

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to examination	)	ADOPTION
procedures	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 15, 2010, the Department of Administration proposes to adopt the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 6, 2010, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I ADOPTION OF EXAMINATION PROCEDURE (1) The department adopts the revised Uniform Financial Institution Rating System as one of its examination procedures. The edition adopted is the December 19, 1996, edition as published in the Federal Register at 61 Fed. Reg. 67021. It may be viewed at <http://www.fdic.gov/news/news/financial/1996/fil96105.pdf>. A copy may be obtained from the Federal Financial Institutions Examination Council (FFIEC) at 3501 Fairfax Drive, Room D-8073a, Arlington, VA 22226-3550.

AUTH: 32-1-218, MCA  
IMP: 32-1-211, MCA

STATEMENT OF REASONABLE NECESSITY: While the department has used the Uniform Financial Institution Rating System (UFIRS) as one of its bank examination procedures for the past 31 years, it has never formally adopted that procedure by rule. The department is simply formalizing in rule the existing practice of the department since 1979 to make the use of this procedure clear to all affected by it.

The UFIRS was adopted by the Federal Financial Institutions Examination Council (FFIEC) on November 13, 1979. The agencies comprising the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The FFIEC recommended on December 9, 1996, that the all banking agencies adopt the

updated rating system. The revised UFIRS became effective January 13, 1999, and was to be used in examinations of all commercial banks and thrifts commencing after that date.

The department has used the UFIRS since 1979 and adopted the revised UFIRS when it came out. The use of this system allows the division to be consistent with other federal regulators that examine banks. This allows the regulators to use the same procedures when conducting joint examinations, which facilitates the process for both the regulators and the banks. It allows financial institutions to deal with one set of rules and one examination by two sets of regulators, which make examinations more efficient and less time consuming.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [kosullivan@mt.gov](mailto:kosullivan@mt.gov); and must be received no later than 5:00 p.m., August 13, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above at the above address no later than 5:00 p.m., August 13, 2010.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on the number of state-chartered banks, which is currently 64 as of the publication of this notice.

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

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall

make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request.

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

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

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

Certified to the Secretary of State July 6, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
4.5.210 relating to priority 3 regulated )  
plants )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 5, 2010, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on July 29, 2010, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.5.210 PRIORITY 3 REGULATED PLANTS (NOT MONTANA LISTED NOXIOUS WEEDS) (1) and (1)(a) remain the same.

(b) *Hydrilla (Hydrilla Verticillata)*:- ;

(c) *Russian Olive (Elaeagnus angustifolia)*.

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: MDA received a petition from the Montana Native Plant Society requesting that Russian Olive (*Elaeagnus angustifolia*) be considered for listing as noxious. MDA had received petitions for Russian olive in the past, but had no practical system by which to address the plant. Priority 3 provides special management for Russian olive. MDA also conducted a survey to County Commissioners and County Weed District Coordinators requesting their input whether it should be listed or not. The results of the survey showed support for a Priority 3 listing.

FINANCIAL IMPACT: Initially, prohibiting sale of Russian olive might result in a small loss for the nursery industry, but this will be short-lived as noninvasive plants are substituted. The cost to the state by uncontrolled aquatic and riparian invaders is estimated to be far more injurious than the loss of revenue for current trade.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than August 12, 2010.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies 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 Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at [www.agr.mt.gov](http://www.agr.mt.gov), under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong  
Ron de Yong, Director

/s/ Cort Jensen  
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, July 6, 2010.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.101.403 fees, 24.101.413 ) PROPOSED AMENDMENT  
renewal dates and requirements, and )  
24.171.401 fees )

TO: All Concerned Persons

1. On August 9, 2010, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 Outfitters (board) no later than 5:00 p.m., on August 6, 2010, to advise us of the nature of the accommodation that you need. Please contact Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2373; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

3. The department is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.101.403 FEES (1) through (2)(a) remain the same.

(3) There is no late fee for licensed guides under the jurisdiction of the Board of Outfitters.

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

AUTH: 37-1-101, MCA

IMP: 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA

REASON: Until recently, the board has kept guide licenses nonrenewable because the nature of guiding includes the uncertainty of whether a license will be used from year to year, and the license is only useful for very limited times of the year. The decision on whether to get a guide license is often not made until the applicable hunting or fishing season approaches. The department determined this rule amendment is now reasonably necessary to facilitate and align with the board's decision to implement renewal of guide licenses, with consideration for the unique nature of the occupation. Because guides do not currently renew, there is no current revenue from guides paying late fees to renew late. Therefore, the department estimates no fiscal impact associated with this proposed amendment.

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(w) remain the same.

BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(x) Outfitters	Outfitter <u>Professional Guide</u> <u>Guide (including</u> <u>provisional guide)</u>	Annually <u>Annually</u> <u>Annually</u>	December 31 <u>December 31</u> <u>December 31</u>

(y) through (6)(f) remain the same.

(g) all licenses issued by the Board of Athletics end on June 30 of each year and the licensee must reapply; and

~~(h) guide and professional guide licenses issued by the Board of Outfitters end on December 31 of each year and the licensee must reapply; and~~

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

(7) remains the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: The department is amending this rule to facilitate the board's recent decision to renew guide and professional guide licenses. It is reasonably necessary to amend this rule and set renewal dates for guides and professional guides to align with the board's proposed amendments to ARM 24.171.401 in this notice.

4. The board is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.171.401 FEES (1) through (1)(h) remain the same.

~~(i) Guide or professional guide license effective until December 31, 2008~~

~~(i) original guide license 100~~

~~(ii) temporary guide license 100~~

~~(j) (i) Guide or professional guide license effective January 1, 2009~~

(i) guide initial and renewal guide license 150

(ii) remains the same.

(j) Professional guide license

(i) initial license (inclusive of application processing) 250

(ii) renewal of license 150

(k) through (2) remain the same.

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: In conjunction with the board's recent decision to renew guide and professional guide licenses, it is reasonably necessary to amend this rule and set forth the particular guide renewal fees. Because the renewal fee is the same as the current initial licensure fee, there is no fiscal impact for this proposed change.

The board is also amending this rule to establish separate licensure fees for guides and professional guides. Until recently, the board had never received a professional guide application. Now that applications are beginning to come to the board, it is necessary to set a fee commensurate with costs to process the initial professional guide applications. Initial processing of a professional guide license is substantially more involved in comparison to the guide application, because staff has to confirm compliance with additional qualifications. The board estimates that there will be approximately 20 professional guides initially licensed per year, with a resultant increase to annual revenue of \$2,000. The board is deleting (1)(i) as the provisions are outdated and unnecessary.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsout@mt.gov](mailto:dlibsout@mt.gov), and must be received no later than 5:00 p.m., August 17, 2010.

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

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

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

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

BOARD OF OUTFITTERS  
LEE KINSEY, 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 July 6, 2010

BEFORE THE BOARD OF HORSE RACING  
DEPARTMENT OF LIVESTOCK  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 32.28.801 and 32.28.804 ) AMENDMENT  
pertaining to eligibility for maidens )  
over seven years old and conditions ) NO PUBLIC HEARING  
accompanying a claim ) CONTEMPLATED

TO: All Concerned Persons

1. On August 14, 2010, the Department of Livestock proposes to amend the above-stated rules.

2. The Board of Horse Racing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Horse Racing no later than 5:00 p.m. on July 30, 2010 to advise us of the nature of the accommodation that you need. Please contact Sherry Rust, P.O. Box 200512, Helena, MT 59620-0512; telephone (406) 444-9321; TTD number 1-800-253-4091; fax (406) 444-4305; e-mail srust@mt.gov.

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

32.28.801 GENERAL REQUIREMENTS (1) through (25) remain the same.

(26) ~~No A~~ A maiden seven years old or older shall not be eligible to enter or start in any race unless such horse has started in a race within the last 365 days and has recently had a successful veterinarian's examination. For purposes of this rule only, a maiden is a horse which at the time of starting has never won a race on the flat in any country.

(27) No Arabian shall run on any track in the state of Montana until it is a three year old. ~~No Arabian maiden seven years old or older shall be eligible to enter or start in any race. For purposes of this rule only a maiden is a horse which at the time of starting has never won a race on the flat in any country.~~

(28) through (65) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-101, 23-4-104, 23-4-202, ~~23-4-301~~, MCA

REASON: The rule is amended to allow horses seven years old or older to be eligible to run as a maiden if the horse has run within the past year and is healthy enough to run. The reference to Arabian maidens is deleted because Arabian horses are incorporated in the previous section.

32.28.804 CLAIMING (1) through (24) remain the same.

~~(25) After a horse has been claimed out of a claiming race, the horse loses all starter allowance eligibilities. Claimed horses must re-establish their starter allowance eligibilities for the new owner before being allowed to start in any type of starter allowance or starter handicap race.~~

AUTH: 23-4-104, 23-4-202, MCA  
IMP: 23-4-104, 23-4-202, MCA

REASON: The rule is amended to allow conditions to follow the horse.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Board of Horse Racing, Attn. Ryan Sherman, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to [RSherman@mt.gov](mailto:RSherman@mt.gov) to be received no later than 5:00 p.m., August 12, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Ryan Sherman at the above address no later than 5:00 p.m., August 12, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either ten percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 100 persons based on 1000 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's web site at [www.liv.mt.gov](http://www.liv.mt.gov).

8. The Board of Horse Racing 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 Ryan Sherman at Montana Board of Horse Racing, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to [RSherman@mt.gov](mailto:RSherman@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

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

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

/s/ Sherry K. Meador  
Sherry K. Meador  
Rule Reviewer

/s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Department of Livestock

Certified to the Secretary of State July 6, 2010.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.78.102 pertaining to ) PROPOSED AMENDMENT  
Temporary Assistance for Needy )  
Families (TANF) )

TO: All Concerned Persons

1. On August 5, 2010, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 27, 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](mailto:dphhslegal@mt.gov).

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 1, 2010~~ August 1, 2010 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

4. The Department of Public Health and Human Services (department) is proposing amendment to ARM 37.78.102 pertaining to Temporary Assistance for Needy Families (TANF).

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2010. The department proposes to make some revisions to this manual regarding the TANF Working Caretaker Relative Program that will take effect on August 1, 2010. The proposed amendment to ARM 37.78.102 is necessary to incorporate into the Administrative Rules of Montana the revised versions of the policy manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect an average of 83 households and approximately 128 children who have received services through the TANF Working Caretaker Relative Program. Manuals and TANF policy bulletins are available for review in each local office of public assistance and on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

Following is a brief overview of the TANF manual material with substantive changes:

TANF 901-2 - Working Caretaker Relative Child Care

TANF 901-2 is being updated to reflect changes to the copayment and service population for the TANF Working Caretaker Relative Program. Effective August 1, 2010, the mandatory copayment will increase from \$10 per family to \$150 per family and service will only be provided to children ages 11 and under.

The TANF Working Caretaker Relative Program was implemented pursuant to House Bill 2 (HB 2) (effective August 1, 2007) and House Bill 676 (effective July 1, 2009). Funding for the program was established at \$485,072 for state fiscal year 2011. Current expenditures indicate the funding will not be sufficient to provide services at the existing level, therefore in order to stay within the budgeted amount as required per restrictions in HB 2, the above changes are necessary.

The department estimates the change in copayment could impact an average of 83 households and approximately 128 children. The department estimates the change in service population could impact a small number of households with children over the age of 11. Currently there are only two children over the age of 11 receiving services through TANF working caretaker relative child care.

5. The department intends to apply this rule retroactively to August 1, 2010, which is needed to provide services at the existing level within the budget restrictions to HB 2.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., August 13, 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, do not apply.

/s/ Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State July 6, 2010.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.80.101 pertaining to child ) PROPOSED AMENDMENT  
care assistance )

TO: All Concerned Persons

1. On August 5, 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 amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 27, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (12) remain the same.

(13) The child care assistance program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual in effect on ~~September 1, 2007~~ August 1, 2010. The Montana Child Care Manual, dated ~~September 1, 2007~~ August 1, 2010, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at [www.childcare.mt.gov](http://www.childcare.mt.gov).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

4. The Department of Public Health and Human Services (department) is proposing amendment to ARM 37.80.101 pertaining to child care assistance.

ARM 37.80.101

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Child Care Policy Manual effective September 1, 2007. The department proposes to make some revisions to this manual regarding the TANF Working Caretaker Relative Program that will take effect on August 1, 2010.

Changes to the TANF Policy Manual for the Working Caretaker Relative Program require the proposed policy change for the Child Care Policy Manual. The TANF Working Caretaker Relative Program is a program available for individuals caring for child only TANF grant recipients through the public assistance office. However, the Child Care Program manages the child care functions through its administrative oversight of child care payments and eligibility as is reflected in the Child Care Manual. As a result, the Child Care Policy Manual must be updated in addition to the TANF updates to reflect updates in the TANF Manual regarding TANF Working Caretaker Relative Program. Both rules are being changed simultaneously.

The proposed amendment to ARM 37.80.101(13)(b) is necessary to incorporate into the Administrative Rules of Montana the revised versions of the Child Care Policy Manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Child Care Policy Manual could affect an average of 83 households and approximately 128 children who have received services through the TANF Working Caretaker Relative Program. Manuals and Child Care policy bulletins are available for review on the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

Following is a brief overview of the Child Care Policy Bulletin with substantive changes:

Child Care Section 3-3 - Working Caretaker Relative Child

Care Child Care Section 3-3 is being updated to reflect changes to the copayment and service population for the TANF Working Caretaker Relative Program along with slight administrative processing language updates. Effective August 1, 2010, the mandatory copayment will increase from \$10 per family to \$150 per family and service will only be provided to children ages 11 and under.

The TANF Working Caretaker Relative Program was implemented pursuant to House Bill 2 (HB 2) (effective August 1, 2007) and House Bill 676 (effective July 1, 2009). Funding for the program was established at \$485,072 for state fiscal year 2011. Current expenditures indicate the funding will not be sufficient to provide services at the existing level, therefore in order to stay within the budgeted amount as required per restrictions in HB 2, the above changes are necessary.

The department estimates the change in copayment could impact an average of 83 households and approximately 128 children. The department estimates the change in service population could impact a small number of households with children over the age of 11. Currently there are only two children over the age of 11 receiving services through TANF Working Caretaker Relative Child Care.

5. The department intends to apply this rule retroactively to August 1, 2010, which is needed to provide services at the existing level within the budget restrictions to HB 2.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., August 13, 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, do not apply.

/s/ Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State July 6, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM ) NOTICE OF REPEAL  
2.21.215, 2.21.216, 2.21.217, )  
2.21.221, 2.21.222, 2.21.223, )  
2.21.224, 2.21.226, 2.21.227, )  
2.21.228, 2.21.229, 2.21.230, )  
2.21.232, 2.21.234, and 2.21.241 )  
pertaining to annual leave policy )

TO: All Concerned Persons

1. On April 15, 2010, the Department of Administration published MAR Notice No. 2-21-428 regarding the proposed repeal of the above-stated rules at page 804 of the 2010 Montana Administrative Register, Issue Number 7.

2. A hearing was held on May 14, 2010. One person appeared but did not testify. The following written comments were received:

Comment 1: The statement of reasonable necessity was insufficient because it failed to adequately inform the public regarding the reasons why the rules were proposed to be repealed and what had changed since the rules were adopted to cause the Department of Administration to determine that the public was not affected. Since the statement of reasonable necessity was not understandable, the public could not meaningfully comment and the repeal could be seen as arbitrary and capricious.

Response 1: The department changed the statement of reasonable necessity to explain that the Montana Administrative Procedure Act's definition of rule, set out in 2-4-102(11)(a) and (b), MCA, was amended and no longer includes "rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system." The new statement of reasonable necessity also explained that the amendment to statute occurred in 2003 and the State Human Resource Division has been removing its internal administrative policies from the Administrative Rules of Montana as part of its review process. An Amended Notice and Extension of Comment Period on Proposed Repeal including the amended statement of reasonable necessity was published to give the public another opportunity to comment on the repeal.

Comment 2: A separate statement of reasonable necessity should be stated following each rule being repealed.

Response 2: In this case, the reasons for each rule's repeal are the same. Therefore, the statement was not repeated following each rule to save resources.

Comment 3: Internal management of state government affects the public because state employees' wages and benefits are sizable portions of the state's budget. To take this policy out of public rulemaking gives the impression that this business is done behind closed doors.

Response 3: The repeal of these rules is consistent with the definition of rule in the above-cited statute. Further, the policy will now be published in the Montana Operation Manual (MOM). The MOM policies are available to employees and the public on the State Human Resources Division web site at <http://hr.mt.gov/hrpp/policies.mcp>. If the policy is amended in the future, notice will be posted on the MINE web page, an internal site for state employees.

3. On June 10, 2010, the Department of Administration published a notice revising the reasonable necessity statement and extending the comment period at page 1356 of the 2010 Montana Administrative Register, Issue Number 11.

4. The comment period closed on June 25, 2010, at 5:00 p.m. No further comments were received.

5. The Department of Administration has repealed ARM 2.21.215, 2.21.216, 2.21.217, 2.21.221, 2.21.222, 2.21.223, 2.21.224, 2.21.226, 2.21.227, 2.21.228, 2.21.229, 2.21.230, 2.21.232, 2.21.234, and 2.21.241 as proposed.

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

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

Certified to the Secretary of State July 6, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM        ) NOTICE OF REPEAL  
2.21.305, 2.21.306, 2.21.307,        )  
2.21.308, 2.21.309, 2.21.310,        )  
2.21.311, and 2.21.312 pertaining to    )  
disaster and emergency leave policy    )

TO: All Concerned Persons

1. On April 15, 2010, the Department of Administration published MAR Notice No. 2-21-429 regarding the proposed repeal of the above-stated rules at page 808 of the 2010 Montana Administrative Register, Issue Number 7.

2. A hearing was held on May 14, 2010. No one appeared, and no written comments were received. However, based on comments regarding the statements of reasonable necessity for two other similar notices of proposed repeal, on June 10, 2010, the department published a notice revising the reasonable necessity statement and extending the comment period at page 1358 of the 2010 Montana Administrative Register, Issue Number 11.

3. The comment period closed on June 25, 2010, at 5:00 p.m. No further comments were received.

4. The Department of Administration has repealed ARM 2.21.305, 2.21.306, 2.21.307, 2.21.308, 2.21.309, 2.21.310, 2.21.311, and 2.21.312 as proposed.

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

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

Certified to the Secretary of State July 6, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM ) NOTICE OF REPEAL  
2.21.1801, 2.21.1802, 2.21.1803, )  
2.21.1811, 2.21.1812, and 2.21.1831 )  
pertaining to exempt compensatory )  
time policy )

TO: All Concerned Persons

1. On April 15, 2010, the Department of Administration published MAR Notice No. 2-21-430 regarding the proposed repeal of the above-stated rules at page 811 of the 2010 Montana Administrative Register, Issue Number 7.

2. A hearing was held on May 14, 2010. One person appeared but did not testify. The following written comments were received:

Comment 1: The statement of reasonable necessity was insufficient because it failed to adequately inform the public regarding the reasons why the rules were proposed to be repealed and what had changed since the rules were adopted to cause the Department of Administration to determine that the public was not affected. Since the statement of reasonable necessity was not understandable, the public could not meaningfully comment and the repeal could be seen as arbitrary and capricious.

Response 1: The department changed the statement of reasonable necessity to explain that the Montana Administrative Procedure Act's definition of rule, set out in 2-4-102(11)(a) and (b), MCA, was amended and no longer includes "rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system." The new statement of reasonable necessity also explained that the amendment to statute occurred in 2003 and the State Human Resource Division has been removing its internal administrative policies from the Administrative Rules of Montana as part of its review process. An Amended Notice and Extension of Comment Period on Proposed Repeal including the amended statement of reasonable necessity was published to give the public another opportunity to comment on the repeal.

Comment 2: A separate statement of reasonable necessity should be stated following each rule being repealed.

Response 2: In this case, the reasons for each rule's repeal are the same. Therefore, the statement was not repeated following each rule to save resources.

Comment 3: Internal management of state government affects the public because state employees' wages and benefits are sizable portions of the state's

budget. To take this policy out of public rulemaking gives the impression that this business is done behind closed doors.

Response 3: The repeal of these rules is consistent with the definition of rule in the above-cited statute. Further, the policy will now be published in the Montana Operation Manual (MOM). The MOM policies are available to employees and the public on the State Human Resources Division web site at <http://hr.mt.gov/hrpp/policies.mcp.x>. If the policy is amended in the future, notice will be posted on the MINE web page, an internal site for state employees.

Comment 4: The rules at issue were implemented in accordance with 2-18-102, MCA, which requires the Department of Administration to adopt rules. Therefore, the rules are appropriately included in ARM. A statement of intent was included in an amendment to 2-18-102(3), MCA, in 1995 because "A statement is required for this bill because 2-18-102 requires the department of administration to adopt administrative rules containing personnel policies . . ." A Supreme Court case, State v. Vainio, 306 Mont. 439 (2001), stated: "When the legislature authorizes an agency to adopt rules, the procedures mandated by MAPA [Montana Administrative Procedure Act] apply."

Response 4: These rules are repealed to comply with the definition of rules in 2-4-102(11)(a) and (b), MCA, cited above, which was amended in 2003.

Comment 5: The statement of reasonable necessity stated that a "revised annual leave policy" would be included in the Montana Operations Manual. The annual leave policy has nothing to do with the exempt compensatory time policy.

Response 5: The reference to the annual leave policy was an error and was corrected in the amended notice.

3. On June 10, 2010, the Department of Administration published a notice revising the reasonable necessity statement and extending the comment period at page 1360 of the 2010 Montana Administrative Register, Issue Number 11.

4. The comment period closed on June 25, 2010, at 5:00 p.m. No further comments were received.

5. The Department of Administration has repealed ARM 2.21.1801, 2.21.1802, 2.21.1803, 2.21.1811, 2.21.1812, and 2.21.1831 as proposed.

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

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

Certified to the Secretary of State July 6, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.11.203, 24.11.315,	)	ADOPTION, AND REPEAL
24.11.2407, 24.16.7520, 24.16.7527,	)	
24.35.111, 24.35.121, 24.35.131,	)	
24.35.133, 24.35.141, 24.35.202,	)	
24.35.205, 24.35.206, 24.35.207,	)	
24.35.302, 24.35.303, the adoption of	)	
NEW RULES I and II, and the repeal	)	
of ARM 24.35.201 all related to	)	
independent contractor exemption	)	
certificates and employment status	)	
determinations by the department	)	

TO: All Concerned Persons

1. On May 13, 2010, the Department of Labor and Industry (department) published MAR Notice No. 24-35-243 regarding the proposed amendment, adoption, and repeal of the above-stated rules at page 1139 of the 2010 Montana Administrative Register, Issue Number 9.

2. On June 7, 2010, the department held a public hearing in Helena at which time members of the public had an opportunity to make oral and written comments and submitted documents. No one presented written or oral testimony at the hearing and no written comments were received by the department during the comment period.

3. The department has amended ARM 24.11.203, 24.11.315, 24.11.2407, 24.16.7520, 24.16.7527, 24.35.111, 24.35.121, 24.35.131, 24.35.133, 24.35.141, 24.35.202, 24.35.205, 24.35.206, 24.35.207, 24.35.302, and 24.35.303 exactly as proposed.

4. The department has adopted NEW RULE I (24.35.101) and New RULE II (24.35.117) as proposed.

5. The department has repealed ARM 24.35.201 as proposed.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State on July 6, 2010.

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

In the matter of the amendment of )  
ARM 24.180.401 fee schedule and )  
the adoption of NEW RULE I )  
pertaining to continuing education )  
provider qualifications )

NOTICE OF AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On April 29, 2010, the Board of Plumbers (board) published MAR notice no. 24-180-46 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 974 of the 2010 Montana Administrative Register, issue no. 8.

2. On May 27, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the June 4, 2010, deadline.

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

COMMENT 1: The board received numerous comments regarding the proposed amendments to ARM 24.180.401. All the comments were made in opposition to the board's proposed increases to licensure fees.

RESPONSE 1: After thoroughly considering the strong opposition to the increases reflected in the comments and making another detailed and thorough review of current and future board finances, the board decided not to increase the fees in the amounts originally proposed, but is instead proposing revisions as shown below. The board did not propose the fee increases arbitrarily or unnecessarily, and does not take this action lightly. The board appreciates all comments made and thanks everyone who participated in the rulemaking process.

COMMENT 2: Several commenters stated that the licensing fees for Montana plumbers are disproportionate to licensing fees of other Montana occupations and to licensing fees for plumbers in other states.

RESPONSE 2: The number of licensees, the board's activities, and other factors make such a comparison one of "apples to oranges." Additionally, other states have sources of revenue and other legislative advantages that make a fair comparison impossible. The proposed fee increases are necessary to keep fees commensurate with costs, considering the board's responsibilities and the number of active licensees paying those fees. However, the board is actively seeking other revenue

sources and will be aggressively seeking legislative changes that are hoped to offset some of the board's costs.

COMMENT 3: Numerous commenters stated that the fees are not reasonable, especially in light of the economy and the income of plumbers.

RESPONSE 3: The board is sympathetic to these concerns, but notes that economic performance and licensee income do not factor into the board's necessary operating costs. Some board costs are actually greater in these economic times, and the board is statutorily mandated to set and adjust fees to keep fees commensurate with associated costs.

COMMENT 4: Several commenters questioned why the board referred to increased legal expenses during board meetings as justification for the proposed fee increases, even though a review of the board's records and statements through December 2009 indicated a positive financial outlook for the board.

RESPONSE 4: In general, the board's legal and compliance costs have increased as a result of increased enforcement efforts against unlicensed plumbing. The board also notes that complaints against licensees are significantly higher and more investigations have been commissioned. While the billing rate for legal work has not increased, the amount of effort to enforce the plumbing statutes, rules, and standards has increased, which raises board costs.

COMMENT 5: Several commenters opined that the fee increases may not be necessary because some expenses incurred in 2009 will not necessarily be repeated in future years and used as an example legal expenses, in relation to the contract for outsourcing the administration of the licensing exams.

RESPONSE 5: There is no particular one-time cost or any set of one-time costs that are responsible for the board's proposed fee increases. Rather, the estimated overall costs of administering the board's functions necessitate the fee increases.

COMMENT 6: Several commenters stated that the board should explore both additional revenue sources and, like the board's licensees, ways to reduce costs. The commenters stated that CE audits cost too much, and the board should instead require proof of CE as a condition to license renewal.

RESPONSE 6: At its March 2010 meeting, the board determined to significantly reduced the number of CE audits to minimize the fee increase. In addition, the board is actively seeking additional sources of revenue, more efficient ways to prevent unlicensed plumbing, and other statutory changes to provide for the protection of the public, without making licensure cost prohibitive. The board maintains that CE is necessary for the protection of the public and may, following a meeting of its legislative committee, follow through with the suggestion that each licensee's CE be proven as a condition to renewal.

COMMENT 7: Several commenters asserted that because the master of record status has been treated the same since 1975, the proposed new fee for the status is not justified.

RESPONSE 7: The board has ascertained through current accounting that there are administrative costs associated with master plumbers of record, and those costs should be recovered through an appropriate fee.

COMMENT 8: One commenter asserted that the increase in board costs is disproportionately low compared to the proposed fee increases.

RESPONSE 8: The board is amending the proposed fee increases to meet the current projections.

COMMENT 9: Several commenters complained that only licensees pay for enforcement against unlicensed plumbing, while all of the public benefit through the board's protection.

RESPONSE 9: The professional and occupational licensing boards exist to regulate the plumbing profession, which includes protecting the public against unqualified and unlicensed practitioners. The board intends to aggressively pursue legislative changes to assist in controlling unlicensed plumbing while providing alternative revenue sources. The board points out that pursuing actions against those practicing plumbing work without a license also protects licensees' jobs.

The fee increases are required if the board is going to continue its work of protecting the public, which is accomplished primarily by investigating and preventing unlicensed plumbing and enforcing licensee standards of conduct. Recently, the unlicensed practice of plumbing has become a focus of enforcement efforts, although the board is not currently able to recover its costs from those cases. The board concluded that the burden of enforcing unlicensed practice should not be borne exclusively by licensees, and the board asks for the support of its licensees, labor and industry organizations, and others to help solve this problem.

COMMENT 10: A few commenters stated that the additional fees are not justified because there are no additional benefits being offered.

RESPONSE 10: The board is statutorily mandated to set and maintain licensure fees to meet costs or the board cannot function. No additional services can be offered because the cost of providing the current level of services necessitates the higher fees.

COMMENT 11: One commenter suggested the board increase enforcement without incurring more costs by making state inspectors provide services as compliance officers for the board.

RESPONSE 11: The board is seeking to make appropriate changes to existing laws. This comment suggests what may be an appropriate change to law, but the suggestion does not circumvent the current need for fee increases.

COMMENT 12: A few commenters questioned why the board needs to increase fees twice in the last three years, when the board had not done so for many years before.

RESPONSE 12: The board notes that if smaller fee increases had occurred throughout the period of time when no increase was made, it would probably not have been necessary to have two significant fee increases so close together.

COMMENT 13: Several commenters stated that the proposed fee increases are particularly unfair to apprentices and will harm recruiting for the Joint Apprenticeship and Training Committees.

RESPONSE 13: The current requirements for initial licensure are those the board has determined to be minimally necessary to protect the public. The board notes that there is no administrative fee charged by the board to become an apprentice and believes that the fee increases will not significantly influence the number of apprentices entering the trade.

COMMENT 14: One commenter stated that the cards mailed out on behalf of the board did not give adequate notice of the fee increase.

RESPONSE 14: The board and department ensure adequate public notice and opportunity for public participation in the rulemaking process by following the statutory requirements of the Montana Administrative Procedure Act.

COMMENT 15: A commenter suggested that the state should refund what it took out of the plumbing reserve in the past ten years.

RESPONSE 15: The board will look into the matter.

COMMENT 16: One commenter suggested that the board should control the administrative costs for services provided by the department.

RESPONSE 16: The board consistently explores ways to reduce costs, but notes that seeking a legislative change to control administrative costs is outside the scope of this proposed rulemaking.

4. The board has amended ARM 24.180.401 with the following changes, stricken matter interlined, new matter underlined:

24.180.401 FEE SCHEDULE (1) remains as proposed.

(2) Application fee

\$ ~~120~~ 100

(a) through (3) remain as proposed.

(a) Journeyman	180	<u>170</u>
(b) Master	325	<u>280</u>
(4) remains as proposed.		
(a) Journeyman	180	<u>160</u>
(b) Master	325	<u>265</u>
(5) Medical gas endorsement application fee	120	<u>100</u>
(6) through (8) remain as proposed.		
(9) Master plumber of record fee	65	<u>50</u>
(10) through (14) remain as proposed.		

5. The board has adopted NEW RULE I (24.180.2103) exactly as proposed.

BOARD OF PLUMBERS  
TIM REGAN, PRESIDING OFFICER

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

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

Certified to the Secretary of State July 6, 2010

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment ARM ) NOTICE OF AMENDMENT  
36.21.410, 36.21.413A, 36.21.634, )  
36.21.635, 36.21.639, 36.21.640, )  
36.21.645, 36.21.654, 36.21.655, )  
36.21.656, 36.21.659, 36.21.660, )  
36.21.678, 36.21.679, 36.21.702, )  
36.21.801, 36.21.803, 36.21.809, and )  
36.21.810 pertaining the Board of )  
Water Well Contractors )

To: All Concerned Persons

1. On April 15, 2010, the Board of Water Well Contractors of the Department of Natural Resources and Conservation published MAR Notice No. 36-22-137 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 843 of the 2010 Montana Administrative Register, Issue No. 7.

2. The department has amended ARM 36.21.410, 36.21.413A, 36.21.635, 36.21.639, 36.21.640, 36.21.645, 36.21.654 through 36.21.656, 36.21.659, 36.21.660, 36.21.678, 36.21.679, 36.21.702, 36.21.801, 36.21.803, 36.21.809, and 36.21.810 as proposed.

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

36.21.634 DEFINITIONS

(1) through (11) remain as proposed.

(12) "Community water system" means any public water supply system which serves at least ~~ten~~ 15 service connections used by year-round residents or regularly serves at least ~~45~~ 25 year-round residents.

(13) through (41) remain as proposed.

COMMENT 1:

Commenter stated that a 25-foot minimum extension of the casing to sealing depth is too high. The current 18-foot depth is sufficient and there are no problems with that depth. Drilling deeper would also incur extra costs for the driller.

RESPONSE 1:

Current Department of Environmental Quality rules and other drilling rules and construction standards already require a 25-foot casing depth for all wells put in subdivisions. All wells within a 100-year floodplain and public or community wells

also require the 25-foot sealing. The change to DNRC rules is to avoid potential conflicts between rule sets.

COMMENT 2:

Commenter proposed changing the 60-day period for supplying well logs to supplying the well logs after the driller has received payment for the well construction.

RESPONSE 2:

One of the main reasons DNRC has the 60-day period for supplying well logs is because 85-2-516, MCA, states that the well log will be submitted within 60 days to the Montana Bureau of Mines and Geology. In order to change that requirement, the MCA would have to be amended legislatively, which is beyond the authority of the BWWC.

COMMENT 3:

Commenter stated that the casing comes in 20-foot pieces, and that it would be more beneficial for the driller if the depth were an amount that coincided with 20-foot increment as drillers cannot use the leftover pieces.

RESPONSE 3:

See Response 1.

COMMENT 4:

Commenter stated that if there are specific instances of contamination that necessitate the 25-foot casing sealing then those instances should be dealt with on a case-by-case basis.

RESPONSE 4:

See Response 1.

COMMENT 5:

Commenter stated that it would help if the board required bentonite placement by the pitless adapter when sealing the water line. Commenter wanted to include in the sealing of the casing, a requirement that sealing material be replaced when back filling after installing a pitless adapter.

RESPONSE 5:

DNRC thanks the commenter, but that amendment falls outside of the scope of the current rulemaking.

COMMENT 6:

Commenter stated that there was a misprint in ARM 36.21.634(12) and that it should read, "Community water system' means any public water supply system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents."

RESPONSE 6:

DNRC agrees and has made the change.

COMMENT 7:

Commenter stated that DNRC should amend ARM 36.21.801 and replace "groundwater table" with "water table".

RESPONSE 7:

DNRC thanks the commenter, but that amendment falls outside of the scope of the current rulemaking.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Fred Robinson

FRED ROBINSON

Rule Reviewer

Certified to the Secretary of State July 6, 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 amendment of ARM        )  
36.25.205 regarding procedures for the        )  
issuance of state oil and gas leases        )

NOTICE OF AMENDMENT

To: All Concerned Persons

1. On April 15, 2010, the Department of Natural Resources and Conservation published MAR No. 36-22-141 regarding a notice of public hearing on the proposed amendment of the above-stated rule, at page 858 of the 2010 Montana Administrative Register, Issue Number 7.

2. The department has amended ARM 36.25.205 exactly as proposed.

3. No comments or testimony were received on the rule.

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 on July 6, 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<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through 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.

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

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