

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

| | |
|---|----------|
| 2-21-446 Notice of Public Hearing on Proposed Adoption - Reasonable Accommodations and Equal Access. | 966-981 |
| 2-21-448 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention. | 982-997 |
| 2-21-453 Notice of Public Hearing on Proposed Amendment - Employee Records Management. | 998-1001 |

LABOR AND INDUSTRY, Department of, Title 24

| | |
|--|-----------|
| 24-11-258 Notice of Public Hearing on Proposed Amendment - Unemployment Insurance Rates for Governmental Entities. | 1002-1005 |
| 24-26-257 (Board of Personnel Appeals) Notice of Public Hearing on Proposed Amendment - Petitions for Decertification Before the Board of Personnel Appeals. | 1006-1007 |

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-548 Notice of Public Hearing on Proposed Adoption and Amendment - Reimbursement for the Provision to Persons With Developmental Disabilities of Services - Items Covered as Benefits of the Various Programs of Services Administered by the Developmental Disabilities Program. 1008-1019

REVENUE, Department of, Title 42

42-2-861 Notice of Proposed Amendment and Repeal - Property Taxes. No Public Hearing Contemplated. 1020-1022

42-2-862 (Board of Review) Notice of Public Hearing on Proposed Amendment - One-Stop Business Licensing. 1023-1025

SECRETARY OF STATE, Office of, Title 44

44-2-169 Notice of Public Hearing on Proposed Adoption - Access to Documents - Fees for Copies of Public Records. 1026-1028

RULE ADOPTION SECTION

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-358 (Fish, Wildlife and Parks Commission) Notice of Adoption of a Temporary Emergency Rule - Closing the Smith River From Camp Baker to Eden Bridge. 1029-1031

12-358 (Fish, Wildlife and Parks Commission) Notice of Repeal of a Temporary Emergency Rule - Closing the Smith River From Camp Baker to Eden Bridge. 1032

12-369 (Fish, Wildlife and Parks Commission) Notice of Adoption of a Temporary Emergency Rule - Closing the Belt Creek Within Sluice Boxes State Park From Logging Creek Bridge to Riceville Bridge in Cascade County. 1033-1035

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 1036-1037

How to Use ARM and MAR. 1038

Accumulative Table. 1039-1047

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules) NOTICE OF PUBLIC HEARING ON
I through XX pertaining to reasonable) PROPOSED ADOPTION
accommodations and equal access)

TO: All Concerned Persons

1. On July 8, 2011, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed adoption of the above-stated rules.

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 no later than 5:00 p.m. on June 29, 2011, to advise us of the nature of the accommodation that you need. Please contact John Pavao, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT 59620-0127; telephone (406) 444-3984; Montana Relay Service 711; FAX (406) 444-0703; or e-mail jpavao@mt.gov.

3. The department proposes to adopt the following rules:

RULE I SHORT TITLE (1) This subchapter may be cited as Reasonable Accommodations and Equal Access Policy.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to provide a title for the rules to allow employees and citizens to easily recognize and access them.

RULE II POLICY AND OBJECTIVES (1) The rules in this subchapter establish the minimum requirements for providing reasonable accommodations, reasonable modifications, and equally effective communication for persons with disabilities as for persons without disabilities consistent with:

- (a) the Americans with Disabilities Act of 1990 (ADA);
- (b) ADA Amendments Act of 2008;
- (c) Genetic Information Nondiscrimination Act of 2008 (GINA);
- (d) Montana Human Rights Act, Title 49, MCA;
- (e) Governmental Code of Fair Practices provided in Title 49, chapter 3, MCA; and

(f) Rights of Persons with Disabilities provided in Title 49, chapter 4, MCA.

(2) This subchapter covers all agencies in Montana's executive branch except:

- (a) the Montana University System;
- (b) the Montana State Fund;
- (c) elected officials;
- (d) personal staff of elected officials; and
- (e) any other position specifically excluded under 2-18-103 and 2-18-104,

MCA.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-2-101, 49-2-303, 49-3-101, 49-3-201, MCA

STATEMENT OF REASONABLE NECESSITY: These rules are proposed as the minimum necessary to comply with the laws listed. However, if agencies have reason to impose even stricter standards, they should have that flexibility. The department believes it is important to reference federal and state laws, regulations, and policies that serve as the primary source documents for establishing the standards set forth in these rules. This gives the reader information on where they can find additional information. It is also important for readers to understand that these rules apply to the executive branch of state government, because the department has rulemaking authority for personnel matters, but not over the entities excluded. Other state entities may adopt these rules or adopt their own internal policies and procedures for preventing and addressing discrimination and harassment.

RULE III DEFINITIONS (1) The department adopts and incorporates the definitions in Title I and Title II of the ADA, as amended by the ADA Amendments Act of 2008 (P.L. 110-325), effective January 1, 2009, 42 USC 12102, 12103, 12111, and 12131, which set forth all definitions applicable to the law, except those defined under this rule. A copy of these definitions may be obtained by contacting the department at the address provided in [RULE XVI] or at <http://www.ada.gov/pubs/adastatute08.htm>.

(2) The following definitions also apply to this subchapter:

(a) "Designated personnel" means agency representatives identified in these rules as those responsible for processing reasonable accommodation requests including agency managers, ADA coordinators, Equal Employment Opportunity (EEO) officers, human resource staff, and individuals involved in the hiring process.

(b) "Extenuating circumstances" means circumstances beyond management's control and may include time spent waiting for medical documentation, special equipment, modifications to a work area, or other factors.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule adopts and incorporates federal ADA definitions to promote a consistent application of key terms and concepts. The department has taken this approach because the ADA's definitions are thorough and well-accepted. It would serve no purpose for the department to draft its own definitions.

The rule defines other key terms used in the rules, but not specifically defined under the law, to clarify the language used in these rules and to promote a consistent understanding and application of the rules. The definitions of "designated personnel" and "extenuating circumstances" are necessary to allow reference to those terms rather than restating the list of persons or circumstances each time one is used. This helps with the word flow and understanding.

RULE IV REASONABLE ACCOMMODATIONS (1) Agency managers shall provide reasonable accommodations to qualified individuals with disabilities in all aspects of employment unless doing so would cause undue hardship.

(2) Agency managers shall encourage employees and applicants with disabilities to request reasonable accommodations at any time they identify a barrier to employment. A barrier may include a policy, procedure, or workplace arrangement preventing applicants from effectively competing for a position and employees from performing essential functions of their position or receiving benefits of employment.

(3) The obligation to provide reasonable accommodations applies to all aspects of employment. This responsibility is ongoing and a reasonable accommodation may become necessary any time a person's disability or job changes.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-2-101, 49-3-101, MCA

STATEMENT OF REASONABLE NECESSITY: This rule provides guidance to agency managers regarding their specific responsibilities to provide reasonable accommodations to qualified applicants and employees with disabilities and to address and minimize potential barriers to employment. Managers must understand their responsibilities to promote compliance with applicable state and federal laws and regulations to avoid potential liability incurred by noncompliance.

Section (1) states the fundamental requirements of the ADA that the state must follow. The phrases "reasonable accommodations," "qualified individual with disabilities," and "undue hardship" are defined in Title I of the ADA and used in the Montana Human Rights Act. See Title 49, MCA.

Section (2) places an obligation on agency managers to encourage employees and applicants with a disability to request reasonable accommodations when necessary. The department took this proactive approach because many times these persons will be hesitant to ask for an accommodation even though barriers exist preventing applying and competing for a job or, once on the job, inhibiting effective job performance. Encouragement from management will help overcome barriers.

Section (3) emphasizes that the obligation to provide reasonable accommodations applies throughout employment. This emphasis is important because conditions can and do change, and agency managers need to know that reasonable accommodations must be adapted to the changing conditions. Remaining silent on this point would tend to misguide managers, letting them believe that once an accommodation is made the obligation ends.

RULE V REQUESTING REASONABLE ACCOMMODATIONS

(1) Employees or applicants with a disability may request reasonable accommodations through any one of the designated personnel.

(2) Reasonable accommodation requests may be oral or in writing and do not have to include the words "reasonable accommodation" or "disability." Employees may simply indicate they are having difficulty performing their job or applying for a position because of a disability.

(3) Family members, friends, health care professionals, or other representatives may request reasonable accommodations on employees' or applicants' behalf.

(4) There are no time limits for requesting an accommodation; however, employees should not wait for an impairment to affect their job performance before requesting an accommodation. Employees are encouraged to communicate with agency management about performance issues as soon as they realize the need for an accommodation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule provides guidance to applicants and employees on how and when to request a reasonable accommodation. Making more than an immediate supervisor available to receive a request is necessary to ensure the employee has the opportunity to make the request to someone with whom they feel comfortable talking and who hears what the employee is saying. This rule is important to help applicants and employees understand their right to request a reasonable accommodation at any time they identify the need. The department believes it is important to make it as easy as possible for applicants and employees to request a reasonable accommodation. Consistent with this approach, the department has proposed that oral requests are acceptable, that no "magic words" are necessary to request a reasonable accommodation, and that certain representatives of applicants and employees may make the requests. An alternative approach was to require that applicants and employees make their requests in writing. This approach has some merit because it would provide a record in the applicants' or employees' own words regarding the accommodation needed. In the end, the department believes that the easier the process, the more effective the reasonable accommodation will be.

Allowing others to request a reasonable accommodation on an employee's behalf is necessary when the employee is incapable of making the request for some reason. Also, experience has shown that many times an applicant or employee will be hesitant to raise the issue because they fear it will hurt them in the application process or in their jobs. Allowing a representative to broach this issue will facilitate the communication process.

The department also proposes that there be no time limits for requesting an accommodation, consistent with the ADA, and to aid in helping the employee succeed at their job. The rule is necessary to inform employees they should not wait

to request a reasonable accommodation until a disciplinary action happens because a disability is not an excuse for failure to perform essential job functions.

RULE VI RESPONDING TO REASONABLE ACCOMMODATION

REQUESTS (1) Designated personnel who receive reasonable accommodation requests shall promptly notify their agency ADA coordinator of the request.

(2) If the request comes from someone other than an agency manager, the ADA coordinator shall inform the appropriate manager and provide assistance throughout the reasonable accommodation process. With assistance from the ADA coordinator, the agency manager shall:

(a) participate in an informal dialogue (known as the interactive process) with the employee or applicant;

(b) periodically follow up with the employee or applicant on all reasonable accommodation requests; and

(c) approve or deny the request within 30 working days following the initial request, unless extenuating circumstances exist.

(3) Designated personnel shall always consider an employee's or applicant's requested accommodation; however, they may elect another reasonable accommodation if it would effectively allow the employee to perform the essential functions of the job or allow an applicant to compete for a position.

(4) Employees may refuse the elected accommodation; however, if the employee cannot perform the essential functions of the job, with or without the accommodation, the employee may not be qualified for the position.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to provide guidance to agency managers, human resource professionals, EEO officers, and ADA coordinators as to their specific duties and responsibilities when responding to reasonable accommodation requests. Involving the ADA coordinator is important because this person has the expertise to help the agency and the person making the request. Involving the agency manager emphasizes that it is the manager's, not a subordinate's, job to ensure the law is followed. Delegating the task to others will likely lead to a de-emphasis of the ADA responsibilities. Importantly, failure to respond to a reasonable accommodation request could result in a violation of state and federal laws prohibiting disability discrimination.

Section (3) allows the designated personnel to elect an alternative reasonable accommodation. This approach was taken because the accommodation suggested by the applicant or the employee may be too expensive or unworkable for management.

Finally, the proposed rule allows the employee to refuse an accommodation. The alternative would be to mandate accepting the employer recommendation. This alternative was not adopted because employees cannot be forced to use a particular reasonable accommodation. However, the rule makes clear the employee must be able to perform the essential functions of the job or risk being terminated for cause.

RULE VII PARTICIPATING IN THE INTERACTIVE PROCESS (1) Agency managers shall participate in the interactive process until they identify an effective accommodation or determine a reasonable accommodation is not possible. Failure to participate in the interactive process could result in a delay or failure to provide a reasonable accommodation.

(2) When an employee or applicant requests a reasonable accommodation, the dialogue between designated personnel and the employee may include the following:

- (a) a discussion of the employee's specific limitations;
- (b) how the limitation affects the employee's performance;
- (c) specific job tasks or selection procedures that are or may be problematic for the employee;
- (d) possible accommodations; and
- (e) if implemented, whether the accommodation was effective.

(3) The extent of the dialogue between designated personnel and the employee or applicant may vary because of the nature of an individual's disability or their specific request. If the disability and the need for an accommodation are obvious, the discussion may be brief. In some cases, the agency manager may need to ask questions about the nature of the individual's disability and the individual's functional limitations in an effort to identify an effective accommodation.

(4) Designated personnel shall limit discussion with applicants to the individual's specific request, their inability to participate in a particular selection process, and possible accommodations.

(5) Designated personnel may not ask probing questions likely to disclose genetic information in compliance with ARM Title 2, chapter 21, subchapter 40, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to provide guidance to agency managers, human resource professionals, EEO officers, and ADA coordinators as to their specific duties and responsibilities when responding to reasonable accommodation requests. Failure to participate in the interactive process could result in a violation of state and federal laws prohibiting disability discrimination. The rule also helps applicants and employees understand their role in the reasonable accommodation process.

While it may seem unnecessary to suggest that managers speak to employees with a disability about reasonable accommodations, the rule is necessary because managers are afraid to broach the subject for fear of violating the employee's rights under the ADA. The department has not proposed that the specifics of the conversation be mandated because each situation is different. Sometimes the disability and solution are obvious. Other times neither is obvious and the discussion must be more exploratory to find an accommodation that will work.

In the case of a job applicant, addressed in (4), the conversation must be limited to the applicant's specific needs to participate in the selection process. Further questioning may be construed as discriminatory if the person is not successful in getting the job.

RULE VIII DOCUMENTING REASONABLE ACCOMMODATION REQUESTS (1) Agency managers shall document all reasonable accommodation requests and their contact with designated personnel. Documentation must include the following:

- (a) accommodation requested and discussed;
 - (b) impact of the impairment on the employee's ability to perform their job or an applicant's ability to participate in the selection process;
 - (c) follow-up discussions with employees, applicants, or their representative;
- and
- (d) decisions made and actions taken.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule provides guidance to agency managers, human resource professionals, EEO officers, and ADA coordinators as to their specific duties and responsibilities when responding to reasonable accommodation requests. Careful documentation is necessary to demonstrate what actions management has taken to respond to a reasonable accommodation request. It may demonstrate a good-faith effort when management has appropriately responded to a request or to provide accountability when they have not.

RULE IX REQUESTING MEDICAL DOCUMENTATION (1) Medical examinations must be job-related and consistent with business necessity.

(2) Agency managers may request documentation from an appropriate health care professional when the need for a reasonable accommodation is not known or obvious. If an agency manager requests medical documentation, the manager shall:

- (a) provide the request to the applicant or employee in writing;
- (b) explain the need for documentation and limit the request to information about the individual's disability, functional limitations, and the need for a reasonable accommodation to perform the essential functions of the job;
- (c) include a statement to the applicant, employee, or health care provider to not provide genetic information as specified under ARM Title 2, chapter 21, subchapter 40, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy;
- (d) not request more information than required to support the need for a specific type of accommodation; and
- (e) not request documentation when the disability and the need for a reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate their need for a reasonable accommodation.

(3) If the individual does not provide the requested documentation, agency

managers are not required to provide an accommodation. Agency managers may make exceptions if extenuating circumstances prevent the individual from providing the documentation.

(4) Agency managers shall document the time exhausted while waiting for documentation. This time will not count against the agency's 30-working-day timeline to process the request.

(5) If an individual provides insufficient documentation, the agency manager shall explain why the documentation was insufficient and allow additional time to provide sufficient documentation.

(6) Agency management may require an individual to go to a health care professional of the agency's choice when the individual fails to provide sufficient documentation. If management requires an individual to go to a health care provider, the agency shall pay costs associated with the visit.

(7) If an employee chooses not to see a health care professional of the agency's choice and fails to provide sufficient documentation, agency managers are not required to provide an accommodation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule provides guidance to agency managers, human resource professionals, EEO officers, and ADA coordinators as to their duties and responsibilities when responding to reasonable accommodation requests. In those cases where the need for an accommodation is not known or obvious, medical information will help both the employer and the employee select the best accommodation. Without the ability to seek this information, an accommodation will likely not meet the employee's needs, or an accommodation may not be made at all. Given that medical information is private under Montana law, the department also believes it is important to clarify for managers the boundaries that exist regarding disclosure of information. The laws are evolving, and it is important that the state clearly communicate the rights and obligations regarding personal medical information, which is private under Montana law. For example, it is important to educate managers that under federal law genetic information may not be disclosed. If the medical information is not provided or the employee refuses the request to see a health care professional, the department has taken the approach of allowing the agency to refuse the accommodation. This approach was taken because without a solid baseline of information, the agency and the employee will be guessing what the best reasonable accommodation is. An alternative approach would be to require the agency to provide a reasonable accommodation even if necessary medical information is not provided. This approach would waste time and money and would harbor frustration for everyone.

RULE X APPROVING REASONABLE ACCOMMODATION REQUESTS

(1) Agency managers shall serve as the approval authority for all reasonable accommodation requests.

(2) If agency managers determine the request is reasonable, they must:

- (a) grant the request and notify the employee or applicant in writing of their decision;
- (b) implement the accommodation as soon as practical;
- (c) follow up with the employee or applicant to ensure the accommodation is effective;
- (d) continue the interactive process if the accommodation is not effective, the need for the accommodation has changed, or the job has changed; and
- (e) continue the interactive process until they find an alternative or determine it is not possible to provide a reasonable accommodation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Complying with ADA is the law and therefore is important. To emphasize this importance, the proposed rule places the responsibility on agency managers, not subordinate employees, to ensure that reasonable accommodation requests are handled. This is not to say that others may not assist the manager, but managers must know that the ultimate responsibility is theirs. An alternative would be to allow some other person to handle the job, but this would tend to erode the importance of complying with the law.

The department also believes that outlining the manager's responsibilities will prevent the requests for reasonable accommodations from remaining unfinished and prevent management from avoiding final decisions, thus avoiding liability. The department also requires follow-up to ensure the decision continues to be effective. Without this guidance, compliance with ADA will be spotty and inconsistent, a result that is unacceptable.

RULE XI REASSIGNING AN EMPLOYEE AS A REASONABLE ACCOMMODATION (1) When an employee with a disability can no longer perform the essential functions of their position with or without a reasonable accommodation, the agency manager shall consider reassigning the employee to an equivalent vacant position unless doing so would create an undue hardship. The employee shall concur with the reassignment.

(2) When reassigning an employee to a vacant position as a reasonable accommodation, agency managers shall:

- (a) do so without a competitive process;
- (b) consider any implications under a seniority system of a collective bargaining agreement;
- (c) attempt to reassign a qualified employee to a vacant position equivalent in pay, status, and other relevant factors (e.g., benefits, geographical location); and
- (d) continue the interactive process after reassigning an employee to ensure the employee is able to perform the essential functions of the job, with or without a reasonable accommodation.

(3) If reassigning an employee would violate a seniority system or collective bargaining agreement, it may not be reasonable to reassign an employee.

(4) If an equivalent vacant position is not available, management may

reassign the employee to a lower-pay position, provided the employee is qualified and agrees to the transfer.

(5) "Vacant" means the position is available when the employee asks for an accommodation, or the employer knows a position will become available within a reasonable amount of time. Agency managers shall determine a reasonable amount of time on a case-by-case basis.

(6) Agency managers are not required to create a new position as a reasonable accommodation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Sections (1) through (4) and (6) of the proposed rule address ADA requirements. The department believes this rule is necessary because managers should understand the ADA requires the employer to consider reassigning an employee to a vacant position. In particular, the criteria under (2), (3), and (4) provide guidance regarding the reassignment process and the interaction between the potential reassignment and seniority system and collective bargaining. The department believes this approach of explicitly identifying the criteria is preferable to remaining silent on the issue because the managers are not ADA experts and may not know this vacancy requirement exists. Having the rule will also promote a consistent approach when addressing vacancy issues.

The proposed rule defines "vacant" because this is not a self-evident term in the ADA context. The definition is taken from the ADA regulations. The department saw no need to craft its own definition because the federal definition meets the department's purposes.

RULE XII DENYING REASONABLE ACCOMMODATION REQUESTS (1) If agency managers determine they cannot reasonably accommodate a request or an accommodation would create an undue hardship, they shall forward the recommendation to their division administrator. If the division administrator is the manager receiving the request, the administrator shall make the recommendation to their supervisor.

(2) If the division administrator or higher-level manager concurs with the recommendation, the administrator or manager shall notify the employee or applicant in writing within 30 working days of the initial request.

(3) The written notification must include an explanation for the denial and the appeal process.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to require managers to receive their supervisor's concurrence before they deny a reasonable accommodation request to ensure it is the correct decision, thereby avoiding liability. This approach was taken because the department believes it is

important for the agency as a whole to establish an appropriate level of authority and accountability within the department when denying a request.

The 30-day time limit will ensure that requests are acted on promptly. Otherwise, a delay may increase liability exposure under the ADA. The department proposes 30 days, as opposed to a lesser or greater time period, because experience has shown it normally takes this time to fairly address an employee's request.

Finally, the written notification provides closure and a record of the decision and educates the employee or applicant regarding appeal rights. An oral notification would create a breeding ground for errors and misunderstandings.

RULE XIII DISCHARGING EMPLOYEES WITH DISABILITIES (1) Agency managers may consider discharging an employee with a disability when the employee is no longer able to perform the essential functions of their job with or without a reasonable accommodation, and they have ruled out all possible options.

(2) If denial of a reasonable accommodation results in the discharge of an employee, the appeal process outlined in ARM Title 2, chapter 21, subchapter 65, Discipline Policy or applicable collective bargaining agreement will supersede the reasonable accommodation appeal process.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The ADA is not an absolute law. This proposed rule outlines the circumstances under which employees may be discharged when they cannot perform the essential functions of the job with or without an accommodation. This approach is consistent with the ADA. Allowing an employee to stay on the job when the work cannot be performed would be a disservice to the taxpayers, other employees, and the employee. Since the department has already established an appeal process for employee terminations under ARM Title 2, chapter 21, subchapter 65, Discipline Policy, the department proposes using that appeal process, in lieu of the reasonable accommodation appeal process, to promote a fair and consistent approach to handling termination appeals.

RULE XIV APPEALING DENIAL OF REASONABLE ACCOMMODATION REQUESTS (1) The department head shall serve as the appeal authority for all denials.

(2) Employees and applicants wishing to appeal a denial shall submit a written request, along with supporting documents, to the department head within 15 working days from the time they receive the denial letter.

(3) The department head shall work with the appropriate agency manager, the ADA coordinator, and human resources manager to review pertinent information and the rationale for denial.

(4) Upon completion of the review, the department head shall:

(a) deny the request, approve the request, or refer it back to management for further action; or

(b) notify the employee or applicant of their decision in writing within 15 working days of receiving the appeal.

(5) If the department head denies the appeal, the written notification must include an explanation for the denial and information on the right to file a complaint with the Montana Human Rights Bureau, Department of Labor and Industry.

(6) Employees and applicants may contact the Montana Human Rights Bureau at (406) 444-2884 or (800) 542-0807 or the federal Equal Employment Opportunity Commission at (800) 669-4000 to file a complaint.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-2-101, 49-2-501, 49-3-102, 49-3-301, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to give the employee and management the opportunity within a reasonable time period to reconsider the accommodation request a final time to lessen the chance of error and a complaint in another forum. This approach is preferable to one that totally relies on the manager's decision. The department believes that the department head is the appropriate final internal appeal authority because that position is where the buck stops. An alternative would be to have an outside person review the appeal but that would entail additional expense, and, if the employee does not agree with the department head, the employee may file a complaint with the Montana Human Rights Bureau and/or the Equal Employment Opportunity Commission.

RULE XV CONFIDENTIALITY REQUIREMENTS (1) Agency managers shall:

(a) treat all information related to an employee's or applicant's disability as confidential; and

(b) maintain disability-related information according to the requirements of ARM Title 2, chapter 21, subchapter 66, Employee Records Management Policy.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes it is important to reemphasize management's responsibility to protect information related to an individual's disability or their reasonable accommodation. Disability-related information is extremely sensitive and deeply personal, and managers must protect it to the greatest extent possible to prevent liability under federal and state laws and regulations. The rule refers managers to the state's policy that addresses appropriate handling of disability-related documents to promote consistent compliance for safeguarding this sensitive information.

RULE XVI TRACKING AND REPORTING REASONABLE ACCOMMODATION REQUESTS (1) Agency ADA coordinators shall track reasonable accommodation requests using the Reasonable Accommodation Tracking Sheet at the State Human Resources Division web site: <http://hr.mt.gov/hrpp/policies.mcp> and also available from the State Human

Resources Division, Department of Administration, Room 125 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

(2) ADA coordinators shall provide a quarterly summary of all reasonable accommodation requests to the State Human Resources Division no later than the fifteenth day of each quarter.

(3) The report must include the following information:

- (a) total number of requests;
- (b) whether requests were by employees or applicants;
- (c) types of accommodations requested and approved;
- (d) cost of accommodations;
- (e) effectiveness of the accommodations;
- (f) number of days to process the requests (including extenuating circumstances); and
- (g) if denied, the reason for denial and whether the employee or applicant appealed.

(4) Data are for tracking purposes only and must not include confidential information such as names or references to medical conditions or impairments.

(5) The State Human Resources Division shall collect and analyze data to:

- (a) assess program effectiveness;
- (b) develop or modify existing policies, procedures and guides; and
- (c) promote compliance with applicable laws, regulations, and policies.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-205, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to fulfill the EEO requirement that states provide tracking reports containing the identified, nonconfidential information. Having this rule will provide guidance to agencies and will ensure reports are consistent from agency to agency. These reports will also help the State Human Resources Division to assess EEO program effectiveness and focus future training and prevention efforts to help the state avoid liability.

RULE XVII DISABILITY RETIREMENT (1) Employees with disabilities may be eligible for disability retirement benefits under 19-3-1002, MCA. Employees may contact the Montana Public Employee Retirement System at (877) 275-7372 (toll free) or (406) 444-3154 for more information.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule advises the employee about disability retirement in this context, which is necessary because it may be the best accommodation for the employee, and the employee may not be aware of it.

RULE XVIII REASONABLE MODIFICATION PROCEDURES (1) Agency managers shall make reasonable modifications to policies, practices, and procedures that deny, or have the potential to deny, equal access to individuals with disabilities, unless doing so would result in an undue burden or fundamentally alter a program, service, or activity.

(2) Anyone requesting to modify a policy, practice, or procedure may contact the office responsible for providing the program, service, or activity, including agency management, ADA coordinator, EEO officer, or human resources staff.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, 49-3-205, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule directs agency managers to change policies, practices, and procedures when necessary to accommodate a disability to make the work force more inclusive and to avoid liability. The ADA requires that employers assume this burden. The department believes that this requirement is important enough to also include it in rule.

RULE XIX EFFECTIVE COMMUNICATION PROCEDURES (1) Agency managers shall furnish auxiliary aids and services, upon request, to promote equally effective communication for people with disabilities, unless doing so would result in an undue burden or fundamentally alter the program, service, or activity.

(2) Anyone requiring auxiliary aids and services may contact the department directly responsible for providing the program, service, or activity, including agency management, ADA coordinator, EEO officer, or human resources staff.

(3) Agency managers may not charge individuals with disabilities to offset costs associated with providing required auxiliary aids and services.

(4) Agency managers are not required to provide personal use items such as wheelchairs, prescription eyeglasses, hearing aids, or personal services such as eating, toileting, or dressing.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, 49-3-205, 49-4-202, 49-4-211, 49-4-503, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes this rule is important to reaffirm the state's commitment to equal opportunity by emphasizing management's responsibility to provide equal access to programs, services, and activities to people with disabilities, as required by federal and state laws and regulations. An important element of fulfilling this responsibility is to ensure all written and spoken communications are equally effective for individuals with disabilities as for individuals without disabilities. In some cases, agency managers will need to provide written materials in alternative formats (e.g., Braille, large font, audible, etc.), sign language interpreters, or other assistive devices to provide equal access to their programs, services, and activities. Agency managers must understand they cannot charge customers for these services. Approximately fifteen percent of all Montanans have a disability and the number of requests for auxiliary aids and services is likely to increase as our population ages. Since the

state will publish this document on a public domain, the rule helps promote compliance with the ADA's requirement to provide public notice about an individual's right to request auxiliary aids and services and the state's responsibility to provide equal access.

RULE XX RESPONSIBILITIES (1) The Department of Administration shall:

(a) periodically review and update, as needed, reasonable accommodation and equal access rules, processes, and procedures; and
(b) design and develop training for employees that includes reasonable accommodations, reasonable modifications, and effective communication processes and procedures.

(2) Agency managers shall:

(a) provide reasonable accommodations to known physical or mental limitations of otherwise qualified employees or applicants with disabilities unless doing so would create an undue hardship;
(b) make reasonable modifications to policies, practices, or procedures unless doing so would create an undue financial or administrative burden or fundamentally alter the nature of a service, program, or activity;
(c) offer equally effective communications to people with disabilities and post public notice statements in areas frequented by employees and the public and on the agency's web site to increase awareness of individual rights and the state's responsibilities under the ADA;
(d) include a reasonable accommodation statement in all job listings; and
(e) provide a copy of these rules to all employees.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, 49-3-205, MCA

STATEMENT OF REASONABLE NECESSITY: The department oversees the state's equal opportunity program and provides technical assistance, tools, training, and resources to help agencies effectively implement the state's equal opportunity policies. The department believes this rule is important to promote consistent enforcement of these rules, minimize duplication of effort, establish appropriate levels of authority, and to promote compliance with federal and state laws and regulations. The department recognizes agency managers are essential to effective implementation of these rules because they may have contact with applicants, employees, or customers who may request reasonable accommodations, modifications to policies or procedures, or request alternatives to accessing a program, service, or activity. Agency managers must know their roles and responsibilities in responding to these requests to ensure fair and consistent practices. Failure to appropriately handle these requests could result in liability for the state.

4. Concerned persons may submit their data, views, or arguments, including comments on the proposed form in Rule XVI, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Pavao, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT

59620-0127; telephone (406) 444-3984; fax (406) 444-0703; Montana Relay Service 711; FAX (406) 444-0703; or e-mail jpavao@mt.gov, and must be received no later than 5:00 p.m., July 8, 2011.

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

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

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

8. 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
Mike Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 31, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

| | | |
|---|---|-----------------------------|
| In the matter of the adoption of New |) | NOTICE OF PUBLIC HEARING ON |
| Rules I through IX, the amendment of |) | PROPOSED ADOPTION, |
| ARM 2.21.4001, 2.21.4002, 2.21.4005, |) | AMENDMENT, AND REPEAL |
| 2.21.4013, 2.21.4014, and the repeal of |) | |
| ARM 2.21.4003, 2.21.4004, 2.21.4006, |) | |
| 2.21.4007, and 2.21.4012 pertaining to |) | |
| equal employment opportunity, |) | |
| nondiscrimination, and harassment |) | |
| prevention |) | |

TO: All Concerned Persons

1. On July 8, 2011, at 9:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

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 no later than 5:00 p.m. on June 29, 2011, to advise us of the nature of the accommodation needed. Please contact John Pavao, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT 59620-0127; telephone (406) 444-3984; Montana Relay Service 711; FAX (406) 444-0703; or e-mail jpavao@mt.gov.

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

NEW RULE I COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA) (1) To comply with GINA, which prohibits discrimination based on genetic information with respect to employment or state-sponsored group health plans, agency managers may not:

- (a) request, require, or purchase genetic information about employees or their family members; or
 - (b) use genetic information to:
 - (i) discriminate against an individual in hiring, discharge, compensation, terms, conditions, or privileges of employment;
 - (ii) make decisions about admission to apprenticeship and training programs, including on-the-job training;
 - (iii) limit, segregate, or classify an individual;
 - (iv) fail or refuse to refer an individual for employment;
 - (v) deprive an individual of employment opportunities; or
 - (vi) acquire health insurance or set premiums under the group health plan.
- (2) Requests for genetic information include, but are not limited to:

(a) conducting Internet searches on individuals in a way that is likely to result in obtaining genetic information;

(b) knowingly or purposefully listening to third-party conversations or searching an individual's personal effects for the purpose of obtaining genetic information; and

(c) making requests for information about an individual's current health status in a way that is likely to result in obtaining genetic information.

(3) To avoid inadvertently receiving genetic information, agency representatives who request medical information as part of an employment-related medical exam or a medical certification in response to a request for sick leave, leave qualifying under the Family Medical Leave Act, or a reasonable accommodation request under the Americans with Disabilities Act, shall include the following statements verbatim in their written request for medical information:

(a) "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. To comply with this law, we ask you not to provide any genetic information when responding to this request for medical information."

(b) "Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

(c) "Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes."

(4) Agency managers may not ask probing questions of an individual if they inadvertently learn of a health condition of an applicant, employee, or the health condition of a family member.

(a) Probing questions include, but are not limited to, asking the individual whether other family members have the condition or whether the individual has been tested for the condition. These questions are likely to result in the acquisition of genetic information.

(5) Agency representatives possessing genetic information about an employee shall maintain the information as confidential in compliance with ARM Title 2, chapter 21, subchapter 66, Employee Records Management Policy.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: While GINA was enacted in 2008 and requires compliance by all states, the Equal Employment Opportunity Commission (EEOC) did not release the federal regulations until November 2010. It is important for agency personnel to understand the law's requirements. In particular, knowing what genetic information is and the limits of using the information and avoiding acquiring genetic information inadvertently through medical information

requests or probing questions are not parts of a knowledge base that is necessarily intuitive. If this approach was not taken, state personnel would not have the tools to comply with GINA, thereby exposing the state to potential liability. This proposed rule follows the EEOC's rule. The department has determined that because the EEOC's rule thoroughly covers the subject matter, the department saw no need to craft its own original rules.

NEW RULE II RULE VIOLATIONS (1) Employees who violate these rules are subject to discipline, up to and including discharge under ARM Title 2, chapter 21, subchapter 65, Discipline Policy. A rule violation includes managers who allow discrimination to occur or fail to take appropriate action to correct inappropriate behavior, including discrimination or harassment.

(2) Failure to conduct an investigation in a proper and timely manner, interference with an investigation, failure to cooperate with an investigator, or making a false statement to an investigator may result in disciplinary action, up to and including discharge.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to reinforce these rules and let managers and employees know that discrimination or harassment will not be tolerated. Employees should know that management may take disciplinary action for violations of the rules; for failure to correct inappropriate, discriminatory, or harassing behavior; or failure to conduct an investigation in a proper and timely manner. The alternative would be to remain silent regarding the consequences of violating the applicable rules; however, this approach would be unfair to employees.

NEW RULE III INITIATING AN INTERNAL COMPLAINT (1) Agency managers shall encourage employees, applicants, clients, and customers who believe they have been discriminated against or harassed to contact their supervisor, another manager, or the agency's EEO officer, ADA coordinator, or human resources staff.

(2) Complaints may be oral or in writing; however, complainants are encouraged to use the Department of Administration's complaint form found at <http://hr.mt.gov/hrpp/policies.mcp>.

(3) For complaints not submitted on a complaint form, the agency representative receiving the complaint shall obtain and document the following information:

- (a) name, address, and phone number(s) of the complainant(s);
- (b) date(s), time(s), and location(s) of the alleged discriminatory behavior or conduct;
- (c) name(s), if known, of the accused(s);
- (d) description of the behavior or conduct that resulted in an alleged violation;
- (e) whether the alleged discrimination was based on a protected class; and

(f) names of potential witnesses who may have heard or observed the alleged discriminatory conduct or behavior.

(4) Agency representatives who receive a complaint or become aware of allegations of discrimination or harassment shall promptly notify the human resource manager, EEO officer, or ADA coordinator, regardless of their perception of the validity of the complaint.

(5) The human resource manager, EEO officer or ADA coordinator, legal counsel, and appropriate manager shall meet to discuss the appropriate course of action. If the complaint is against any of these individuals, they are excluded from the meeting. The discussion must focus on measures to stop the alleged behavior, a review of the investigative process, and management's role in the process.

(6) If management determines an internal investigation would not be appropriate because of a potential conflict, they may request assistance from the State Human Resources Division or other outside source.

(7) The human resource manager or human resource staff, as appropriate, shall coordinate with the investigator and advise management throughout the course of the investigation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Quite often, individuals who feel that they are the victims of discrimination are hesitant about raising the matter for fear of "rocking the boat" or reprisals. This silence will not resolve the issue. Therefore, it is important to encourage individuals who believe they are the victims of discrimination or harassment to report their concerns so that appropriate and timely action may be taken. Employees must know their complaints will be investigated and not be treated as inconsequential. While the proposed rule allows for oral complaints, the department encourages written complaints so management can act on the actual allegations of the complainant rather than an interpretation of what the complainant said. This is important to ensure an impartial, accurate, and thorough investigation of the allegations.

If the employee decides to orally report the incident(s), the proposed rule provides guidance regarding what to include within a report. This guidance will help the agency representative stick to the material and relevant facts of the allegations. Otherwise, a report may exclude critical information or, conversely, include irrelevant or immaterial information. Consistent reporting will yield consistent and fair results.

The rule proposes a team approach to handling complaints. The department believes this is appropriate because discrimination or harassment issues can be complicated and often implicate several disciplines including human resources and legal. Human resources and legal personnel are trained to address these issues.

The proposed rule highlights the importance of promptly addressing conflict of interest issues. Otherwise, the investigation will be tainted.

Finally, the department proposes that human resources personnel help facilitate the investigation process. The human resource staff is trained to handle these issues and can assist the investigator by arranging interviews and gathering information. The process runs much more smoothly when the investigator has a

knowledgeable contact within the agency.

NEW RULE IV INVESTIGATING A COMPLAINT (1) The EEO officer, ADA coordinator, or another representative chosen by management shall promptly begin an investigation upon receiving a complaint.

(2) Before the investigation begins, the appropriate manager shall separately explain the following to the complainant and accused:

(a) the investigation process and anticipated timelines;
(b) what retaliation is and that it will not be tolerated; and
(c) expectations and consequences of discussing the complaint with anyone other than the investigator, management, union representative, or legal counsel.

(3) Agency managers shall provide:

(a) periodic updates to the complainant and the accused; and
(b) documentation of their initial meeting and all subsequent follow-up action to the investigator.

(4) The investigator shall:

(a) gather evidence to determine a "cause" or "no-cause" finding;
(b) coordinate with the agency's legal counsel before conducting interviews and throughout the investigation; and
(c) provide periodic updates to the agency's human resource manager.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes that the EEO officer or ADA coordinator, depending on the issue, should lead the investigation since this person has the most training and expertise in these areas. However, in rare cases, management may need to choose another resource from within or outside the department to conduct the investigation; for example, when it would create a conflict of interest for the EEO officer or ADA coordinator to conduct the investigation. Experience has also taught that it is important that management keep the complainant and accused aware of the status of the investigation and certain "do's" and "don'ts." A lack of communication creates distrust and allows rumors to overtake fact, which makes the workplace a difficult place for all employees. The department believes that keeping good records from the beginning to the end of the process will avoid confusion and provide support for the ultimate decision that is made.

The proposed rule recommends the investigator issue a "cause" or "no-cause" finding. Such a finding is consistent with how the Montana Human Rights Bureau handles discrimination claims, and the department has determined that this approach has worked well for that bureau. Also, if the complainant decides to file a complaint with the bureau, the bureau's investigator will be familiar with the standards the agency investigator used in reaching their conclusion. Having legal counsel involved in the process will help the investigator navigate the legal issues that inevitably arise in these situations.

NEW RULE V POST-INVESTIGATION ACTIONS (1) After receiving the final report, the appropriate manager shall promptly inform the complainant and accused of the outcome of the investigation in writing.

(2) In the case of a cause finding, the appropriate agency manager shall:

(a) take appropriate disciplinary action, if necessary, according to the ARM Title 2, chapter 21, subchapter 65, Discipline Policy;

(b) advise the complainant corrective action to stop the behavior has been taken, but not disclose the details or nature of disciplinary action;

(c) reemphasize that retaliation will not tolerated; and

(d) contact the complainant within 30 days to ensure the behavior has stopped and there was no retaliation.

(3) In the case of a no-cause finding, the appropriate agency manager shall contact the complainant within 30 days to ensure the complainant has not experienced retaliation.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Closure is an important part of the complaint resolution process. Although the complainant is not entitled to know what, if any, disciplinary action management imposed on the accused, the complainant does have the right to know the complaint was addressed. The department also believes management and employees need to know retaliation will not be tolerated whatever the outcome of the investigation. This emphasis and timely follow-up with the complainant will help avoid future issues that could expose the state to additional liability.

NEW RULE VI CONFIDENTIALITY REQUIREMENTS (1) Agency managers shall make every attempt to protect the privacy of individuals involved in the complaint process; however, individual privacy cannot be guaranteed.

(2) Employees involved in the complaint process (e.g., complainant, accused, witnesses, etc.) may not discuss the complaint or investigation with anyone other than management, the EEO officer, ADA coordinator, human resources manager, investigator, union representative, or legal counsel. Discussing the complaint or investigation with individuals who do not have an official need to know may result in disciplinary action under the ARM Title 2, chapter 21, subchapter 65, Discipline Policy.

(3) The human resource staff shall maintain the investigative report and supporting documents in a secure, confidential case file separate from the regular employee file.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is proposed to maintain confidentiality in the complaint process. Confidentiality is important for several reasons. First, confidentiality will encourage the parties and witnesses to

speak freely without fear of reprisal. If confidentiality does not exist, the investigator will not get all the facts to make an informed decision. Second, a confidential process promotes a relatively peaceful working environment in the midst of a difficult time, especially when one coworker accuses another of inappropriate behavior. Third, in some people's minds, allegations are facts. Harassment and discrimination complaints are serious, having the potential to stain a person's reputation. Allowing an investigation to be publicly aired will only heighten tensions and could unjustly compromise a person's integrity. The department, however, has determined it cannot guarantee privacy. In past cases, some individuals, including the complainant, accused, and witnesses felt compelled to disclose the matter even after being told the process is confidential. In these cases, every effort was made to protect confidentiality, but the involved parties chose to breach the process. An agency cannot control this behavior, and it is important to acknowledge this fact. It is equally important to inform individuals they may be disciplined for violating confidentiality, so they know there will be consequences arising from their behavior. The department believes privacy must be taken seriously from the beginning of the process to the end, including maintaining a filing system that preserves confidentiality.

NEW RULE VII TRACKING AND REPORTING INTERNAL COMPLAINTS

(1) Agency EEO officers shall track internal complaints using the Complaint Tracking Sheet located on the State Human Resources Division web site: <http://hr.mt.gov/hrpp/policies.mcp>. EEO officers shall provide quarterly summaries of internal complaints to the State Human Resources Division no later than the fifteenth day of each quarter.

(2) The report must include:

- (a) the total number of complaints;
- (b) whether the complainant and accused was an employee, customer, or client;
- (c) basis of the complaint (protected class);
- (d) reason for complaint (e.g., employment-related, denied access to a program or service, or inappropriate comment); and
- (e) outcome of the complaint.

(3) The report is for tracking purposes only and must not include confidential information such as names of individuals involved.

(4) The State Human Resources Division shall collect and analyze the data to:

- (a) assess program effectiveness;
- (b) develop or modify existing policies, procedures, and guides; and
- (c) promote compliance with applicable laws, regulations, and policies.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to fulfill the EEO requirement that states provide tracking reports containing the identified, nonconfidential information. Having this rule will provide guidance to

agencies and will ensure reports are consistent from agency to agency. These reports will also help the State Human Resources Division to assess EEO program effectiveness and focus future training and prevention efforts to help the state avoid liability.

NEW RULE VIII INITIATING AN EXTERNAL COMPLAINT (1) In addition to the internal complaint process, complaints may be filed with the following agencies:

(a) Montana Human Rights Bureau (HRB), 1625 11th Avenue, P.O. Box 1728 Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807, TTY (406) 444-0532; or e-mail <http://erd.dli.mt.gov/humanright/hrhome.asp>; or

(b) United States Equal Employment Opportunity Commission (EEOC) San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260, (800) 669-4000, TTY (800)-669-6820; or e-mail www.eeoc.gov.

(2) Jurisdiction may vary based on the nature of the complaint. For example, neither the HRB nor the EEOC considers complaints based on sexual orientation, culture, social origin or condition, or ancestry.

(3) The HRB or EEOC must receive the complaint within 180 days of the alleged incident or when first discovered. If the complainant uses the internal complaint process, they will have 300 days from the alleged incident to file a complaint with the HRB or EEOC.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department has proposed this rule because the average person will likely not know other avenues are also available to pursue discrimination complaints. Providing contact information and letting people know that deadlines exist for filing complaints will avoid confusion and assist a person in exercising their legal rights.

NEW RULE IX RESPONSIBILITIES (1) The Department of Administration shall:

(a) periodically review and update equal opportunity (EO) standards, guidelines, and administrative processes and procedures;

(b) assist agencies in maintaining an effective EO program;

(c) provide annual utilization analysis reports to agencies;

(d) provide EEO analyses, reports, and technical assistance to agencies;

(e) recommend strategies to promote diversity and overcome potential barriers to employment; and

(f) design and develop equal opportunity training.

(2) Executive branch department heads shall:

(a) appoint an EEO officer responsible for:

(i) managing the agency's EEO program;

(ii) training employees on EO;

(iii) assisting employees and managers with resolving EO issues;

(iv) conducting internal investigations; and

(v) developing written EEO action plans; and

- (b) appoint an ADA coordinator responsible for:
 - (i) training employees on the ADA, disability awareness, and reasonable accommodations;
 - (ii) conducting self-evaluations to assess accessibility of programs, services, and activities; and
 - (iii) assisting with reasonable accommodation requests.
- (3) Agency managers shall:
 - (a) retain electronic records for all jobs recording the sex, race, and ethnic group of employees and applicants as provided in 49-2-102, MCA, and the Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295 (August 25, 1978);
 - (b) provide reasonable accommodations, upon request, for qualified individuals with disabilities and for applicants and employees based on their religious practices, unless doing so would create an undue hardship;
 - (c) post the state's EO policy poster and complaint-resolution procedures, including contact information for the agency EEO officer and ADA coordinator, in areas frequented by employees and the public;
 - (d) provide a copy of these rules to all employees;
 - (e) provide EO and harassment prevention training to all new employees within 90 days of hire or within [six months of the effective date of these rules] for current employees who have not yet received training;
 - (f) provide EO and harassment prevention refresher training for all employees every three years or more frequently as needed; and
 - (g) document all training in the employee's personnel file.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes this rule is important to promote consistent enforcement of the policy without question and to minimize duplication of effort. The department oversees the state's equal opportunity program and provides technical assistance, tools, and resources to help agencies effectively implement the state's equal opportunity rules. Since department heads are ultimately responsible for fair and equitable treatment of applicants, employees, and customers of their respective agencies, agency EEO officers and ADA coordinators are critical to successful implementation of the agency's equal opportunity program. EEO officers and ADA coordinators have insight into the unique needs and challenges of their respective agencies and serve as a subject matter expert. Agency personnel must understand the state's rules prohibiting discrimination and harassment and the consequences of violating these rules. Providing a copy of the rules and subsequent training increases individual awareness and promotes accountability. Maintaining training records demonstrates a good-faith effort to prevent discrimination and harassment and promotes compliance with 49-3-201, MCA, requiring agencies to provide orientation and training programs with emphasis on human relations and fair employment practices.

OVERALL STATEMENT OF REASONABLE NECESSITY FOR ALL NEW RULES: Section 49-3-201, MCA, addresses employment of state and local government personnel. Section 49-3-205, MCA, addresses equal access to governmental services. These sections are necessary to emphasize state and local governments' responsibilities to make employment decisions and to provide equal access to governmental services without regard to an individual's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

As part of its required biennial review of rules, the Department of Administration proposes new rules I through IX to update the policy to include prohibition of discrimination based on genetic information in compliance with new federal laws and regulations; provide much-needed standardized procedures for filing, responding to, and tracking discrimination complaints and for conducting investigations; clarify and address agency and management responsibilities; and emphasize the consequences for not complying. This guidance is lacking in the current rules.

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

2.21.4001 SHORT TITLE (1) This subchapter may be cited as the nondiscrimination eEqual eEmployment eOpportunity, Nondiscrimination, and Harassment Prevention pPolicy.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes a new title is needed to clearly capture the essence of these rules and to promote a logical flow for the reader.

2.21.4002 POLICY AND OBJECTIVES (1) ~~It is the policy of the state of Montana that state government:~~

~~(a) is an equal employment opportunity employer;~~

~~(b) does not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs; and~~

~~(c) implement and maintain an effective equal employment opportunity program which may include a written affirmative action plan.~~

~~(2) It is the objective of this policy to establish minimum standards for the implementation of an equal employment opportunity program for all executive branch agencies, in compliance with relevant state and federal laws, regulations, and executive orders.~~

(1) These rules establish the minimum requirements for implementing and maintaining an equal opportunity program that promotes compliance with:

(a) federal laws and regulations prohibiting illegal discrimination including the Genetic Information Nondiscrimination Act of 2008 (GINA);

(b) the Montana Human Rights Act, Title 49, MCA;
(c) the Governmental Code of Fair Practices, Title 49, chapter 3, MCA; and
(d) and the Governor's Executive Order 41-2008, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention.

(2) These rules establish complaint procedures to promote prompt and equitable resolution of discrimination complaints.

(3) These rules cover all agencies in Montana's executive branch except:

(a) the Montana University System;

(b) the Montana State Fund;

(c) elected officials;

(d) personal appointed staff of elected officials; and

(e) any other position specifically excluded under 2-18-103 and 2-18-104,

MCA.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: These rules are proposed as the minimum necessary to comply with the laws listed. However, if agencies have reason to impose even stricter standards, they should have that flexibility. The department believes it is important to reference federal and state laws, regulations, and policies that serve as the primary source documents for establishing the standards set forth in this policy. This gives the reader information on where they can find additional information. It is also important for readers to understand that these rules apply to the executive branch of state government because the department has rulemaking authority for personnel issues but not over the excluded entities. Other state entities may adopt these rules or adopt their own internal policies and procedures for preventing and addressing discrimination and harassment.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION ~~(1) The state of Montana is an equal employment opportunity employer and prohibits discrimination based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs unless based on a bona fide occupational qualification (BFOQ). The state of Montana's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.~~

~~(2) Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation.~~

(1) The executive branch is committed to equal opportunity, nondiscrimination, and harassment prevention in all aspects of employment and in

programs, services, and activities offered to the public.

(2) Agency managers may not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran's status, culture, social origin or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.

(3) Agency managers may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require a distinction based on age, physical or mental disability, marital status, sex, religion, or national origin. A BFOQ is a legal exception to an otherwise discriminatory hiring practice. Exceptions are strictly construed, as provided in 49-2-303, MCA, and the burden rests with the agency to demonstrate the exemption should be granted. Federal and state laws prohibit BFOQs based on race or color.

(4) To promote a work and customer service environment free from discrimination, agency managers shall:

(a) base hiring decisions on individual competencies and qualifications;

(b) promote an inclusive work environment where individuals are afforded every opportunity to reach their fullest potential;

(c) recognize individual differences as a key element of organizational and team success;

(d) treat individuals with dignity and respect; and

(e) value the rights of all Montanans to benefit from equal access to employment and programs, services, and activities offered to the public.

(5) Agency managers who observe behaviors that may be viewed as discriminatory shall immediately stop the behavior and promptly notify their agency's EEO officer, Americans with Disabilities Act (ADA) coordinator, or human resources manager.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes this rule is important because it emphasizes the state's commitment to diversity and to provide equal access to state employment, programs, and services. The department, like other state and local governments and corporations around the country, has realized the value of a diverse workplace. Diversity promotes innovation and problem solving by exploring different experiences and perspectives. By embracing and capitalizing on individual differences, state agencies can discover more efficient ways of doing business and better meet the needs of our diverse customers. This approach aligns the state's policy with the Montana Constitution, which recognizes an individual's inalienable rights, as well as individual dignity, and promotes compliance with 49-3-205, MCA, which prohibits discrimination in governmental services. The policy adopts sexual orientation as a protected class to promote compliance with Executive Order 41-2008. It identifies protected classes under this policy so that readers understand who is protected and what behaviors

may lead to illegal discrimination. The policy sends a strong message that agency managers are critical to promoting diversity and equal opportunity within their agencies. This is important because agency managers are often in the best position to address and resolve inappropriate conduct and behavior within their work areas. They also set the tone for the human relations climate within their work areas. The rule identifies and allows those rare exceptions provided in federal and state laws, regulations, and policies where managers may make employment decisions based on otherwise protected classes. Although rarely used, these exceptions are important in some situations.

~~2.21.4013 OTHER HARASSMENT (1) Harassment of employees, clients, customers, and any other persons because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs is prohibited. It is the state of Montana policy to provide employees, clients, customers, and any other persons with a work environment free of these forms of harassment.~~

~~(2) Examples of other prohibited harassment include, but are not limited to:~~

~~(a) coercion of employees, clients, or customers in the participation or non-participation in religious activities; or~~

~~(b) ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.~~

(1) Harassment, including sexual harassment, may consist of, but is not limited to oral, written, or electronic communications (e.g., voice mails, e-mails, text messages, or other social networking tools) in the form of repeated and unwelcomed jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior, or behavior accepted between two or more people, can be offensive to others; for this reason it is prohibited in the workplace.

(2) Sexual harassment is a form of discrimination that includes unwelcome verbal or physical conduct of a sexual nature when:

(a) submission to the conduct is implicitly or explicitly made a term or condition of employment;

(b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or

(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(3) Agency managers may not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior may not constitute illegal discrimination, it may still violate this rule.

(4) Agency managers who observe behaviors that may be viewed as discrimination or harassment shall immediately stop the behavior and promptly notify their agency's EEO officer, ADA coordinator, or human resources manager.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department believes this rule is important because it provides specific examples of behaviors that may detract from a professional work environment or lead to workplace harassment. It is important to address all forms of harassment, including sexual harassment, because federal and state laws recognize harassment as a form of discrimination. For example, federal and state laws recognize sexual harassment as a form of sex discrimination. It is important for employees to understand that agency managers will not tolerate harassment in any form, even if it does not rise to the level of illegal discrimination, because harassment is exclusionary, unprofessional, and hurtful. Agency managers play an important role in preventing and addressing harassment, and this rule provides important guidance to managers who observe or become aware of potential harassment.

2.21.4014 RETALIATION (1) ~~The state of Montana~~ Agency managers may not retaliate or allow, condone, or encourage others to retaliate against any customer, applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint, ~~and/or testifying or participating in any other manner in a discrimination proceeding, including testifying in court.~~

(2) Agency managers who become aware of retaliation shall immediately inform the agency's human resource manager, human resource staff, EEO officer, or ADA coordinator, who can advise management on the appropriate course of action.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The number of retaliation claims has risen significantly at the federal and state levels over the past several years. Although federal and state laws already prohibit retaliation, the department believes it is important to reinforce this prohibition. This rule is necessary to inform employees and customers that they have the right to address discrimination and harassment concerns without fear of retribution. Agency managers play an important role in preventing retaliation and must know what actions to take to stop it. Retaliation breeds fear, subjects the state to liability, and undermines the complaint process. The state cannot tolerate retaliation in any form.

5. The department proposes to repeal the rules as follows:

2.21.4003 DEPARTMENT OF ADMINISTRATION ROLE found at page 2-1155 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.4004 DEPARTMENT OR AGENCY ROLE found at ARM page 2-1156.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4006 PRE-EMPLOYMENT INQUIRIES found at ARM page 2-1156.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4007 PRE-EMPLOYMENT MEDICAL EXAMINATIONS found at ARM page 2-1157.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4012 SEXUAL HARASSMENT found at ARM page 2-1157.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration proposes the repeal of ARM 2.21.4003, 2.21.4004, 2.21.4006, 2.21.4007, and 2.21.4012 as necessary to enhance flow of the rules and eliminate duplication of other rules or policies. Some parts of the rules proposed to be repealed have been combined with other rules or replaced by new rules.

6. Concerned persons may submit their data, views, or arguments, including comments on the proposed forms in NEW RULE III and NEW RULE VII, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Pavao, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; or e-mail jpavao@mt.gov, and must be received no later than 5:00 p.m., July 8, 2011.

7. John Pavao, Department of Administration, 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 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 State Human Resources Division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 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 department's web site at <http://doa.mt.gov/administrativerules.mcp>x. 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.

10. 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 May 31, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 2.21.6608, 2.21.6613, 2.21.6615,) PROPOSED AMENDMENT
and 2.21.6616 pertaining to employee)
records management)

TO: All Concerned Persons

1. On July 8, 2011, at 11:00 a.m. the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 June 29, 2011, to advise us of the nature of the accommodation needed. Please contact Lisa Coligan, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, Montana 59620; telephone (406) 444-3854; fax (406) 444-0703; Montana Relay Service 711; or e-mail lcoligan@mt.gov.

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

2.21.6608 DEFINITIONS As used in this subchapter the following definitions apply:

(1) through (3) remain the same.

(4) "Genetic information" means information about applicants' or employees' genetic tests, the genetic tests of their family members, and the manifestation of a disease or disorder in their family members, including information obtained orally or inadvertently (refer to [MAR Notice No. 2-21-448, New Rule I published in this issue]). ~~Genetic information does not include information about an individual's sex or age.~~ Records containing genetic information are listed in ARM 2.21.6613.

(5) and (6) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment to ARM 2.21.6608 clarifies the definition of genetic information. Recently published federal Genetic Information Nondiscrimination Act (GINA) regulations, which employers are required to follow, state that genetic information includes information obtained orally or inadvertently. The federal regulations restrict the use and collection of genetic information, including information that may be obtained orally, such as through a water cooler conversation, or, inadvertently, such as through an

employee's response to a medical certification form. If this amendment is not made, then employees may not know genetic information also includes information obtained orally or inadvertently. The improper use or disclosure could subject the state to liability.

The department deleted the reference to sex or age as not being genetic information because that subject matter is being covered in the proposed amendments to ARM 2.21.6613.

2.21.6613 RECORDS THAT CONTAIN GENETIC INFORMATION

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

(2) Examples of frequently used employee personnel records that may contain genetic information include Family and Medical Leave Act (FMLA) request forms, reasonable accommodation requests, medical certifications ~~tests~~, medically fit for duty forms, and records relating to worker's compensation claims and employee participation in wellness programs.

(3) Genetic records do not include:

(a) information about the sex or age or an individual or family members;

(b) information about the race or ethnicity of an individual or family member that is not obtained from a genetic test;

(c) information about an employee's disease that is already manifested or diagnosed;

(d) routine tests such as blood count, cholesterol, or liver-function tests; and

(e) analysis of infectious agents such as bacteria, viruses, and fungi.

(4) GINA prohibits the collection of genetic information, except in specific instances. Refer to the FMLA (MOM #03-0309), Sick Leave (MOM #03-0310), Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention (ARM, Title 2, chapter 21, subchapter 40), and Reasonable Accommodation [MAR Notice No. 2-21-446, New Rules I through XX published in this issue] policies for exceptions to obtaining genetic information.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments to ARM 2.21.6613 incorporate recent GINA regulations identifying those records that do not contain genetic information. The changes to the GINA regulations were made because there was confusion regarding what specific records included genetic information and what records did not.

The current rule does not provide the clarity of the recent GINA regulations. The amendments will allow state employees and management to identify genetic information without confusion and unnecessary caution.

The reference to wellness programs is made because GINA specifically identifies wellness programs as an area where genetic information is sometimes requested or conveyed. Given that the state does have wellness programs, it is important to identify this area as a potential source for genetic information.

2.21.6615 ACCESS TO EMPLOYEE PERSONNEL RECORDS (1) through (3) remain the same.

(4) As provided in the ADA and FMLA, access to medical information may not be disclosed except to:

(a) the employee about whom the information pertains;

(a) through (d) remain the same, but are renumbered (b) through (e).

(5) through (10) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to ARM 2.21.6615 clarifies the employee's right to access medical and genetic information. Although (3) allows employees to access records, (4) does not. The new wording is proposed to alleviate the confusion that has been caused by the lack of clarity.

2.21.6616 EMPLOYEE PERSONNEL RECORDS USE (1) Nothing in this subchapter prohibits authorized users from relying on the content of employee personnel records ~~as provided in this policy~~ or in agency procedures when responding to requests for employment information from employers to which employees have applied for employment.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to ARM 2.21.6616 is necessary to remove redundant language in the text.

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 Lisa Coligan, Department of Administration, P.O. Box 200127, Helena, Montana 59620; telephone (406) 444-3854; fax (406) 444-0703; or e-mail lcoligan@mt.gov, and must be received no later than 5:00 p.m., July 8, 2011.

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

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

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>x. 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 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 May 31, 2011.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.11.2221, pertaining to) PROPOSED AMENDMENT
unemployment insurance rates for)
governmental entities)

TO: All Concerned Persons

1. On June 30, 2011, at 10:30 a.m., the Department of Labor and Industry (department) will hold a public hearing in in the first floor conference room (room 104) of the Walt Sullivan Building, 1315 East Lockey Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 24, 2011, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail dgilbert@mt.gov.

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

24.11.2221 STATE AND LOCAL GOVERNMENT EXPERIENCE RATING

(1) and (2) remain the same.

(3) For wages paid ~~on or after~~ from July 1, 2008, through June 30, 2011:

(a) and (b) remain the same.

(4) For wages paid on or after July 1, 2011:

(a) Governmental entities are assessed for purposes of 39-51-404, MCA, at the rate of .09 percent of total quarterly wages.

(b) The following is the rate schedule used for governmental entities.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

| <u>Individual Employer's Benefit Cost Ratio</u> | <u>*Median Benefit Cost Ratio</u> | | | | | | | | | | | | |
|---|-----------------------------------|-----|-----|-----|-----|------|------|------|------|------|------|------|------|
| | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 |
| <u>.1 or less</u> | .06 | .06 | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | 1.06 | 1.26 | 1.46 |
| <u>.2</u> | .06 | .06 | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | 1.06 | 1.26 | 1.46 |
| <u>.3</u> | .06 | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.26 | 1.46 |
| <u>.4</u> | .16 | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.16 | 1.26 | 1.46 |
| <u>.5</u> | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.36 | 1.46 |
| <u>.6</u> | .16 | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.26 | 1.36 | 1.46 |
| <u>.7</u> | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 |
| <u>.8</u> | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 |
| <u>.9</u> | .26 | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 |
| <u>1.0</u> | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.26 | 1.36 | 1.46 |
| <u>1.1</u> | .36 | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.36 | 1.46 |
| <u>1.2</u> | .36 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.36 | 1.46 | 1.46 |
| <u>1.3</u> | .46 | .56 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.36 | 1.46 | 1.46 |
| <u>1.4</u> | .46 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 | 1.46 | 1.46 | 1.46 |
| <u>1.5</u> | .46 | .66 | .76 | .86 | .96 | 1.06 | 1.16 | 1.26 | 1.36 | 1.46 | 1.46 | 1.46 | 1.46 |

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entities for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

AUTH: 39-51-302, MCA
IMP: 39-51-404, 39-51-1212, MCA

REASON: There is reasonable necessity to amend ARM 24.11.2221 to correct minor errors in the contributions table for experience-rated governmental employers, which errors the department recently discovered.

The department proposes that it apply the changed rates to wages paid on or after July 1, 2011, the start of the state fiscal year. The department believes that the effect of the changes will be that the affected governmental employers will have a slightly lower contribution rate. The department believes that only 88 employing units will be directly affected by the proposed changes. Because wages are reported by employers on a quarterly basis (30 days after the close of the calendar quarter) and taxes are due and payable at that time, there should not be any overpayment by the affected governmental employers. In the highly unlikely event that a governmental employer would cease operations and payrolls after July 1, 2011, but before the changes in the rates were officially adopted, the department would recalculate the contributions due under the revised rates.

The department notes that although it has, as required, advised employers of the contributions rates that will be in effect on July 1, the proposed rule changes will be applied to all wages paid in the first calendar quarter of the state fiscal year. Once the proposed changes are finally adopted, the department will provide notice of the revised rates to the affected governmental employers. The department concludes that correcting the rates in the above manner will avoid or minimize the need for recalculations or providing for a refund or credit of overpaid contributions.

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: Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail dgilbert@mt.gov and must be received no later than 5:00 p.m., July 8, 2011.

5. 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.

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 Labor and Industry, Attn: Mark Cadwallader, 1315 East Lockett Ave., P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

9. The department intends to make the proposed amendments effective on or about July 29, 2011, but reserves the right to make the amendments effective at a later date, or not at all.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLEY
Keith Kelley
Commissioner
Department of Labor and Industry

Certified to the Secretary of State May 31, 2011

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.643 pertaining to petitions) PROPOSED AMENDMENT
for decertification before the Board of)
Personnel Appeals)

TO: All Concerned Persons

1. On June 30, 2011, at 9:00 a.m., the Board of Personnel Appeals (board) will hold a public hearing in the first floor conference room (room 104) of the Walt Sullivan Building, 1315 East Lockey Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on June 22, 2011, to advise us of the nature of the accommodation that you need. Please contact the board's agent, the Employment Relations Division, Department of Labor and Industry, Attn: Windy Knutson, 1805 Prospect Ave., Helena, Montana, 59601; telephone (406) 444-0032; fax (406) 444-7071; TDD (406) 444-5549; or e-mail wknutson@mt.gov.

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

24.26.643 PETITION FOR DECERTIFICATION (1) A petition for decertification of an exclusive representative ~~shall~~ may be filed by an employee, a group of employees, or a labor organization, provided that 12 months have elapsed since the last election.

(2) The petition must be filed during the 30 day window period which starts on the 90th day and ends on the 60th day prior to the termination date of the collective bargaining agreement, or ~~upon~~ after the terminal date thereof.

(3) through (8) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: There is reasonable necessity to clarify the rule in light of recent disputes regarding the acceptable timing for filing a petition for decertification. The change clarifies that the Board of Personnel Appeals will accept petitions for decertification after the terminal date of a contract as opposed to only accepting petitions on the terminal date of a collective bargaining agreement.

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: Windy Knutson, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Ave., P.O. Box 201503, Helena, Montana, 59620-1503; fax (406) 444-7071; or e-mail wknutson@mt.gov, and must be received no later than 5:00 p.m., July 8, 2011.

5. 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.

6. The board and the Department of Labor and Industry (department) maintain lists 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 lists 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 Labor and Industry, Attn: Mark Cadwallader, 1315 East Lockey Ave., P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ JACK HOLSTROM
Chair
Board of Personnel Appeals
Department of Labor and Industry

/s/ KEITH KELLY
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State May 31, 2011

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 VIII and the |) | PROPOSED ADOPTION AND |
| amendment of ARM 37.34.913 |) | AMENDMENT |
| pertaining to reimbursement for the |) | |
| provision to persons with |) | |
| developmental disabilities of services |) | |
| and items covered as benefits of the |) | |
| various programs of services |) | |
| administered by the developmental |) | |
| disabilities program |) | |

TO: All Concerned Persons

1. On June 29, 2011 at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on June 20, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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:

NEW RULE I REIMBURSEMENT FOR SERVICES: GENERALLY (1) The following requirements and limitations govern the reimbursement of providers for the provision of services and items delivered to persons who are currently eligible for and accepted into one or more of the developmental disabilities services programs administered by the department. These requirements are in addition to any other federal and state requirements governing the funding and delivery of the various services provided through the program.

(2) Reimbursement for services and items is only available:

(a) through payments made to providers that have a current contract with the department authorizing the provider to deliver developmental disabilities services. In addition a provider must be:

(i) currently enrolled in conformance with ARM 37.85.402 as a Montana Medicaid provider as evidenced by a signed current provider enrollment agreement,

unless the type of provider is expressly exempted from the requirement by the department; and

(ii) designated by Developmental Disabilities Program (DDP) to be a qualified developmental disabilities provider, unless the program does not require the provision of the particular type of service or item by or through a qualified provider.

(b) for services and items that are authorized in rule or federal agreements for delivery through the particular developmental disabilities services program that the consumer is authorized by the DDP to participate in;

(c) when the particular services and items delivered are authorized for delivery to the consumer through the consumer's individual cost plan (ICP) as provided for in [RULE II], or if the ICP is not applicable, the planning and authorization procedures applicable to the particular program;

(d) if the consumer has received the services and items authorized; and

(e) when delivered in accordance with applicable professional and facility licensing authorities.

(3) The department reimburses for a service or item at the lower of:

(a) the rate applicable to the particular service or item as established through rule; or

(b) the provider's usual and customary fee that is charged to any and all parties for the delivery of the service or item.

(4) Reimbursement for the delivery of a service or item delivered to a consumer through the department's DDP is payment in full and the provider may not receive further reimbursement for the service or item from the program, other departmental programs, the consumer, or other parties.

(5) A provider in order to receive reimbursement for a service or item must properly invoice for the service or item through the DDP's electronic billing system, Agency Wide Accounting Client System (AWACS), unless the service or item is not reimbursed through that payment system.

(6) A provider may receive reimbursement from a consumer for a service or item that is not reimbursable through the DDP if, prior to delivery of the service or item, the provider and the consumer or the consumer's legitimate representative have entered into a written agreement that allows for the delivery of and payment for the service or item in an accountable manner.

(7) A provider may not seek or obtain reimbursement from a consumer for a service or item that, though reimbursable by the DDP as a service or item, has not been reimbursed by the program due to the failure of the provider to properly seek reimbursement for the service or item or due to the failure of the provider to properly deliver the service or item to the consumer.

(8) Reimbursement is not available for services and items:

(a) the DDP determines are not delivered in accordance with the quality assurance standards applicable to those services and items;

(b) provided while a person is a resident of an intermediate care facility for the developmentally disabled, an intermediate nursing care facility, or a skilled nursing care facility, as those facilities are defined in 50-5-101, MCA; or

(c) reimbursable as either a Medicaid state plan service or through any other local government, state, or federal program for which the person is eligible or would be eligible upon application.

(9) The department has the right to recover as a sum owing to the department reimbursement received by a provider that is an overpayment or is improperly obtained.

(a) Overpayments and improper payments include but are not limited to any departmental reimbursement obtained by a provider that:

(i) does not conform to the requirements and limitations of this rule or any other rules governing the administration and delivery of the services and items for which the reimbursement is obtained;

(ii) does not compensate for actual delivery of the services and items for which the reimbursement is obtained;

(iii) is the consequence of mistaken, improper, or fraudulent billing;

(iv) is due to departmental mistake; or

(v) is due to other circumstances.

(b) The department or its agents may recover overpayments by any available means including withholding of further reimbursement payments.

(10) Reimbursement for services and items is not made directly to consumers or their representatives.

AUTH: 53-2-201, 53-6-113, 53-6-402, 53-20-204, MCA

IMP: 53-6-101, 53-6-111, 53-6-402, 53-20-203, 53-20-205, MCA

NEW RULE II REIMBURSEMENT FOR SERVICES: INDIVIDUAL COST PLANS (1) Authorization for the reimbursement of a provider for the delivery of particular services and items to an individual consumer is based on the implementation of an individual cost plan (ICP) for the consumer. Absent an approved ICP for a consumer, reimbursement is not available for services and items delivered to the consumer.

(2) Services and items delivered to a consumer may not be reimbursed unless authorized in the consumer's ICP prior to the delivery of those services and items.

(3) Reimbursement for the delivered services and items may not exceed the sums designated as available for those services in the consumer's ICP. Nor may total reimbursement for the delivered services and items exceed the total of the sums designated as available for those services in the consumer's ICP.

(4) An ICP is developed by the consumer's case manager for submission to the DDP regional office for review and approval. For services reimbursed on time units the case manager estimates the levels of service delivery based on a reasonable assessment of the direct care staff time necessary to meet the health and safety needs of the consumer. The case manager uses the standardized reimbursement rates and any specified rates of reimbursement for particular services and items to calculate the amount of monies necessary to fund the services and items to be provided to the consumer.

(5) All new proposed ICPs or proposed amendments to ICPs must be reviewed and authorized by the DDP's regional manager.

(6) Neither the Montana resource allocation tool nor the plan of care may be used to authorize reimbursement for services or items.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

NEW RULE III REIMBURSEMENT FOR SERVICES: THE 0208 COMPREHENSIVE PROGRAM OF MEDICAID FUNDED HOME AND COMMUNITY SERVICES (1) Reimbursement through the Medicaid Home and Community Services 0208 Comprehensive Services Program waiver is only available to a provider for services or items:

- (a) delivered in accordance with the requirements and limitations of [RULE I];
 - (b) delivered in accordance with the terms and conditions of the formal approval by the Centers for Medicare and Medicaid (CMS) governing this waiver;
 - (c) specified as 0208 comprehensive program services in ARM 37.34.911;
- and

(d) authorized in accordance with [RULE II] for reimbursement through the consumer's individual cost plan (ICP).

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through the 0208 Comprehensive Program of Home and Community Services as specified in Section Two: Rates of Reimbursement for the HCBS 1915(c) 0208, 0371, 0667 Waiver Programs, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, published September 1, 2011. A copy of Section Two of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

NEW RULE IV REIMBURSEMENT FOR SERVICES: THE 0371 COMMUNITY SUPPORTS PROGRAM OF MEDICAID FUNDED HOME AND COMMUNITY SERVICES (1) Reimbursement for the provision of services or items funded through the 0371 Community Supports Program of Home and Community Services waiver is only available to a provider for services or items:

- (a) delivered in accordance with the requirements and limitations of [RULE I];
- (b) delivered in accordance with the terms and conditions of the formal approval by the Centers for Medicare and Medicaid (CMS) governing this waiver;
- (c) specified as 0371 community supports program services; and
- (d) authorized in accordance with [RULE II] for reimbursement through the consumer's individual cost plan (ICP).

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through the 0307 Community Supports Program of Home and Community Services as specified in Section Two: Rates of Reimbursement for the HCBS 1915(c) 0208, 0371, 0667 Waiver Programs, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, published September 1, 2011. A copy of Section Two of the manual may be obtained through the Department of Public

Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

NEW RULE V REIMBURSEMENT FOR SERVICES: THE 0667 AUTISM PROGRAM OF MEDICAID FUNDED HOME AND COMMUNITY SERVICES

(1) Reimbursement for the provision of services or items funded through the 0667 Autism Program of Home and Community Services waiver is only available to a provider for services or items:

- (a) delivered in accordance with the requirements and limitations of [RULE I];
- (b) delivered in accordance with the terms and conditions of the formal approval by the Centers for Medicare and Medicaid (CMS) governing this waiver;
- (c) specified as 0667 autism program services; and
- (d) authorized in accordance with [RULE II] for reimbursement through the consumer's individual cost plan (ICP).

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through the 0667 Autism Program of Home and Community Services as specified in Section Two: Rates of Reimbursement for the HCBS 1915(c) 0208, 0371, 0667 Waiver Programs, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, published September 1, 2011. A copy of Section Two of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

NEW RULE VI REIMBURSEMENT FOR SERVICES: HOME AND COMMUNITY SERVICES FUNDED WITH NON-MEDICAID MONIES

(1) Reimbursement for the provision of services or items funded through home and community services funded with non-Medicaid monies is only available to a provider for services or items:

- (a) delivered in accordance with the requirements and limitations of [RULE I];
- (b) specified as non-Medicaid program services; and
- (c) authorized in accordance with [RULE II] for reimbursement through the consumer's individual cost plan (ICP).

(2) The rates of reimbursement for the particular types of services and items funded through home and community services funded with non-Medicaid monies are the same as those authorized for the same types of services and items reimbursed in accordance with [RULE III] through the 0208 Comprehensive Program of Home and Community Services and with [RULE IV] through the 0371 Community Supports Program of Home and Community Services.

(3) Developmental Disabilities Program (DDP) services or items funded with non-Medicaid monies are considered to be a payor of last resort.

AUTH: 53-2-201, 53-20-204, MCA

IMP: 53-2-201, 53-20-203, 53-20-205, MCA

NEW RULE VII REIMBURSEMENT FOR SERVICES: PART C EARLY INTERVENTION SERVICES PROGRAM (1) Reimbursement for the provision of services or items funded through the Part C Early Intervention Services Program is available in accordance with the criteria and procedures appearing in the Part C State Plan entered into between the department and the U.S. Department of Education and in the contract between the DDP and a provider for the delivery of Part C funded services.

AUTH: 53-2-201, 53-20-204, MCA

IMP: 53-2-201, 53-20-203, 53-20-205, MCA

NEW RULE VIII REIMBURSEMENT FOR SERVICES: TARGETED CASE MANAGEMENT SERVICES (1) Reimbursement for the provision of case management services funded either as the Medicaid state plan targeted case management service or as a state general fund funded service is available in accordance with ARM 37.86.3601, 37.86.3602, 37.86.3605, 37.86.3606, and 37.86.3607 pertaining to the administration and reimbursement of Medicaid funded state plan targeted case management services.

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

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

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

37.34.913 0208 COMPREHENSIVE PROGRAM OF MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: REIMBURSEMENT ~~(1) Reimbursement under the medicaid home and community services program is only available for services specified in the recipient's individual plan of care.~~

~~(2) Reimbursement for services is at those rates that are available under the terms of the contract that the department enters into with providers of services.~~

~~(3) Reimbursement is not available in the following circumstances:~~

~~(a) for services reimbursable under the state medicaid program or any other local government, state or federal program for which the person is eligible or would be eligible upon application;~~

~~(b) for costs of services that exceed the funding available for the recipient as provided in the department's contract with the provider; and~~

~~(c) for services provided on an inpatient basis at a hospital or a long term care facility as defined in 50-5-101, MCA.~~

~~(4) No copayment will be imposed on recipients for the costs of medicaid home and community services, however, recipients are responsible for copayments on other medicaid services as defined in ARM 46.12.204.~~

(1) Reimbursement for the provision of services or items funded through the 0208 Comprehensive Program of Home and Community Services is available in accordance with criteria and procedures in [RULES I and II].

(2) The rates of reimbursement for particular types of services and items that may be funded through the 0208 Comprehensive Program of Home and Community Services established in accordance with [RULE III].

AUTH: 53-2-201, ~~53-6-113~~, 53-6-402, ~~53-20-204~~, MCA

IMP: 53-2-201, ~~53-6-101~~, 53-6-402, ~~53-20-205~~, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the adoption of New Rules I through VIII and the amendment of ARM 37.34.913 pertaining to reimbursement for the provision to persons with developmental disabilities of services and items covered as benefits of the various programs of services administered by the Developmental Disabilities Program (DDP). The implementation of this set of proposed rules, with the resulting establishment of a rate methodology, serves to reimburse contractors for the provision of services to meet the needs of persons with developmental disabilities. The delivered services serve to foster the capacities of consumers to live in the most appropriate and least restrictive settings through habilitation and other services generally designed for their needs.

The reimbursement system and rates to be adopted through this proposed rule set have been several years in the development and application. At this time the methodology and factors constituting the reimbursement system are now thoroughly implemented and warrant adoption in rule. The system was developed in response to concerns stated by the Centers for Medicare/Medicaid (CMS) in a 2000 review of the principal Medicaid funded home and community developmental disabilities services program administered by the department.

In response to the CMS review, the department proceeded with an intensive multifaceted initiative to develop a coherent reimbursement system that would meet with CMS approval. This effort included the work of a multiparty Rates Advisory Committee to bring many perspectives into consideration in the process of development and implementation. That committee, which remains in place, has included consumer and provider interested parties.

In November 2003, the department contracted with a consulting firm to assist the state in the development of a published reimbursement system as well as a way to allocate available resources based on the needs of Montana's persons with developmental disabilities. Once the consulting firm was in place, various meetings were frequently held with extensive involvement of interested parties throughout the

state to assure that the perspectives of interested parties were considered prior to implementation of a new comprehensive reimbursement system.

In January 2005, an initial pilot of 50 individuals in service throughout the state was launched to test the methodology for the reimbursement system. At that same time, in the Appropriations Bill, the 2005 Legislature stated its support for a graduated approach to the implementation of the system.

In July 2005, phase II of the reimbursement system started which involved all adult providers in Region II (consisting of approximately 320 individuals in services and 7 DD providers). This pilot lasted the fiscal year until June 2006. Based on legislative comments in HB2, the prior pilot findings, and updated provider information, the rates were adjusted to accommodate budget neutrality.

The full implementation of the reimbursement system was accomplished by 2009. Since 2009, there have been further adjustments to the system, including approximately a 2% provider rate increase implemented in State Fiscal Year (SFY) 2010.

Proposed NEW RULES III, IV, V, and VI give notice that the department will be reducing the reimbursement rates to the DDP providers by approximately 2% beginning on September 1, 2011. These provider rate changes are based on a provider rate increase that went into effect in Fiscal Year (FY) 2010, and was held constant in FY 2011. The 2010 provider rate increase was paid for with one-time-only funding appropriated by the 61st Legislative session meeting in 2009. This one-time-only funding was not included in the budget base for FY 2012 and the funds were not appropriated by the current 62nd Legislative session.

The department considered whether a rate decrease could cause a cost shift to a more expensive service. The department considered the impact of the rate changes on efficiency, economy, quality of care, and access to Medicaid services and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a (a) (30(A)).

In evaluating the reductions needed to live within the legislative appropriation, the department considered the alternatives of eliminating covered services and/or decreasing Medicaid eligibility. The department is unable to decrease eligibility for services after March 23, 2010 and be in compliance with the Medicaid maintenance-of-effort (MOE) requirements of the Patient Protection and Affordable Care Act, PL 111-148, Title II, Sections 2001, et seq. Eliminating optional services was considered and rejected because of the impact on vulnerable Medicaid clients who would lose coverage for services.

New Rule I

New Rule I states the general authority governing reimbursement for the implementation of the State's program of home and community services for persons

with developmental disabilities funded with both Medicaid and non-Medicaid monies. The provision by a state of health care and health care related services funded with federally derived Medicaid monies necessitates conformance by the state with federal statutes, regulations, and policies that govern expenditures of those monies. This proposed rule is necessary to denote those various expenditure and accountability requirements. The option of not specifying the federal authority governing the program was not considered appropriate.

The proposed rule also would establish the parameters and particulars for provider participation in the reimbursement system with respect to contractual relationships with the department, conformance with quality assurance standards, and use of the electronic billing system.

In addition, the proposed rule establishes the discretion of the department to manage the various aspects of the program in conformance with federal authority, the appropriated budget authority, and as otherwise determined appropriate by the department. This application of discretion to the program is necessary to assure continuing conformance with the governing federal authority so as to avoid withdrawal of federal approval for the program and to avoid federal recoupment for expenditures of federal monies inappropriately expended. Discretion is also necessary to assure that the program is managed within the programmatic and fiscal parameters and limitations that the Legislature may impose upon the department in the appropriation process. The necessity to conform with governing authority and fiscal dictates precludes consideration of other options.

New Rule II

Proposed New Rule II is necessary to inform service consumers, families, and providers of services that the particular services and the financial resources available for the reimbursement of the delivery of services to an individual consumer is predicated upon the financial resources authorized in the Individual Cost Plan (ICP) and then applied to the consumer's service delivery via the reimbursement methodology. The proposed new rule would further establish the constituent features and application of the ICP.

New Rule III

This proposed new rule is necessary to establish the department's rates of reimbursement for services delivered to consumers who are eligible for the 0208 Comprehensive Home and Community Services program. In addition the proposed rule would establish requirements for and limitations upon reimbursement for the services. The proposed rule is necessary to inform providers of services under this waiver of the allowable rates for those services and the requirements for billing and receiving payment. The rates for reimbursement for the services available under that waiver are to be found in the manual of service reimbursement adopted and incorporated by reference in this proposed rule. The proposed rule is necessary to establish that the services available through the program may only be provided by or

through a provider that is enrolled as a Medicaid provider with the department, that meets all licensing and other nonprogrammatic requirements, that complies with the requirements related to the receipt of Medicaid monies, that meets the programmatic requirements governing the delivery of services, and that is not reimbursed otherwise. These provider requirements are necessary to provide conformance with the governing federal authority.

New Rule IV

This proposed new rule is necessary to establish the department's rates of reimbursement for services delivered to consumers who are eligible for the 0371 Community Supports home and community services program. In addition the proposed rule would establish requirements for and limitations upon reimbursement for the services. The proposed rule is necessary to inform providers of services under this waiver of the allowable rates for those services and the requirements for billing and receiving payment. The proposed rule is necessary to establish that the services available through the program may only be provided by or through a provider that is enrolled as a Medicaid provider with the department, that meets all licensing and other nonprogrammatic requirements, that complies with the requirements related to the receipt of Medicaid monies, that meets the programmatic requirements governing the delivery of services, and that is not reimbursed otherwise. These provider requirements are necessary to provide conformance with the governing federal authority.

New Rule V

This proposed new rule is necessary to establish the department's rates of reimbursement for services delivered to consumers who are eligible for the 0667 Children's Autism home and community services program. In addition the proposed rule would establish requirements for and limitations upon reimbursement for the services. The proposed rule is necessary to inform providers of services under this waiver of the allowable rates for those services and the requirements for billing and receiving payment. The proposed rule is necessary to establish that the services available through the program may only be provided by or through a provider that is enrolled as a Medicaid provider with the department, that meets all licensing and other nonprogrammatic requirements, that complies with the requirements related to the receipt of Medicaid monies, that meets the programmatic requirements governing the delivery of services, and that is not reimbursed otherwise. These provider requirements are necessary to provide conformance with the governing federal authority.

New Rule VI

This proposed new rule is necessary to establish the department's rates of reimbursement for services delivered to consumers who receive services that are not funded with Medicaid home and community services monies. In addition the proposed rule would establish requirements for and limitations upon reimbursement

for the services. The proposed rule is necessary to inform providers of services under this waiver of the allowable rates for those services and the requirements for billing and receiving payment. The proposed rule is necessary to establish that the services available through the program may only be provided by or through a provider that meets all licensing and other nonprogrammatic requirements that meets the programmatic requirements governing the delivery of services, and that is not reimbursed otherwise.

New Rule VII

This proposed new rule is necessary to establish the department's manner of reimbursement for services delivered to consumers who receive services that are funded with Part C early intervention services program monies.

New Rule VIII

This proposed new rule informs via cross reference where the established rules regarding case management services may be located and the rates and reimbursement information may be accessed.

ARM 37.34.913

This rule revision is necessary to eliminate this outdated language that is in conflict with this new set of rules and the processes that are established for reimbursement of services delivered through the comprehensive 0208 home and community services program.

Effective Date

The effective date of these rules is September 1, 2011.

Fiscal Impact

The provider rate reduction affects all three DDP waivers and is expected to account for reduction in payments of approximately \$2.1 million per year affecting 55 current providers. The affected rates will be primarily Medicaid rates with a very small portion being non-Medicaid. The rate reduction will affect approximately 330 individuals in the Community Supports (0371) waiver, approximately 2,390 individuals in the Comprehensive (0208) waiver, and approximately 55 individuals in the Children's Autism (0667) waiver.

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: Kenneth Mordan, 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., July 7, 2011.

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/ Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton for Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State May 31, 2011.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|--------------------------------------|---|----------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 42.18.106, 42.18.107 and |) | AMENDMENT AND REPEAL |
| repeal of ARM 42.20.801, 42.20.802, |) | |
| 42.20.803, and 42.20.804 relating to |) | NO PUBLIC HEARING |
| property taxes |) | CONTEMPLATED |

TO: All Concerned Persons

1. On July 29, 2011, the department proposes to amend and repeal the above-stated rules.

2. The Department of Revenue 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 Department of Revenue no later than 5:00 p.m. on June 20, 2011, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5825; fax (406) 444-4375; e-mail canderson@mt.gov.

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

42.18.106 2003 MONTANA REAPPRAISAL PLAN (1) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-111, ~~45-7-133~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.106 to remove 15-7-133, MCA, as an implementing citation because it has been repealed.

42.18.107 2009 MONTANA REAPPRAISAL PLAN (1) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-111, ~~45-7-133~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.107 to delete the implementing cite of 15-7-133, MCA, because it has been repealed.

4. The department proposes to repeal the following rules:

42.20.801 DEFINITIONS which can be found on page 42-2125 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: Ch. 6. Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.801 because the rule only applied to tax year 2006 and is no longer applicable.

42.20.802 QUALIFYING FOR THE 2006 PROPERTY TAX REFUND which can be found on page 42-2125 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: Ch. 6. Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.802 because the rule only applied to tax year 2006 and is no longer applicable.

42.20.803 PROPERTY TAX REFUND FOR ENTITIES OWNING A RESIDENCE which can be found on page 42-2125 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: Ch. 6. Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.803 because the rule only applied to tax year 2006 and is no longer applicable.

42.20.804 GOOD CAUSE FOR EXTENDING FILING PERIOD FOR PROPERTY TAX REFUND; PROCEDURE FOR REQUESTING AN EXTENSION; DEMONSTRATING "GOOD CAUSE" which can be found on page 42-2126 of the Administrative Rules of Montana.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: Ch. 6. Sp. Laws May 2007, 15-1-201, 15-30-140, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.804 because the rule only applied to tax year 2006 and is no longer applicable.

5. Concerned persons may submit their data, views, or arguments in writing. Written data, views, or arguments may be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701;

telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than 5:00 p.m., July 8, 2011.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than 5:00 p.m., July 8, 2011.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately 80,000 based on approximately 800,000 who are property taxpayers in Montana.

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

9. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State May 31, 2011

BEFORE THE BOARD OF REVIEW
DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.8.102 and 42.8.104 relating to) PROPOSED AMENDMENT
one-stop business licensing)

TO: All Concerned Persons

1. On July 6, 2011, at 9:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Board of Review, through the Department of Revenue, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., June 29, 2011, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.8.102 ONE-STOP BUSINESS LICENSING GUIDE (1) The department shall will make available to all ~~taxpayers~~ businesses a guide regarding the process for filing an application under the one-stop program. This guide ~~dated December 2001 is hereby incorporated by reference and,~~ as periodically updated by the department, may be obtained from the Department of Revenue, web site at revenue.mt.gov; by a written request to P.O. Box 5805, Helena, Montana 59604-5805; or by calling the department's call center, toll free, at (866) 859-2254 or in Helena at (406) 444-6900.

AUTH: 30-16-104, MCA

IMP: 30-16-103, 30-16-201, 30-16-301, 30-16-302, 30-16-303, MCA

REASONABLE NECESSITY: The board proposes to amend ARM 42.8.102 to introduce efficiencies into the existing application process for both external and internal users. To assist the public, the program will maintain a dynamic master application on the department's web site. Under the current process, when a citizen requests an application, the program manually alters the application with any agency changes since the last printing of the application and mails it to the requestor for completion. The proposed amendments to the rule should save time for the users

by providing them with a convenient option to access and print the most current application themselves and, at the same time, save the program printing and mailing costs. To make it easier for citizens to contact the program, telephone contact information has also been added to the rule.

42.8.104 RESPONSIBILITIES (1) It will be the responsibility of the Board of Review, as established in 30-16-302, MCA, to provide policy direction to the department for the administration of the program and to establish program policy among the participating agencies.

(2) It ~~shall~~ will be the responsibility of the agency to enforce and administer the licenses according to the appropriate statutes of that agency. It is the responsibility of the agency to acquire missing documents or material necessary to process the master application and forward this material to the department.

(2)(3) It ~~shall~~ will be the responsibility of the department to process complete master applications that contain all the necessary supporting documentation. Applications will be processed upon receipt but licenses will not be issued until all required documents have been forwarded to the department from the agency or the applicant.

(4) It will be the responsibility of the one-stop business licensing program to simplify the process for businesses to apply and renew select business licenses administered by multiple state agencies. Agencies will work jointly to create a simple process; thereby creating efficiencies for both businesses and state agencies participating in the program.

AUTH: 30-16-104, MCA

IMP: 30-16-103, 30-16-201, 30-16-301, 30-16-302, 30-16-303, MCA

REASONABLE NECESSITY: The board proposes to amend ARM 42.8.104 to provide businesses and agencies with an easy to understand summary of the one-stop business licensing program's purpose. The proposed amendment describes the responsibilities for both the board and the program. Defining the responsibilities of the board and the program will help businesses and other agencies decide if they would like to participate in the one-stop business licensing program.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than July 13, 2011.

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

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking"

heading. 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.

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

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Chairman

Certified to Secretary of State May 31, 2011

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to access to) PROPOSED ADOPTION
documents and fees for copies of)
public records)

TO: All Concerned Persons

1. On June 29, 2011, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on June 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I ACCESS TO DOCUMENTS AND FEES FOR COPIES

(1) Pursuant to Article II, section 9, of the Montana Constitution, and 2-6-102, MCA, government documents may be examined and copies provided to the public, with a few exceptions where privacy concerns outweigh the public's right to know.

(a) This rule pertains to documents and electronic and nonprint records made available or copied pursuant to the public's right to know.

(b) Fees charged for other services provided by the Secretary of State's office are not affected by this rule.

(2) Documents in the Secretary of State's office are available for public inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(3) There is no charge for examination of documents.

(4) The Secretary of State will determine on a case-by-case basis whether a staff person must be present to observe and supervise the examination of documents and whether documents can be removed from the office.

(5) Requests to examine and/or for copies of documents will be processed and completed as soon as possible depending on the workload and availability of staff.

(6) A Secretary of State staff person will provide the copies requested utilizing office equipment and resources.

(7) The Secretary of State will determine the form in which a copy will be provided, i.e., certain election records will only be provided as digital images on a compact disk.

(8) The following fees will be charged for copies of documents:

(a) Photocopies, \$.50 per page;

(b) Digital images provided on a compact disk, \$.15 per page.

(9) Fees charged for electronic information and nonprint records will be determined on a case-by-case basis pursuant to 2-6-110, MCA.

AUTH: 2-15-405, MCA

IMP: Article II, section 9, Montana Constitution, 2-6-102, 2-6-103, 2-6-104, 2-6-110, MCA

REASON: The Secretary of State has a statutory duty to allow access to and provide copies of documents and electronic and nonprint records to the public. Section 2-6-102, MCA, gives the Secretary of State the ability to charge a fee for these copies. Section 2-15-405, MCA, requires that the Secretary of State set by administrative rule each fee charged by the Secretary of State and that such fees be commensurate with the overall costs of the Office of the Secretary of State and reasonably reflect the prevailing rates charged in the public and private sectors for similar services. In determining the fees to charge, the Secretary of State relied on guidelines provided by former Governor Marc Racicot and Governor Schweitzer's Chief Legal Counsel. Because the Secretary of State has determined that a staff person will make the copies using office equipment and resources, the charges reflect staff time in compiling the information and making the copies as well as the actual cost of the materials. These charges are commensurate with rates charged by other agencies and the courts for similar services. Therefore, the Secretary of State is adopting this rule to comply with the mandate that an administrative rule be adopted for each fee charged. The Secretary of State received five requests in the past year to provide copies of documents pursuant to the public's right to know. The new fee schedule would result in approximately \$55.00 per year in increased revenue for hard copies of documents. Since the fee for copies of digital images remains the same at \$.15 per page, the revenue for copies of digital images is expected to remain the same.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 7, 2011.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State 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 Secretary of State.

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/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 31st day of May, 2011.

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Smith River from Camp Baker to) TEMPORARY EMERGENCY RULE
Eden Bridge)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) On May 22, 2011, flow levels at Eden Bridge were recorded at 4,300 CFS and flow levels at Eagle Creek Gauge, near Camp Baker, were recorded at 2,320 CFS. These levels are dangerously high.

(b) Due to high run off in tributaries, large quantities of logs and uprooted trees are floating down the river. On May 21, two expert river rangers patrolling the river reported that a large log swept down on them from behind and created a hazardous condition by nearly pinning them against the cliff.

(c) Persons recreating on the river in these conditions would be subjected to:

(i) boating accidents resulting from collisions with logs, debris, and cliff walls;

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

(iii) immersion hypothermia; or

(iv) drowning.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the commission 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. 11 of the 2011 Montana Administrative Register.

2. The commission 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 17, 2011, 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.

3. The temporary emergency rule is effective May 23, 2011 when this rule notice is filed with the Secretary of State.

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

RULE I SMITH RIVER TEMPORARY EMERGENCY CLOSURE

- (1) The closed portion of the Smith River is located in Meagher and Cascade Counties.
- (2) The Smith River is closed to all floating on the river between Camp Baker and Eden Bridge.
- (3) This rule will remain in effect until the department determines the river is again safe for boating. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department) to determine when this portion of the river is again safe for floating of the water and to rescind the temporary emergency closure.

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

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

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the river is again safe for floating and the rule is repealed. This will depend on the extent and duration of the debris in the area and flow levels. Signs restricting use of the river 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.

7. 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 June 20, 2011.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which 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 commission or department.

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

/s/ Joe Maurier
Joe Maurier, Secretary
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State May 23, 2011.

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

In the matter of the repeal of a)
temporary emergency rule closing the) NOTICE OF REPEAL OF A
Smith River from Camp Baker to) TEMPORARY EMERGENCY RULE
Eden Bridge)

TO: All Concerned Persons

1. On May 23, 2011, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Smith River, published at page 1029 of the 2011 Montana Administrative Register, Issue No. 11. Due to high run off in tributaries, large quantities of logs and uprooted trees were floating down the river. On May 21, two expert river rangers patrolling the river reported that a large log swept down on them from behind and created a hazardous condition by nearly pinning them against the cliff.

2. The large debris flowing down the river has decreased and the situation no longer constitutes an imminent peril to public health, safety, and welfare. The commission is repealing the rule however; the public is encouraged to exercise caution when floating the Smith River because water flows are still high. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties and published in Issue No. 11 of the 2011 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective June 1, 2011.

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

/s/ Art Noonan
Art Noonan, Acting Secretary
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State June 1, 2011.

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

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

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) The Regional Park Manager inspected the creek on May 21, 2011 and reported that the creek is raging with large amounts of debris floating down through the narrow canyon. Large rapids, boils, and eddies were seen creating dangerous boating conditions.

(b) The water levels at the Riceville Bridge are reaching the bottom of the bridge deck, creating serious concerns for the safety of the bridge. Montana Department of Transportation and Cascade County are monitoring the bridge closely.

(c) Cascade County Sherriff Bob Edwards has requested the commission close Belt Creek citing public safety concerns and preservation of resources. Flooding throughout the county has created numerous situations requiring the county's resources to respond.

(d) Persons recreating on the river in this condition would be subjected to:

(i) boating accidents resulting from collisions with logs, debris, and cliff walls;

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

(iii) immersion hypothermia; or

(iv) drowning.

(e) 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 commission 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. 11 of the 2011 Montana Administrative Register.

2. The commission 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 17, 2011, 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.

3. The temporary emergency rule is effective May 23, 2011 when this rule notice is filed with the Secretary of State.

4. 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 the seven mile stretch of waters flowing through Sluice Boxes State Park from Logging Creek Bridge to Riceville Bridge.

(3) This rule is effective as long as there are debris and high water levels in Belt Creek. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department), in consultation with the commissioner in the region, to determine when this portion of the creek is again safe for floating and to rescind the temporary emergency closure.

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

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

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the river is again safe for floating and the rule is repealed. This will depend on the extent and duration of the debris in the area. Signs restricting use of the river 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.

7. 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 June 20, 2011.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which 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 commission or department.

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

/s/ Joe Maurier

Joe Maurier, Secretary

Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk

Rule Reviewer

Certified to the Secretary of State May 23, 2011.

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, 2010. This table includes those rules adopted during the period January 1, 2011, through March 31, 2011, and any proposed rule action that was pending during the past 6-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 2011 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.

ADMINISTRATION, Department of, Title 2

- 2.59.1505 and other rule - Department Approval of Loan Agreement Form - Examination of Deferred Deposit Lenders, p. 692
- 2.59.1708 and other rule - Renewal Fees for Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators, p. 274
- 2.59.1718 and other rules - Exemptions Under 32-9-104, MCA, Determining the Amount of the Surety Bond Required for New Applicants - Date by Which the Montana Test Must Be Completed in Order to Be Licensed as a Mortgage Loan Originator in Montana - Temporary Licenses - Transition Fees, p. 2627, 2956

(Public Employees' Retirement Board)

- 2.43.2105 Basic Period of Service, p. 132, 643
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1831, 2571
- 2.43.5104 Adoption by Reference of the Declaration of Trust- State of Montana Public Employees Pooled Trust, p. 1920, 2572

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 2675, 142

AGRICULTURE, Department of, Title 4

- 4.12.102 and other rules - Apiculture, p. 2018, 2650
- 4.12.3503 and other rule - Certified Seed Potatoes, p. 2867, 232
- 4.13.1001A State Grain Lab Pricing, p. 696
- 4.14.303 Montana Agricultural Loan Authority, p. 2424, 2810
- 4.16.701 and other rules - Agricultural Marketing Development Program, p. 2633, 2957
- 4.17.103 and other rules - Organic Program, p. 1923, 2573

STATE AUDITOR, Title 6

- I-VI Insurer Investments in Derivative Instruments, p. 762
- 6.6.2401 and other rules - Group Coordination of Benefits, p. 2426, 2958
- 6.6.3401 and other rules - Standards for Companies Considered to Be in Hazardous Financial Condition, p. 616
- 6.6.3504 Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 705
- 6.6.4601 and other rules - Montana Life and Health Insurance Guaranty Association Act - Notice Concerning Coverage Limitations and Exclusions, p. 700
- 6.10.502 Broker-Dealers and Investment Advisors, p. 746

COMMERCE, Department of, Title 8

- I Administration of the 2013 Biennium Quality Schools Grant Program- Planning Grants, p. 708
- I Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 2678, 645
- 8.94.3726 Administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program, p. 1834, 2728
- 8.94.3726 Incorporation by Reference for the CDBG Program, p. 135, 566
- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CBDG) Program, p. 710
- 8.99.504 and other rules - Microbusiness Loans, p. 713
- 8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 2281, 2811

(Board of Housing)

- 8.111.202 and other rules - Procedural Rules - Qualified Lender Requirements, p. 622
- 8.111.602 Low Income Housing Tax Credit Program, p. 2792, 567

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Aquatic Invasive Species Inspection Stations, p. 626
- 12.10.103 and other rules - Shooting Range Development Grants, p. 2794, 101

(Fish, Wildlife and Parks Commission)

- 12.6.2201 and other rules - Exotic Species, p. 1643, 1928, 2812
- 12.11.610 and other rules - Recreational Use Rules on the Bitterroot River, Blackfoot River, and Clark Fork River, p. 767
- 12.11.805 and other rules - Recreational Use Rules in Montana, p. 83, 901

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-VII Electronic Filing of Documents, p. 628
- 17.50.213 (Motor Vehicle Recycling and Disposal) Reimbursement Payments for Abandoned Vehicle Removal, p. 91, 379
- 17.53.706 and other rules - Hazardous Waste and Underground Storage Tanks - Emergency Preparedness, Prevention, and Response at Transfer Facilities - Reporting of Suspected Releases - Reporting and Cleanup of Spills and Overfills - Reporting of Confirmed Releases, p. 25, 234
- 17.56.102 and other rules - Underground Storage Tanks - Applicability - Compliance Inspections - Petroleum UST Systems - Fee Schedule - Permit Issuance - Anti-Siphon Requirements, p. 2899, 145
- 17.74.301 and other rules - Incorporation by Reference - OSHA Preclusion - Asbestos Project Management, p. 493, 718
- 17.80.201 and other rules - Tax Certification - Pollution Control Equipment - Energy Facilities - Certification of Certain Energy Production or Development Facilities or Equipment for Property Tax Classification or Abatement - Monitoring of Compliance With Certification Criteria - Revocation of Certification, p. 2886, 233

(Board of Environmental Review)

- 17.8.102 Incorporation by Reference of Current Federal Regulations and Other Materials Into Air Quality Rules, p. 2636, 143
- 17.8.604 and other rules - Air Quality - Open Burning, p. 2880, 569
- 17.8.763 Air Quality - Revocation of Permit, p. 2878, 568
- 17.8.801 and other rules - Air Quality - Definitions - Ambient Air Increments - Major Stationary Sources - Source Impact Analysis - Source Information - Sources Impacting Federal Class I Areas - Definitions - When Air Quality Permit Required - Baseline for Determining Credit for Emissions - Air Quality Offsets, p. 799
- 17.30.201 and other rule - Water Quality - Permit Application - Degradation Authorization - Annual Permit Fees - General Permits, p. 2870, 909
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89
- 17.30.1201 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Effluent Limitations and Standards - Standards of Performance - Treatment Requirements, p. 771
- 17.36.922 and other rule - Local Variances - Variance Appeals to the Department, p. 528

- 17.38.101 and other rules - Plans for Public Water Supply or Wastewater System - Fees - Definitions - Water Supply - Chemical Treatment of Water, p. 521
- 17.38.204 Maximum Organic Chemical Contaminant Levels, p. 2639, 144

(Petroleum Tank Release Compensation Board)

- 17.58.201 and other rules - Procedural and Substantive Rules - Petroleum Tank Release Compensation, p. 1, 377
- 17.58.326 and other rules - Operation and Management of Petroleum Storage Tanks - Review and Determination of Claims for Reimbursement - Third-Party Damages, p. 720

TRANSPORTATION, Department of, Title 18

- 18.9.102 and other rules - Licensed Distributors - Special Fuel Users - Invoice Errors - Multi-Distributor Invoice Requirements, p. 2454, 2814, 2961
- 18.9.111 and other rules - Gasohol and Alcohol Blended Fuel, p. 2460, 2815

CORRECTIONS, Department of, Title 20

- I & II Day Reporting Program, p. 29, 235
- I & II Satellite-Based Monitoring Program, p. 33, 236
- 20.9.302 and other rules, Youth Who Have Been Paroled From Youth Correctional Facilities, p. 808
- 20.9.602 and other rules - Prison Rape Elimination Act - Licensure of Youth Detention Facilities, p. 183, 570
- 20.25.101 and other rules - Board of Pardons and Parole, p. 2816

JUSTICE, Department of, Title 23

(Gambling Control Division)

- 23.16.120 Loans and Other Forms of Financing, p. 2903, 146

LABOR AND INDUSTRY, Department of, Title 24

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

- I-XIII Approved Construction Techniques for Fire Mitigation, p. 980, 1966, 237, 319
- 24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195, 573
- 24.16.7506 and other rules - Collective Bargaining Proceedings Heard by the Board of Personnel Appeals, p. 1652, 2841, 47
- 24.17.103 and other rules - Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2681, 102, 747

- 27.17.127 Prevailing Wage Rates for Public Works Projects-Nonconstruction Services, p. 725
- 24.21.401 and other rules - Apprenticeship Training Programs, p. 2466, 2962
- 24.29.1401A and other rules - Implementation of Utilization and Treatment Guidelines - Medical Services Rules for Workers' Compensation Matters, p. 728
- 24.29.1432 and other rules - Workers' Compensation Medical Fee Schedules, p. 2642
- 24.29.2701 and other rules - Silicosis Benefits - Subsequent Injury Fund, p. 2476, 2967

(Board of Athletic Trainers)

- 24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Licensure of Athletic Trainers, p. 94, 576

(Board of Barbers and Cosmetologists)

- 24.101.413 and other rule - Renewal Dates - Requirements - Fees, p. 812

(Board of Chiropractors)

- 24.126.510 and other rules - Endorsement - Inactive Status and Conversion - Minimum Requirements for Impairment Evaluators - Prepaid Treatment Plans, p. 2284, 380

(Board of Medical Examiners)

- I Qualification Criteria for Evaluation and Treatment Providers, p. 1467, 2729

(Board of Nursing)

- 24.159.301 and other rules - Definitions - Fees - Nursing Education Programs - LPN Practice Permit - LPN Licensure - LPN Foreign Requirements - RN Practice Permit - RN Licensure - RN Foreign Requirements - Delegation Practices - Nondisciplinary Track - Conduct of Nurses - Program Standards - Continuing Education - Clinical Practice Settings, p. 1930, 2651

(Board of Pharmacy)

- 24.174.303 and other rules - Definitions - Examination for Licensure - Administration of Vaccines - Prescription Requirements - Internship Requirements - Preceptor Requirements - Registered Pharmacist Continuing Education - Disciplinary Action, p. 277
- 24.174.401 and other rules - Fee Schedule - Change in Address - Change of Pharmacist-in-Charge - Class IV Facility - Identification of Pharmacist-in-Charge - Wholesale Drug Distributor - Telepharmacy Operations - Dangerous Drugs - Cancer Drug Repository - Clinical Pharmacist Practitioner, p. 2041, 2968

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rules - Definitions - Licensing Fee Schedule - Application for Registration - Site Visits - Program Administration - Program Participant Protection - Definitions-Residential Programs - Renewals - Registration Fee Schedule - Implementation, p. 636

(Board of Professional Engineers and Professional Land Surveyors)

I-IV Professional Land Surveyor Scope of Practice Activities, p. 2288, 385
24.183.502 and other rule - Application Processes for Professional Engineers and Professional Land Surveyors, p. 286, 920

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Fee Schedule - CPA/LPA Designation - Licensing Examinations - Professional Conduct Rules - Profession Monitoring Rules - Renewal and Continuing Education - Complaint Procedures - Exercise of Practice Privilege in Other Jurisdictions - Profession Monitoring of Holders of Special Practice Permit - Compliance With Continuing Education for Nonresidents - Renewal and Continuing Education, p. 1836, 2574

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Application Requirements - Qualifying Education Requirements - Qualifying Experience - Inactive License or Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Continuing Education, p. 2905, 577

(Board of Realty Regulation)

24.210.667 and other rule - Continuing Real Estate Education - Continuing Property Management Education, p. 815

(Board of Sanitarians)

24.216.402 and other rules - Fee Schedule - Applications - Minimum Licensure Standards - Examination - Continuing Education - Sanitarian-in-Training - Inactive Status Licensure, p. 364, 749

(Board of Social Work Examiners and Professional Counselors)

I-XII Qualification of Social Workers and Professional Counselors to Perform Psychological Testing, Evaluation, and Assessment, p. 533
24.101.413 Renewal Dates - Requirements - Licensure - Regulation of Marriage and Family Therapists, p. 550
24.219.301 and other rules - Definitions - Application Procedures - Supervisor Qualifications - Parenting Plan Evaluations, p. 540

(Board of Veterinary Medicine)

24.225.401 and other rules - Fees - Examination Application Requirements - Examination for Licensure - Board-Approved Training Program Criteria

- Euthanasia Technician Test Criteria - Certified Euthanasia Agency Inspection Criteria, p. 371

LIVESTOCK, Department of, Title 32

- 32.3.108 and other rules - Game Farm Regulations - Deputy State Veterinarians, p. 2492, 2974
- 32.3.220 and other rules - Semen Shipped Into Montana - Brucellosis Definitions - Designated Surveillance Area - Penalties, p. 2485, 2797, 147
- 32.6.712 Food Safety - Inspection Service - Meat - Poultry, p. 2483, 2973
- 32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 289

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Land Commissioners)

- 36.11.402 and other rules - Forest Management Rules for Implementing Conservation Easements - Habitat Conservation Plans, p. 2687, 320

(Board of Oil and Gas Conservation)

- I-V Oil and Gas Well Stimulation, p. 819

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-VI Medicaid for Workers with Disabilities, p. 1271, 2733
- I-XIII Montana Medicaid Provider Incentive Program for Electronic Healthcare Records, p. 824
- 37.27.128 and other rules - Emergency Care - Inpatient and Transitional Living Chemical Dependency Programs, p. 2053, 2975
- 37.34.206 and other rules - Developmental Disabilities Eligibility Rules for Medicaid Only, p. 312
- 37.40.307 and other rules - Nursing Facility Reimbursement, p. 835
- 37.40.705 and other rules - Home Health Care - Personal Assistance Service, p. 858
- 37.40.1421 Medicaid Provider Fee Schedules - Home and Community-Based Services (HCBS) for the Elderly and People With Physical Disabilities, p. 896
- 37.50.901 Interstate Compact on the Placement of Children, p. 2297, 106
- 37.70.115 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2700, 108
- 37.78.102 and other rule - Temporary Assistance for Needy Families (TANF), p. 2515, 107
- 37.78.102 Temporary Assistance for Needy Families (TANF), p. 561
- 37.79.102 and other rules - Healthy Montana Kids, p. 2521, 2845, 70
- 37.79.102 Healthy Montana Kids Definition of Federal Poverty Level, p. 871
- 37.80.101 and other rule - Child Care Assistance, p. 2171, 2661, 2743

- 37.80.101 and other rules - Child Care Assistance, p. 2925, 323
- 37.81.304 and other rules - Big Sky RX Benefit - Medicaid Dental Services - Outpatient Drugs - Prescriptions for Durable Medical Equipment - Prosthetics and Orthotics (DMEPOS) - Early and Periodic Screening - Diagnostic and Treatment (EPSDT) - Qualified Medicare Beneficiaries Chiropractic Services, p. 2528, 2986
- 37.85.212 and other rule - Resource Based Relative Value Scale (RBRVS) - Reimbursement for Physician Administered Drugs, p. 865
- 37.86.805 and other rules - Medicaid Acute Services Reimbursement - Early and Periodic Screening - Diagnostic and Treatment (EPSDT), p. 851
- 37.86.2206 and other rules - Provider Requirements - Reimbursement for Therapeutic Group Homes (TGH) - Therapeutic Family Care (TFC) - Therapeutic Foster Care (TFOC), p. 2085, 49
- 37.86.2224 and other rules - Children's Mental Health Bureau Rate Reduction, p. 874
- 37.86.2801 and other rules - Medicaid Inpatient Hospital Services, p. 884
- 37.86.3515 Case Management Services for Adults With Severe Disabling Mental Illness - Reimbursement, p. 2807, 449
- 37.86.3515 and other rules - Mental Health Services for Adults, p. 891
- 37.86.3607 Rates of Reimbursement for the Provision by Provider Entities of Medicaid Funded Targeted Case Management Services to Persons With Developmental Disabilities, p. 881
- 37.87.903 and other rules - Psychiatric Residential Treatment Facility Reimbursement, p. 293
- 37.87.1303 and other rules - Home and Community-Based Services for Youth With Serious Emotional Disturbance (Waiver), p. 841
- 37.87.1331 Home and Community-based Services (HCBS) for Youth With Serious Emotional Disturbance (SED), p. 2512, 2983
- 37.89.103 and other rules - Provider Reimbursement Under the Mental Health Services Plan, p. 2799, 322
- 37.97.101 and other rules - Youth Care Facility (YCF) Licensure, p. 2108, 138, 387
- 37.104.101 and other rule - Emergency Medical Services (EMS), p. 2915
- 37.106.1130 and other rules - Licensing Requirements for Outpatient Facilities for Primary Care, p. 2690, 578
- 37.108.507 Components of Quality Assessment Activities, p. 36, 333

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Motor Carrier Authority Recognition, p. 2179, 2989
- 38.5.2202 and other rule - Pipeline Safety, p. 2537, 2992

REVENUE, Department of, Title 42

- I-III Functions and Operation of the Office of Taxpayer Assistance, p. 2309, 2759

- I-IV Telecommunication Services for Corporation License Taxes, p. 1968, 2540, 582
- I-XI Rental Vehicle Sales and Use Tax, p. 2200, 2755
- 42.2.325 Confidentiality of Tax Records, p. 1398, 2744
- 42.11.104 and other rules - Liquor Vendors, p. 2563, 451
- 42.12.206 and other rules - Liquor License Transfers, Suspension, and Revocation, p. 2303, 165
- 42.14.101 and other rules - Lodging Facility Use Taxes - Sales Taxes, p. 2184, 2751
- 42.14.101 and other rule - Lodging Facility Use Tax, p. 44, 461
- 42.14.1002 and other rule - Rental Vehicle Tax, p. 41, 460
- 42.15.315 and other rules - Dependents Credits and Refunds, p. 2559, 3026
- 42.15.802 Family Education Savings Program, p. 2181, 2748
- 42.19.401 and other rules - Property Tax Assistance Programs for the Disabled Veterans and Elderly Homeowners, p. 2546, 336
- 42.20.107 Valuation Methods for Commercial Properties, p. 2544, 334
- 42.21.113 and other rules - Property Taxes - Trend Tables for Valuing Property, p. 2314, 3022
- 42.21.140 and other rules - Property Taxes, p. 2554, 345
- 42.22.101 and other rules - Centrally Assessed Property, p. 1977, 2542, 2993
- 42.25.1801 and other rules - Oil and Gas Taxes, p. 1872, 2580
- 42.31.1002 Hospital Utilization Fee, p. 2301, 2847

SECRETARY OF STATE, Office of, Title 44

(Commissioner of Political Practices)

- 44.12.204 Payment Threshold - Inflation Adjustment for Lobbyists, p. 2726