staff shall review timely submitted proposals and determine whether to recommend certification of the CRDC. The proposal and staff's recommendation regarding certification shall be forwarded to the department director for a final decision ~~on certification;~~

(c) the department will ~~annually~~ review the CRDC performance on a quarterly basis for compliance with continued program requirements for certification; and

(d) remains the same.

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

8.99.303 ASSISTANCE GRANTS – DISTRIBUTION (1) The department shall ~~distribute~~ set aside assistance grants annually ~~as follows~~ based upon the following:

(a) ~~\$25,000~~ \$30,000 to each CRDC for providing services to their respective regions based upon receipt of an acceptable work plan. For the purpose of this rule, services means work in the development and management of revolving loan funds, business technical assistance, state and federal grants and programs, local and regional planning, business retention and expansion programs, and business recruitment programs;

(b) ~~\$60,000 to~~ \$65,000 divided among the CRDCs according to the following formula:

(i) through (iii) remain the same.

(iv) 15% shall be distributed based on the number of ~~incorporated cities or towns in the region~~ communities served;

(c) all ~~remaining~~ assistance grants will be distributed on a quarterly basis, ~~in~~ at the department's sole discretion, based upon the performance of the CRDC in meeting submitted work plans for the current year, to CRDCs for demonstrated capacity building needs.

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

8.99.305 CRDC – CERTIFICATION REPORTING REQUIREMENTS

(1) through (1)(b) remain the same.

(c) a description of any changes in the services provided by the CRDC to the citizens, communities, and businesses in the region;

(d) an action plan consistent with the strategic plan that identifies goals, actions, and priorities for the coming year; in the areas of:

(i) revolving loan fund activity and management;

(ii) business technical assistance;

(iii) the application for and award of department grant and loan programs and other state and federal grant and loan programs;

(iv) local and regional planning;

(v) business retention and expansion programs, if any; and

(vi) business recruitment programs, if any;

~~(e) an annual report that includes statements concerning the accomplishments or shortfalls of goals and actions identified in the previous year's action plan; a report showing the work accomplished by the CRDC for the preceding year in the areas of:~~

(i) revolving loan fund activity and management;

(ii) business technical assistance;

(iii) the application for and award of department grant and loan programs and other state and federal grant and loan programs;

(iv) local and regional planning;

(v) business retention and expansion programs, if any; and

(vi) business recruitment programs, if any;

~~(f) contact information for each certified treasure community in the region;~~

~~(g) (f) a copy of the CRDC's most recent annual, audited or professionally reviewed financial statements including any supplemental schedules or other detailed information that specifically discloses the financial condition and results of operations of the CRDC; and~~

~~(h) remains the same but is renumbered (g).~~

(2) Quarterly reporting requirements for CRDC certification include:

(a) a progress report showing accomplishments in meeting annual work plan objectives in the following areas:

(i) revolving loan fund activity and management;

(ii) business technical assistance;

- (iii) the application for and award of department grant and loan programs and other state and federal grants and programs;
- (iv) local and regional planning;
- (v) business retention and expansion programs, if any; and
- (vi) business recruitment programs, if any;
- (b) any other requirements deemed necessary by the department to maintain certification.

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

REASON: It is reasonably necessary to amend the rules for certified regional development corporations because existing seven year program contracts expire on December 31, 2010. Amended rules are also needed to once again create a fair and equitable process that is open and transparent for future certification of regional development corporations and the assistance grants associated with certification. In addition, amended rules are reasonably necessary to improve accountability, financial controls, measures, and professional economic development leadership for each certified regional development corporation.

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: Fran Viereck, Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2736; fax (406) 841-2731; or e-mail fviereck@mt.gov, and must be received no later than 5:00 p.m., June 28, 2010.

5. Ty Jones, Legal Counsel, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, by fax to (406) 841-2731, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

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

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

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

Certified to the Secretary of State May 17, 2010.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.3.148 pertaining to release) PROPOSED AMENDMENT
of driving records)

TO: All Concerned Persons

1. On June 22, 2010 at 2:00 p.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Justice 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 Justice no later than 5:00 p.m. on June 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.3.148 RELEASE OF DRIVING RECORDS FOR CONSUMER REPORTS AND SINGLE USE RESTRICTION (1) remains the same.

(2) When an authorized requestor pays a statutorily specified fee to receive any record or abstract created or retained by the department in accordance with 61-11-102, MCA, the authorized requestor may only use the record or abstract received for a single purpose, which may include disclosure of that record or abstract to one person or business entity. The same record or abstract may not be used for a different purpose or supplied or disclosed to a different person or business entity unless a separate request for the record or abstract has been made by the authorized requestor and the statutorily specified fee for that request has been paid.

AUTH: 44-1-103, 61-11-516, MCA
IMP: 44-1-103, 61-11-102, 61-11-516, MCA

REASON: This change is reasonably necessary to protect the privacy and accuracy of drivers' information, as required by the Montana Driver Privacy Protection Act, and to facilitate sufficient revenue for the retention and appropriate release of these records.

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: J. Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box

201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than July 1, 2010.

5. Stuart Segrest, Department of Justice, has been designated to preside over and conduct this hearing.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by phone on May 13, 2010.

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State May 17, 2010.

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.155.301 definitions, and the)
adoption of NEW RULES I and II)
continuing education, unprofessional)
conduct)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On June 17, 2010, at 9:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy (board) no later than 5:00 p.m., on June 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted chapter 451, laws of 2009 (House Bill 662), creating the Board of Massage Therapy (board) and setting forth the requirements for the licensure and regulation of massage therapists. The bill was signed by the Governor and became effective on May 5, 2009.

The board determined it is reasonable and necessary to adopt New Rules I and II to further implement the legislation by establishing requirements for continuing education and to specify conduct that would be considered unprofessional for purposes of disciplinary actions by the board.

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

- 24.155.301 DEFINITIONS (1) remains the same but is renumbered (4).
- (2) and (3) remain the same.
- (4) remains the same but is renumbered (1).
- (5) and (6) remain the same.

(7) For purposes of 37-33-501, MCA, a license that "has lapsed and has not been revived" means an "expired license" as defined in ARM 24.101.402.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-141, 37-33-404, 37-33-501, 37-33-502, MCA

REASON: Section 37-33-501(2), MCA, refers to the circumstance of a person "whose license has lapsed and has not been revived." The board determined it is reasonably necessary to add (7) and clarify the board's intent that this language is consistent with the licensure terminology found in ARM 24.101.402 and 37-1-141, MCA. The board is amending the implementation cites to accurately reflect all statutes implemented through the rule.

5. The proposed new rules provide as follows:

NEW RULE I CONTINUING EDUCATION REQUIREMENTS (1) The board will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to his/her knowledge and competence which also meet these qualifications.

(2) A continuing education activity must meet the following criteria:

(a) The activity must have significant intellectual or practical content. The activity must deal with direct application of massage therapy knowledge, skills, business practices, or ethical standards. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the massage therapist demonstrates that the activity is substantially related to his or her role as a massage therapist.

(b) The activity itself must be conducted by an individual or group qualified by practical or academic experience.

(c) Continuing education credit earned by courses, seminars, or workshops must be supportable through a certificate of completion containing the following information:

(i) full name and credentials of the presenter, including provider number, if applicable;

(ii) title of the presentation attended;

(iii) number of hours and date of each presentation attended;

(iv) description of the presentation format; and

(v) name of licensee.

(d) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years, following submission of a continuing education report.

(3) In general, one continuing education credit will be granted for each hour of participation in the continuing education activity.

(4) A licensed massage therapist must earn at least 12 continuing education credits every two consecutive years by the licensee renewal date on even numbered years beginning in 2012.

(a) No continuing education is required for licensees licensed less than one full year on their first continuing education reporting date. Licensees licensed at least one year but less than two full years on the first continuing education reporting date shall submit six hours of continuing education.

(b) All licensed massage therapists must submit an attestation to the board on each even year's license renewal that they have obtained the required continuing education.

(c) The board will randomly audit between two percent and five percent of the licensees attesting to continuing education. Certificates of completion or program documentation for continuing education credits reported must be submitted upon request of the board.

(5) Acceptable continuing education courses include but are not limited to:

(a) courses, seminars, or workshops taken in person or online or by other electronic means;

(b) teaching a course, with one continuing education credit allowed for each hour of preparation time for each credit hour offered, and one credit of continuing education allowed for each hour of presentation time for each credit hour offered, all credit being subject to proper documentation and none of which may be reused for any future continuing education reporting period;

(c) published articles or books with the hours awarded as determined at the discretion of the board;

(d) correspondence courses, books, or audio tapes documented by notes summarizing the course content; and

(e) cardiopulmonary resuscitation (CPR) with certificate.

(6) Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete the previous reporting period may be used to meet the continuing education requirements for the next continuing education reporting period.

(7) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request an exemption. All requests for exemptions will be considered by the board and evaluated on an individual basis.

AUTH: 37-1-131, 37-1-319, 37-33-405, MCA

IMP: 37-1-306, 37-33-405, MCA

NEW RULE II UNPROFESSIONAL CONDUCT (1) The following conduct is unprofessional conduct justifying disciplinary action against a licensee:

(a) incompetence, negligence, or use of any modality procedure in the practice of a profession which results in an unreasonable risk of physical injury to the client;

(b) accepting and performing massage therapy responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(c) engaging in or soliciting sexual contact or sexual intercourse, as those terms are defined in 45-2-101, MCA, with a client, when such act or solicitation is related to the practice of massage therapy;

(d) failing to adequately supervise auxiliary staff or massage therapy students to the extent that the consumer's health or safety is at risk;

(e) failing to comply with continuing education requirements set forth in ARM Title 24, chapter 155, or failing to supply continuing education documentation as requested by the board in accordance with applicable statutes and rules, or

supplying misleading, incomplete, or false information relative to continuing education;

(f) failing to cooperate with an investigation that is the result of a complaint; or

(g) violation of any of the provisions of statute or rule applicable to the practice of massage therapy.

(2) Upon a finding of unprofessional conduct as defined in (1), and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed pursuant to 37-1-136 and 37-1-312, MCA. Any additional cost or expense incurred by a licensee as a result of a sanction is the burden of the licensee. As additional forms of sanction, and without limiting the availability of any other sanction, the board may:

(a) require supervision, inspections, reports, additional continuing education or other training;

(b) limit the licensee's scope of practice in any reasonable manner considering the circumstances; and

(c) impose any other condition of licensure, probation, reinstatement, or relicensure the board deems necessary or appropriate to protect the health, safety, or welfare of the public or to rehabilitate the licensee.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-33-405, MCA

IMP: 37-1-136, 37-1-319, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., June 25, 2010.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings

or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdlmt@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on November 16, 2009, by telephone.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MASSAGE THERAPY
MICHAEL EAYRS, CHAIRPERSON

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

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

Certified to the Secretary of State May 17, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.301.131 incorporation by	)	PROPOSED AMENDMENT AND
reference of international building	)	ADOPTION
code, 24.301.138 and 24.301.139)	
fees, 24.301.142 and 24.301.146)	
building code modifications,)	
24.301.171 incorporation by)	
reference of international existing)	
building code, 24.301.172)	
incorporation by reference of)	
international mechanical code,)	
24.301.173 incorporation by)	
reference of international fuel gas)	
code, 24.301.301, 24.301.351, and)	
24.301.371 plumbing requirements,)	
24.301.401, 24.301.402, 24.301.411,)	
24.301.421, 24.301.431, 24.301.441,)	
and 24.301.451 electrical)	
requirements, 24.301.461 inspection)	
fees, 24.301.491 refunds or credits,)	
and the adoption of NEW RULE I)	
definitions)	

TO: All Concerned Persons

1. On June 17, 2010, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Building Codes Bureau of the Department of Labor and Industry (department) determined it is reasonable and necessary to amend certain administrative rules to adopt and incorporate by reference the new editions of numerous nationally recognized building codes, with stated exceptions. The department is also proposing additional

amendments throughout the rules in response to and to coincide with the adoption and incorporation by reference of these building codes.

The department is amending ARM 24.301.172, 24.301.301, and 24.301.461 to adjust fees for mechanical, plumbing, and electrical permits based upon the results of a fiscal analysis performed over the last two fiscal years. The analysis revealed that the cost of issuing permits and performing inspections across the state has outpaced the revenue gained from issuing permits. Following the analysis, the department identified fee categories that did not correspond with costs and proposes changes to the rules to ensure fees are commensurate with costs in all categories, resulting in some fees being reduced and others increased. The department sold 611 mechanical permits, 2281 plumbing permits, and 9925 electrical permits for a net collection of \$1,602,202 in the year ending April 30, 2010. Due to the volatility of the building industry as affected by seasonal and economic fluctuations, it is impossible to precisely predict the number of permits to be issued in any year. Therefore, the department collected and analyzed data on the economy, the building industry, and inspection costs, and is proposing fee changes to ensure that permitting fees adequately cover the corresponding costs and to gain the most equitable position for all impacted stakeholders. The department notes that all the proposed fees have been vetted publicly and endorsed by vote of the Montana Building Codes Council.

A majority of the department's proposed changes reflect only renumbering of sections or tables of the updated codes without substantive change to the rule. Other changes are made to improve readability of the rule, such as implementing acronyms rather than using the full names of the adopted codes, referencing the Department of Labor and Industry as the "department," and substituting "Bureau of Building and Measurement Standards" with the correct term of "Building Codes Bureau." Additional grammatical and numbering changes are necessary to comply with ARM formatting requirements. The department is also amending several rules throughout to add the web addresses of building codes publishers to contact or obtain code information online. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and to provide the complete sources of the department's rulemaking authority. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.301.131 INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE (1) ~~The Department of Labor and Industry, referred to as the department in this rule and all subsequent rules in ARM Title 24, chapter 301,~~ adopts and incorporates by reference the International Building Code, ~~2006~~ 2009 edition, ~~referred to as the International Building Code or IBC,~~ unless another edition is specifically stated, together with Appendix Chapter C (Group U - Agricultural Buildings).

(2) remains the same.

(3) A copy of the International Building Code IBC may be obtained from the Department of Labor and Industry, Building Codes Bureau of Building and Measurement Standards, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCsafe.org.

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

24.301.138 CALCULATION OF FEES (1) International Building Code (IBC) Section ~~408.2~~ 109.2, Schedule of Building Permit Fees, is modified for use by the department with the following additions:

(a) Permit fees. The fee for each building permit is established in Table ~~408.2~~ 109.2.

(b) Plan review fees. When submittal documents are required, a plan review fee must be paid in addition to the building permit fee. The plan review fee is 35 percent of the building permit fee as established in Table ~~408.2~~ 109.2. If only plan review services are provided, the plan review fee for such services shall be 50 percent of the combined plan review and building permit fee.

(c) Add a new paragraph to IBC Section ~~408.2~~ 109.2 to read: "Requested Inspection Fee - \$45, provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

(2) through (4)(b) remain the same.

(c) the cost per square foot method of valuation and the cost per square foot figures, ~~modified by region~~, for the type and quality of construction and occupancy group listed in the "Building Valuation Data" table of the ~~March/April 2002~~ January/February 2009 Edition edition of "International Conference of Building Officials Building Standards Building Safety Journal" magazine, published by the International Code Council ~~Conference of Building Officials~~.

(d) For purposes of modifying the building valuation values derived from the square-foot method calculations of (4)(c), the calculated building valuation shall be multiplied by a factor of 0.60 to arrive at a final calculated building valuation.

(d) remains the same but is renumbered (e).

(5) through (7) remain the same.

(8) A copy of the "Building Valuation Data" table may be obtained free of charge from the Department of Labor and Industry, Building Codes Bureau of Building and Measurement Standards, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517.

TABLE ~~408.2~~ 109.2
BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1 to \$500	\$23.50

\$501 to \$2000	\$23.50 for first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2000
\$2001 to \$25,000	\$69.25 for the first \$2000 plus \$14 for each additional \$1000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$391.75 for the first \$25,000 plus \$10.10 for each additional \$1000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75 for the first \$50,000 plus \$7 for each additional \$1000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1000, or fraction thereof to and including \$500,000
\$500,001 to \$1,000,000	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$5,608.75 for the first \$1,000,000 plus \$3.15 for each additional \$1000, or fraction thereof
Other Inspections and Fees:	
1. remains the same.	
2. Reinspection fees assessed under provisions of Section 305.8 \$45.00 per hour	
3. through 5. remain the same but are renumbered 2. through 4.	

¹ remains the same.

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

IMP: 50-60-103, 50-60-104, 50-60-203, MCA

REASON: The department is amending (4)(c) to reflect the name change of the International Conference of Building Officials to the International Code Council and the updating of the valuation table format and publication date of the new table. Other changes, including taking building occupancy type into consideration, are necessary to more appropriately determine building valuation on the most specific information available for each building type.

The department is amending (4)(d) to include a modifier used to arrive at a final calculated building valuation to keep permit fees commensurate with costs. The modifier used in the currently adopted Building Valuation Data table is 0.84. The department instead proposes a modifier of 0.60, which results in a 40 percent lower valuation of the final calculated building valuation, in consideration of such factors as lower costs of construction and code enforcement in Montana.

24.301.139 INVESTIGATION FEES ASSESSED FOR WORK COMMENCING WITHOUT BUILDING PERMIT (1) ~~In accordance with Subsection 108.4 of the International Building Code, the department shall assess investigation fees for any work commenced on a building or structure before obtaining the necessary permits. The investigation fees will be 50 percent of the combined plan review and building permit fee, with a minimum fee of \$250 and a maximum fee not to exceed \$1000. In accordance with subsection 109.4 of the International Building Code and pursuant to the requirements of fees being commensurate with costs, the department may assess an investigation fee for any work commenced on a building or structure prior to obtaining the required building permits. The investigation fee will be charged on an hourly rate of \$45.00 per hour, for every hour, including portions of an hour spent on investigating the work commenced without the proper building permits. This investigation fee shall be in addition to the regular plan review and building permit fee assessed in ARM 24.301.138(1)(a) and (b).~~

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

IMP: 50-60-103, 50-60-104, 50-60-201, 50-60-203, MCA

REASON: It is reasonably necessary to amend this rule to further clarify the fees charged for investigations for work done without the required building permits. The fees will be based on terms found in the IBC and to comply with the statutory requirements for establishing fees that are commensurate with costs.

24.301.142 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM (1) remains the same.

(2) The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of Section ~~443~~ 114 of the ~~International Building Code~~ IBC. When a person fails to submit required plans, obtain a permit, correct plans, or comply with an order of the department, the department, as authorized by 50-60-109, MCA, may bring civil action to enjoin the person from constructing or using the building.

(3) and (4) remain the same.

(5) Subsection ~~406.4~~ 107.1 of the ~~International Building Code~~ IBC is amended with the addition of the following: "The department requires submittal of two complete sets of construction documents for all projects. This section shall not be construed to require an architect or engineer license. The requirements for who must be licensed to practice architecture or engineering work is governed by Title 37, chapter 65, MCA and Title 37, chapter 67, MCA. The issuance of a building permit does not in any way address the need for licensure by the permit holder or designer."

(6) Subsection ~~440.4~~ 111.1 of the ~~International Building Code~~ IBC is amended with the addition of the following: "On a case-by-case basis, the building official or his agent may grant the owner permission to occupy and use a building or portions thereof prior to completion of the project when the building official or his

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

(7) Subsection ~~440.2~~ 111.2 of the ~~International Building Code IBC~~ is amended to read:

(a) "~~440.2~~ 111.2 Certificate issued. If the building official or the building official's agent makes all the inspections of a building or structure required by Section ~~409~~ 110, and finds it was constructed in accordance with the provisions of the state building code, the building official shall issue a certificate of occupancy, as referenced in 50-60-107, MCA, which shall contain the following:

(i) through (7)(b)(ii) remain the same.

(c) "Formal Written Approval: In situations where the department was unable to perform the required inspections referenced in Section ~~409~~ 110 of the ~~International Building Code IBC~~, but no significant deficiencies from the state building code have been noted, the bureau may issue a letter of formal written approval in lieu of a certificate of occupancy."

(8) The department will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of Section ~~442~~ 113 of the ~~International Building Code IBC~~.

(9) Subsection ~~4805.2.4~~ 1809.5 of the ~~International Building Code IBC~~ requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be ~~3.0 ft.~~ three feet for single story wood or metal frame buildings, and ~~4.0 ft.~~ four feet for multistory or masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar-use buildings. The building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA.

(10) remains the same.

AUTH: 50-60-203, MCA

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

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) and (2) remain the same.

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

~~(4) (3) Subsection 101.4.4 101.4.3, Plumbing, is modified by:~~

~~(a) and (b) remain the same.~~

~~(5) (4) Subsection 101.4.5 101.4.4, Property Maintenance, is deleted in its entirety.~~

~~(6)~~ (5) Subsection ~~101.4.6~~ 101.4.5, Fire Prevention, is modified by deleting "International Fire Code" and replacing with "fire code adopted by the fire authority having jurisdiction ~~Fire Prevention and Investigation Bureau of the Department of Justice.~~"

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

~~(8)~~ (7) Subsection ~~106.3.4~~ 107.3.1 is amended by the addition of the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the construction documents, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

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

~~(11)~~ (10) Subsection 903.3.5, Inadequate Water Supply, is amended by addition of the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, ~~2002~~ 2007 Edition ~~edition~~ (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage onsite to operate ~~50 percent~~ of the hydraulically remote area for the response time of the local fire department. ~~This reduction shall not reduce the number of operating sprinklers to less than four.~~ Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula $T = 0.65 + 1.7D$ 6.5 minutes (mobilization time) + 1.7 minutes/mile D (travel time), where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the response time calculated above, but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A ~~50 percent~~ reduction in water storage of up to 50 percent, but not less than that required for a 20 minute supply is allowed. ~~Density shall not be modified.~~ All automatic fire sprinkler system designs and components shall be in ~~storage for 50 percent of the sprinkler discharge requirements~~ in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter, and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, ~~2002~~ 2007 edition."

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

(a) remains the same.

(i) Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, ~~2002~~ 2007 Edition ~~edition~~.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, ~~2002~~ 2007 Edition ~~edition~~.

(b) Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, ~~2003~~ 2007 Edition edition.

(c) remains the same.

~~(13)~~ (12) Delete Subsection ~~903.2.7~~ 903.2.8 and replace with the following:

"1. remains the same.

"a. ~~20~~ 16 or more transient guests or ~~40~~ 8 or more transient guestrooms;

"b. ~~20~~ 16 or more occupants in other than dwelling units;

"c. ~~46~~ 8 or more dwelling units; or

"d. through "4. remain the same.

~~(14)~~ (13) Subsection ~~907.2.8.1~~, Manual Fire Alarm System, is amended with the addition of the following: "Exception 3: A manual fire alarm system is not required in buildings with five or fewer guestrooms or ten or fewer guests where the building does not exceed two stories in height and is equipped with multiple-station smoke alarms installed in accordance with Subsection ~~907.2.10.4~~ 907.2.11."

~~(15)~~ (14) Subsection ~~1017.1~~ 1018.1 is amended by addition of the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings, and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

(15) For "R" occupancies that are exempt from the requirements of a fire sprinkler system, pursuant to ARM 24.301.146(12), Table 1018.1, referenced in subsection 1018.1, shall be amended by the deletion of the language "Not Permitted" under the heading "Required Fire-Resistive Rating (hours) – Without sprinkler system" for "R" occupancies with an occupant load served by corridor of greater than ten. Under that same location where "Not Permitted" is to be deleted, the language "1" shall be inserted instead, which will require those corridors to have one-hour fire-resistive ratings.

(16) through (18) remain the same.

(19) Subsection ~~2902.4~~ 2902.3, Required Public Toilet Facilities, is deleted in its entirety.

(20) through (37) remain the same.

(38) Subsection 903.2.7, condition #4 is deleted and replaced with the following: "A Group M occupancy is used for the display and sale of upholstered furniture which exceeds 2500 square feet of display and sale area."

AUTH: 50-60-203, MCA

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

REASON: The department determined it is reasonably necessary to delete (3) as it includes a section no longer included in the 2009 edition of the IBC and therefore needs no modification. The department is amending (10) (renumbered) to indicate the publication of the 2007 edition of the National Fire Protection Association Standard for the Installation of Sprinkler Systems (NFPA 13) and the 2007 edition of the National Fire Alarm Code (NFPA 72). Additionally, the response time formula is spelled out in (10) to more specifically describe the factors in the formula.

The remaining changes affecting density modification are proposed to reduce confusion on the modification to emphasize storage modification, rather than density modification. Section (11) (renumbered) indicates the publication of the 2007 editions of the NFPA 13, NFPA 13R, and NFPA 14. Changes in (12) (renumbered) modify the IBC thresholds for when group R occupancies in the IBC will require a fire sprinkler system. Section (15) is amended to modify the subsequent Table in "R" occupancies that are exempt from the installation of a fire sprinkler system under ARM 24.301.146(12), to allow for a higher fire-resistive rating of those corridors. The Table in the code assumes that all "R" occupancies are sprinkled, which is not the case due to the previous modification of the code in that section. Section (38) is being amended to allow a minimum threshold to be inserted on Group M occupancies, which will allow small businesses with minimal upholstered sales items to be exempt from the requirements of IBC 903.2.7.

24.301.171 INCORPORATION BY REFERENCE OF INTERNATIONAL EXISTING BUILDING CODE (1) ~~The Department of Labor and Industry department~~ adopts and incorporates by reference the International Existing Building Code (IEBC), ~~2006 2009 Edition edition~~, which may be used as an alternate prescriptive method(s) for the remodel, repair, alteration, change of occupancy, addition, and relocation of existing building.

(a) through (3) remain the same.

(4) A copy of the ~~International Existing Building Code~~ IEBC may be obtained from the Department of Labor and Industry, ~~Bureau of Building Codes Bureau and Measurement Standards~~, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA

IMP: 50-60-103, ~~50-60-109~~, 50-60-201, 50-60-203, MCA

24.301.172 INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE (1) ~~The Department of Labor and Industry department~~ adopts and incorporates by reference the International Mechanical Code, ~~2006 2009 Edition edition~~, published by the International Code Council, unless another edition

is specifically stated, together with the following amendments:

(a) through (c)"(1) remain the same.

"(2) The mechanical permit fees are calculated as follows:

Cost of Mechanical System	Mechanical Permit Fee
\$0 - \$10,000	\$ 40 <u>48</u> for first \$1000 plus \$ 12 <u>14</u> for each additional \$1000 or fraction thereof, to and including \$10,000
\$10,001 - \$50,000	\$ 148 <u>166</u> for first \$10,000 plus \$ 7 <u>9</u> for each additional \$1000 or fraction thereof, to and including \$50,000
\$50,001	\$ 428 <u>514</u> for first \$50,000 plus \$ 4 <u>6</u> for each additional \$1000 or fraction thereof.

(d) remains the same.

(e) Section 109 of the ~~International Mechanical Code~~ IMC will be left as is for use by certified cities, counties, or towns, which by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use a board of appeals created in accordance with Section 442 113 of the ~~International Building Code~~ IBC to serve as their boards of appeal. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Section 109.

~~(f) Subsection 506.3.3.1, Grease duct test, is amended as follows for use only by the department: "Prior to the use of concealment of any portion of a grease duct system, a leakage test shall be performed by the installer. Installer shall provide documentation to the department of satisfactory test results. Ducts shall be considered to be concealed where installed in shafts or covered by coatings or wraps that prevent the ductwork from being visually inspected on all sides. The permit holder shall be responsible to provide the necessary equipment and perform the grease duct leakage test. A light test or an approved equivalent test method shall be performed to determine that all welded and brazed joints are liquid tight. A light test shall be performed by passing a lamp having a power rating of not less than 100 watts through the entire section of duct work to be tested. The lamp shall be open so as to emit light equally in all directions perpendicular to the duct walls. A test shall be performed for the entire duct system, including the hood-to-duct connection. The ductwork shall be permitted to be tested in sections, provided that every joint is tested."~~

(g) remains the same but is renumbered (f).

(g) Table 403.3 is amended by the addition of a footnote "i". Footnote "i" is to be referenced in the table at, "Private Dwellings, Single and Multiple". The footnote at the end of the table should be as follows: "i. Every dwelling unit shall have installed a minimum 100 CFM exhaust fan controlled by either an automatic timer or humidistat."

(2) ~~The Bureau of Building and Measurement Standards~~ Building Codes Bureau shall not enforce the ~~International Mechanical Code~~ IMC in buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under

Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Mechanical Code as adopted by those units of government.

(3) through (5) remain the same.

(6) The ~~International Mechanical Code~~ IMC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the ~~International Mechanical Code~~ IMC may be obtained from the Department of Labor and Industry, ~~Bureau of Building Codes Bureau and Measurement Standards~~, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

REASON: The department is amending this rule to increase fees for mechanical permits based on a fiscal analysis performed over the last two fiscal years. The analysis revealed that the costs of issuing mechanical permits and performing mechanical inspections across the state has outpaced the revenue gained from issuing mechanical permits. See also the general statement of reasonable necessity for this notice.

24.301.173 INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The ~~Department of Labor and Industry~~ department adopts and incorporates by reference the International Fuel Gas Code, ~~2006~~ 2009 edition, published by the International Code Council, ~~referred to as the International Fuel Gas Code~~ IFGC, unless another edition is specifically stated, together with the following amendments:

(a) through (c) remain the same.

(d) Section 109 of the ~~International Fuel Gas Code~~ IFGC will be left as is for use by certified cities, counties, or towns, who by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use the board of appeals created in accordance with Section ~~442~~ 113 of the International Building Code to serve as the board of appeals. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of Section 109.

(2) The ~~Bureau of Building and Measurement Standards~~ Building Codes Bureau shall not enforce the ~~International Fuel Gas Code~~ IFGC on those buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Fuel Gas Code as adopted by those units of government.

(3) through (5) remain the same.

(6) The ~~International Fuel Gas Code~~ IFGC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements

for certain mechanical installations. A copy of the International Fuel Gas Code IFGC may be obtained from the Department of Labor and Industry, Bureau of Building Codes Bureau and Measurement Standards, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-203, 50-60-303, MCA

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) The Department of Labor and Industry department adopts and incorporates by reference the Uniform Plumbing Code, 2006 2009 edition, referred to as the Uniform Plumbing Code, unless another edition is specifically stated, together with the following appendix chapters and amendments:

- (a) through (1)(f) remain the same.
- (i) for issuing each permit \$20 30*
- (ii) for each plumbing fixture 7 10
- (iii) water service - domestic or commercial 7 10
- (iv) for each building sewer and each trailer park sewer 44 15
- (v) storm drains and storm drainage 7 10
- (vi) for each water heater 7 10
- (vii) for each industrial water pretreatment interceptor, including its tray and vent, excepting kitchen type grease interceptors functioning as fixture traps 7 10
- (viii) for installation, alteration, or repair of water piping and/or water treatment equipment 7 10
- (ix) for repair or alteration of drainage or vent piping 7 10
- (x) for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore 7 10
- (xi) for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping
 - (A) one to four each 7
 - (B) remains the same.
- (xii) requested plumbing inspection fee (provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items) 45 65
- (xiii) remains the same.
- ~~(xiv) for each gas piping system of one to four outlets~~ 7
- ~~(xv) for each gas piping system of five or more, per outlet~~ 2
- ~~(xvi)~~ (xiv) for each medical gas piping system serving one to five inlet(s)/outlet(s) for a specific gas 50 75
- ~~(xvii)~~ (xv) for each additional medical gas piping inlet(s)/outlet(s) 5 10

(xvi) for each gray water system (commercial or residential) 75

* and (g) remain the same.

~~(h) Subsection 405.2, Prohibited Urinals, is amended by adding the following: "Exception: Nonwater supplied urinals may be installed and shall be maintained in accordance with manufacturer's installation instructions and required maintenance schedule. A properly sized drain, vent, and water supply line, permanently capped, shall be installed for future use in the event the owner decides or is ordered to replace the nonwater supplied urinal with a water supplied urinal."~~

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

(r) Subsection 704.3, is amended by deleting the first sentence and replacing it with, "There may not be a direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed."

(s) Subsection 707.4, first paragraph, is amended by deleting the first sentence and replacing with, to read as follows: "Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal and each run of piping, which is more than 50 feet in total developed length, shall be provided with a cleanout for each 50 feet, or fraction thereof, in length of such piping."

(t) through (z) remain the same.

~~(aa) Section 908.0, is amended to read as follows: Wet venting.~~

~~(ab) (aa) Subsection 908.1, is amended to read, as follows: "Wet Venting."~~

(i) (ab) Subsection 908.1.1 is deleted and replaced with, "Wet venting is limited to drainage piping receiving the discharge from the trap arm of one and two fixture unit fixtures that also serves as a vent for not to exceed four fixtures.

(ii) All wet vented fixtures shall be within the same story; provided, further, that fixtures with a continuous vent discharging into a wet vent shall be within the same story as the wet vented fixtures."

(ac) Subsection 908.2, 980.1.2 is amended to read as follows: "The piping between any two consecutive inlet levels shall be considered a wet vented section. Each wet vented section shall be a minimum of one pipe size larger than the required minimum waste pipe size of the upper fixture or shall be one pipe size larger than the required minimum pipe size for the sum of the fixture units served by such wet vented section, whichever is larger, but in no case less than 2 two inches."

(ad) remains the same.

(ae) Chapter 13, Health Care Facilities and Medical Gas and Vacuum Systems, is deleted except for subsection 1303.0, 1304.0, 1305.0, 1306.0, 1307.0, and 1308.0. In lieu of Chapter 13, except for the subsections not deleted, the Department of Labor and Industry adopts and incorporates by reference the National Fire Protection Association's Standard NFPA 99C, Gas and Vacuum Systems, 2005 edition, referred to as NFPA 99C, unless a different edition date is specifically stated, as the standard for the installation of medical gas and vacuum systems. The requirements of this rule shall not be construed as to replace or supersede any additional requirements for testing and certification of medical gas and vacuum systems, including independent third party certification of systems, as may be applicable. NFPA 99C is a nationally recognized standard setting forth minimum standards and requirements for medical gas and vacuum systems. A copy of NFPA

99C may be obtained from the National Fire Protection Association, One Battery March Park, P.O. Box 9101, Quincy, MA 02269-9101.

(2) remains the same.

AUTH: 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: The department determined it is reasonably necessary to amend the fees for plumbing permits based on fiscal analysis performed over the last two fiscal years. The analysis revealed that the costs of issuing plumbing permits and performing plumbing inspections across the state has outpaced the revenue collected from issuing the plumbing permits. See also the general statement of reasonable necessity for this notice.

Additionally, the department is amending (1)(r) to align with food and consumer safety laws of the Department of Public Health and Human Services.

24.301.351 MINIMUM REQUIRED PLUMBING FIXTURES (1) remains the same.

MINIMUM NUMBER OF PLUMBING FACILITIES^{a, n, q}
 Fixtures (Number of fixtures per number of occupants)

Occupancy or Use		Water Closets (Urinals - see footnotes g & m)		Lavatories	Bathtubs/ Showers	Drinking Fountains ^f
		Male	Female			
A S S E M B L Y	Theaters	1 per 125	1 per 65	1 per 2 water closets		1 per 1,000
	Nightclubs ^{g,n,p}	1 per 40	1 per 40			
	Restaurants ^{g,n,p}	1 per 75	1 per 75			
	Halls, museums, coliseums, arenas ^o , stadiums, pools, etc.	1 per 125	1 per 75			1 per 1,000
	Churches ^d	1 per 150	1 per 75			1 per 1,000
	Business ^{i,j,l,p}	1 per 25	1 per 25			
	Educational Elementary	1 per 100	1 per 35	1 per 2 water closets		1 per floor
	Educational Secondary	1 per 100	1 per 45	1 per 2 water closets		1 per floor
	Factory and industrial	1 per 100	1 per 100	1 per 100		1 per 400
	High hazard	1 per 100	1 per 100	1 per 100		1 per 1,000
I N S T	Residential care	1 per 10	1 per 10	1 per 10	1 per 8	
	Hospitals, ambulatory nursing home patients ^c	1 per room		1 per room ^e	1 per 15	1 per 100

I T U T I O N A L	Day nurseries ^k , sanitariums, nonambulatory nursing home patients, etc. ^c	1 per 15	1 per 15	1 per 15	1 per 15 ^f	1 per 100
	Employees, other than residential care ^c	1 per 25	1 per 25	1 per 35		1 per 100
	Visitors, other than residential care	1 per 75	1 per 75	1 per 100		1 per 500
	Prisons ^c	1 per cell		1 per cell	1 per 15	1 per 100
	Asylums, reformatories, etc. ^c	1 per 15	1 per 15	1 per 15	1 per 15	1 per 100
	Mercantile ^l	1 per 500	1 per 500	1 per 750		
R E S I D E N T I A L	Hotels, motels	1 per guestroom		1 per guestroom	1 per guestroom	
	Lodges	1 per 10	1 per 10	1 per 10	1 per 8	
	Multiple family	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	
	Dormitories	1 per 10	1 per 10	1 per 10	1 per 8	1 per 100
	One and two-family dwelling ^d	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	

Footnotes (a) through (n) remain the same.

- o. Riding arenas as defined in ARM ~~24.301.107(14)(c)~~ 24.301.146(9)(b) are required to provide separate male and female accessible restrooms which contain a minimum of one water closet and one lavatory. Footnotes (p) through (r) remain the same.

AUTH: 50-60-203, 50-60-504, MCA
 IMP: 50-60-203, 50-60-504, MCA

REASON: The department is amending this rule to include use of building in determining fixture requirements. Since building use and occupancy are not always synonymous, the change will allow greater flexibility for the design and build community to address the number of fixtures required.

24.301.371 PLUMBING INSPECTIONS (1) and (2) remain the same.

- (3) Upon completion of the inspection and approval of the plumbing work, the department shall, if requested, issue the permit holder a certificate of compliance.
- (4) remains the same.

AUTH: 50-60-203, 50-60-504, MCA
 IMP: 50-60-510, 50-60-511, MCA

REASON: The issuing of a certificate of compliance for plumbing work installed currently is a requirement whether or not the permittee requested or required it, when many installations do not require such certification. To reduce the time and cost associated with this process, the department is amending this rule so the certificates are issued only when requested by the permittee.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The Department of Labor and Industry department, by and through the Bureau of Building and Measurement Standards Building Codes Bureau, adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2005~~ 2008 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Bureau of Building and Measurement Standards Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

24.301.402 DEFINITIONS (1) For the purposes of this chapter subchapter, the following definitions shall apply:

(1) remains the same but is renumbered (e).

(a) "Maintenance Work" means ordinary and customary in-plant or onsite installations, modification, additions, or repairs, which shall be limited to: relamping fixtures, replacing ballasts, trouble-shooting, motor controls, replacing motors, breakers, magnetic starters, in a kind-for-kind manner. "Maintenance Work" will also include the connection of listed factory-assembled equipment that can be directly connected to an existing branch-circuit or panelboard by means of a factory-installed lead. If a new circuit is required to operate the equipment, or if the size of the supply conductors needs to be increased, this will be considered new work and not "Maintenance Work."

(b) "Permittee" means the property owner that is responsible for the installation of electrical wiring and equipment authorized by an electrical permit, or the license holder named as the "Responsible Licensed Electrician" for an "Electrical Contractor," who is responsible for the installation of electrical wiring and equipment authorized by an electrical permit. On farm and ranch installations used in conjunction with an agricultural or livestock raising operation, the term "Permittee" will mean the owner, owner's agent, and/or person(s) employed by the owner on a full-time basis as a farm or ranch employee(s) at the farm or ranch involved.

(c) "Provisional Power" means the connection of electrical power to any part of a premises wiring system from any source of energy, prior to the final inspection and approval of the installation by the electrical inspector.

(d) "Rental Property" means any property utilized by any person(s) for other than the owner's personal use with or without the consideration of compensation for the use.

AUTH: 50-60-603, MCA

IMP: 50-60-603, MCA

REASON: The department is amending this rule to set forth additional definitions to clarify and align with the proposed changes rules in part 4 regarding electrical requirements. Some of these definitions were previously located within the amended rules and are relocated here for convenience and ease of use.

24.301.411 WIRING STANDARDS (1) remains the same.

(a) NEC ARTICLE 440-2 110.2 (SUPPLEMENTARY). When requested, complete wiring diagrams shall be provided prior to installation of conductors and equipment indicating the conductor's and equipment's intended use.

(b) NEC Article ~~550-32(a)~~ 550.32(A): The allowable distance for service equipment from the exterior wall of a manufactured or mobile home is increased from 30 ft (9.14 m) to 50 ft (15.24 m).

(c) NEC Article ~~550-32(b)(2)~~ 550.33(A): Add the following: It shall be permissible to feed a manufactured (mobile) home with type SER cable when the service equipment is mounted on the exterior of the home. Physical protection of the cable is required by enclosing the cable in an approved raceway where the cable is run on the outside of the home. The cable is to be properly supported and attached per Article 338, where installed under the home.

(d) NEC Article ~~760-4~~ 760.1 (SUPPLEMENTARY). Smoke ~~detectors~~ alarms shall be installed in any building or structure as required under the currently adopted International Building Code or International Residential Code, whichever applies, regardless of whether or not the building or structure is exempt by 50-60-102, MCA.

REASON: The department is amending this rule to correct an inaccurate reference to smoke detectors. It is reasonably necessary to change the term to smoke alarms to align with terminology used in the National Electrical Code, International Building Code, and the International Residential Code.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-203, 50-60-603, MCA

24.301.421 ELECTRICAL INSPECTORS (1) Only persons appointed ~~and certified~~ by the department shall act as electrical inspectors to represent the state of Montana.

(2) Inspectors shall give information as to the meaning or application of the code, ~~but shall not perform duties for or assume the responsibilities of a consultant or advisor with respect to contractors, electricians, or owners, or users for whom the inspectors perform compliance inspections under the authority granted to them by virtue of their employment as department inspectors.~~ The inspector shall not design circuitry or perform engineering tasks for the permittee.

(3) remains the same.

(4) State electrical inspectors shall have powers as are vested in them by the department, including but not limited to the power to make inspections and to ascertain that none of the provisions of ~~the Electrical Safety Law~~ Title 50, chapter 60, part 6, MCA, the National Electrical Code, as amended from time to time, or the ~~rules of the section~~ Administrative Rules of Montana, Title 24, chapter 301, subchapter 4, Electrical Requirements are being violated.

(5) remains the same.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 2-2-101, 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604,
MCA

REASON: It is reasonably necessary to amend (1) to clarify that the department appoints, but does not certify, electrical inspectors. Because the current language may mislead people to believe there is a testing or competency requirement for these inspectors, the department is amending this rule to eliminate any confusion.

The department is amending (2) to clarify the electrical inspectors' duties and responsibilities with regard to design and layout of electrical installations. Inspectors only perform electrical inspections and are neither required nor allowed to do design work or instruct homeowners on electrical wiring. The board is amending (4) to specify the laws and specific documents that inspectors utilize in checking compliance of electrical installations.

24.301.431 ELECTRICAL PERMIT (1) remains the same.

(2) Prior to the commencement of any electrical installation, in an area where the electrical code is enforced by the department, the ~~installer or owner~~ permittee shall submit an official and complete request for electrical permit to the department in Helena with fee(s) as provided in ARM 24.301.461. If the permittee fails to obtain a permit for an electrical installation, a "Failure to Permit Investigation Fee" may be required in addition to the standard permit fee. ~~Request for electrical~~ Electrical permit forms will be made available by the department and may also be available at any power supplier or from the electrical inspector. ~~At the time of application for a permit, the applicant shall indicate on the application for a permit whether or not the applicant will be the permittee for the entire project. Owners shall designate which electrical contractor will be performing work on the project.~~

~~(a) The department may issue a provisional electrical permit authorizing electrical installations for a period not to exceed 14 days when the applicant remits an application with fees that exceed the current fee required. The department will notify the applicant of the correct fee due and retain the original permit fee until the applicant remits the correct fee. If the applicant fails to remit the correct fee within 14 days, the department will return the incorrect fee and application and request the power supplier disconnect the electrical service until such time as the required electrical permit is issued.~~

(3) The term "~~owner~~ permittee" listed in ARM 24.301.431(2), applies to owners doing electrical work on their own residence, farm, or ranch property provided that said property is maintained for their personal, private use. The property or residence shall not be built on speculation of resale or intended as rental property. ~~On farm and ranch installations used in conjunction with an agricultural or livestock raising operation, the term "owner" applies to the owner, owner's agent and/or person(s) employed by the owner on a full time basis as a farm or ranch employee(s) at the farm or ranch involved.~~

(4) remains the same.

(5) The requirements listed in 50-60-605, MCA, requiring an "electrical permit" before the energizing of an electrical installation by a power supplier means the power supplier may energize said installation with provisional power, before an inspection has been performed by the department, after issuing a power supplier limited service certificate as allowed in ARM 24.301.472, or upon receipt of the power supplier's copy of the electrical permit issued by the department.

(6) An individual that energizes an electrical installation without first obtaining an electrical permit for that installation is guilty of a misdemeanor per 50-60-607, MCA. The bureau may require a utility per 50-60-605, MCA, to not energize or to remove provisional power from the permittee's electrical system if the permittee connects new wiring to a new or existing power source, thereby causing the utility to energize the electrical installation without first receiving the required permit for the connection.

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

~~(8)~~ (9) Electrical permits ~~on which the fees, as provided in ARM 24.301.461, are under \$350~~ are valid for a period of 18 months from the date of issuance. One Renewals renewal of one year 18 months may be granted by the department as long as the application for renewal is made not more than 30 days following expiration of the original permit. Original electrical permits expire after 18 months from the date of issuance if not renewed. Renewed electrical permits will expire 18 months after the renewal date.

~~(9)~~ (10) The electrical permit is transferable ~~one time~~, with application for permit transfer being made in writing on forms provided by the department and the payment of a \$20.00 transfer fee. The permit transfer shall be completed prior to the subsequent permittee commencing work under the transferred permit.

~~(10)~~ (11) The exception to permit requirements listed in 50-60-602(2), MCA, for regularly employed maintenance personnel doing maintenance work on the business premises applies to personnel on the regular payroll rather than personnel under contract. ~~Maintenance work includes ordinary and customary in-plant or on-site installations, modification, additions or repairs which shall be limited to: relamping fixtures, replacing ballasts, trouble shooting, motor controls, replacing motors, breakers, magnetic starters, in a kind-for-kind manner. Also included are connection of specific items or specialized equipment that can be directly connected to an existing branch circuit panel by means of factory installed leads. However, if a new circuit is required to operate the equipment, or if the size of the supply conductors need to be increased, this will be considered new work.~~

(11) remains the same but is renumbered (12).

AUTH: 50-60-203, 50-60-603, ~~50-60-607~~, MCA

IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, 50-60-605, MCA

REASON: The department is amending (2) to clarify the proper method for permit application and the consequences for not properly obtaining an electrical permit. These modifications are aimed at reducing compliance costs. It is reasonably necessary to delete (2)(a) as unnecessary due to changes made to permit application forms.

The department is adding (6) to set forth the consequences for energizing an electrical installation without a permit which will reduce the associated compliance costs in this area.

The department is amending (9) to allow a renewal on all permits and limit all permit renewals to a single 18-month period. The department determined that these changes will reduce permits over \$350.00 in value from expiring, yet also require that other permits have an end date to keep the installation requirements contemporary with electrical code requirements.

The department is amending (10) to eliminate the one-time limit on transfer of electrical permits and set a fee for transfers. The department notes that when allowed more than one transfer, permit holders will no longer need to buy entirely new permits at considerable cost. The department issues between 400 and 600 electrical transfers each year with a resultant \$1000 increase in annual revenue.

The board is striking the definition of maintenance work from (11) as it is being relocated to ARM 24.301.402 in this notice.

24.301.441 COVER (ROUGH-IN) INSPECTIONS (1) and (2) remain the same.

(3) Whenever violations are found upon inspection, the inspector will notify the ~~installer~~ permittee verbally, with a written inspection report, or a written compliance order as to the nature of the violations.

(4) Provisional power may be removed from the installation if code violations discovered during the cover (rough-in) inspection are of such a nature to be considered an immediate threat of fire to the structure or shock hazard.

AUTH: 50-60-203, 50-60-603, ~~50-60-604~~, MCA

IMP: 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: It is reasonably necessary to amend this rule and correct the term installer to permittee to ensure the written inspection report is sent to the person who obtained the permit. The department is adding (4) to provide a more responsive and timely mechanism for removing power to an installation when public health or safety is threatened. The department determined that injunctions do not provide an adequate remedy for these types of code violations and is amending this rule to better protect the public.

24.301.451 FINAL INSPECTION (1) remains the same.

(2) Upon completing final inspections, state inspectors will date and sign the inspection reports. Inspectors will apply a green "approved" tag ~~or an orange "conditionally approved" tag~~ to installations. ~~Green "approved" tags will be applied when installations have been inspected and approved by the department. Orange Inspectors will apply an orange "conditionally approved" tags tag will only be applied to those installations that violate the cover inspection provision as provided in ARM 24.301.441. Upon approval, the department will remove the provisional power designation~~ If the installation is disapproved, notice thereof, together with reasons for disapproval, will be given by inspectors to installers of record. After removal or repair of the cause for disapproval, installers must make a request for reinspection

by the inspector who issued the disapproval. When the inspector approves the corrected installation as identified on the permit and inspection documents, an appropriate tag will be applied to the installation.

(3) If the installation is disapproved, inspectors will provide the permittee with notice of and reasons for the disapproval. After correcting the cause for disapproval, the permittee must make a request for reinspection to the department. Failure to make corrections or request the final reinspection may cause the department to cancel the provisional power. When the inspector approves the corrected installation as identified on the permit and inspection documents, the inspector will apply the proper final inspection tag to the installation and the department will remove the "provisional power" designation.

AUTH: 50-60-203, 50-60-603, ~~50-60-604~~, MCA

IMP: 50-60-103, 50-60-201, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The department determined it is reasonably necessary to amend and reformat this rule section to more clearly distinguish between approved and disapproved installations and the procedures for each when encountered. The changes are intended to improve the clarity and intent of the rule.

24.301.461 ELECTRICAL INSPECTIONS FEES (1) remains the same.

Type of Installation	Permit Fee
<u>(a) single-family dwellings or cabins (includes attached or detached garage if wired at the same time as the house or cabin). A cabin is a structure designed for use for overnight stays that may not meet the definition of a dwelling unit.</u>	
(i) 400 up to 300 <u>200</u> amp service	\$150* <u>200</u>
(ii) 301 or more <u>201 to 400</u> amp service	\$300* <u>380</u>
*Fee includes maximum of three inspections. Additional inspections charged at requested electrical inspection rates.	
(iii) <u>401 to 600 amp service</u>	<u>600</u>
(iv) <u>601 and up amp service</u>	<u>800</u>
<u>(b) remains the same.</u>	
(i) up to 200 amp panel	60 <u>80</u>
(ii) 201 to 300 amp panel	120 <u>150</u>
(iii) 301 or more amp panel	150 <u>250</u>
(c) multi-family dwellings (duplex through 12 units)	120 per bldg*
(i) <u>Up to 200 amp service</u>	<u>180</u>
(ii) <u>201 to 400 amp service</u>	<u>380</u>
(iii) <u>401 to 600 amp service</u>	<u>580</u>
(iv) <u>601 and up amp service</u>	<u>780</u>
* remains the same.	
(d) multi-family dwellings (duplex through 12 units) rewire or remodel only - per dwelling unit	80 <u>100</u>

(e) <u>single-family dwelling interior/exterior wiring/rewiring</u> rewire only or new addition to a home (includes (i) <u>more than three circuits and change of service</u> <u>and/or interior panelboard if installed at the same time</u>)	80 <u>120</u>
(ii) <u>more than three circuits only (does not include change of</u> <u>service or panelboard)</u>	100
(iii) <u>two or three additional circuits or pieces of equipment only</u>	70
(iv) <u>one additional circuit or piece of equipment (hot tub,</u> <u>air conditioner, etc.)</u>	45
(f) <u>change of service</u>	25
(i) <u>exterior meterbase and interior/exterior main disconnect only</u>	45
(ii) <u>exterior meterbase and interior/exterior main disconnect</u> <u>with feeder and distribution panelboard replacement</u>	75
(g) <u>remains the same.</u>	
(i) <u>wiring to a mobile or modular home with wiring of a</u> <u>basement and/or garage addition at the same time</u>	400 <u>120</u>
(ii) <u>wiring to a mobile, modular, or RV only on</u> <u>privately owned property</u>	60* <u>80</u>
(iii) <u>wiring to a mobile or RV on rental space at a</u> <u>licensed court with previously existing electrical service</u>	25* <u>40</u>
*Fee includes only one inspection; reinspections require new permit.	
(h) <u>through (h)(ii) remain the same.</u>	
(i) <u>new service and wiring for utilization equipment</u> <u>such as livestock well, residential irrigation well, etc.</u>	40 <u>50</u>
(j) <u>agricultural irrigation pumps or machines on a common service</u> (i) <u>per unit (one pump and/or one pivot)</u>	40 <u>50</u>
(ii) <u>multiple pumps or pivots (\$50 for first pump or pivot plus</u> <u>\$25 for each additional piece of equipment supplied by a</u> <u>common service.) (Note: A separate permit is required for each</u> <u>service installed supplying either a single piece of equipment or a combination of</u> <u>equipment.)</u>	
(k) <u>permit renewal fee</u>	45 <u>60</u>
(l) <u>remains the same.</u>	
(m) <u>remains the same, but is renumbered (o).</u>	
(m) <u>permit transfer fee</u>	20
(n) <u>failure to permit investigation fee</u>	45/hour
(n) (p) <u>provisional temporary construction service</u> <u>(for nonresidential jobs only) 25 \$60.00 (Note: A provisional</u> <u>construction service permit may only be closed when the permit</u> <u>expires and power is removed or upon the permittee obtaining</u> <u>a new permit applicable for the wiring of the structure being built.</u> <u>The utility power supplier shall be ordered by the inspector to</u> <u>remove power from a "Provisional construction service" upon</u> <u>expiration of the permit, if no additional permit has been obtained.)</u> NOTE: this additional \$25 fee is required in addition to the above inspection fees if a temporary service will be used, and is to be paid at the same time as the regular permit fee before construction begins.	

(o) permit issuance fee*

20

~~*This fee does not apply to permits issued pursuant to (1)(k) or (2).~~

(2) A requested inspection is limited to the inspection of existing electrical installations that an owner or occupant may wish to have inspected. The fee for a requested inspection is payable prior to or at the time of the inspection. The fee for a requested electrical inspection is \$45 ~~60~~, provided that such service, including all time spent preparing all paperwork furnished as documentation by the inspector regarding the inspection, is not in excess of one hour in duration, and then \$25 ~~30~~ for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will also be charged at the rates established under Title 2, chapter 18, part 5, MCA, when considered by the department to be applicable for the situation.

~~(3) If the application for permit and the proper fees, as determined under (1) of this rule, are not sent to the department prior to or upon commencement of the electrical work, the fees will be doubled and will have to be paid before the permit will be issued.~~

AUTH: 50-60-104, 50-60-203, 50-60-603, 50-60-604, MCA

IMP: 50-60-104, 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The department is amending this rule to amend fees for electrical permits. The proposed changes are based on fiscal analysis performed over the last two fiscal years, which revealed that the costs of issuing electrical permits and performing electrical inspections across the state has outpaced the revenues from issuance of the permits. See also the general statement of reasonable necessity for this notice.

The department is amending electrical inspection fees in (1)(a) and (c) for single and multi-family dwellings due to a fiscal analysis finding of a direct link between inspection time and electrical service size. Because larger service sizes require more inspections and greater inspection time, it is reasonably necessary to correlate inspection fees with larger service size and more equitably assign costs to those services requiring greater time and attention. The department is also amending (1)(a) to specify that detached garages are actually accessory buildings which will be covered under (1)(b) following the amendment, and to clarify that cabins are also not accessory buildings.

It is reasonably necessary to amend (1)(e) and (f) to further distinguish the fees for remodel or change of service situations. The department determined that assessing the same fee for a single circuit or a large remodel is inequitable. Further, the current single fee does not cover the costs of larger project inspections. Following amendment, the fees will be equitably allocated with higher fees assessed for larger and more complex inspection projects.

The department is amending (1)(j) to differentiate inspection fees based upon the number of irrigation pumps or pivots and more equitably assess larger fees to inspections that require more time and labor to complete. It is necessary to add a permit transfer fee at (1)(m) to implement changes proposed in ARM 24.301.431 in this notice. The department is adding a failure to permit investigation fee at (1)(n) and deleting (3) from this rule to align with new processes for commencing work without a permit as proposed in this notice at ARM 24.301.139.

24.301.491 REFUNDS OR CREDITS (1) and (2) remain the same.

(3) A refund or credit issued for a permit fee on a project, which was inspected by the department, shall have the refund or credit prorated at the rate of ~~\$25~~ 45 per required inspection performed, in addition to the \$25 refund/credit fee.

(4) No refund or credit for permit fees shall be issued for duplicate permits, when the permittee failed to transfer the original permit pursuant to ARM 24.301.431~~(9)~~ (10), and a subsequent permit was obtained for the same project.

(5) remains the same.

AUTH: 50-60-203, 50-60-603, 50-60-604, MCA

IMP: 50-60-203, 50-60-603, 50-60-604, MCA

REASON: The department is amending the inspection rate for prorating a refund due to inspection costs that have risen beyond the historic \$25 per inspection, and now average \$45.00 per inspection due to increases in factors effecting inspection costs such as fuel increases, travel costs, personnel costs, and equipment costs. The department is proposing this change following the fiscal analysis as outlined in the general statement of reasonable necessity.

5. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS (1) As used in this chapter:

- (a) "Department" means the Department of Labor and Industry.
- (b) "IBC" means the International Building Code, 2009 edition.
- (c) "IMC" means the International Mechanical Code, 2009 edition.
- (d) "IFGC" means the International Fuel Gas Code, 2009 edition.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The department is proposing New Rule I to identify standardized terms and acronyms that are used consistently throughout this chapter.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dcook@mt.gov, and must be received no later than 5:00 p.m., June 25, 2010.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.buildingcodes.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep

its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2050, e-mailed to dcook@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

10. Colleen White, attorney, has been designated to preside over and conduct this hearing.

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

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

Certified to the Secretary of State May 17, 2010

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

In the matter of the repeal of ARM	)	NOTICE OF SECOND PUBLIC
36.11.111 and the amendment of ARM	)	HEARING AND EXTENSION
36.11.450 pertaining to the export of	)	OF COMMENT PERIOD ON
timber harvested in the state and the	)	PROPOSED REPEAL AND
maximum size of nonadvertised timber	)	AMENDMENT
permits)	

To: All Concerned Persons

1. On April 29, 2010, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-145 regarding the notice of public hearing on the proposed repeal and amendment of the above-stated rules at page 988 of the 2010 Montana Administrative Register, Issue No. 8.

2. On June 16, 2010, at 1:00 p.m. a second public hearing will be held in the Clark Fork Conference Room at 2705 Spurgin Road, Missoula, Montana, to consider the amendment of the above-stated rules. This second public hearing supplements the hearing that occurred on May 26, 2010. It has come to the attention of the department that certain interested parties were not initially notified of the proposed rule change. This second hearing has been scheduled to permit those parties to provide testimony and written comment.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Shawn Thomas, Forest Management Bureau, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4306; fax (406) 542-4242; e-mail sthomas@mt.gov.

4. The department is also extending the time within which to submit written comment. Written data, views, or arguments may be submitted to Shawn Thomas at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on June 24, 2010. Testimony and comments that have already been submitted pursuant to the initial notice and hearing need not be repeated.

5. The rules as proposed to be repealed and amended remain the same.

6. Shawn Thomas, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Second Public Hearing and Extension of Comment Period on Proposed Repeal and Amendment is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make

the electronic copy of this Notice of Second Public Hearing and Extension of Comment Period on Proposed Repeal and Amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 3 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on April 19, 2010.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Mark Phares
Mark Phares
Rule Reviewer

Certified to the Secretary of State on May 17, 2010.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through VI pertaining to) PROPOSED ADOPTION
Medicaid for Workers with Disabilities)

TO: All Concerned Persons

1. On June 24, 2010, 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 of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on June 14, 2010, 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 MEDICAID FOR WORKERS WITH DISABILITIES: DEFINITIONS

The following definitions apply to this subchapter:

(1) "Employed" means engaged in work for which the individual receives or seeks to receive income, either as an employee or as a self-employed person. An individual is considered to be employed only if Medicare and social security taxes are withheld from the income received for the work or, in the case of a self-employed individual, if the individual pays Medicare and social security taxes on any income received for the work.

(2) "Family" means the individual applying for or receiving Medicaid and any relative or relatives who reside with the individual and whose income and resources are deemed available to the individual pursuant to the supplemental security income (SSI) regulations in 20 CFR, part 416, subparts K and L, as amended through May 17, 2010, which are adopted and incorporated by reference. 20 CFR part 416, subpart K, contains the SSI criteria for evaluating income, including the income of financially responsible relatives. 20 CFR, part 416, subpart L, contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, 5th Floor, P.O. Box 202925, Helena, MT 59620-2925.

(3) "Gross income" means an individual's income before any deductions or disregards provided in 20 CFR, part 416, subpart K, are subtracted.

(4) "Income" has the meaning provided in 20 CFR, part 416.1102 and 416.1103 as amended through May 17, 2010.

(5) "Indian" means any person who is a member of an Indian tribe.

(6) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or group or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, 43 USCS section 1601 et seq., that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) "Retirement or pension fund or plan" means a fund or plan specifically established and earmarked for the sole purpose of providing financial resources for a person who is retired from gainful employment or who is no longer employed by a particular employer. Examples of a retirement or pension fund or plan are 457 plans, conventional 401(k) plans, SIMPLE 401(k) plans, employer-based defined benefit plans, Public Employee Retirement System (PERS) accounts for Montana state employees, thrift savings plan accounts for federal employees, section 403(b) plans, section 501(c)(18) plans, Keogh plans, individual retirement accounts (IRAs), Roth IRAs, SIMPLE IRAs, simplified employee pension (SEP) plans, employee profit sharing plans, and cash balance plans.

AUTH: 53-6-113, MCA

IMP: 53-6-131, 53-6-195, MCA

RULE II MEDICAID FOR WORKERS WITH DISABILITIES: APPLICABLE LAW (1) Except as specifically provided in this subchapter or in the Aged Blind Disabled (ABD) Medicaid Manual adopted and incorporated by reference in ARM 37.82.101, the Medicaid for Workers with Disabilities program shall be administered in accordance with Title XIX of the Social Security Act, 42 USC 1396, et seq. and ARM Title 37, chapter 5, chapter 82, subchapters 1, 2, and 4, chapter 85, chapter 86, chapter 87, chapter 88, and chapter 90.

AUTH: 53-6-113, MCA

IMP: 53-6-131, 53-6-195, MCA

RULE III MEDICAID FOR WORKERS WITH DISABILITIES: GENERAL ELIGIBILITY CRITERIA (1) An individual is eligible for benefits through the Medicaid for Workers with Disabilities program if the individual:

- (a) is employed;
- (b) has a disability as defined in 42 USC 1382c, except that the individual has or has had earnings above the level for substantial gainful activity;
- (c) has family income and resources that do not exceed the limits specified in [RULES IV and V];
- (d) pays a cost-share amount as specified in [RULE VI]; and
- (e) satisfies all other eligibility requirements specified in the authorities cited in [Rule II].

AUTH: 53-6-113, MCA
IMP: 53-6-131, 53-6-195, MCA

RULE IV MEDICAID FOR WORKERS WITH DISABILITIES: INCOME

(1) An individual is eligible for benefits through the Medicaid for Workers with Disabilities program in regard to income if the individual's net family income is less than 250% of the 2010 U.S. Department of Health and Human Services poverty level for a family of that size.

(2) The individual's net family income will be determined using the income provisions of the supplemental security income (SSI) regulations at 20 CFR, part 416, subpart K, as amended through May 17, 2010, and of the Aged Blind Disabled (ABD) Medicaid Manual adopted and incorporated by reference in ARM 37.82.101. 20 CFR, part 416, subpart K, which contains the SSI criteria for evaluating income, including the income of financially responsible relatives, is adopted and incorporated by reference. In case of a conflict between a provision of 20 CFR, part 416, subpart K, and a provision of the ABD Medicaid Manual, the provision of the Medicaid Manual shall apply. The ABD Medicaid Manual is available for public viewing at each local office of public assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, 5th Floor, P.O. Box 202925, Helena, MT 59620-2925.

AUTH: 53-6-113, 53-6-195, MCA
IMP: 53-6-131, 53-6-195, MCA

RULE V MEDICAID FOR WORKERS WITH DISABILITIES: RESOURCES

(1) An individual is eligible in regard to resources if the individual's resources, including any resources of relatives deemed to be available to the individual pursuant to the supplemental security income (SSI) regulations at 20 CFR, part 416, subpart L, as amended through May 17, 2010, have a value of \$8,000 or less. 20 CFR, part 416, subpart L, which contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives, is adopted and incorporated by reference. A married individual who resides with his or her spouse is eligible in regard to resources if the resources of the individual and his or her spouse, including any resources of relatives deemed to be available to the individual pursuant to 20 CFR, part 416, subpart L, have a value of \$12,000 or less.

(2) Except as provided in (3) below, the individual's resources will be determined using the resource provisions of SSI regulations at 20 CFR, part 416, subpart L, and of the ABD Medicaid Manual adopted by reference in ARM 37.82.101. In case of a conflict between a provision of 20 CFR, part 416, subpart L, and a provision of the ABD Medicaid Manual, the provision of the Medicaid Manual shall apply.

(3) Funds in a retirement or pension fund or plan are excluded as a resource.

AUTH: 53-6-113, 53-6-195, MCA
IMP: 53-6-131, 53-6-195, MCA

RULE VI MEDICAID FOR WORKERS WITH DISABILITIES: COST SHARE

FEES (1) Except as provided in (2) below, an otherwise eligible individual must make a monthly cost share fee in accordance with the table in (3) below, as a condition of eligibility for benefits under the Medicaid for Workers with Disabilities program. The payment is based on the gross income of the individual only, not the individual's family income. The amount of the payment varies depending on what percentage of the federal poverty level for a family of one the individual's gross income represents.

(2) Indians are not required to pay any cost share fee regardless of their income.

(3) The amount of an individual's cost share fee will be determined using the following table:

Gross Income as a percentage of federal poverty level (FPL)	Monthly gross income dollar amount	Monthly payment
Up to 100%	\$01.00 to \$903	\$35
Over 100% to 150%	\$903.01 to \$1,354	\$75
Over 150% to 200%	\$1,354.01 to \$1,805	\$125
Over 200% to 250%	\$1805.01 to \$2,256	\$175

AUTH: 53-6-113, 53-6-195, MCA

IMP: 53-6-131, 53-6-195, MCA

4. The Montana Medicaid program is a joint federal and state program that pays medical expenses for eligible low income individuals. The Department of Public Health and Human Services (the department) administers the Montana Medicaid program in accordance with the federal Medicaid statute at 42 USC 1396a et seq. and the state Medicaid statute at 53-6-101, MCA et seq. To qualify for the Montana Medicaid program, an individual must meet the eligibility requirements set forth in ARM Title 37, chapter 82. For individuals seeking Medicaid because of advanced age, blindness, or disability the financial requirements for eligibility include income and resource limits. The department also publishes a policy manual known as the Aged, Blind, and Disabled (ABD) Medicaid Manual which contains information about the eligibility requirements that is more detailed than that in administrative rules. The primary purpose of this manual is to provide guidance to employees of the local offices of public assistance who determine Medicaid eligibility.

In 2009 the 61st Montana Legislature enacted Senate Bill 119 (SB 119) which authorizes the department to create a new Medicaid eligibility group known as Medicaid for Workers with Disabilities. SB 119 authorizes the department to adopt less stringent income and resource limits than are used to determine eligibility for other ABD Medicaid. The provisions of SB 119 are codified in 53-6-113(6), 53-6-131(11), and 53-6-195, MCA. The federal authority to provide coverage to this group is provided in the Balanced Budget Act (BBA) of 1997, codified at 42 USC, section 1396a(a)(10)(A)(ii)(XIII), which gives states the option of creating a Medicaid

coverage group for individuals with disabilities who are employed so that they can work without losing their Medicaid coverage due to their earnings from employment. SB 119 requires the department to administer Medicaid for Workers with Disabilities in accordance with the provisions of the BBA at 42 USC, section 1396a(a)(10)(A)(ii)(XIII).

SB 119 authorizes the department to provide coverage under this group to individuals whose net family income is less than 250% of the federal poverty levels (FPL) published by the U.S. Department of Health and Human Services, but it does not state how net family income is determined or what the resource limit for this group will be. It also does not define certain key terms such as "family" or "employed". It is therefore necessary to adopt rules to specify in more detail the policies that will apply in determining eligibility for this group. These rules will provide detailed guidance to employees of the department who determine eligibility for Medicaid and ensure that the same policies for determining eligibility are applied to all applicants for coverage under this group. The rules will also notify potential Medicaid recipients and other members of the public of the eligibility requirements for this coverage group.

Rule I

SB 119 requires that an individual be employed in order to receive benefits under this coverage group. The term "employed" is not defined in SB 119 or in the BBA, however. It is therefore necessary to define this term to ensure that all individuals administering the program give the same meaning to the term and to put members of the public on notice of how the department interprets this term. Proposed new Rule I defines the term "employed" broadly without imposing a minimum number of hours of employment or a minimum amount of earnings because the BBA does not permit the department to impose requirements more restrictive than the requirements of the supplemental security income (SSI) cash assistance program. SSI rules do not prescribe minimum work hours or earnings for purposes of determining whether an individual is employed. SSI rules do permit states to require proof of employment such as payment of Medicare and social security taxes, however. The department therefore has defined "employed" to include a requirement for payment of Medicare and social security taxes to prevent individuals who are not engaged in bona fide employment from qualifying for the program, which is intended to benefit employed individuals. For example, an individual who occasionally does odd jobs for a family member without paying any taxes on the money earned from such work would not qualify as employed under this definition.

Although the BBA limits eligibility to individuals in families whose income is less than 250% of the FPL, the BBA does not define the term "family". The department has chosen to use the definition of family used in the SSI program, which includes a spouse with whom the individual resides as part of the individual's family, so that spousal income will be counted in determining eligibility for Medicaid for Workers with Disabilities. Some advocates for individuals with disabilities suggested that only the income of the person seeking Medicaid coverage be counted if the applicant was

married, because this would allow more individuals to qualify for coverage. The department rejected this approach because it is not consistent with the policy applied in all other Medicaid coverage groups. Medicaid policy generally requires that the income of all financially responsible relatives with whom a person lives be counted in determining the person's eligibility. Thus, a spouse's income or a parent's income is always counted if the spouses live together or the parent lives with the child. This is fair because the spouse's or parent's income is available to help pay for necessities such as food and shelter that the individual otherwise would have to pay himself or herself, leaving more of the individual's income available to pay medical expenses. There is no reason to make an exception to the usual policy for this coverage group, which is already being given the benefit of significantly higher income and resource limits than other groups.

The department is defining the term "retirement or pension plan or fund" broadly to include any type of fund or plan specifically designated for the sole purpose of providing financial resources for retirement or separation from a particular employer. The requirement that the funds or plan be solely for that purpose is included to ensure that funds in all savings and investment accounts do not qualify for exclusion. This would not be consistent with the reason for excluding retirement and pension funds and plans, which is to protect only money specifically earmarked for retirement from being spent prematurely on medical expenses.

It is not necessary to include a definition of the term "net family income" because the term "family" is defined, and the rule provides that the individual's net family income will be determined in accordance with the rules of the SSI program.

Rule II

Although there are special criteria for determining eligibility for Medicaid for Workers with Disabilities that apply only to this coverage group, the general eligibility criteria applicable to other coverage groups apply except as otherwise specified. Additionally, the rules governing the provision of services to Medicaid recipients generally apply to this coverage group. Proposed new Rule II is therefore necessary to clarify that the rules and statutes applicable to other Medicaid coverage groups apply to Medicaid for Workers with Disabilities also.

Rule III

Proposed new Rule III summarizes the financial and nonfinancial eligibility requirements for Medicaid for Workers with Disabilities. This is necessary to apprise those administering the program and interested members of the public of the requirements to qualify for Medicaid under this coverage group.

Rule IV

Proposed new Rule IV sets an income limit for this coverage group, namely that the applicant's net family income must be below 250% of the FPL. This is the maximum

amount of income that a participant is permitted to have under the BBA. The department chose this income limit, which is significantly higher than the maximum allowed for other Medicaid coverage groups, because disabled individuals who are working may have additional expenses related to their employment and should therefore be allowed to have more income without being penalized by the loss of their Medicaid coverage.

Proposed new Rule IV further provides that net family income will be determined using the income provisions of the SSI regulations. The department chose to use the SSI rules to calculate net family income because these are the rules used to determine eligibility for other coverage groups serving the disabled population. The department has found that using different rules for similar programs or coverage groups leads to confusion among both the agency employees who administer the programs and participants in the programs. Conversely, consistency of policies among similar programs and coverage groups eliminates confusion and reduces errors in all programs and coverage groups. Additionally, the department decided not to use more liberal income disregards or other special rules to calculate net income for this group, because the income limit of 250% of FPL is high enough to make this unnecessary.

Rule V

Proposed new Rule V sets the resource (asset) limit for this coverage group at \$8,000 for an unmarried individual and \$12,000 for a married couple. These amounts are four times the resource limits used in the SSI program. The purpose of having higher resource limits is to allow workers with disabilities to reap the rewards of employment by being allowed to accumulate assets without being penalized. The department considered establishing resource limits that are twice the SSI limits but decided this was not generous enough. The department concluded that setting the resource at four times the SSI limits would allow participants to accumulate reasonable but not excessive amounts of property.

The department rejected the option of having higher resource limits or no resource limits at all because it would benefit a person while the person was working and eligible under this coverage group but would disqualify the person from receiving Medicaid under a different coverage group if the person lost eligibility under this group. Since most people who work eventually stop working for one reason or another, such as retirement, health problems, layoffs, or voluntary job quit, having excessively high resource limits would be disadvantageous to participants in the long run because it would cause ineligibility for benefits under a different Medicaid coverage group when one of these events occurs. Also, having very high resource limits or no limits would create an unfair disparity between disabled workers and other aged, blind, or disabled individuals who are not working and who are subject to the SSI resource limits.

Proposed new Rule V specifies that resources will be determined using the resource provisions of the SSI regulations and of the department's ABD Medicaid Manual and

further provides that in the case of a conflict between a provision of the SSI regulations and a provision of the ABD Medicaid Manual the provision in the Medicaid Manual will be followed. In general the department uses the SSI rules to determine resource eligibility for individuals whose eligibility is based on being aged, blind, or disabled, although the department has adopted some policies that are more liberal than the SSI policies. The department has chosen to apply the same policies used for other aged, blind, and disabled coverage groups to this new coverage group to preserve consistency among Medicaid programs serving individuals with disabilities. The department has found that using different rules for similar programs or coverage groups leads to confusion among both the agency employees who administer the programs and participants in the programs. Conversely, consistency of policies among similar programs and coverage groups eliminates confusion and reduces errors in all programs and coverage groups. Additionally, the department decided not to use different, more liberal rules to calculate countable resources for this group because the resources limits have been set high enough to make this unnecessary.

Proposed new Rule V specifies that funds in a retirement or pension fund or plan will not be counted in determining eligibility for this coverage group. The department has chosen to exclude these resources to maintain consistency with other coverage groups serving individuals with disabilities. Retirement and pension funds and plans are excluded because it is not desirable to force individuals to spend money they will need for their basic support in their old age or retirement on medical expenses.

Rule VI

Proposed new Rule VI contains the table that will be used to determine the amount of the cost share fee each individual will pay. The payment amount will be based on the gross income of the individual, rather than the individual's family income because this will result in the cost share fee being more closely related to the earnings of the individual with a disability.

The payment table contains four income/payment brackets. In the first bracket, individuals with income of up to 100% of the FPL, that is, with monthly income of up to \$903, will pay \$35; individuals with income of over 100% to 150% of the FPL, that is, with monthly income of \$903.01 to \$1,354.00, will pay \$75; individuals with income of over 150% to 200% of the FPL, that is, with monthly income of \$1,354.01 to \$1,805, will pay \$125; and individuals with income of over 200% to 250% of the FPL, that is, with monthly income of \$1,805.01 to \$2,256, will pay \$175.

The department chose to set a single payment amount for a range of incomes rather than calculating an individual's payment as a percentage of the individual's income, because this method of determining the payment is easier for participants in the program as well as for the departmental employees administering the program. If the payment was a specified percentage of the individual's income, the payment would constantly be changing as the individual's income changed, which in turn would require the individual to report any change in income, however small, and

would require departmental employees to recompute the payment and notify the individual of the new payment amount every time a change in income occurred. This would be burdensome for both participants and employees and would increase the likelihood of mistakes in the payment amount being made. Having four payment brackets ensures that the amount of the payment is related to the individual's income closely enough to be fair but also ensures that the payment amount would not change too frequently because each of the four brackets covers a fairly broad range of incomes.

The amounts participants in the program will be required to pay were not determined like insurance premiums by having actuaries determine the exposure to risk and estimating the amounts participants must pay in order for the payments to cover the amount Medicaid will expend for participants. The department chose these payment amounts after studying the amounts participants in similar programs in other states are required to pay. The department determined that these amounts are reasonably related to the participant's income and are not so high as to be burdensome. Indians will not be required to pay any cost share fee because Section 5006 of the American Recovery and Reinvestment Act of 2009 provides that Indians receiving Medicaid cannot be required to pay cost sharing payments.

The fiscal impact of these rules on participants

Medicaid for Workers with Disabilities will begin on July 1, 2010 if the necessary approvals are received from the Centers for Medicare and Medicaid (CMS), the federal agency that oversees state Medicaid programs. It is estimated that 43 individuals will participate in the program in its first three months, July through September 2010, and it is estimated that these participants will pay cost share fees totaling \$6,135. It is estimated that 254 individuals will participate in the program from October 1, 2010 through September 30, 2011 and that they will pay cost share fees totaling \$145,980. It is estimated that the total spent for the program from July 1, 2010 through September 30, 2011 will be \$282,960, of which \$92,641 will be general fund dollars and \$190,319 will be federal dollars.

5. The department intends to apply proposed new Rules I through VI retroactively to July 1, 2010. A retroactive application of the proposed new rules will have no negative impact on Medicaid applicants or recipients.

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, and must be received no later than 5:00 p.m., June 25, 2010.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on May 13, 2010, sent postage prepaid via USPS, and by telephone and e-mail May 12, 2010.

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State May 17, 2010.

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

In the matter of the establishment of a) NOTICE OF NEGOTIATED
negotiated rulemaking committee on) RULEMAKING
guest ranch and outfitting and guide)
facilities)

TO: All Concerned Persons

1. The Department of Public Health and Human Services intends to establish a negotiated rulemaking committee to negotiate and develop proposed rules regulating guest ranches and outfitting and guide facilities.

2. The proposed rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only rules to: (a) ensure that the establishment has safe drinking water and an adequate water supply; (b) ensure an adequate and sanitary sewage system and refuse disposal system; and (c) address food safety concerns, such as adequate storage, refrigeration, and food handling, as specified in 50-51-103, MCA.

3. Interests that are likely to be significantly affected by the proposed rules are:

a. Establishments which meet the definition of "guest ranch" in 50-51-102(4), MCA. "Guest ranch" means a facility that: (a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen; (b) furnishes sleeping accommodation on advance reservations for a minimum stay; (c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and (d) is a small establishment or a seasonal establishment.

b. Establishments which meet the definition of "outfitting and guide facility" in 50-51-106(6), MCA. "Outfitting and guide facility" means a facility that: (a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen; (b) furnishes sleeping accommodations to guests; (c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101, MCA; and (d) is a small establishment or a seasonal establishment.

The definitions of seasonal establishment in 50-51-102(9), MCA, and small establishment in 50-51-102(10), MCA are applicable to guest ranches and outfitting and guide facilities. "Seasonal establishment" means a guest ranch or outfitting and guide facility operating less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. "Small establishment" means a guest ranch or an outfitting and guide facility offering

accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are: Jim Murphy, Communicable Disease Control and Prevention Bureau Chief; Shannon McDonald, Department of Public Health and Human Services Legal Counsel; Melissa Tuemmler, R.S., Food and Consumer Safety (FCS) Supervisor; and Ruth Piccone, R.S., FCS Public Health Sanitarian.

5. The department is seeking applications from interested parties to serve on the committee. The department proposes persons from organizations which are likely to be significantly affected by the proposed rules to serve on the committee to represent their interests. These include, but are not limited to, Montana Ranch Vacation Association, Montana Outfitters and Guides Association, and Montana Innkeepers Association.

6. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Jim Murphy, Department of Public Health and Human Services, Public Health and Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, no later than June 28, 2010:

(a) the name of the petitioner or the nominee, mailing address, and contact information including telephone, fax number, e-mail address, and mailing address;

(b) a description of the interests the person or nominee represents, including relationship to regulated guest ranches or outfitting and guide facilities and the name of the establishment or association;

(c) evidence that the person or nominee is authorized to represent parties related to the interests the person proposes to represent;

(d) a written commitment that the petitioner or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 8 and will actively participate in good faith in the development of the rules under consideration; and

(e) the ability of the petitioner or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

7. The department may limit the size of the negotiated rulemaking committee, if, after receipt of the comments and applications, the department determines that the interests of the persons that will be significantly affected by the proposed rule can be adequately represented. The selected committee members will represent the guest ranches, outfitting and guide facilities, state and local public health

officials, or other parties or agencies which have a significant relationship with regulated guest ranch and outfitting and guide facilities.

8. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On May 27, 2010, this notice will be published in the Montana Administrative Register (MAR), and as appropriate, in newspapers and other publications, seeking comment and applications for memberships on the negotiated rulemaking committee no later than June 28, 2010. The notice will also be mailed to persons known to the department to have an interest in this matter.

(b) After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than August 31, 2010. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection. Within 30 days from the notification of selection, the committee members will be sent an information packet.

(c) The negotiated rulemaking committee will convene at various times in July, August, September, and October to negotiate and develop proposed rules. The committee will establish a date by September, 2010, for conclusion of the rule negotiations with the goal of reaching a consensus on the proposed rules. Teleconferencing will be utilized for most meetings, with at least one meeting scheduled in Helena, Montana.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit to the department a report containing the proposed rules by December 2010. If a consensus cannot be reached on the proposed rules, the committee will transmit to the department a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

9. Interested parties may submit their views or comments concerning the proposed negotiated rulemaking process to Jim Murphy, Department of Public Health and Human Services, Public Health and Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, no later than June 28, 2010.

10. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the department of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

a. Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

b. The negotiated rulemaking committee terminates upon adoption of the final rule under consideration, unless the agency, after consulting the committee or the committee itself specifies an earlier termination date (2-5-106(4), MCA).

12. The specific grant of rulemaking authority authorizing the proposed rules is found in 50-51-103, MCA. The proposed rules will implement 50-51-101 and 50-51-103, MCA.

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State May 17, 2010.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to the administration)
of the 2010-2011 Federal Community)
Development Block Grant (CDBG))
Program)

TO: All Concerned Persons

1. On December 24, 2009, the Department of Commerce published MAR Notice No. 8-94-79 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2416 of the 2009 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rule as proposed: New Rule I (8.94.3726).

3. 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: Can CDBG funds for Public Facilities be used to create a community garden?

RESPONSE #1: Each applicant to CDBG must be able to demonstrate that a majority of each project's beneficiaries are low and moderate income persons. If an applicant can demonstrate that a community garden would primarily benefit low and moderate income persons, the garden would be an eligible activity.

COMMENT #2: Can CDBG funds be used for a homeless shelter?

RESPONSE #2: Because of the emphasis of the CDBG program on assisting low and moderate income persons, a homeless shelter would be eligible for funding.

COMMENT #3: Can the department relax the rule that local governments cannot apply for another Planning Grant this spring even though they have an uncompleted FFY 2009 Planning Grant underway?

RESPONSE #3: The department is not proposing any changes at this time to the rule, in part because the number of applications already received far exceeds what the department has funding for.

COMMENT #4: Can CDBG funds be used to pay the first part of the first year's salary for a director of a new land trust?

RESPONSE #4: CDBG funds cannot be used for payment of staff salaries or operation and maintenance (O & M) expenses.

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

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

Certified to the Secretary of State May 17, 2010.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 12.11.115 and 12.11.501 and the) ADOPTION
adoption of NEW RULE I regarding)
recreational water use on Lake Five)

TO: All Concerned Persons

1. On March 25, 2010 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-361 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 671 of the 2010 Montana Administrative register, Issue Number 6.

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

3. The commission has adopted the above-stated rule as proposed: NEW RULE I (12.11.2208).

4. Five people provided verbal comment and one person provided written comment at a public hearing and eight people submitted written comment during the comment period. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT #1: Six people were in favor of the proposed amendment and adoption.

RESPONSE #1: The commission appreciates the interest in this rulemaking process.

COMMENT # 2: One person suggested a 50-foot or 100-foot no wake zone instead of completely eliminating the established 200-foot no wake zone.

RESPONSE #2: The Department of Fish, Wildlife and Parks proposed language for rules to the commission as agreed to in a settlement agreement in recognition of concerns expressed about safety on Lake Five with the development of a fishing access site. The commission decided that eliminating the established 200-foot no wake zone is appropriate on Lake Five.

COMMENT #3: Seven people stated they were opposed to the prohibiting of personal watercraft (PWC). Five of these seven people recommended the commission adopt a restriction of the use of PWC from noon to 6 p.m. instead of completely prohibiting their use. Three of the seven people expressed concern that Lake Five would become the only lake in Montana, besides the lakes in Glacier National Park, where PWC would be restricted. Two of the seven people stated PWC were their choice of recreational vehicles for several reasons including

personal preference to PWC and the affordability of PWC in comparison to other boats. One of the seven stated these rules were generated due to an agreement so a fishing access site could be established on Lake Five and stated people use PWC to fish and would be using the fishing access site for its intended purpose. One of the seven stated there is more drinking while operating boats than PWC because it is harder to drink while driving a PWC and banning PWC will increase the risk even more.

RESPONSE #3: As agreed to in a settlement agreement which recognized concerns about safety on Lake Five related to development of a fishing access site, the department agreed to ask the commission to prohibit PWC. The commission does not agree that restricting the time PWC may use the lake will address the safety concerns expressed by some landowners however, the commission understands the concerns of landowners who already own PWC and will not be able to use them, including using PWC for fishing, on Lake Five. The lakes that are restricted in Glacier National Park were instated by the federal government and are outside the authority of the commission and have no bearing on this rulemaking process. The commission is unaware of a higher rate of boating under the influence among boat users than with PWC users and the commission does not agree that the banning of PWC will increase the rate of boating under the influence of alcohol.

COMMENT #4: One person expressed specific safety concerns and enforcement of rules and regulations on Lake Five. The person stated the Department of Fish, Wildlife and Parks is under cost controls causing a shortage of staff and the department will now be required to patrol Lake Five.

RESPONSE #4: The department and commission are always conscientious of possible cost savings and the department has not reduced staff. The department agreed to propose the rule language to the commission in order to provide access to Lake Five and does not have any concerns about enforcing the rules and regulations on the lake.

COMMENT #5: Three people specifically stated their support for the prohibition of PWC.

RESPONSE #5: The commission appreciates the interest in this rulemaking process.

COMMENT #6: Three people express disappointment that they had not received notice of this rulemaking authority or the public hearing.

RESPONSE #6: The staff of the Department of Fish, Wildlife and Parks published notice of the hearing and proposed language on its web site, sent hard copies of the notice to people who asked to receive notice of the department's rulemaking proposals, and published a notice in the area newspaper. The commission regrets the inability to notify everyone that may have an interest in the rulemaking process and encourages persons who wish to receive notice of rulemaking actions proposed

by the commission make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or faxed to the office at (406) 444-7456.

/s/ Bob Ream

Bob Ream, Chairman

Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk, Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State May 17, 2010

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

In the matter of the adoption of a) NOTICE OF ADOPTION OF A
temporary emergency rule closing the) TEMPORARY EMERGENCY RULE
Belt Creek within Sluice Boxes State)
Park from Logging Creek Bridge to)
Riceville Bridge Parking Area in)
Cascade County)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) authorizes the Department of Fish, Wildlife and Parks (department) to adopt temporary emergency rules to close public waters to public use as provided in ARM 12.11.6601 through 12.11.6605.

2. The department has determined the following reasons justify the adoption of a temporary emergency rule:

(a) A log jam has created an obstruction in a narrow, steep-walled section of a canyon that has caused the creek to be impassable by recreationists.

(b) Persons recreating on the creek in this condition would be subjected to:

(i) collisions with the log jam;

(ii) becoming stranded and having to hike out of steep canyon areas; or

(iii) drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 10 of the 2010 Montana Administrative Register.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov.

4. The temporary emergency rule is effective May 18, 2010 when this rule notice is filed with the Secretary of State.

5. The text of the temporary emergency rule provides as follows:

RULE I BELT CREEK TEMPORARY EMERGENCY CLOSURE

- (1) The closed portion of Belt Creek is located in Cascade County.
- (2) Belt Creek is closed to all floating within in the seven mile stretch of waters flowing through Sluice Boxes State Park from Logging Creek Bridge over Belt Creek on United States Forest Service Road 839 (River Mile 58.5) to Riceville Bridge Parking Area on Evans Riceville Road (River Mile 51).
- (3) This rule is effective as long as there is a log jam on Belt Creek and the department determines this portion of the creek is again safe for floating and rescinds the temporary emergency closure.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

- 6. The rationale for the temporary emergency rule is as set forth in paragraph 2.
- 7. This rule will expire as soon as the department determines the creek is again safe for floating. Signs restricting use of the creek will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.
- 8. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Fitzpatrick, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than July 2, 2010.
- 9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.
- 10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

<u>/s/ Robert N. Lane</u> Robert N. Lane Department of Fish, Wildlife and Parks	<u>/s/ William A. Schenk</u> William A. Schenk Rule Reviewer
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Certified to the Secretary of State May 18, 2010.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL,
36.25.137, amendment of ARM	)	AMENDMENT, AND
36.25.106, 36.25.110, 36.25.111,	)	ADOPTION
36.25.112, 36.25.115, 36.25.117, and)	
36.25.125, and the adoption of New)	
Rules I through XIII regarding surface)	
leasing and cabinsite leasing rules)	

To: All Concerned Persons

1. On January 14, 2010, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-143 regarding a notice of public hearing on the proposed repeal, amendment, and adoption of the above-stated rules at page 25 of the 2010 Montana Administrative Register, Issue No. 1.

2. The department has repealed ARM 36.25.137 as proposed.

3. The department has amended ARM 36.25.106, 36.25.110, 36.25.111, 36.25.112, 36.25.115, 36.25.117, and 36.25.125 as proposed. The department has adopted New Rules VII (36.25.1007), XI (36.25.1011), XII (36.25.1012), and XIII (36.25.1013) as proposed.

4. The department has adopted New Rules I (36.25.1001), II (36.25.1002), III (36.25.1003), IV (36.25.1004), V (36.25.2005), VI (36.25.1006), VIII (36.25.1008), and X (36.25.1010) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (36.25.1001) CABINSITE DEFINITIONS

(1) remains as proposed.

(2) "Adjusted 2009 appraised value" means an amount equal to the 2003 Montana Department of Revenue (DOR) appraised value for a state parcel increased ~~by~~ at a rate of 6.53 percent compounded annually to 2009.

(3) and (4) remain as proposed.

(5) "Base rent" means the lower of five percent of the adjusted 2009 appraised value of the state trust land under lease or an amount equal to five percent of the actual 2009 reappraisal of market value by the DOR.

(6) through (11) remain as proposed.

(12) "Lease" means a contract by which the board conveys state trust land for a term of years for a specified rental, and for the use for which the land is classified (77-1-401, MCA).

(13) remains as proposed.

(14) "Lease fee adjustment process" means the annual process by which the department applies the Lease Fee Indicator to the adjusted 2009 appraised value of

the leased premises, or by which the department applies the rental rate contracted in the lease to the actual 2009 reappraisal of market value by the DOR, and subsequent reappraisals, to determine if it is necessary to alter the annual rental payment. Future lease fee adjustments will occur at the review period defined in the lease, or at any time that it is considered necessary to protect the interests of the state trusts, as determined at the sole discretion of the director of the department.

(15) through (18) remain as proposed.

(19) "Trust(s)" means any one, or collectively all of the trusts, that receive income derived from department management of state trust lands.

NEW RULE II (36.25.1002) CABINSITE LEASES

(1) through (3) remain as proposed.

~~(4) The issuance of any cabinsite leases after January 16, 1987, shall require reclassification of the land as provided by ARM 36.25.109. Cabinsite leases shall be classified as per ARM 36.25.108, or if necessary, reclassified as per ARM 36.25.109.~~

(5) A cabinsite lease grants the lessee the right of access and the right to place necessary utility facilities within the cabinsite lease premises, and across specified adjacent state trust lands from the main utility to the cabinsite lease premises during the term of the lease, with the prior written approval of the department. For any such rights outside of state trust land ~~the cabinsite premises,~~ the lessee will be responsible for obtaining any necessary easements from ~~must acquire an easement with~~ the appropriate landowner(s).

NEW RULE III (36.25.1003) CABINSITE MINIMUM RENTAL (1) Effective January 1, 2010, and for those cabinsite leases due for the lease fee adjustment process in calendar year 2008 and 2009, and except as provided in (1)(a) and (1)(b), the minimum rental for a cabinsite lease is the greater of five percent of the 2009 appraised market value of the land, excluding improvements, as determined by the Montana Department of Revenue (DOR) pursuant to 77-1-208, MCA, or \$250, or a competitive bid amount as described in ARM 36.25.1009. As required by 77-1-106, MCA, this rental rate reflects the expenses commonly incurred by lessees in leasing state trust land. A cabinsite lessee may:

(a) remains as proposed.

(b) sign and execute a 2010 supplemental lease agreement (SLA), which will direct that the minimum rental shall be calculated as follows:

(i) an amount equal to the 2003 appraised parcel value determined by the DOR, ~~shall be~~ increased at an annual rate of 6.53 percent, compounded annually for six years to obtain the adjusted 2009 appraised value. [Example: 2003 appraised value \times multiplied by $(1.0653)^6 =$ equals adjusted 2009 appraised value];

(ii) remains as proposed.

(iii) the lower of either an amount equal to five percent of the adjusted 2009 appraised value or five percent of the 2009 appraised parcel value shall be the base rent applicable to the lease in the year 2010; ~~and~~

(iv) the annual rental due for years 2011 and thereafter shall be calculated by applying the LFI to the previous year's lease fee. Any lease renewed, reviewed, or subject to lease fee adjustment, shall pay an annual rental equal to that calculated

under (b)(i) through (iv), above. In year 2010, the LFI will not be used. [Example: 2010 base rent × multiplied by (1 + LFI) = equals 2011 rent]; and

(v) lessees may opt to sign an SLA at any time before lease renewal.

(2) through (7) remain as proposed.

NEW RULE IV (36.25.1004) CABINSITE PAYMENT DUE DATE

(1) The department shall bill for cabinsite leases using the schedule outlined in (1)(a) through (c).

(a) Written notice of the amount of rental due for 2010 will be sent to each cabinsite lessee's address of record following adoption of these rules on May 28, 2010. In this instance, the specific dates for payment notification, when payments are due, and when late charges and lease cancellation may occur will be approved by the Land Board.

(4b) Beginning in January 2011 and each January thereafter of each year, the department will send written notice of the amount of rental due to each cabinsite lessee's address of record. ~~written notice of the amount of rental due. Notices shall be sent to the lessee's address of record.~~

(i) The notice shall also state that the payment is due by March 1, and if payment is not received or postmarked ~~not paid~~ by April 1, that the lease ~~will be~~ is cancelled.

(A) In mid-March, prior to April 1, the department shall send a reminder letter by certified mail to each lessee who has not made payment, notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease is cancelled.

(B) ~~Payments An additional \$25 late fee will be charged for payments made after March 1, but before April 1. will be charged an additional \$25 late fee. In mid-March, prior to April 1, the department shall send a letter by certified mail to each lessee who has not made payment, notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease is cancelled.~~

(2c) If the lessee elects to make semi-annual payments, the department will send written notices in January and July of each year, ~~except as described in (1)~~ to the address of record, per ARM 36.25.104(3), stating the amount of semi-annual rental due.

(i) The notice shall also state that the first-half payment is due by March 1, and if not paid by April 1, the lease is cancelled. The notice shall also state that the second-half payment is due by September 1, and if not paid by October 1, the lease is cancelled.

(A) In mid-March, prior to April 1; and mid-September, prior to October 1, the department shall send a reminder letter by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1 or October 1. If payment is not received and postmarked by April 1 or October 1, the entire lease is cancelled.

(B) ~~Likewise An additional \$25 late fee will be charged for payments made after March 1 but before April 1; and payments made after September 1 but before October 1. will be charged an additional \$25 late fee. In mid-March, prior to April 1, and mid-September, prior to October 1, the department shall send by certified mail~~

~~to each lessee who has not made payment a letter notifying the lessee that the lease is cancelled if payment is not received or postmarked on or before April 1 or October 1. If payment is not received and postmarked by April 1 or October 1, the entire lease is cancelled.~~

(d) In special circumstances, as determined by, and at the direction of the board, the department may send notices of payment to lessees at times other than those described in (1)(a) and (b). The specific dates for payment notification, when payments are due, and when late charges and lease cancellation may occur will be approved by the Land Board.

(32) A lease may be reinstated for an additional reinstatement fee, which will be a minimum of \$500, or as much as three times the annual rental amount of the lease. The decision whether or not to offer a lessee the ability to reinstate the lease by paying a reinstatement fee, as well as the amount to charge for the reinstatement fee, are both at the discretion of the department.

~~(4) When a lease term begins on or between March 1 and August 31 during the first year of the lease, the lessee shall pay a rental price equal to the rental price for an entire year. When the lease term begins on or between September 1 and February 28 of the next year, the lessee shall pay a rental price equal to half of the annual rental. Prorated or partial-year payments shall be made in amounts equal to either the full annual rental or half the annual rental.~~

(3) The rental price for the first year of a new lease shall be prorated by dividing the full amount of the rental for the first year by 365 then multiplying the result by the number of days between the lease start date and the last day of the upcoming February.

NEW RULE V (36.25.1005) CABINSITE IMPROVEMENTS (1) A cabinsite lessee may place improvements on state trust land which are necessary for the conservation or utilization of that state trust land and associated structures such as outbuildings, utilities, and sleeping cabins, with the approval of the department; however, only one single-family residence will be permitted on each cabinsite lease, and the lessee is responsible to ~~insure~~ ensure all such installations and improvements meet all applicable rules, codes, and regulations.

(2) The lessee shall apply for permission prior to placing any improvements on state trust land and shall use the form prescribed by the department.

(3) A lessee will not be entitled to compensation by a subsequent lessee for improvements ~~which are~~ placed on the land after May 10, 1979, unless those improvements ~~have been~~ were previously approved by the department in writing prior to their placement upon the land. Proof of the date of placement of improvements may be required by the department. Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee.

~~(4) It shall be the responsibility of the lessee to~~ The lessee shall be responsible for notifying the department of the value of the improvements. The asking price of the improvements shall be the higher of either the most recent DOR assessment of the improvements, or of an appraisal of the improvements, though the lessee retains the right to lower the asking price of the improvements. Settlement for the improvements shall be determined pursuant to 77-1-208(3), MCA, and the

procedures set out in ARM 36.25.125. All settlement for improvements must occur within 120 days of the issuance of the lease.

(a) remains as proposed.

(b) Determination of compensation for improvements shall utilize standard appraisal procedures, giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, and remaining economic life. Compensation shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(5) At the time of assignment or other transfer of interest in the leasehold, the department must be notified of the sale price of the improvements and be provided copies of any agreements reflecting the transfer of both the lease and improvements, such as, but not limited to a realty transfer certificate.

(5) remains as proposed but is renumbered (6).

NEW RULE VI (36.25.1006) REMOVAL OF CABINSITE IMPROVEMENTS AND COMPENSATION

(1) At cancellation, termination, or abandonment of the cabinsite lease, the lessee will be notified of their right to be compensated for their improvements by a new lessee, or their right to remove those improvements.

(2) and (3) remain as proposed.

(4) The beginning of the three year time period shall be either:

(a) the effective date of an abandonment form executed by the lessee and accepted by the department; or

(b) the date rent is due, if the rent is not paid as per ARM 36.25.1004 or no abandonment form is submitted.

(5) If the lessee abandons the improvements there shall be no obligation by the department or other party for compensation for all improvements on the property, including movable and nonmovable improvements, as well as personal property.

(4) remains as proposed but is renumbered (6).

(5) If three years after the cancellation, termination, or abandonment of the cabinsite lease no new lessee has been found, the department shall provide written notice to the former lessee that unless the improvements are removed within 60 days, the improvements will become the property of the state trust. This condition and limitation applies to all improvements on the property, including movable and nonmovable improvements, as well as personal property.

(6) and (7) remain as proposed but are renumbered (8) and (9).

NEW RULE VIII (36.25.1008) CANCELLATION AND ABANDONMENT OF CABINSITE LEASES AND SECURITY INTERESTS

(1) through (6) remain as proposed.

(7) The former lessee may or may not choose to market the improvements for sale. In no case will the department pay any realtor fees or commissions for the marketing of former lessee improvements when such marketing services are contracted by the lessee.

(8) The proposed buyer of a former lessee's improvements must still participate in, and be the successful bidder of the cabinsite lease, per ARM 36.25.1009.

(9) and (10) remain as proposed.

NEW RULE IX (36.25.1009) ISSUANCE OF CABINSITE LEASE ON UNLEASED AND RECLASSIFIED LAND (1) A person who desires to lease unleased state trust land for a cabinsite must apply on the standard application form prescribed by the department. The application form must be returned to the department and must be accompanied by a nonrefundable application fee. Such application shall be deemed an offer to lease land for a cabinsite as specified by the application, at a rental rate which reflects fair market value.

(2) remains as proposed.

(3) The department will advertise cabinsites for bid in one or more any of the following ways, ~~or any combination of the following:~~

(a) through (e) remain as proposed.

(4) Nothing in this rule shall preclude the department from generally making it known that a cabinsite is currently unleased and that the department is accepting applications to lease state trust land for a cabinsite.

(5) and (6) remain as proposed.

(7) The cabinsite will be leased to the highest qualified bidder, with the following qualifications:

(a) if the board determines that the bid is not in the best interests of the state trust and the high bid is rejected, the board will issue its reason for the rejection in writing. The lease may then be issued, at a rental rate determined by the board, to the first bidder who is willing to pay the board-determined rental, whose name is selected through a random selection process from all bidders for the cabinsite lease; or

(b) if no bidder is selected, or if the highest qualified bidder declines the bid, the department may determine if and when to reopen a lease for bid, or offer the cabinsite lease to the next highest qualified bidder at that next bidder's bid amount.

(8) remains as proposed.

(9) The rental price for the first year of a new lease shall be prorated by dividing the full amount of the rental for the first year by 365 then multiplying the result by the number of days between the lease start date and the last day of the upcoming February. ~~When a lease term begins on or between March 1 and August 31 during the first year of the lease, the lessee shall pay a rental price equal to the rental price for an entire year. When the lease term begins on or between September 1 and February 28 of the next year, the lessee shall pay a rental price equal to half of the annual rental. Prorated or partial-year payments shall be made in amounts equal to either the full annual rental or half the annual rental.~~

(10) through (12) remain as proposed.

NEW RULE X (36.25.1010) TERM OF CABINSITE LEASE (1) A cabinsite lease will be issued for a period not to exceed 15 years unless the cabinsite lessee demonstrates a need for a longer period for loan security purposes, in which case the new lease may be issued in the discretion of the department for a period up to five years longer than the terms of the loan up to a maximum lease period of 35 years.

(a) and (b) remain as proposed.

(c) Lease terms longer than 15 years are intended for loan security of dwelling improvements, not ancillary improvements such as septic tanks, wells, garages, and outbuildings.

(d) The loan amount shall be a minimum of 15 percent of the value of the dwelling improvements.

(e) The lender shall provide proof of the loan and the loan terms to the department.

5. The following comments were received and appear with the department's responses.

COMMENT 1:

The five percent lease rate is too high and should be lowered.

RESPONSE 1:

Five percent of the appraised value is considered full market value, per the 1999 Supreme Court Case No. 98-535, *Montrust v. State*, 1999, MT 263, 296, Mont. 402, 989 P.2d 800, which determined that the state was not receiving full market value for cabinsite leases at 3.5 percent of the appraised value. The subsequent negotiated rulemaking done by the DNRC in 2000 was a result of the court case.

COMMENT 2:

The proposed Real Estate Index (REI) and Consumer Price Index (CPI) have no reference to current market conditions and do not lower lease payments with decreases in the market value of the cabinsite.

RESPONSE 2:

The CPI is a moving, annual, criterion that can lower the lease fee indicator (LFI) in these rules. As an average, land values go up. The 25-year average for the REI will also capture actual movement in the real estate market. However, if the market goes down, that will also be reflected in the REI average.

COMMENT 3:

The LFI, which is comprised of the CPI and the REI, is arbitrary and has no relationship whatsoever to the full market value of state cabin leases. Commenter said that LFI should be removed from New Rules I (ARM 36.25.1001) through III (ARM 36.25.1003).

RESPONSE 3:

See Response 2.

COMMENT 4:

School trust land appraisals for cabinsites must not be conducted as though there is fee ownership of the property, but as though the property is being leased.

RESPONSE 4:

DNRC is the fee owner of the land and expects that the appraising agency, Department of Revenue (DOR), is complying with state statute and applicable administrative rules, and is following professional appraisal practices. A lower appraisal would require a higher lease rate to achieve full market value, which was part of the negotiated rules discussion from 2000.

COMMENT 5:

Prior to implementing the new rules, DOR or an appraisal firm should perform another appraisal of the cabinsites using professional appraisal standards. The land should be appraised as a lease property, rather than as fee simple land.

RESPONSE 5:

See Response 4.

COMMENT 6:

Leases should have competitive bids at renewals.

RESPONSE 6:

Most lessees indicated their strong desire to avoid competitive bidding at renewal during the 2000 negotiated rulemaking, leading to ARM 36.25.117(3)(a), which has been renumbered as ARM 36.25.1011(2) (New Rule XI(2)). Competitive bidding, if implemented, would still require a minimum or floor bid, which would be the minimum value as described in these rules.

COMMENT 7:

The rules should include provisions for seniors and other people on fixed incomes to lease their cabinsites for static amounts.

RESPONSE 7:

A fixed rent amount does not achieve full market value as land values increase. New Rule XII (ARM 36.25.1012) provides for some consideration to low income lessees that use the cabinsite as their primary residence, but any deferred rent must be paid back.

COMMENT 8:

The lease fee should be capped at a fixed amount. Lease fees should be equal to the property taxes that would be charged for a cabinsite if it were not tax exempt land.

RESPONSE 8:

A freeze on lease fees as land values increase would mean full market value is not being obtained for the trust, as required by statute and *Montrust v. State*. Property taxes are assessed to satisfy city and county government services and do not reflect a return to the trust beneficiaries for the use of the state trust land for cabinsite leasing.

COMMENT 9:

Commenter suggests the rules should provide a discount to lessees that pay the annual lease cost in one payment, rather than in biannual payments.

RESPONSE 9:

A discount would be a reduction in lease payment, which would mean those discounted leases would not achieve full market value, as required by statute and *Montrust v. State*.

COMMENT 10:

77-1-208, MCA, provides that an appeal of a cabinsite value as determined by the DOR appraisal must be conducted pursuant to tax appeal provisions. Commenter said that DNRC cannot deny an appeal of value.

RESPONSE 10:

Appraisal appeals must be filed with DOR, not DNRC, since DOR has the statutory authority in that matter. DNRC does not have the authority to provide for hearings upon assessed values determined by the DOR.

COMMENT 11:

DNRC does not have the authority to use a value other than the DOR appraised value (2009 projected value).

RESPONSE 11:

DNRC's proposed rules utilize a base rent that is a full, phased-in lease payment projected forward by six years at 6.53 percent appreciation. If the proposed rules were not adopted, the only other option would be to use the 2009 DOR appraised value exclusively. For many lessees, using this method would result in a lease fee higher than that anticipated using the current base rent as the basis for valuation, as laid out in these rules.

COMMENT 12:

The rules should use the term "the trust" instead of "the state".

RESPONSE 12:

DNRC agrees and references to "state" have been changed to "trust(s)" where applicable. A definition of "trust" has also been added to ARM 36.25.1001(New Rule I).

COMMENT 13:

Commenter said that DNRC should require that, at the time of assignment or other transfer of interest in the leasehold, DNRC must be notified of the assignment price and be provided with copies of any agreements reflecting the transfer, thereby ensuring full disclosure of the consideration paid for such transfer.

RESPONSE 13:

DNRC agrees and has included language requiring DNRC notification in ARM 36.25.1005(5) (New Rule V(5)).

COMMENT 14:

Lessees are stewards that care for the trust's property and maintain the land. Commenter stated that lessees should be compensated for that stewardship.

RESPONSE 14:

Stewardship, while appreciated, does not translate to a tangible monetary return to the trust beneficiaries. The lessee typically receives the greatest and most direct benefit from a well-maintained lease site. Stewardship cannot be leveraged to reduce lease fees. Also, see Response 9.

COMMENT 15:

Commenter asked for clarification as to how large a loan is needed to qualify for an extended lease term? Commenter also said that DNRC should require proof of such a loan and clearly indicate that the 35-year term is one-time, or at least not ongoing at renewal.

RESPONSE 15:

DNRC agrees and has included language in New Rule X(1)(c) through (g) (ARM 36.25.1010(1)(c) through (g)) for clarification.

COMMENT 16:

Commenter says that if the lessee expresses intent to abandon his lease it should not be construed as actual abandonment. The rules regarding notice of abandonment should remain unchanged.

RESPONSE 16:

The rules state that a lessee's notice to abandon must be on a form prescribed by DNRC and signed by the lessee (see ARM 36.25.1008(2) through (4)). Only such notice shall be considered as a true and unequivocal abandonment.

COMMENT 17:

The rules do not provide a way for the 2003 DOR appraised value to be appealed.

RESPONSE 17:

According to DOR, the 2003 DOR values may no longer be appealed. Changes to DOR rules and procedures are outside the scope and authority of the proposed DNRC rulemaking.

COMMENT 18:

The DNRC has no right to establish rules over privately held improvements. Not only is the DNRC overstepping its governmental authority in this matter, but enforcing this rule would have the effect of automatically forcing the owner of those improvements (the leaseholder) to lose money due to having to pay real estate commission and taxes out of the sales price.

RESPONSE 18:

The proposed rules allow for the selling of improvements. Since the improvements belong to the lessee/seller, it is consistent that if a lessee/seller lists a property for sale with a realtor, the lessee/seller and any buyer would be responsible for realtor commissions and taxes due.

COMMENT 19:

The state is unfairly manipulating the market for leaseholder improvements by setting unrealistic annual fees. These escalating fees will inevitably lead to leaseholders being unable to sell their property and being forced to relinquish it to the state for no compensation.

RESPONSE 19:

For most lessees, the lease fee anticipated under the proposed rules is lower than that anticipated under the current lease fee methodology. Additionally, the time period for the sale of improvements has been extended from two to three years.

COMMENT 20:

Commenter stated that New Rule V(3) (ARM 36.25.1005(3)) is sufficient to limit the appraisal to only authorized improvements and that New Rule V(4)(a) (ARM 36.25.1005(4)(a)) should be stricken.

RESPONSE 20:

DNRC is seeking to ensure appraisals are conducted in compliance with state statutes, administrative rules, and within the regular scope of the Uniform Standards for Professional Appraisal Practice (USPAP) and the use that is appropriate to the residential lease site. The intent is to keep listing prices consistent with a third-party appraisal to keep the time on market as short as possible. Further, improvements sold in excess of appraised value demonstrate the sale of "leasehold", thereby indicating lease fees may be below market value.

COMMENT 21:

Commenter stated that by contracting for appraisals of improvements, DNRC is restricting the rights of cabinsite improvement owners.

RESPONSE 21:

Each appraiser is an independent third party that is contracted by DNRC. Every appraiser contracted by DNRC is expected to comply with USPAP.

COMMENT 22:

Commenter asked why for up to three years following abandonment of the lease, they should be responsible for paying the personal property tax on improvements that they can no longer use?

RESPONSE 22:

Personal property tax is an issue between the owner of improvements and the taxing authority, not the DNRC. The improvements continue to be owned by the former

lessee, as indicated in New Rule VI (ARM 36.25.1006), until the time period in the rule elapses and the state takes ownership.

COMMENT 23:

DNRC's proposed revision of the ARM covering state cabin leases does not address the material issues leaseholders raised in the public process DNRC ran, leading up to the Land Board recommendations and initial decision on these rules.

RESPONSE 23:

DNRC is uncertain as to what "material issues" commenter refers to. These rules account for many of the comments received from June 2009 to the present, such as lower payments, consistent payments, and more dynamic lease fee calculations that reflect changes in the real estate market.

COMMENT 24:

The DNRC cannot adopt rules for which it has no legal authority. That power rests solely with the Legislature.

RESPONSE 24:

The proposal notice cites the statutory rulemaking authority DNRC has to make rules on each proposed amendment or adoption. Additionally, the Land Board has the statutory authority for management of school trust lands and has directed DNRC to initiate this rulemaking process.

COMMENT 25:

DNRC is proposing to give its director sole discretion to make lease fee adjustments. Commenter said this provision should be stricken from these rules as there is no statutory authority for the director to have this authority.

RESPONSE 25:

The DNRC director has the authority to act on behalf of the Land Board to make management decisions on trust lands that protect the trust beneficiaries.

COMMENT 26:

Commenter stated that the rules appear to be at odds with what they have always understood to be the relationship between land rents and land value: land value multiplied by a lease rate equals the lease payment.

RESPONSE 26:

The base rent under the new rules, as well as the lease fee calculations under the current method, are calculated by using the appraised land value multiplied by the lease rate to get the lease fee or lease payment.

COMMENT 27:

Commenter said that since the 2003 DOR appraisal value may not be appealed, DOR would like to avoid using reference to the 2003 value.

RESPONSE 27:

DNRC agrees and has changed the definition of "Adjusted 2009 appraised value" in New Rule I(2) (ARM 36.25.1001(2)) and modified the language of New Rule III(1)(b)(i) (ARM 36.25.1003(1)(b)(i)).

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Tommy Butler

TOMMY BUTLER

Rule Reviewer

Certified to the Secretary of State May 17, 2010.

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

In the matter of the adoption of New Rules I through VI pertaining to state matching fund grants to counties for crisis intervention, jail diversion, involuntary precommitment, short-term inpatient treatment costs, and contracts for crisis beds and emergency and court-ordered detention beds for persons with mental illness) NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 29, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-491 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1871 of the 2009 Montana Administrative Register, Issue Number 20, and on December 10, 2009 published MAR Notice No. 37-491 pertaining to the notice of extension of comment period on proposed adoption on page 2360 of the 2009 Montana Administrative Register, Issue Number 23.

2. The department has adopted New Rule I (37.89.1001), and Rule VI (37.89.1021) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.89.1003) GRANTS TO COUNTIES, PARTICIPANTS (1) and (2) remain as proposed.

(3) Funds will be distributed only to a county or group of counties via a contract approved by the department. Counties must submit invoices to the department for funds.

AUTH: 53-21-1203, MCA
IMP: 53-21-1203, MCA

RULE III (37.89.1005) GRANTS TO COUNTIES, DETERMINING GRANT AMOUNTS (1) through (3) remain as proposed.

(4) The department will match county and other local entity funds or in-kind contributions using a sliding scale for state grants as provided in 53-21-1203, MCA.

(a) The sliding scale is determined by calculating historical county use of the state hospital using the previous year's admission data versus total state use of the

~~state hospital and county population versus total state population the previous year's admissions as reported by MSH per 1,000 county residents.~~

(b) remains as proposed.

(c) The department may match the local investment of cash and in-kind contributions to any county whose MSH admissions are at or above the statewide average admission rate on a sliding scale of 50% to ~~65%~~ 70% in equal 5% increments. The department's match will not be less than 50% of the local investment.

(5) remains as proposed.

(6) The department will recalculate the sliding scale match rate annually using the formula described in 53-21-1203, MCA, based on the prior year's admissions to MSH ~~per 1,000 residents.~~

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE IV (37.89.1007) GRANTS TO COUNTIES, PRO RATA

DISTRIBUTION (1) If the amount requested for matching fund grants exceeds the funding available in the legislative appropriation, the department ~~may~~ shall allocate funding on a the pro rata basis described in (2) ~~according to the estimate of county population adopted in [RULE III].~~

(2) The department will allocate funding by dividing available funding by the sum total population of all counties submitting a letter of intent and multiplying the ~~resulting quotient~~ by the individual county population, subject to the matching fund requirements in ARM 37.89.1005. No county will receive a grant amount larger than the grant amount requested.

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, MCA

RULE V (37.89.1009) GRANTS TO COUNTIES, STRATEGIC PLAN

REQUIREMENTS (1) Letters of intent (LOI) to participate in the state fund matching grants will be accepted until two weeks after publication of the final adopted version of this rule and grant applications will be accepted until March 1, 2010 for fiscal year 2010 with the grant term concluding at the end of the fiscal year.

(2) For subsequent fiscal years, grant applications that continue or expand activities implemented with a previous year's funding may be given priority over new applications, if the applying county or group of counties have met the requirements of (5) and the department has determined that continuation of the plan would promote appropriate utilizations of the Montana State Hospital and would ultimately result in cost savings to the state deadlines will be determined by the department and the department will notify counties of the application deadline no later than March 31.

(3) ~~Only counties that submit a timely LOI are eligible for matching grant funds.~~ New and continued grants are subject to the matching requirements in ARM 37.89.1005.

~~(4) Grants will be awarded no later than 60 days after receipt of a completed~~

~~grant applications and contract for services.~~

(5) through (5)(e) remain as proposed but are renumbered (4) through (4)(e).
(6) remains as proposed but is renumbered (5).

AUTH: 53-21-1203, MCA

IMP: 53-21-1203, 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: We strongly agree with the goals and criteria set forth in Rule I (37.89.1001) and view them as embodying legislative intent for House Bill 130 (HB 130) rewarding existing mental health crisis services that are having the desired effect of reducing usage at Montana State Hospital (MSH) in Warm Springs as well as jail diversions at the local and state levels. We firmly believe that these goals and criteria should be the basis for disbursement of grant money to applicants.

RESPONSE #1: The department thanks the commentors and will adopt Rule I (37.89.1001) as proposed.

COMMENT #2: We recommend that the following provisions be added to Rule II (37.89.1003): "(3) Funds will be distributed only to a county or group of counties via a contract approved by the department. Counties must submit invoices to the department for funds."

RESPONSE #2: The department agrees and has adopted Rule II (37.89.1003) with the addition of the suggested provisions.

COMMENT #3: We found the language in proposed Rule III (37.89.1005) difficult to understand. We recommend the following language be substituted for Rule III(4)(a) (37.89.1005): "The sliding scale is determined by calculating historical county use of the state hospital through the use of the previous year's admission data versus total state use of the state hospital and county population versus total state population." We also recommend deleting "per 1000 residents" at the end of Rule III(6) (37.89.1005).

RESPONSE #3: The department agrees and has adopted Rule III (37.89.1005) with the recommended changes.

COMMENT #4: Are the numbers in Rule III(4)(c) (37.89.1005) correct?

RESPONSE #4: The department believes the numbers in Rule III(4)(c) (37.89.1005) should be 5%, 50%, and 70% respectively. The rule was adopted accordingly.

COMMENT #5: We represent a coalition of 11 counties in eastern Montana. Since beginning operations in June 2006, we have provided services to individuals from 30

different counties in Montana. We believe it would be beneficial if we provided short-term inpatient mental health evaluation and treatment for the entire state.

RESPONSE #5: The department acknowledges the contributions the commentor's service has made toward the goals expressed in House Bill 130 (HB 130) and proposed Rule I (37.89.1001). The grants are intended to encourage the development of jail diversion, crisis intervention services, and short-term inpatient treatment in strategically located centers throughout the state. A single short-term inpatient mental health evaluation and treatment center would result in little progress toward the goal of treating mental illness closer to home.

COMMENT #6: We strongly support the use of the criteria in Rule I (37.89.1001) and the funding mechanism in Rule III (37.89.1005) involving a sliding scale reflecting successful reduction in use of MSH in Warm Springs and jail diversions. Since we believe that legislative intent of HB 130 was first to quickly reward local crisis services programs for accomplishing those goals, we believe use of the criteria and the sliding scale in determining grant funding amounts would not only be appropriate but absolutely fair. To do otherwise penalizes successful programs such as ours and contradicts legislative intent for HB 130.

RESPONSE #6: The department thanks the commentor and has adopted Rule III (37.89.1005) with the language suggested in comment #3.

COMMENT #7: Legislative intent to encourage quick disbursement of the grant funds is evident in HB 130 with the requirement that department rules be in place by August 1, 2009. This no doubt recognizes the importance of quick funding disbursement to existing crisis services facilities such as ours. Therefore, it would be harmful for the department to wait several months to determine if applications for grant funding will exceed the annual appropriations amount, which could only be accurately determined after receipt of all the applications.

RESPONSE #7: HB 130 states that, as soon as possible after July 1 of each year, the department shall grant to each eligible county state matching funds. The department agrees that this language encourages a timely response to each application. The department provided grant application materials to all counties on August 4, 2009, and began accepting grant results September 1, 2009, to meet this obligation.

COMMENT #8: We believe proposed Rule IV (37.89.1007) has no tie to legislative intent in HB 130, is based on a faulty assumption that the appropriation funding level is being exceeded, and should be discarded or minimized in its application. It would be inaccurate to allocate funding based on letters of intent because criteria driven applications subject to the sliding scale will not necessarily exceed appropriations. The letters of intent probably were not based on the criteria addressed in proposed Rule III (37.89.1005). We question the appropriateness of shifting away from grants being disbursed based on criteria and the sliding scale. A simple per capita

approach is not appropriate because it rewards late comers and hinders the ability of more progressive counties to continue the good work they have started.

RESPONSE #8: The department does not agree. We believe the rules detailing distribution methodology, including Rule IV (37.89.1007), are consistent with the plain language of the statute, effectively fulfill legislative intent, and are the fairest way to award grants when demand exceeds the available funds. Under Rule IV (37.89.1007), matching rates will still be determined using the sliding scale. Letters of intent will be used only to discover if counties intend to submit applications that would, in aggregate amount, exceed the funds available. Under this rule, applications still must include a plan that will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and will ultimately result in cost savings to the state. Successful applicants will still be required to demonstrate that participating counties have or will commit sufficient funds or in kind contributions to meet the match requirements. The per capita computations described in Rule IV (37.89.1007) will not be used to allocate funds pursuant to a county's letter of intent but rather to "set aside" funds within the fiscal year's appropriation until a completed grant application is received and approved by the department. Any funds not claimed in FY 2010 may be awarded to successful grant applicants in FY 2011.

COMMENT #9: As one of the main architects of the funding and cost share language (in HB 130), my intent was not to be "fair" but to reward communities that could demonstrate collaboration, reduced use of MSH in Warm Springs, and successful jail diversion. The criteria for grant money in HB 130 may not be perfect but programs demonstrating collaboration and success in reducing use of the state hospital and jails should be rewarded by being first in line. Next in line should be the communities who are interested in developing crisis center services. So, I strongly disagree with what the department is doing and how it's doing it. My big fear is that if the department decides to change the proposed rules very much, there will be a big delay causing the Community Crisis Center in Billings to wait several months to get a check.

RESPONSE #9: The department believes these rules describe the fairest and most effective way to implement HB 130 by prompting development of local mental health crisis services and jail diversion options. Throughout the drafting process, the department was mindful of the need to make the proposed rules useable in future years when more than one crisis center is operating with the help of grants under HB 130. Therefore, the department has adopted Rule V (37.89.1009) with the provision that counties who were awarded a grant in fiscal year 2010 will be given priority over new applications for grants.

COMMENT #10: The goals of HB 130 can only be accomplished by increasing local and regional treatment capacity of people in crisis that addresses both crisis stabilization and short term treatment needs. HB 130 anticipated that the appropriation would not be enough to fund all grant requests. We believe proposed Rule IV (37.89.1007) contradicts the clear intent of the legislation. Letters of intent

are not detailed proposals for funding and building treatment capacity. They cannot be compared against the measuring stick provided by HB 130, the prospects that a strategic plan will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation. Furthermore, county population is not the chief driver of state hospital admissions.

RESPONSE #10: The department agrees that the goals of HB 130 can only be accomplished by increasing local and regional treatment capacity, as stated by the commentor. As explained in the response to comment #8, the department believes Rule IV (37.89.1007) is consistent with the clear intent of the legislation and is the fairest way to award grants when demand exceeds the available funds.

COMMENT #11: The language in Rule IV(1) (37.89.1007) is misleading. We recommend it be revised to say "(1) If the amount requested for matching fund grants exceeds the funding available in the legislative appropriation, the department shall allocate funding on the pro rata basis described in (2)."

RESPONSE #11: The department agrees and has adopted Rule IV (37.89.1007) with the suggested language.

COMMENT #12: The department's proposed method of fund disbursement in Rule IV (37.89.1007) (when the amount requested exceeds legislative appropriation) calling for distribution of available funding on a pro rata basis by county population conflicts with the HB 130 language requiring a two-part sliding scale (based on population and commitments together). Why couldn't the department complete its calculation using the elements of the formula established in HB 130, then distribute on a pro rata basis, rather than just distributing off the top using population?

RESPONSE #12: As discussed in the responses above, the department will use the ratio of population and admissions to calculate a "match rate" (the department will match each dollar of local investment on a sliding scale from \$0.50 to \$0.70). Section 53-21-1203(2), MCA directs the department to establish the match rate based upon population and commitments. "Grant amounts", however, must be based on available funding.

The department will use a prorated distribution formula that will consider the number of residents in all the counties submitting a letter of intent and the total amount of funding available. This approach encourages regional collaboration. Population totals are combined when evaluating regional proposals and maximum potential grant amounts are calculated, subject to local investment matching requirements.

Under 53-21-1203, MCA, the department must evaluate each plan proposal to determine whether it will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention or evaluation and will ultimately result in cost savings to the state.

COMMENT #13: Proposed Rule V (37.89.1009) hints that existing facilities might not receive funding until after the deadline for all grant applications, March 1, 2010. This delay could be exacerbated by an additional waiting period of up to 60 days as provided in proposed Rule V (37.89.1009). This drawn-out process is contrary to legislative intent for quick disbursement to existing facilities.

RESPONSE #13: The department recognizes it would have been harmful to delay disbursement of matching funds. The deadline for grant applications should not be interpreted as an obstacle to the award of grants submitted early. The department intends to award grants upon completion of the application process and will disburse state matching funds as soon as the necessary contracts have been signed and essential information has been submitted.

The department proposed the March 1, 2010 deadline for applications because it is the latest date it could guarantee disbursement of funds within FY 2010. It has been the department's experience that the evaluation of a grant application, the exchange of essential information, and the signing of contractual agreements between the department, the counties, and services providers requires at least three months.

The 60 day deadline for the award of grants proposed in Rule V (37.89.1009) has been deleted from the proposed rule.

COMMENT #14: We believe the proposed rules are consistent with testimony, discussions, and understandings on HB 130 that occurred during the 2009 Montana Legislature.

RESPONSE #14: The department made every effort to adopt rules that will advance the goals expressed in HB 130. The department thanks the commentor for its support.

COMMENT #15: We generally support the proposed rules, but are concerned that many counties did not receive notice of the proposed rules in time to submit comments. We request that the comment period be extended to allow interested parties time to study the proposed rules and submit comments.

RESPONSE #15: The department agreed and extended the comment period to December 17, 2009 for written comments.

COMMENT #16: Why is the department proposing to use 2007 population figures when 2008 population numbers are available? Even if the most recent population figures are used, they would still be compared with 2009 state hospital admissions.

RESPONSE #16: The department used the most recent population figures when it computed state hospital utilization and a matching rate formula for each county. At the time, 2007 population figures were the most recent available. The commentor is correct that 2008 figures are now available. However, counties have made strategic plans based on the 2007 population data and have submitted proposals in reliance

of the formulas computed with 2007 data. The department has determined that the benefits of keeping the match rate computations stable outweigh any advantage that would be gained from more recent data.

COMMENT #17: We are concerned that the proposed match rate methodology is a "snapshot" of county utilization of the state hospital and does not take history into consideration. Small counties may commit only one person to the state hospital in a two or three year period. The proposed methodology could result in a small county being inaccurately designated a high use county.

RESPONSE #17: The match rate methodology is set by statute and cannot be modified by administrative rules. The department has used a ratio of utilization to population so as to minimize the impact on counties with small population numbers.

COMMENT #18: The proposed method of distributing state matching grants will mean that some areas of the state will not have access to jail diversion, involuntary precommitment, and short-term inpatient treatment services. We recommend that the department consider the distance to services when awarding grants.

RESPONSE #18: The department does not agree that the distance to mental evaluation and treatment services should be a specific consideration in the evaluation of grant proposals. The mandate of HB 130 directs the department to make grants to "each eligible county". Counties that are distant from centers where medical services exist can form collaborative partnerships and may submit a proposal for regional services. In a group, the utilization of MSH by participating counties is aggregated and a grant will be awarded accordingly.

COMMENT #19: The department's proposed contract with counties that receive grants is not compatible with I.R.S. code section 115 insurance pool requirements. We recommend rewriting the contract so that counties can participate in a section 115 insurance pool.

RESPONSE #19: The department agrees and will make the necessary adjustments to next year's proposed contract. The department chose not to propose rules on the insurance pool requirement because details of that pool were not available at the time of the rule proposal notice.

COMMENT #20: The proposed rules do not make provision for the distribution of unclaimed and unexpended funds. We recommend that the department distribute all of the appropriated funds before the close of the 2011 state fiscal year.

RESPONSE #20: The department believes rules pertaining to the distribution of unclaimed and unexpended funds would be beyond its authority. The statutory provisions governing the treatment of unclaimed and unexpended appropriations apply. Since the appropriation for mental health diversion is biennial, funds not claimed in FY 2010 will be available to counties in FY 2011.

COMMENT #21: It is unclear which categories of commitment will be reimbursed by the department under the proposed rules. Will matching fund grants be available for voluntary commitments, involuntary commitments, emergency commitments and court ordered detentions?

RESPONSE #21: The department adopts proposed Rule III (37.89.1005) providing that the number of all admissions to MSH be used in calculating the match rate. HB 130 uses inconsistent terminology, employing the term "admissions" when describing how grant amounts should be determined and "commitments" when describing how the sliding scale should work. However, both the preamble and the stated goal for the matching grant program refer to a reduction in emergency and court-ordered detentions. These are among several kinds of admissions that may or may not qualify as commitments, but will be used by the department to calculate match rates.

By interpreting the term "commitments" broadly, the department will include data about all forms of mental health detention, evaluation, and treatment needs in a grant determination and to harmonize all parts of the statute so that each provision will be given effect.

COMMENT #22: Why can't the department use the matching grant formula established in HB 130?

<u>County population</u>		<u>Commitments per county</u>
State population	and	Total commitments in state

Compare these two figures and a high-use county (commitments higher than population) will receive a lower percentage of matching funds. Please state why the department's proposed formula is preferable.

RESPONSE #22: Proposed new Rule III(1) (37.89.1005) states that the department "will base the matching fund grants . . . on the criteria specified in 53-21-1203, MCA". One provision of the Montana Administrative Procedure Act (MAPA), specifically 2-4-305(2), MCA, prohibits rules that unnecessarily repeat statutory language. Mindful of that prohibition, the department concluded that 53-21-1203, MCA should be the only standard for calculating match rates.

The department used the formula established in HB 130, now codified at 53-21-1203, MCA, but defined "commitments" to include all admissions to MSH. This would include court-ordered detentions, emergency detentions, involuntary commitments, commitments ordered by tribal courts to Indian health services, voluntary commitments, inter-institutional transfers, court-ordered evaluations, fitness to proceed evaluations, guilty but mentally ill sentences, and not guilty by reason of mental illness sentences. As explained in the response to the previous comment, 53-21-1203, MCA uses the terms "admissions" and "commitments" inconsistently. The preamble to HB 130 and the stated goal for the matching grant

program refer to a "reduction in emergency and court ordered detentions". The department will use a ratio of admissions to population to compute the match rate.

COMMENT #23: We discussed using "admissions" for the funding formula versus "commitments". The department clarified it was using "admissions" for its calculations. HB 130 uses the word "commitments". The department's rule is contrary to the statute. Please comment.

RESPONSE #23: The department does not believe its rule is contrary to the statute. As explained in the response to comments #21 and #22 above, the department will be using the number of all admissions to MSH in calculating the match rate. Section 53-21-1203, MCA uses the terms "admissions", "commitments", and "detentions". Rule III (37.89.1005) is an attempt to harmonize and give effect to all provisions of the statute.

COMMENT #24: We are concerned that the department's planned reimbursement scheme may not accurately reflect the Legislature's intent on reimbursement. Clarify whether grant amounts will be distributed across the state or directed towards specific areas that may already have programs in place. Please address the concern voiced by several legislators that the money was intended to go towards counties with models that are already working, not spread across the state.

RESPONSE #24: Section 53-21-1203, MCA directs the department to make grants to "each eligible county". The department finds nothing in the bill to indicate that it was intended to go toward counties with models that are already working. The grants are intended to encourage the development of jail diversion, crisis intervention services, and short-term inpatient treatment in strategically located centers throughout the state.

COMMENT #25: The department has stated crisis intervention team training and crisis response team expenditures will be eligible for match under the proposed rules. Please state your basis for this.

RESPONSE #25: Section 53-21-1203(3)(b) refers to "development" of jail diversion and crisis intervention services under counties' strategic plans, and charges the department with evaluating prospects that plans submitted "will, if implemented" reduce admissions to the state hospital. The department believes this language states the legislative intent that matching grants be used for the development or expansion of crisis intervention and jail diversion capacity, thereby reducing the current level of admissions for court-ordered and emergency detentions. Crisis intervention teams (CIT) and crisis response teams are effective in crisis intervention and jail diversion. Counties that have developed and supported these activities may consider that as an element of local investment in applying for matching funds.

COMMENT #26: The Children, Families, Health, and Human Services Interim Committee would like to know which counties have responded with a letter of intent

to seek state matching grants and the department's proposed funding numbers accordingly.

RESPONSE #26: MAR notice 37-491 at 2009 MAR issue 20, page 1877 referred interested persons to the department's web site, www.dphhs.mt.gov/amdd/services where a matrix demonstrating the proposed distribution methodology is posted. For those without Internet access, the notice also stated that interested persons can obtain a copy of the matrix by writing the department's Addictive and Mental Disorders Division at P.O. Box 202905, Helena, MT 59620. The matrix demonstrates that the department calculated the match rates by comparing the number of admissions by county to total admissions and the population of each county to the state population.

COMMENT #27: Will the department commit half of the biennial appropriation for this program in the FY 2010 base budget year? If not, please comment as to ongoing funding to implement the matching grants program. Is it sustainable?

RESPONSE #27: The biennial appropriation is allocated to fund HB 130, HB 131, and HB 132 collectively, without guidance as to distribution. The department has allocated approximately 50% of this biennial appropriation to funding these programs in FY 2010. Unspent funds will be available for program implementation in FY 2011. The department expects that the matching grant requests for FY 2010 will not exceed 50% of the appropriation, but has the ability to use more than 50% of the appropriation during the first year if the requests merit.

The appropriation for matching grants was included in HB 2 and was not designated as one-time-only funding. The department will provide data to the 2011 Legislature to demonstrate the effectiveness of this funding. The sustainability of the program will depend on future appropriations.

COMMENT #28: The department's preliminary state matching grant award figures indicate that some counties are slated to receive a larger grant amount than was asked for. Please explain.

RESPONSE #28: No county will receive a larger grant amount than it requested. In order to access the amount calculated, the county must have sufficient local investment to match the grant funding.

The department will revise its final rules to clarify that grant amounts will not be greater than the amount requested.

COMMENT #29: HB 130 directed the department to adopt rules for implementation by August 1, 2009 and fully implement the grant program by September 1, 2009. Please address the delay in both these areas.

RESPONSE #29: The department believes the grant program was fully implemented by the September 1, 2009 deadline. All counties received information

on matching grant availability, the application process, and were asked to submit proposals in an August 4, 2009 letter to Harold Blattie, Executive Director of the Montana Association of Counties (MACO). The department received letters of intent from counties and subsequent applications for matching funds.

The department acknowledges it did not meet the August 1, 2009 deadline for adoption of administrative rules. The deadline barely allowed sufficient time for the department to file proposed rules and complete the rulemaking process.

The proposed rules were filed with the Secretary of State on October 19, 2009 and a public hearing was conducted November 23, 2009. The department received requests to extend the comment period and did extend it to December 17, 2009.

The delay in rulemaking has not adversely affected the availability of funds to county grant applicants. As of the date of this notice, the department has signed a contract with Yellowstone County (and ten partner counties). Contracts with Missoula County, Lewis and Clark County (and three partner counties), and Ravalli County are pending.

COMMENT #30: We understand there is concern that, under the rules being considered, the Community Crisis Center in Billings will not be adequately funded as was intended by the legislation passed during the 2009 session of the Montana Legislature.

The Community Crisis Center is a very successful approach to address mental health issues in our area and has also saved the state money. It seems to us that a successful program such as this should not be discriminated against by rules that do not reflect legislative intent.

We know what a benefit this program has been to constituents of ours and hope that you will do what is fair and equitable for them according to the legislative intent of HB130. A successful and established program should benefit according to the reasoning of this bill.

RESPONSE #30: The department does not agree that established programs would be discriminated against under these rules. The department expects the rules will fairly and equitably implement the legislative intent expressed in HB 130. The department finds nothing in the bill to indicate that it was intended solely to assure adequate funding of the Community Crisis Center in Billings.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State May 17, 2010.

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

In the matter of the amendment of)
ARM 37.30.1001 and 37.30.1002 and)
repeal of ARM 37.30.1006 and)
37.30.1007 pertaining to standards)
for providers of services funded)
through certain disability transitions)
programs)

NOTICE OF AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On March 25, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-500 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 684 of the 2010 Montana Administrative Register, Issue Number 6.

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

3. 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 department indicated in the justification related to ARM 37.30.1002 that there are no standards for accreditation which are particularly designed for independent living services. However, the Commission of Accreditation of Rehabilitation Facilities (CARF) does provide standards specifically related to accreditation for independent living centers.

RESPONSE #1: The department agrees with comment #1 and recognizes the inaccuracy made in the original statement. However, this will not change the proposed amendment. The department will still use the recognition and funding of independent living centers by the United States Department of Education as the standard for enrollment for provision of independent living services.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State May 17, 2010.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 44.3.104, 44.3.2014, 44.3.2015,)	
44.3.2109, 44.3.2113, 44.3.2114,)	
44.3.2401, 44.9.202, 44.9.301,)	
44.9.303, 44.9.305, 44.9.307,)	
44.9.312, 44.9.315, 44.9.402, and)	
44.9.404 pertaining to elections)	

TO: All Concerned Persons

1. On February 25, 2010, the Secretary of State published MAR Notice No. 44-2-158 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 520 of the 2010 Montana Administrative Register, Issue Number 4.

2. On April 15, 2010, the Secretary of State published an Amended Notice and Extension of Comment Period for MAR Notice No. 44-2-158 because it revised the statements of reasonable necessity for the proposed amendments to ARM 44.3.104, ARM 44.3.2114, and ARM 44.9.315 pursuant to e-mailed comments received from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee at page 906 of the 2010 Montana Administrative Register, Issue No. 7.

3. The Secretary of State has amended the following rules as proposed: 44.3.2015, 44.3.2113, 44.9.301, 44.9.303, 44.9.305, 44.9.307, 44.9.312, 44.9.402, and 44.9.404.

4. The Secretary of State will not amend 44.3.2014 as proposed.

5. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) and (2) remain as proposed.

AUTH: ~~13-1-202~~, 13-3-205, MCA
IMP: ~~13-1-202~~, 13-3-205, MCA

44.3.2109 PROCEDURES FOR CHALLENGES (1) through (4) remain as proposed.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain

what information the elector may provide to respond to the challenge. The notification must be made: pursuant to 13-13-301(b), MCA.

- ~~(i) within five days of the filing of the challenge if the election is more than five days away; or~~
 - ~~(ii) on or before election day if the election is less than five days away.~~
- (b) through (6) remain as proposed.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

- (1) through (7) remain as proposed.
- (8) Provisional ballots must be handled ~~Consistent with 13-15-107(5), MCA,~~ a provisional ballot must be removed from its provisional outer envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:
- ~~(a) verified before 5:00 p.m. on the day after the election; or~~
 - ~~(b) postmarked by 5:00 p.m. on the day after election day and received and verified by 3:00 p.m. on the sixth day after the election.~~
- (9) through (12) remain as proposed.

AUTH: 13-13-603, MCA

IMP: 13-15-107, 13-15-301, MCA

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (6)(b) remain as proposed.

- (c) A ballot requested pursuant to Title 13, chapter 21, MCA, must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with handled as provided in 13-1-104(1), MCA; and
- (d) remains as proposed.

AUTH: 13-12-202, MCA

IMP: 13-12-202, 13-13-205, MCA

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) through (1)(l) remain as proposed.

- (m) sample written instructions that will be sent to the electors. The instructions must include, but are not limited to: shall be consistent with 13-19-205(2)(b), MCA.
- ~~(i) information on the estimated amount of postage required to return the ballot; and~~
 - ~~(ii) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is known, or if the information on location and hours of places of deposit is not yet known, a section~~

that will allow the information to be added before the instructions are mailed to electors.

AUTH: 13-19-105, MCA

IMP: 13-19-205, MCA

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS (1) and (2) remain as proposed.

AUTH: 13-19-105, MCA

IMP: 13-2-222, ~~13-13-211~~, 13-19-207, MCA

6. The Secretary of State has thoroughly considered the comments received. The comments received and the Secretary of State's responses are as follows:

COMMENT #1: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendment to ARM 44.3.104:

"The amendment to ARM 44.3.104 appears to delete language regarding the accessibility of polling [sic] places that is now obsolete because the date referenced in subsection (1) has now passed. However, one of the sections cited as the authorizing section, 13-1-202, MCA, has nothing to do with accessibility standards. In fact that section authorizes the Secretary to prescribe the 'design of any election form', not accessibility standards. That section of the MCA therefore cannot serve as the authority for the amendment. For the same reason, 13-1-202, MCA cannot be one of the sections implemented by the new rule. Similarly, 13-1-202, MCA, was not amended by HB 19 and cannot, therefore, be one of the MCA sections implemented by this rule, given the language of the rationale for the rule. Additionally, I can find no amended statutory language in HB 19 that concerns the subject of this rule. The rationale is therefore erroneous."

RESPONSE #1: The Secretary of State has removed 13-1-202, MCA, as an authority and implementation statute for the rule. The statement of reasonable necessity was amended in the Amended Notice and Extension of Comment Period referenced in paragraph 2 above.

COMMENT #2: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendment to ARM 44.3.2014:

"The change to ARM 44.3.2014 duplicates, word for word, the change to the implemented section made by HB 19. Because of that fact, the requirements of section 2-4-305(2), MCA, must be followed. However, the required indication of statutory language has not been made in the proposed rule."

RESPONSE #2: The Secretary of State will not proceed to amend this rule.

COMMENT #3: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.3.2015:

"The rationale for this rule indicates that the rule is the result of changes to law made by HB 19, yet there were no changes made by that bill to section 13-2-514, MCA. It's therefore difficult to understand how the stated rationale can apply to a rule implementing that section of law."

RESPONSE #3: Section 13-2-514, MCA, is a pre-existing implementation statute for the rule. House Bill 19 made changes to 13-2-304, MCA, which are reflected in the rule amendments. The Secretary of State will amend the rule as proposed.

COMMENT #4: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.3.2109:

"The amendments to ARM 44.3.2109 add language that now make the rule read exactly like the statute [sic] implemented. For this reason, the requirements of 2-4-305(2), MCA, must be followed."

RESPONSE #4: The Secretary of State has added language to indicate the notification is pursuant to 13-13-301(b), MCA, and has eliminated (4)(a)(i) and (ii).

COMMENT #5: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.3.2113:

"Regarding the changes to ARM 44.3.2113, two of the sections cited as being implemented, sections 13-13-14 [sic] and 13-13-601, MCA, were not amended by HB 19. It's therefore difficult to see how the statement of rationale applies, to implement the law changes in HB 19, can apply to those two sections of law."

RESPONSE #5: Sections 13-13-114 and 13-13-601, MCA, are pre-existing authority for this rule. House Bill 19 made changes to 13-15-107, MCA, which necessitated the proposed rule amendments. The Secretary of State will amend the rule as proposed.

COMMENT #6: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.3.2114:

"The changes to subsections (8) and (10) of ARM 44.3.2114 now make those subsections read identically with subsection (5) and (6), respectively, of section 13-15-107, MCA, and for that reason the rule format must follow the requirements of 2-4-305(2), MCA. Additionally, one of the sections cited as being implemented by the

rule , 13-15-301, MCA, was not amended by HB 19, so it's difficult to see how that section is being implemented by and/or how the rationale applies in the case of that section. Finally, most of the language of the stated rationale is a restatement of the provisions of the rule, which, under sections 2-4-305(6)(b), MCA, cannot serve as a statement of reasonable necessity."

RESPONSE #6: The Secretary of State has amended (8) to eliminate the proposed language by substituting a reference to the pertinent statutory language. The implementation statute 13-15-301, MCA, is pre-existing authority for this rule. House Bill 19 made changes to 13-15-107, MCA, which necessitated the proposed rule amendments. The statement of reasonable necessity was amended in the Amended Notice and Extension of Comment Period referenced in paragraph 2 above.

COMMENT #7: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.3.2401:

"The new language in subsection (c) of ARM 44.3.2401 makes this subsection read exactly like subsection (2) of the implemented statute. The format requirements of 2-4-305(2), MCA, must therefore be followed."

RESPONSE #7: Section (6)(c) has been amended to state that a ballot must be handled as provided in 13-1-104(1), MCA.

COMMENT #8: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.9.202:

"The changes to ARM 44.9.202 make the section read identically to subsection (2)(b) of the implemented section. The format requirements of 2-4-305(2), MCA, must therefore be followed."

RESPONSE #8: Section (1)(m) has been amended to state that sample written instructions shall be consistent with 13-19-205(2)(b), MCA.

COMMENT #9: The Secretary of State received the following e-mailed comment from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee regarding the proposed amendments to ARM 44.9.315:

"The statutory section cited as authorizing authority for the amendments to ARM 44.9.315 authorizes the secretary of state to adopt rules for various purposes related to mail ballots only. However, there is language in the new provisions of sections (1)(a) and (b) that appears not to concern a ballot voted by mail. If that's the case, a different section must be designated as the authorizing section."

RESPONSE #9: The Secretary of State has eliminated 13-13-211, MCA, as an implementation statute for the rule and added 13-19-207, MCA, as an implementation statute for the rule. The statement of reasonable necessity was amended in the Amended Notice and Extension of Comment Period referenced in paragraph 2 above.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 17th day of May, 2010.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
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 December 31, 2009. This table includes those rules adopted during the period January 1, 2010, through March 31, 2010, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2009 and 2010 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in April 2010 appear. Vacancies scheduled to appear from June 1, 2010, through August 31, 2010, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 2010.

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

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Livestock Advisory Council (Fish Wildlife and Parks)			
Mr. James Bouma Choteau	Governor	reappointed	4/16/2010 1/1/2012
Qualifications (if required): alternative livestock industry representative			
Mr. Stan Frasier Helena	Governor	reappointed	4/16/2010 1/1/2012
Qualifications (if required): sportsperson			
Dr. Don Woerner Laurel	Governor	reappointed	4/16/2010 1/1/2012
Qualifications (if required): Veterinarian			
Board of Dentistry (Governor)			
Dr. George Johnston Dillon	Governor	Sims	4/1/2010 3/29/2015
Qualifications (if required): dentist			
Board of Public Education (Board of Public Education)			
Ms. Gisele Forrest Missoula	Governor	McLean	4/14/2010 2/1/2013
Qualifications (if required): resident of District 1			
Montana Pulse Crop Advisory Committee (Agriculture)			
Mr. Brian Kaae Dagmar	Director	Farver	4/2/2010 2/13/2013
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM APRIL, 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Employees Retirement Board (Administration)			
Mr. Scott Moore	Governor	Paull	4/1/2010
Miles City			4/1/2015
Qualifications (if required): public employee			
Small Business Health Insurance Pool Board (State Auditor)			
Mr. John Thomas	Governor	Welsh	4/12/2010
Helena			1/1/2012
Qualifications (if required): management-level individual with knowledge of state employee health benefit plans			
Trauma Care Committee (Public Health and Human Services)			
Ms. Leah Emerson	Governor	Thuesen	4/12/2010
Ronan			11/8/2011
Qualifications (if required): representative of the Western Region Trauma Advisory Council			
Mr. Sam Miller	Governor	Hansen	4/12/2010
Bozeman			11/8/2011
Qualifications (if required): representative of the Eastern Region Trauma Advisory Council			
Dr. J. Bradley Pickhardt	Governor	reappointed	4/12/2010
Missoula			11/8/2012
Qualifications (if required): representative of the Western Region Trauma Advisory Council			
Water Pollution Control Advisory Council (Environmental Quality)			
Mr. Mitchell Leu	Governor	McLaughlin	4/21/2010
Columbia Falls			0/0/0
Qualifications (if required): representative of industry concerned with the disposal of organic waste			

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Ageing Advisory Council (Public Health and Human Services) Ms. Betty Aye, Broadus Qualifications (if required): public representative</p>	Governor	7/18/2010
<p>Ms. Pat Ludwig, Chester Qualifications (if required): public representative</p>	Governor	7/18/2010
<p>Ms. Connie Bremner, Browning Qualifications (if required): public representative</p>	Governor	7/18/2010
<p>Mr .Robert Maxson, Billings Qualifications (if required): public representative</p>	Governor	7/18/2010
<p>Ms. Grace Bowman, Billings Qualifications (if required): public representative</p>	Governor	7/18/2010
<p>Agriculture Development Council (Agriculture) Mr. Ervin Schlemmer, Joliet Qualifications (if required): agriculture producer</p>	Governor	7/1/2010
<p>Mr. Verges Aageson, Guildford Qualifications (if required): agriculture producer</p>	Governor	7/1/2010
<p>Board of Banking (Administration) Ms. Evelyn Casterline, Vida Qualifications (if required): public representative</p>	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Banking (Administration) cont. Mr. Mark Huber, Helena Qualifications (if required): national bank officer of a medium size bank</p>	Governor	7/1/2010
<p>Board of Funeral Service (Labor and Industry) Mr. Thomas Meeks, Great Falls Qualifications (if required): crematory operator</p>	Governor	7/1/2010
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Gene Bukowski, Billings Qualifications (if required): hearing aid dispenser with a master's degree and national certification</p>	Governor	7/1/2010
<p>Dr. Stephen Kramer, Billings Qualifications (if required): otolaryngologist</p>	Governor	7/1/2010
<p>Board of Nursing (Labor and Industry) Ms. Deborah Hanson, Miles City Qualifications (if required): public representative</p>	Governor	7/1/2010
<p>Ms. Brenda Schye, Fort Peck Qualifications (if required): public representative</p>	Governor	7/1/2010
<p>Ms. Karen Pollington, Havre Qualifications (if required): registered nurse</p>	Governor	7/1/2010
<p>Ms. Kathleen Sprattler, Billings Qualifications (if required): licensed practical nurse</p>	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Pharmacy (Labor and Industry) Mr. Jim MacKenzie, Whitefish Qualifications (if required): licensed pharmacist	Governor	7/1/2010
Ms. Lee Ann Bradley, Missoula Qualifications (if required): licensed pharmacist	Governor	7/1/2010
Board of Physical Therapy Examiners (Labor and Industry) Ms. Robin Peterson Smith, Billings Qualifications (if required): physical therapist	Governor	7/1/2010
Board of Private Security (Labor and Industry) Mr. Mark Chaput, Billings Qualifications (if required): electronic security company	Governor	8/1/2010
Board of Professional Engineers and Land Surveyors (Labor and Industry) Mr. Steve Wright, Columbia Falls Qualifications (if required): licensed chemical engineer	Governor	7/1/2010
Mr. David Elias, Anaconda Qualifications (if required): licensed land surveyor	Governor	7/1/2010
Board of Public Accountants (Labor and Industry) Ms. Irma Paul, Helena Qualifications (if required): public representative	Governor	7/1/2010
Mr. Michael Johns, Deer Lodge Qualifications (if required): certified public accountant	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Public Accountants (Labor and Industry) cont. Ms. Pamela K. Lynch, Plains Qualifications (if required): certified public accountant</p>	Governor	7/1/2010
<p>Board of Radiologic Technologists (Labor and Industry) Mr. Mike Nielsen, Billings Qualifications (if required): radiologic technician/radiology practitioner assistant</p>	Governor	7/1/2010
<p>Board of Regents (Higher Education) Mr. Robert Barnosky, Billings Qualifications (if required): student</p>	Governor	6/30/2010
<p>Board of Sanitarians (Labor and Industry) Mr. James Zabrocki, Miles City Qualifications (if required): sanitarian</p>	Governor	7/1/2010
<p>Board of Veterans' Affairs (Military Affairs) Sen. Joe Tropila, Great Falls Qualifications (if required): representative of the State Administration and Veterans' Affairs Committee</p>	Governor	8/1/2010
<p>Ms. Sylvia Beals, Forsyth Qualifications (if required): Veteran and resident of Region 4</p>	Governor	8/1/2010
<p>Ms. Kelly Williams, Helena Qualifications (if required): representative of the Department of Public Health and Human Services</p>	Governor	8/1/2010
<p>Ms. Teresa Bell, Fort Harrison Qualifications (if required): representative of the US Department of Veterans' Affairs</p>	Governor	8/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Veterans' Affairs (Military Affairs) Mr. Harry LaFriniere, Florence Qualifications (if required): Veteran and resident of Region 1</p>	Governor	8/1/2010
<p>Ms. Mary Creech, Butte Qualifications (if required): Veteran and resident of Region 2</p>	Governor	8/1/2010
<p>Mr. Thomas Huddleston, Helena Qualifications (if required): experience with veterans' issues</p>	Governor	8/1/2010
<p>Mr. James English, Helena Qualifications (if required): individual with experience with veterans' issues</p>	Governor	8/1/2010
<p>Board of Veterinary Medicine (Labor and Industry) Ms. Joan Carey Marshall, Ekalaka Qualifications (if required): veterinarian</p>	Governor	7/31/2010
<p>Ms. Kim Baker, Hot Springs Qualifications (if required): consumer</p>	Governor	7/31/2010
<p>Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat Byrne, Great Falls Qualifications (if required): water well contractor</p>	Governor	7/1/2010
<p>Burial Preservation Board (Administration) Mr. Robert P. Four Star, Poplar Qualifications (if required): representative of the Northern Cheyenne Tribe</p>	Governor	8/22/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Administration) cont. Mr. Linwood Tall Bull, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2010
Mr. Reuben Mathias, Pablo Qualifications (if required): representative of the Salish-Kootenai Tribes	Governor	8/22/2010
Mr. William Big Day, Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2010
Mr. Morris Belgard, Hays Qualifications (if required): representative of the Fort Belknap Indian Community	Governor	8/22/2010
Mr. Videl Stump S.r, Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe	Governor	8/22/2010
Mr. Rusty Randolph, Havre Qualifications (if required): representative of the Little Shell Tribe	Governor	8/22/2010
Dr. Ruthann Knudson, Great Falls Qualifications (if required): representative of the archaeological association	Governor	8/22/2010
Mr. Terry Bullis, Hardin Qualifications (if required): representative of the coroner's association	Governor	8/22/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Service Commission (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): representative of the Montana Department of Labor	Governor	7/1/2010
Rep. Sheila Rice, Great Falls Qualifications (if required): representative of volunteer agencies	Governor	7/1/2010
Dr. Johnel Barcus, Browning Qualifications (if required): representative of the private sector	Governor	7/1/2010
Mr. Cedric Jacobson, Missoula Qualifications (if required): youth representative	Governor	7/1/2010
Ms. Jackie Girard, Helena Qualifications (if required): representative of the National Service Corporation	Governor	7/1/2010
Mr. Doug Braun, Billings Qualifications (if required): representative of organized labor	Governor	7/1/2010
Ms. Kimberly Miske, Wibaux Qualifications (if required): representative of local government	Governor	7/1/2010
Ms. Laura Pflum, Missoula Qualifications (if required): youth representative	Governor	7/1/2010
Consumer Settlement Advisory Council (Attorney General) Rep. Bill Thomas, Hobson Qualifications (if required): none specified	Attorney General	7/10/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Consumer Settlement Advisory Council (Attorney General) Rep. Eve Franklin, Helena Qualifications (if required): none specified</p>	Attorney General	7/10/2010
<p>Mr. Matthew Dale, Helena Qualifications (if required): none specified</p>	Attorney General	7/10/2010
<p>Ms. Tara Veazey, Helena Qualifications (if required): none specified</p>	Attorney General	7/10/2010
<p>Ms. Ali Bovington, Helena Qualifications (if required): none specified</p>	Attorney General	7/10/2010
<p>District Court Council (Justice) Mr. Glen Welch, Qualifications (if required): none specified</p>	nominated	6/30/2010
<p>Economic Development Advisory Council (Commerce) Mr. Joseph B. Reber, Helena Qualifications (if required): public representative</p>	Governor	7/23/2010
<p>Mr. Jim Smitham, Butte Qualifications (if required): public representative</p>	Governor	7/23/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Economic Development Advisory Council (Commerce) cont. Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	7/23/2010
Ms. Corlene Martin, Choteau Qualifications (if required): public representative	Governor	7/23/2010
Information Technology Managers' Advisory Council (Administration) Mr. Mike Jacobson, Helena Qualifications (if required): Department of Justice representative	Director	7/1/2010
Mr. Dick Clark, Helena Qualifications (if required): Department of Administration representative	Director	7/1/2010
Mr. Rick Bush, Helena Qualifications (if required): Department of Natural Resources and Conservation representative	Director	7/1/2010
Mr. Mike Bousliman, Helena Qualifications (if required): Department of Transportation representative	Director	7/1/2010
Mr. Joe Frohlich, Hamilton Qualifications (if required): Ravalli County representative	Director	7/1/2010
Ms. Tammy LaVigne, Helena Qualifications (if required): Department of Labor and Industry representative	Director	7/1/2010
Mr. Mark Van Alstyne, Helena Qualifications (if required): Secretary of State representative	Director	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services experience	Governor	6/16/2010
Ms. Patty Stevens, Ronan Qualifications (if required): prevention programs/services experience	Governor	6/16/2010
Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): experience with emotionally disturbed children	Governor	7/1/2010
Mr. Graydon Davies Moll, Polson Qualifications (if required): experience with developmentally disabled adults	Governor	7/1/2010
Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals	Governor	7/1/2010
Montana Historical Society Board of Trustees (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	7/1/2010
Ms. Shirley Groff, Butte Qualifications (if required): public member	Governor	7/1/2010
Mr. James W. Murry, Clancy Qualifications (if required): public member	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Wheat and Barley Committee (Agriculture) Mr. Donald Fast, Glasgow Qualifications (if required): resident of District 2</p>	Governor	8/20/2010
<p>Mr. Arlo Skari, Chester Qualifications (if required): resident of District 3</p>	Governor	8/20/2010
<p>Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roger A. Noble, Kalispell Qualifications (if required): representative of the petroleum services industry</p>	Governor	6/30/2010
<p>Mr. Greg Cross, Billings Qualifications (if required): representative of the independent petroleum marketing industry</p>	Governor	6/30/2010
<p>Mr. Karl Hertel, Moore Qualifications (if required): insurance industry representative</p>	Governor	6/30/2010
<p>Postsecondary Scholarship Advisory Council (Higher Education) Ms. Connie Wittak, Flaxville Qualifications (if required): having experience in secondary education</p>	Governor	6/20/2010
<p>Professional Engineers and Land Surveyors (Labor and Industry) Representative Hal Jacobson, Helena Qualifications (if required): public representative</p>	Governor	7/1/2010
<p>Public Defender Commission (Administration) Mr. Richard E. Gillespie, Helena Qualifications (if required): attorney nominated by the State Bar who represents criminal defense lawyers</p>	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration) cont.		
Mr. Mike Sherwood, Missoula Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2010
Mr. William Snell, Billings Qualifications (if required): employee of organization providing addictive behavior counseling	Governor	7/1/2010
Ms. Tara Veazey, Helena Qualifications (if required): member of an organization advocating on behalf of indigent persons	Governor	7/1/2010
Research and Commercialization Technology Board (Commerce)		
Mr. Michael Dolson, Plains Qualifications (if required): public member (Native American)	Governor	7/1/2010
State-Tribal Economic Development Commission (Commerce)		
Ms. Emorie Davis-Bird, Browning Qualifications (if required): alternate representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Walter White Tail Feather, Poplar Qualifications (if required): alternate representative of the Fort Peck Assiniboine & Sioux Tribes	Governor	6/30/2010
Mr. Rodney Miller, Wolf Point Qualifications (if required): representative of the Fort Peck Assiniboine and Sioux Tribes	Governor	6/30/2010
Ms .Lola Wippert, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Commerce) cont. Mr. Ronald (Smiley) Kittson, Browning Qualifications (if required): alternate representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Ronald (Smiley) Kittson, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Jerry Lamb, Helena Qualifications (if required): representative of the Governor's Office of Economic Development	Governor	6/30/2010
Teachers' Retirement Board (Administration) Mr. James Turcotte, Helena Qualifications (if required): public representative	Governor	7/1/2010
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) Mr. Ron Bibler, Great Falls Qualifications (if required): individual with a hearing disability	Governor	7/1/2010
Ms. Linda Kirkland, Helena Qualifications (if required): agency representative	Governor	7/1/2010
Ms. Amber Lang, Kalispell Qualifications (if required): individual with a hearing disability	Governor	7/1/2010
Ms. Chris Caniglia, Helena Qualifications (if required): non-disabled business person	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- June 1, 2010 through August 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) cont. Mr. Matt Bugni, Helena Qualifications (if required): agency representative</p>	Governor	7/1/2010
<p>Tourism Advisory Council (Commerce) Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): resident of Glacier Country</p>	Governor	7/1/2010
<p>Mr. Stan Ozark, Glasgow Qualifications (if required): resident of Missouri River Country</p>	Governor	7/1/2010
<p>Ms. Sandy Watts, Garryowen Qualifications (if required): resident of Custer Country</p>	Governor	7/1/2010
<p>Mr. Bill McGladdery, Butte Qualifications (if required): resident of Goldwest Country</p>	Governor	7/1/2010
<p>Western Interstate Commission for Higher Education (Higher Education) Sen. Dan W. Harrington, Butte Qualifications (if required): legislator</p>	Governor	6/19/2010