

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 10.57.412 and 10.58.527 ) PROPOSED AMENDMENT  
relating to areas of specialized )  
competency )

TO: All Concerned Persons

1. On March 13, 2012 at 1:30 p.m. the Board of Public Education will hold a public hearing in the Superintendent's conference room at 1227 11th Avenue, Helena Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Public Education 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 February 28, 2012, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) and (2) remain the same.

(3) A license holder may qualify for a statement of specialized competency by the completion of a minimum of 20 semester college credit hours or equivalency in a specific academic area as approved by the Board of Public Education. Approved areas of permissive specialized competency are: early childhood education, gifted and talented education, technology in education, ~~and~~ mentor teacher, and dance.

(4) through (7) remain the same.

AUTH: 20-4-102, MCA  
IMP: 20-4-106, 20-4-108, MCA

10.58.527 AREAS OF PERMISSIVE SPECIAL COMPETENCY (1) through (7) remain the same.

(8) The dance permissive specialized competency program requires that successful candidates demonstrate:

(a) knowledge of basic dance vocabulary and major characteristics of dance styles and techniques, including:

(i) technical proficiency in one dance style and exposure to others; and

(ii) clear movement demonstrations and auditory prompts, in relation to music and counts;

- (b) knowledge of a variety of choreographic principles and processes, including:
  - (i) fluency with music and emerging technologies as tools of expression;
  - (ii) direction/supervision of a dance production with artistic integrity; and
  - (iii) analysis and evaluation of dance works;
- (c) knowledge of dance as a reflection of both historical periods and cultural diversity, including Montana American Indian cultures; and
- (d) knowledge and implementation of research-based teaching strategies and skills for dance, including:
  - (i) developing curriculum, planning instructional units for K-12 students, and assessing student progress in dance;
  - (ii) implementing classroom procedures that promote health, safety, and injury prevention;
  - (iii) integrating dance into other content areas; and
  - (iv) teaching dance as a discrete art form.

AUTH: 20-2-114, MCA

IMP: 20-1-501, 20-2-121, MCA

4. REASON: Dance teachers are currently being hired in K-12 Montana schools. Although Montana has Arts Standards that include dance, there is no teacher competency in place. The proposed rules would permit individuals with a minimum of 20 semester college credits in dance to request a statement of specialized competency to be added to their educator licenses.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail [pdonovan@mt.gov](mailto:pdonovan@mt.gov) and must be received no later than 5:00 p.m., March 13, 2012.

6. Peter Donovan, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chair  
Board of Public Education

Certified to the Secretary of State January 30, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 10.57.217, 10.57.601 through ) PROPOSED AMENDMENT  
10.57.609, and 10.57.611 relating to )  
educator/specialist discipline )

TO: All Concerned Persons

1. On March 13, 2012 at 1:30 p.m. the Board of Public Education will hold a public hearing in the Superintendent's conference room at 1227 11th Avenue, Helena Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Public Education 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 February 28, 2012, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.57.217 APPEAL PROCESS FOR RENEWAL ACTIVITY (1) Decisions of the superintendent on matters of renewal unit activity or provider status may be appealed to the Board of Public Education pursuant to ARM 10.57.603.

AUTH: 20-4-102, MCA  
IMP: 20-4-108, MCA

Reason: Although denial of renewal unit activity may be appealed, there is no process for the appeal. The rule amendment is necessary to provide a specific procedure for the Board of Public Education to address such an appeal.

10.57.601 REQUEST FOR DISCIPLINE AGAINST THE LICENSE OF AN EDUCATOR/SPECIALIST TEACHER, SPECIALIST, OR ADMINISTRATOR: PRELIMINARY ACTION (1) Pursuant to 20-4-110(2), MCA, requests to issue a letter of reprimand or to suspend or revoke ~~a teacher, specialist or administrator~~ an educator/specialist license shall be brought before the Board of Public Education by only:

(a) an official action of the board of trustees of a local district for any ~~teacher, specialist or administrator~~ licensed educator/specialist currently employed by that district or under contract or otherwise employed by that district at any time during the 12 months prior to the receipt by the Board of Public Education of the request to

issue a letter of reprimand or to suspend or revoke; or

(b) the Superintendent of Public Instruction.

(2) The Superintendent of Public Instruction may initiate a request to the Board of Public Education for discipline against an educator/specialist's license within 12 months from the date of receiving direct notification from a local school district board of trustees or from any other credible source.

(3) Requests shall specify whether a letter of reprimand, revocation, or suspension is sought and shall include:

(a) the specific charge(s) against the ~~teacher, specialist or administrator~~ educator/specialist;

(b) through (d) remain the same.

AUTH: 20-4-102, MCA

IMP: 20-4-110, MCA

Reason: The rule amendment is necessary to make terminology consistent throughout the rules and to address the timeline for asking for disciplinary action for educator/specialist misconduct. The superintendent typically becomes aware of teacher misconduct later than a local district becomes aware. This clarification is necessary to ensure the superintendent has reasonable time to investigate and assess the situation, and not be expected to act until the superintendent has actual, credible notice of the misconduct.

10.57.601A DEFINITION OF "IMMORAL CONDUCT" (1) "Immoral conduct" related to the teaching profession, under 20-4-110(1)(f), MCA, includes, but is not limited to:

(a) sexual contact, as defined in 45-2-101, MCA, or sexual intercourse as defined in 45-2-101, MCA, between a ~~teacher, specialist, or administrator~~ an educator/specialist and a person the ~~teacher, specialist, or administrator~~ educator/specialist knows or reasonably should know is a student at a public or private elementary or secondary school;

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

(iv) 45-5-505, MCA, (deviate sexual conduct), if the conduct either was nonconsensual or involved a person the ~~teacher, specialist or administrator~~ educator/specialist knows or reasonably should know is a student at a public or private elementary or secondary school;

(v) through (e)(iii) remain the same.

(iv) inaccurate employment history;

(f) significant misuse of technology or electronic communication with a person a licensed educator/specialist knows or reasonably should know is a student at a public or private elementary or secondary school, including but not limited to misuse of computers, cellular telephones, or other electronic devices; or

(g) intentionally falsifying or deliberately misrepresenting information regarding standardized assessment of students, including but not limited to providing or changing test answers or using inappropriate testing accommodations or modifications.



AUTH: 20-4-102, MCA  
IMP: 20-4-110, MCA

Reason: The amendment is necessary to provide clarification and notice to licensed educators/specialists regarding misconduct which could result in licensing action by the Board of Public Education.

10.57.601B INVESTIGATION REVIEW (1) Upon receipt of a request made pursuant to 20-4-110(2), MCA and ARM 10.57.601, and for the purpose of complying with 20-4-110(5), MCA, the Board of Public Education shall ~~implement an investigation~~ review the allegations to determine whether or not a substantial reason exists to hold a hearing for the issuance of a letter of reprimand or the suspension or revocation of the ~~teacher, specialist or administrator~~ educator/specialist license. This ~~investigation~~ review shall include notifying the affected ~~teacher, specialist or administrator~~ licensed educator/specialist of the charges against him/her the educator by certified mail and allowing him/her the educator/specialist ten days to respond to those charges. After receiving a response, the board may request further information to ensure the preliminary ~~investigation~~ review properly reflects the facts and position of each party.

AUTH: 20-4-102, MCA  
IMP: 20-4-110, MCA

Reason: The amendment is necessary to accurately define and describe the action taken by the Board of Public Education when a request for licensing action is received, and prior to proceeding with a hearing. The board reviews requests for disciplinary action against an educator/specialist license to ensure there is enough evidence to support allegations of misconduct over which they have jurisdiction. They do not conduct an independent investigation.

10.57.602 NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO HOLD A HEARING

(1) On the basis of the preliminary ~~investigation~~ review conducted pursuant to ARM 10.57.601B, the Board of Public Education shall determine whether or not a substantial reason exists to hold a hearing to issue a letter of reprimand or to suspend or revoke the ~~teacher, specialist or administrator~~ educator/specialist license.

(a) remains the same.

(b) If the board determines that there is substantial reason to hold such a hearing, the board shall provide notice of the pending action to the ~~teacher, specialist or administrator~~ licensed educator/specialist, by certified mail not less than 30 days prior to the date of the hearing. Such notice shall include:

(i) through (iv) remain the same.

(v) a designation of who will hear the allegation; and

(vi) remains the same.

(c) The notice shall advise the ~~teacher, specialist or administrator~~ licensed educator/specialist that ~~he/she~~ the educator/specialist has the right to contest the

proposed action of the board, and that ~~he/she~~ the educator/specialist may do so by appearing at the hearing either personally or through counsel, or by requesting the board to consider the matter on the basis of the available evidence without an appearance by the ~~teacher, specialist or administrator~~ educator/specialist.

(d) The board shall enclose with the notice an election form on which the ~~teacher, specialist or administrator~~ educator/specialist shall be asked to indicate whether ~~he/she~~ the educator/specialist intends to appear at the hearing and contest the board's proposed action, contest the board's proposed action without appearing at the hearing, or accept the proposed letter of reprimand, suspension, or revocation without contesting it. The notice shall require the ~~teacher, specialist or administrator~~ licensed educator/specialist to return the election form within 20 days of the date on which the notice was mailed, and shall inform the ~~teacher, specialist or administrator~~ educator/specialist that failure to return the form in a timely manner shall result in a letter of reprimand or the suspension or revocation of the license by default.

(e) If the ~~teacher, specialist or administrator~~ educator/specialist does not return the completed election form within 20 days or elects to accept the proposed letter of reprimand, suspension, or revocation without contesting it, the board, at its next meeting, shall suspend or revoke the ~~teacher, specialist or administrator~~ educator/specialist license or shall direct the chair to issue a letter of reprimand.

(f) If the ~~teacher, specialist or administrator~~ licensed educator/specialist elects to contest the proposed letter of reprimand, suspension, or revocation and complies with (1)(d), the board shall conduct a hearing.

(2) If resolution is reached prior to the hearing, the parties may report such resolution to the board and ask for dismissal of the matter. Dismissal of the matter by the board based on mutual agreement of the parties must be granted in writing, but need not contain findings of fact or conclusions of law.

AUTH: 20-4-102, MCA

IMP: 20-4-110, MCA

Reason: The amendment is necessary for consistent terminology through the rules and to clarify procedure during an appeal before the Board of Public Education.

10.57.603 HEARING IN CONTESTED CASES (1) through (1)(c) remain the same.

(2) At the time and place set in the notice to the ~~teacher, specialist or administrator~~ educator/specialist, the chairperson of the Board of Public Education, the designated committee, or an appointed hearing examiner shall conduct the hearing in accordance with ~~Rules 9~~ ARM 1.3.211 through ~~24~~ 1.3.224 of the Attorney General's model rules for hearing contested cases, as found in the Administrative Rules of Montana.

(3) In the case of an appeal made pursuant to ARM 10.57.217 regarding a denial of renewal units or provider status, written notice of the appeal must be made to the board within 30 days of the denial by the Superintendent of Public Instruction. For this type of appeal, the board may follow informal proceedings pursuant to 2-4-604, MCA, and the final board decision may be issued by letter from the chair of the board to the appellant.

AUTH: 20-4-102, MCA  
IMP: 20-4-110, MCA

Reason: The amendment is necessary to ensure consistency of terminology throughout the rules, and to provide procedure for an appeal of issues related to denial of renewal units. The numbering for the Attorney General's model rules was modified in 2008.

10.57.604 POST HEARING PROCEDURE (1) ~~After~~ Either immediately following the hearing, or within 60 days of the conclusion of the hearing regarding an educator/specialist license, the board shall, as provided herein:

(a) make a final decision to:

(i) dismiss the matter;

(ii) issue a letter of reprimand;

(iii) enter into a stipulated agreement; or

(iv) suspend or revoke the license for a specific period of time, up to permanent revocation of the educator/specialist license; and

~~(b) adopt consistent with its decision, issue findings of fact, conclusions of law, and an order issuing a letter of reprimand or suspending or revoking for suspension or revocation of the teacher, specialist or administrator educator/specialist license; or~~

~~(b) (c) dismiss the request for letter of reprimand, revocation, or suspension.~~

(2) Consistent with the board's decision, the board chair or designee shall sign the stipulated agreement, the letter of reprimand, or in the case of a suspension or revocation, the final findings of fact, conclusions of law, and order.

(3) The board shall enter record its decision ~~or~~ in its minutes and shall serve the letter of reprimand, or a copy of the findings of fact, conclusions of law, and order by certified mail on the ~~teacher, specialist or administrator~~ educator/specialist and on any other involved party within 30 days of its decision.

(4) Pursuant to 2-4-623, MCA, decisions of the Board of Public Education shall be available for public inspection. Confidential information such as names of any minors, the educator/specialist's address, telephone number, or medical records may be redacted from the posted final decision.

AUTH: 20-2-121, 20-4-102, MCA  
IMP: 20-4-102, 20-4-110, MCA

Reason: The amendments are necessary to ensure consistent terminology, provide clarification to appellants and board members on Board of Public Education hearing procedures, the parameters of authority of the board regarding their decision, and to ensure compliance with statute.

10.57.605 SURRENDER OF A TEACHER, SPECIALIST OR ADMINISTRATOR AN EDUCATOR/SPECIALIST LICENSE (1) A teacher, specialist or administrator licensed educator/specialist may surrender his/her that educator/specialist's license to the Superintendent of Public Instruction. The

Superintendent of Public Instruction, upon review, may accept or reject the license surrender.

(2) remains the same.

(3) The Superintendent of Public Instruction may investigate further following the surrender of a ~~teacher, specialist or administrator's~~ an educator/specialist's license and shall maintain a record of the circumstances surrounding the surrender of any license. The contents of that record shall be available for review by the licensing authority from any other jurisdiction in which the ~~teacher, specialist or administrator~~ educator/specialist seeks licensure.

(4) Surrender of a license is permanent and irrevocable, unless specified otherwise in the document of surrender. Surrender of a license may prejudice the ability of ~~teacher, specialist or administrator~~ an educator/specialist to successfully seek relicensure in Montana in the same or any other class of license or educational endorsement.

(5) remains the same.

AUTH: 20-4-114, MCA

IMP: 20-2-121, MCA

Reason: The amendments are necessary to ensure consistent terminology and clarify the legal significance of a surrender of a license.

10.57.606 REPORTING OF THE SURRENDER, DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE (1) remains the same.

(2) Upon receipt of a license surrendered pursuant to ARM 10.57.605, the Superintendent of Public Instruction shall report to the NASDTEC clearinghouse that the superintendent accepted the surrender of a license held by the ~~teacher, specialist or administrator~~ educator/specialist.

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

(5) The Superintendent of Public Instruction shall report to the NASDTEC clearinghouse the suspension or revocation of a license held by a ~~teacher, specialist or administrator~~ an educator/specialist licensed in Montana.

(6) The Superintendent of Public Instruction shall maintain, pursuant to the superintendent's record retention policies, a record of the circumstances surrounding the surrender, denial, revocation, suspension, or reprimand involving a ~~teacher, specialist or administrator's~~ an educator/specialist's license. The contents of that record shall be available for review by the certifying authority from any other jurisdiction in which the ~~teacher, specialist or administrator~~ educator/specialist seeks licensure.

AUTH: 20-4-102, MCA

IMP: 20-4-110, MCA

Reason: The amendments are necessary to ensure consistent terminology.

10.57.607 APPEAL FROM DENIAL OF A TEACHER, SPECIALIST OR ADMINISTRATOR AN EDUCATOR/SPECIALIST LICENSE (1) ~~Appeal~~ Written

notice of appeal from the decision of the Superintendent of Public Instruction to deny issuance or renewal of ~~a teacher, specialist or administrator~~ an educator/specialist license shall be brought before must be submitted to the Board of Public Education by written request from the applicant to the board received within 30 days of the notice to deny. Written notice of appeal must be received by the board no later than 30 days from the date of the letter of denial sent from the office of the Superintendent of Public Instruction.

(2) through (2)(c) remain the same.

AUTH: 20-2-121, 20-4-102, MCA

IMP: 20-4-102, 20-4-110, MCA

Reason: The amendments are necessary to clarify notice requirements, which could be disputed under the existing language, and to ensure consistency in terminology.

10.57.608 CONSIDERATIONS GOVERNING ACCEPTANCE OF APPEAL IN CASES ARISING UNDER 20-4-104, MCA (1) The Board of Public Education shall not consider an appeal from a denial by the Superintendent of Public Instruction based on 20-4-104, MCA, if the appellant has made an appeal to the board from the denial of ~~a teacher, specialist or administrator~~ an educator/specialist license within three years prior to the application which is at issue, and that appeal was denied by the board following a hearing, unless at the time of notice of appeal pursuant to ARM 10.57.607 the appellant can show demonstrates substantial changes in circumstances relating to the appellant's eligibility for a license.

(2) The board shall not consider an appeal by an educator/specialist regarding a suspended, revoked, or surrendered license during the period of suspension, revocation, or surrender.

AUTH: 20-4-102, MCA

IMP: 20-4-110, MCA

Reason: The amendments are necessary to ensure consistent terminology and to clarify the Board of Public Education's authority to hear an appeal related to a suspended, revoked, or surrendered license.

10.57.609 HEARING ON APPEAL (1) remains the same.

(2) On appeal the burden is on the appellant to establish by a preponderance of the evidence that the appellant satisfies the statutory criteria for issuance of a ~~teacher, specialist or administrator~~ an educator/specialist license. In the case of a request for letter of reprimand, suspension, or revocation of an educator/specialist license, the burden is on the requestor to establish by a preponderance of the evidence that the request for board action should be granted.

~~(3) In cases in which the superintendent of public instruction has denied issuance or renewal of a teacher, specialist or administrator license under 20-4-104, MCA, the board of public education may require the appellant to undergo a mental or physical examination by a physician or health professional designated by the board. In cases in which the superintendent of public instruction has denied~~

~~issuance of a new license, the examination shall be at the appellant's expense. In cases in which the superintendent of public instruction has denied issuance of a renewal license, the examination shall be at the superintendent of public instruction's expense. The report of examination shall be admissible evidence in the appeal proceedings before the board, subject to the appellant's right to cross-examine the maker of the report.~~

AUTH: 20-4-102, MCA  
IMP: 20-4-110, MCA

Reason: The amendment is necessary to ensure consistency in terminology, to clarify the parties' burden of proof, and to remove unnecessary/problematic language related to payment responsibility for evaluations, which is case specific and should not be assigned by rule.

10.57.611 SUBSTANTIAL AND MATERIAL NONPERFORMANCE

(1) through (2)(c) remain the same.

(3) Licensed staff members violating 20-4-110(1)(g), MCA shall may be penalized according to the following guidelines:

(a) through (c) remain the same.

(4) In ~~considering~~ determining the severity of the sanction, if any, ~~to impose for a violation,~~ the board will consider the following:

(a) any direct, harmful impact on students caused by the breach of contract;

(b) the length of prior notice, if any, provided to the employing board by the licensed staff member; and

~~(b) the arrangements made and resources provided by the licensed staff member to ensure continuing instruction to pupils;~~

~~(c) the difficulties faced by the employing district in recruiting a suitable replacement;~~

~~(d) (c) the impact of the licensed staff member's breach of contract on the district's compliance with accreditation standards; and~~

~~(e) other hardships suffered by the employing district as a result of the licensed staff member's breach of contract.~~

(5) remains the same.

AUTH: 20-2-114, 20-2-121, MCA  
IMP: 20-2-121, 20-4-110, MCA

Reason: Amendment is necessary to clarify when a sanction is appropriate, making potential harm to students primary to the board's decision to sanction.

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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., March 13, 2012.

5. Peter Donovan, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

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

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

/s/ Peter Donovan

Peter Donovan

Rule Reviewer

/s/ Patty Myers

Patty Myers, Chair

Board of Public Education

Certified to the Secretary of State January 30, 2012.

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

|                                      |   |                              |
|--------------------------------------|---|------------------------------|
| In the matter of the adoption of NEW | ) | NOTICE OF PROPOSED ADOPTION, |
| RULE I, amendment of ARM             | ) | AMENDMENT, AND REPEAL        |
| 12.11.2308, 12.11.3201, and          | ) |                              |
| 12.11.3215, and repeal of ARM        | ) | NO PUBLIC HEARING            |
| 12.11.1001, 12.11.2401, and          | ) | CONTEMPLATED                 |
| 12.11.3601 regarding no wake zones   | ) |                              |
| surrounding commercial marinas       | ) |                              |

TO: All Concerned Persons

1. On April 26, 2012, the Fish, Wildlife and Parks Commission (commission) proposes to adopt, amend, and repeal the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than February 23, 2012, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail cfurthmyre@mt.gov.

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

NEW RULE I NO WAKE ZONES SURROUNDING COMMERCIAL MARINAS (1) Vessels are limited to a controlled no wake speed as defined in ARM 12.11.101(1) surrounding commercial marinas as buoyed.

(2) A commercial marina may not establish a no wake zone beyond 300 feet of the marina docks without prior approval from the department.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

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

12.11.2308 HEBGEN LAKE (1) Hebgen Lake is located in Gallatin County.

(2) Hebgen Lake is limited to a controlled no wake speed as defined in ARM 12.11.101 in the following areas:

(a) Rainbow Point Bay no wake or as buoyed; and

(b) Loneshomehurst Campground within 200 feet of the shoreline or as buoyed;

~~(c) Kirkwood Resort Marina and residential area and private marina within 200 feet of the shoreline or as buoyed;~~

~~(d) Happy Hour Marina within 200 feet of the docks or as buoyed;~~



- and
- ~~(e) Yellowstone Holiday Marina within 200 feet of the docks or as buoyed;~~
  - ~~(f) Madison Arm Resort within 200 feet of the docks or as buoyed.~~

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

12.11.3201 CANYON FERRY RESERVOIR - LEWIS AND CLARK COUNTY

(1) In Lewis and Clark County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:

- ~~(a) Yacht Basin;~~
- ~~(b) (a) Cave Bay;~~
- ~~(c) (b) Little Hellgate;~~
- ~~(d) (c) Magpie Bay;~~
- ~~(e) (d) Carp Bay; and~~
- ~~(f) (e) Canyon Ferry Dam to Riverside boatramp.~~

~~(2) In Broadwater County, Canyon Ferry Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), within 300 feet of docks or as buoyed in the following areas:~~

- ~~(a) White Earth; and~~
  - ~~(b) Goose Bay.~~
- (3) remains the same and renumbered (2).

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

12.11.3215 HOLTER LAKE (1) Holter Lake is located in Lewis and Clark County.

(2) Holter Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

- ~~(a) Gates of Mountains marina on (Upper Holter Lake) within 300 feet of docks or as buoyed;~~
  - ~~(b) through (d) remain the same and renumbered (a) through (c).~~
  - ~~(e) (d) Departure Point; and~~
  - ~~(f) (e) Merriweather Camp; and~~
  - ~~(g) Holter Lake lodge docks.~~
- (3) remains the same.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

5. The commission proposes to repeal the following rules:

12.11.1001 CANYON FERRY RESERVOIR - BROADWATER COUNTY

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

12.11.2401 FORT PECK RESERVOIR

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

12.11.3601 FORT PECK RESERVOIR

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

Reasonable Necessity: With the possibility of future no wake areas being requested for other established or new marinas for the commission to consider individually the commission is proposing adoption of one statewide rule regarding establishing no wake zones surrounding commercial marinas. Marinas have high boat traffic and have many boats docked so these areas regardless of location are susceptible to accidents and boat damage due to wakes. Currently over half of the commercial marinas have a no wake restriction and this proposal will make the rules consistent throughout the state.

The commission is proposing amendment and repeal of rules that list individual commercial marina restrictions by body of water. A statewide rule would eliminate the need for individual marina restrictions to be listed in separate rules.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Ron Jendro, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-7894; e-mail [rjendro@mt.gov](mailto:rjendro@mt.gov), and must be received no later than March 9, 2012.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Coleen Furthmyre at the above address no later than 5:00 p.m., March 9, 2012.

8. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 people based on the fact that every Montana citizen has access to Montana's lakes.

9. 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.

10. 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/ John F. Lynch

John F. Lynch  
Rule Reviewer

Certified to the Secretary of State January 30, 2012

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

|   |                             |
|---|-----------------------------|
| In the matter of the amendment of ARM )     | NOTICE OF PUBLIC HEARING ON |
| 17.40.201, 17.40.202, 17.40.203, )          | PROPOSED AMENDMENT          |
| 17.40.206, and 17.40.208 pertaining to )    |                             |
| definitions, classification of systems, )   | (WATER TREATMENT SYSTEMS    |
| certification of operators, examinations, ) | AND OPERATORS)              |
| certified operator in charge of system-- )  |                             |
| exceptions )                                |                             |

TO: All Concerned Persons

1. On March 1, 2012, at 1:30 p.m., the Department of Environmental Quality will hold a public hearing in Room 111, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

17.40.201 DEFINITIONS In addition to the terms defined in 37-42-102, MCA:

(1) through (4) remain the same.

(5) "On-site wastewater treatment system" means a sewage system using a mechanical or septic tank based treatment process where the treated waste is disposed of using a soil disposal system.

(5) through (8) remain the same, but are renumbered (6) through (9).

~~(9)~~ (10) "Temporary certificate" means a certificate that is issued to:

~~(a) an applicant approved by the department to be an operator in responsible charge of a specified system until the date of the next examination; or~~

~~(b) an operator in training until the person has met the experience requirements in ARM 17.40.208~~ a department-approved applicant, who does not meet the full certification requirements, to be an operator in responsible charge of a specified system.

(10) and (11) remain the same, but are renumbered (11) and (12).

AUTH: 37-42-202, MCA

IMP: 37-42-202, MCA

REASON: The proposed addition of (5) defines the term "on-site wastewater treatment system," as used in these rules. The proposed addition also ensures that on-site wastewater treatment systems are identified and therefore included under ARM 17.40.208 as a system that requires a certified operator. When the certified operator program originated, on-site wastewater systems were very simple. The general design included a septic tank and a drainfield. Because of their simplicity, they were not required to have a certified operator. Over time, some on-site wastewater systems have become much more complex in their treatment of wastewater and now require advanced knowledge of those processes for proper operation, maintenance, and reporting.

The proposed amendments to the definition of "temporary certificate" in existing (9) (renumbered (10) in this notice) would clarify the distinction between a temporary certificate and a fully certified operator. The proposed amendments are necessary to clarify that a person who does not meet the fully certified operator requirements may be approved by the department to be the person in responsible charge of a public water or wastewater treatment system.

17.40.202 CLASSIFICATION OF SYSTEMS (1) All water supply systems and wastewater systems are classified according to population served ~~and~~ or type of treatment as shown below:

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

(c) Wastewater treatment systems:

(i) ~~Class 1--conventional, high rate, or biological nutrient removal activated sludge systems or any treatment system with mechanical tertiary (advanced) treatment processes~~ secondary and advanced (tertiary) treatment provided by conventional activated sludge plants, biological nutrient removal plants, ammonia conversion processes, or other tertiary processes such as effluent filtration and membrane bioreactor systems;

(ii) ~~Class 2--treatment such as extended aeration, oxidation ditches, trickling filters, package plants, sequencing batch reactors, or bio-disc treatment systems~~ secondary treatment provided by extended aeration activated sludge plants such as oxidation ditches and package plants, fixed-growth trickling filter and bio-disc plants, or sequencing batch reactors;

(iii) Class 3--secondary treatment provided by aerated lagoons;

(iv) Class 4--lagoons not utilizing artificial aeration.

(d) Industrial wastewater treatment systems:

(i) ~~Class 1--physical-chemical treatment facilities for precipitation and settling and/or biological treatment plants treating more than 1.0 mgd~~ biological or physical-chemical treatment facility treating more than 1.0 mgd, including, but not limited to, the following:

(A) air flotation;

(B) air stripping;

(C) reverse osmosis;

(D) electrochemical treatment;

(E) activated sludge;

(F) anaerobic digestion;

(G) aerobic digestion;

- (H) nutrient removal systems;
- (I) tertiary treatment; or
- (J) chemical clarification;
- (ii) Class 2--biological treatment plants treating less than 1.0 mgd biological treatment facilities treating 1.0 mgd or less, including, but not limited to, the following:
  - (A) clarification;
  - (B) filtration;
  - (C) constructed wetlands;
  - (D) carbon adsorption;
  - (E) ion exchange;
  - (F) disinfection;
  - (G) trickling filters;
  - (H) bio-disc systems;
  - (I) sequencing batch reactors;
  - (J) biological sand filters;
  - (K) membrane filtration; or
  - (L) advanced on-site treatment and disposal systems described under certification class (e)(ii) requirements;
- (iii) Class 3--treatment facilities primarily for oil removal industrial treatment facilities, including, but not limited to, the following:
  - (A) oil-water separation;
  - (B) grinding or comminutors;
  - (C) land surface disposal;
  - (D) neutralization (pH adjustment);
  - (E) aerated lagoons;
  - (F) on-site septic tank treatment systems with pressure dosed drainfields;
  - (G) siphon dosed drainfields; or
  - (H) elevated sand mounds;
- (iv) Class 4--ponding facilities for removal of sediment which do not utilize chemical treatment industrial treatment facilities, including, but not limited to, the following:
  - (A) detention ponds;
  - (B) sedimentation ponds;
  - (C) stabilization ponds;
  - (D) lagoons without mechanical mixing or aeration;
  - (E) septic systems treating the discharge from drinking water treatment systems; or
  - (F) on-site treatment using standard septic tanks and gravity drainfields.
- (e) On-site systems:
  - (i) No class 1;
  - (ii) Class 2--package biological wastewater treatment systems, which are public sewage systems and are regulated with a MGWPCS discharge permit, including, but not limited to, the following:
    - (A) conventional activated sludge;
    - (B) sequencing batch reactor;
    - (C) fixed film; and

(D) extended aeration activated sludge systems;

(iii) Class 3--treatment systems, which are public sewage systems and are regulated with a MGWPCS discharge permit, including, but not limited to, the following:

(A) recirculating media trickling filters;

(B) intermittent sand filters;

(C) recirculating sand filters;

(D) aerobic wastewater treatment units;

(E) chemical nutrient reduction systems;

(F) alternate advanced treatment systems; and

(G) experimental systems;

(iv) Class 4--treatment with soil absorption systems, which are public sewage systems and are regulated with a MGWPCS discharge permit, including, but not limited to:

(A) standard absorption trenches;

(B) shallow capped absorption trenches;

(C) deep absorption trenches;

(D) sand-lined absorption trenches;

(E) gravelless trenches and other absorption methods;

(F) elevated sand mounds;

(G) evapotranspiration absorption and evapotranspiration systems;

(H) subsurface drip;

(I) gray water irrigation systems;

(J) absorption beds; and

(K) experimental systems.

(2) and (3) remain the same.

AUTH: 37-42-202, MCA

IMP: 37-42-104, 37-42-304, 37-42-306, MCA

**REASON:** The proposed amendments to the classifications would clarify the level of certification required for various treatment types. The proposed amendments are necessary to remove generalizations in the class definitions and to replace them with specific types of treatment. The proposed amendments will help wastewater treatment systems determine the class of certification that their system requires.

The proposed addition of (e), which addresses on-site systems, would only apply to wastewater systems meeting the public definition and operating under a MGWPCS discharge permit. Public systems with a design capacity to discharge 5000 or more gallons per day to ground water must have a MGWPCS discharge permit. In order to keep the time requirement for full certification under this proposed new rule consistent with the time requirements for other certified wastewater operators, the highest level of certification for the proposed new on-site classification is Class 2.

17.40.203 CERTIFICATION OF OPERATORS (1) through (3)(d) remain the same.

(4) The department may, upon receipt and approval of a fully completed application and payment of an appropriate fee as determined under ARM 17.40.212, issue a temporary certificate. ~~The temporary certificate is effective only until the council meeting following the next examination date, unless the holder of the temporary certificate fails to take the examination. In the latter case, the temporary certificate is effective only until the examination date. However, if the applicant's employer submits to the department an excuse in writing prior to the examination that provides a credible reason for the absence and the department finds the excuse to be reasonable, the department may extend the effective date of the certificate to the date of the council meeting following the next examination.~~ A temporary certificate is effective for six months from the date of issuance, or until the operator becomes fully certified, whichever occurs first. The department may renew a temporary certificate for reasonable cause. A temporary certificate is valid only for the person to whom it is issued, for the system identified on the certificate, and for the period of time identified on the certificate. Temporary certificates may not be transferred to another person or system.

(5) through (11) remain the same.

AUTH: 37-42-202, MCA

IMP: 37-42-201, 37-42-301, 37-42-305, 37-42-306, MCA

REASON: The proposed amendments clarify where, when, and to whom the certificate applies. The proposed amendments also remove superfluous and confusing language that refers to the temporary certificate being "effective until the council meeting . . ." The proposed amendments are necessary because the council is not charged with issuing temporary certificates and the issuance of a temporary certificate is not dependent on the time at which the council meets.

17.40.206 EXAMINATIONS (1) through (3) remain the same.

(4) ~~Except as provided in (4)(a), a~~All classes of examinations will be given by department staff or by a council member at a time and place set by the department.

~~(a) Class 4 and Class 5 water supply system examinations, Class 3 and 4 nonindustrial wastewater treatment examinations, and Class 4 industrial wastewater treatment examinations, may be given by department staff or a council member at a time and place set by the person administering the examination.~~

(5) remains the same.

~~(6) Special examinations may be held if the examination date and place regularly set by the council conflicts with special circumstances of the applicant. To request a special examination, the applicant may petition the department by letter requesting the examination and citing the special circumstances as justification. If the department allows a special examination, it shall set a time and place that, in its discretion, are appropriate to address the needs of the applicant.~~

(7) through (9) remain the same, but are renumbered (6) through (8).

AUTH: 37-42-202, MCA

IMP: 37-42-201, 37-42-301, 37-42-305, 37-42-306, MCA



REASON: The proposed amendments to ARM 17.40.206 would remove restrictions as to the time and place where certification testing may be held and to renumber as appropriate. The proposed amendments are necessary to allow the department to serve the regulated public better by offering all examinations at any reasonable time and place.

17.40.208 CERTIFIED OPERATOR IN CHARGE OF SYSTEM;--  
EXCEPTIONS (1) through (3)(b)(iv) remain the same.

~~(4) An industrial wastewater treatment system that discharges to municipal facilities or removes sediment without a surface water discharge does not need a certified operator.~~

AUTH: 37-42-202, MCA

IMP: 37-42-104, 37-42-302, 37-42-305, MCA

REASON: The proposed amendment would delete the exemption that currently allows industrial wastewater treatment systems that discharge to municipal facilities or that remove sediment without a surface water discharge to be operated without a certified operator. The proposed amendment is necessary because reductions in the maximum limits allowed under a discharge permit could create a municipal facility's treatment system to fail if the industrial wastewater treatment systems are improperly managed. A certified operator will ensure that the industrial wastewater treatment systems, or those systems discharging to ground water under a MGWPCS discharge permit, are in conformance with any limits or conditions required.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., March 8, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, attorney, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA;

underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

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

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

Certified to the Secretary of State, January 30, 2012.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.56.402 pertaining to requirements for )  
petroleum UST systems )  
)  
)  
)  
)  
)  
)

NOTICE OF PROPOSED  
AMENDMENT  
  
(UNDERGROUND STORAGE  
TANKS)  
  
(NO PUBLIC HEARING  
CONTEMPLATED)

TO: All Concerned Persons

1. On March 12, 2012, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

17.56.402 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

(1) through (2) remain the same.

(3) Terminal piping is exempt from the requirements of ARM ~~17.58.204(2)~~ 17.56.204(2) and (3), 17.56.304(3)(f)(i), 17.56.408(1)(a) through (d), 17.56.504(1)(a), and 17.56.701(4)(b)(ii) and (d)(ii). The department may exempt other associated piping on a case-by-case basis, if the department determines the exemption would not cause harm to human health or the environment.

(4) The exempt piping referenced in ~~(2)~~ (3) must be annually leak tested using:

(a) through (5) remain the same.

AUTH: 75-11-302, 75-11-505, MCA

IMP: 75-11-302, 75-11-505, MCA

REASON: The department is proposing to amend ARM 17.56.402 to correct citation errors. Adopting the correct cites will eliminate confusion regarding compliance with release detection requirements for certain underground storage tanks and piping.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than March 8, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than March 8, 2012.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 88 based on the 877 owners and operators in Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this entity. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

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

By: /s/ Richard H. Opper  
RICHARD H. OPPER  
Director

Certified to the Secretary of State, January 30, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

|  |                             |
|--|-----------------------------|
| In the matter of the amendment of ARM )  | NOTICE OF PUBLIC HEARING ON |
| 17.38.208, 17.38.225, 17.38.234, )       | PROPOSED AMENDMENT          |
| 17.38.301, 17.38.302, 17.38.305, )       |                             |
| 17.38.310, and 17.38.312 pertaining to ) | (PUBLIC WATER AND SEWAGE    |
| treatment requirements, control tests, ) | SYSTEM REQUIREMENTS)        |
| testing and sampling records and )       |                             |
| reporting requirements, definitions, )   |                             |
| incorporation by reference, cross- )     |                             |
| connections: regulatory requirements, )  |                             |
| voluntary cross-connection control )     |                             |
| programs: application requirements, )    |                             |
| and standards and requirements for )     |                             |
| cross-connection control )               |                             |

TO: All Concerned Persons

1. On March 2, 2012, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., February 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

- 17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.
- (4) The board adopts and incorporates by reference the following:
  - (a) through (g) remain the same.
  - (h) 40 CFR 141.81, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth the applicability of lead and copper corrosion control treatment steps to small, medium, and large water systems;
    - (i) remains the same.
    - (j) 40 CFR 141.83, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth lead and copper source water treatment requirements;
    - (k) 40 CFR 141.84, ~~as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)~~, which sets forth lead service line replacement requirements;
    - (l) through (w) remain the same.

AUTH: 75-6-103, MCA  
IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.208 clarify the adoption by reference of federal requirements. The proposed amendments are necessary to remove confusing language in the rules. When the department adopted the 2007 edition of 40 CFR, there were additional requirements that had been published in the Federal Register that were not included in the 2007 edition. To avoid adopting multiple editions of the CFR, the board adopted the 2007 edition as modified by the language in the Federal Register. The language in the Federal Register is now present in the 2009 edition, which the board has adopted by reference.

17.38.225 CONTROL TESTS (1) remains the same.

(2) Disinfectant residual tests must be conducted daily by:

(a) remains the same.

(b) ground water systems in accordance with 40 CFR Part 141, subpart S.

Disinfectant residual tests must be conducted daily at each entry point to the distribution system to prove compliance with the 4 ~~four~~-log virus inactivation or removal requirement; and

(c) ground water systems required by the department under ARM 17.38.229 to maintain a residual, and by consecutive systems connected to those systems, at each entry point to the distribution system and, if required to maintain a residual in the distribution system, one in the distribution system. For consecutive systems, the entry point is the point at which the purchased water enters the distribution system of the consecutive system.

(3) The department may waive, on a case-by-case basis, the requirement entry point sampling, distribution sampling, or both for ground water and consecutive systems that are referenced in ARM 17.38.225(2)(c):

~~(i) entry point sampling; and~~

~~(ii) entry point sampling and distribution system sampling, if the consecutive system produces treated water for vending or bottling where the treatment is designed to produce a product free of chlorine.~~

(3) through (7) remain the same, but are renumbered (4) through (8).

AUTH: 75-6-103, MCA  
IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.225 clarify that the department may waive any or all of the disinfectant residual monitoring requirements on a case-by-case basis for systems identified in ARM 17.38.225(2)(c). The proposed clarifications are necessary to allow a regulated system to avoid regulatory requirements where the department has determined that the public health is protected through other means.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain the same.

(3) Recordkeeping requirements for water haulers are set forth in ARM

17.38.513.

(3) through (9) remain the same, but are renumbered (4) through (10).

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment would provide information on where the recordkeeping requirements for water haulers can be found. This proposed amendment is necessary so that confusion will not exist as to whether the recordkeeping requirements in ARM 17.38.234 are applicable to water haulers and so that the water haulers' recordkeeping requirements can be cross-referenced with the recordkeeping requirements of ARM 17.38.234.

17.38.301 DEFINITIONS For the purposes of this subchapter, unless the context requires otherwise, the following definitions, in addition to those in 75-6-102, MCA, apply:

(1) "Approved backflow prevention assembly or device" means an assembly or device included in the ~~"List of Approved Backflow Prevention Assemblies"~~, incorporated by reference in ARM 17.38.302 approved by the department.

(2) through (6) remain the same.

(7) "Certified backflow prevention assembly tester" means a person who holds a current certificate issued by a certification program of any state authorizing the person to test backflow prevention assemblies or who holds a current certificate from the American ~~s~~Society of ~~s~~Sanitary ~~e~~Engineers, or the American ~~b~~Backflow ~~p~~Prevention ~~a~~Association, foundation for cross-connection control and hydraulic research, or American water works association.

(8) remains the same.

(9) "Degree of hazard" means the level of risk created by either a pollutant (non-health hazard) or a contaminant (health hazard), as derived from an assessment of the materials that may come in contact with the distribution system through a cross-connection.

(9) remains the same, but is renumbered (10).

~~(10)~~ (11) "Water pollution Non-health hazard" means a condition that causes or creates a potential for water quality degradation but does not constitute a health hazard.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.301(1) is necessary because the list referred to in the current definition is being deleted in ARM 17.38.302. The proposed amendment will clarify that an "approved" backflow prevention assembly or device means that the assembly or device has been approved by the department. This proposed amendment is therefore consistent with the proposed amendment to ARM 17.38.305(3).

The proposed amendments to (7) clarify which agencies can certify cross-connection control assembly testers. The proposed amendments are necessary to



correct current language that indicates that the Foundation for Cross-Connection Control and Hydraulic Research and the American Water Works Association are certifying agencies. Both of these agencies offer training and testing, but certification is through the organizations now listed in the proposed amendment to the rule.

The proposed addition of the new definition in (9) would clarify the term "degree of health hazard." The proposed definition is necessary to ensure that the term, which is common in the cross-connection control industry, is properly understood by the regulated community.

The proposed amendments to the definition of "water pollution hazard" would make the rule language consistent with standard industry terminology adopted by reference in the "Manual of Cross-Connection Control." The proposed amendment is necessary to remove language that may confuse the regulated public. The remaining amendments are necessary for renumbering purposes.

17.38.302 INCORPORATION BY REFERENCE (1) The board hereby adopts and incorporates by reference the following:

~~(a) "List of Approved Backflow Prevention Assemblies" published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (1998 edition);~~

~~(b) "Manual of Cross-Connection Control" (9<sup>10</sup>th edition), published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (December 1993 October 2009).~~

~~(2) These This publications sets forth approved backflow prevention assemblies or devices and standards for cross-connections to public water supply systems. Copies of the this publications listed above are available at may be obtained by contacting the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901 Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, Kaperielian Hall 200, Los Angeles, CA 90089-2531 or at http://www.usc.edu/dept/fccchr/.~~

~~(3) Backflow prevention assemblies or devices not identified in the publications listed above may be approved by the department if the person demonstrates to the satisfaction of the department that strict adherence to this rule is not necessary to protect public health and the quality of state waters.~~

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.302(1) would remove the adoption by reference of the "List of Approved Backflow Prevention Assemblies" and update the adoption by reference of the "Manual of Cross-Connection Control" to the 10th edition. The proposed deletion of the "List of Approved Backflow Prevention Assemblies" is necessary because Montana law does not allow for the adoption by reference of new editions without going through the rulemaking process. By keeping this adoption by reference in the rule, systems are unable to use new tools that are listed until that edition has been adopted. By removing the list and referring only to assemblies approved by the department, as is being proposed in

ARM 17.38.305(3), the department may then still use the list as guidance and refer to the most recent edition. The proposed amendment to adopt the 10th edition of the "Manual of Cross-Connection Control" would update the adoption by reference to the most current edition. The proposed amendment is necessary to ensure that certified testers are testing the cross-connection control assemblies in accordance with current industry standards. The significant changes to the testing standards will: (1) ensure that a cross-connection is not created during testing; (2) protect the tester from pressure releases; and (3) provide a required minimum value, or improve the accuracy of the test, by detailing the procedure more fully.

The proposed amendments to (2) would clarify how copies of the document adopted by reference may be obtained. The proposed amendments are necessary to reflect proposed amendments in (1) and to clarify that the department does not have copies available. The "Manual of Cross-Connection Control" is offered for sale by the publisher. Previously, because the department is a member of the association and can purchase the manual at a reduced rate, the department offered this document for sale at its cost. The department has determined that it should not be selling the manual to non-members at the member price, nor should the department charge more than its cost. The department will now only give requestors the publisher's contact information and requestors can make arrangements to receive a copy of the manual.

The reason for the proposed deletion of (3) is the same as that given for the proposed amendments to ARM 17.38.305.

#### 17.38.305 CROSS-CONNECTIONS: REGULATORY REQUIREMENTS

(1) A cross-connection on a public water supply system must be eliminated by the disconnection of the cross-connection whenever reasonably practicable. Whenever elimination of a cross-connection is not reasonably practicable and the cross-connection creates a health or ~~water contamination~~ non-health hazard, the hazard must be eliminated by the insertion into the piping of an approved backflow prevention assembly or device in accordance with (2) ~~of this rule~~.

(2) For the cross-connections identified below, the following types of approved backflow prevention assemblies or devices must be used:

(a) A health hazard created by a cross-connection that may be subject to back pressure must be eliminated by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP) or an air-gap.

(b) A health hazard created by a cross-connection that may be subject to back siphonage, but not subject to back pressure, must be eliminated by an approved air-gap, pressure vacuum breaker assembly (PVB), spill-resistant pressure vacuum breaker assembly (SVB), atmospheric vacuum breaker (AVB), or a reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(c) A ~~water pollution~~ non-health hazard created by a cross-connection that may be subject to back pressure and back siphonage must be eliminated, at a minimum, by an approved double check valve assembly (DC). ~~The This~~ cross-connection condition ~~described in this subsection~~ may also be eliminated by an air-gap or by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(d) A ~~water pollution~~ non-health hazard created by a cross-connection that may be subject to back siphonage, but is not subject to back pressure, must be eliminated, at a minimum, by an approved double check valve assembly (DC), pressure vacuum breaker assembly (PVB), spill-resistant pressure vacuum breaker assembly (SVB), or an atmospheric vacuum breaker (AVB) device. This cross-connection condition ~~described in this subsection~~ may also be eliminated by an air-gap or by an approved reduced pressure ~~zone~~ principle backflow prevention assembly (RP).

(3) Backflow prevention assemblies and devices must be approved by the department.

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

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.305 incorporate changes proposed under ARM 17.38.301, update the list of available treatment devices, and incorporate changes in industry naming. The proposed amendments are necessary to allow the regulated public the use of all available treatment options to achieve compliance with the requirements and to incorporate standard industry naming language.

17.38.310 VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: APPLICATION REQUIREMENTS (1) remains the same.

(2) The application must be accompanied by a copy of the local ordinances or plan of operations that describes the methods for implementing the cross-connection control program. The local ordinances or plan of operations must include the following:

(a) and (b) remain the same.

(c) a requirement to eliminate cross-connections and hazards in compliance with ARM 17.38.305 on a priority basis beginning with those identified as having the highest degree of hazard. A health hazard must be assigned a higher degree of risk than all ~~water contamination~~ non-health hazards;

(d) remains the same.

(e) the method for identifying the appropriate backflow prevention assembly or device for a specific degree of hazard. The methodology must be in accordance with the "Manual of Cross-Connection Control" incorporated by reference in ARM 17.38.302, or as described in ARM 17.38.305(2);

(f) through (h) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.310 incorporate changes proposed under ARM 17.38.301 and clarify existing language. The proposed amendments are necessary to incorporate standard industry definitions and language and to clarify the backflow valve requirement without having to access

the Manual of Cross-Connection Control.

17.38.312 VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS:  
STANDARDS AND REQUIREMENTS FOR CROSS-CONNECTION CONTROL

- (1) The department shall approve a voluntary program for cross-connection control if:
- (a) remains the same.
  - (b) the program provides for elimination of cross-connections, health hazards, and ~~water pollution~~ non-health hazards, and for installation and maintenance of backflow ~~protection~~ prevention assemblies or devices in accordance with ARM 17.38.305;
  - (c) through (2)(c) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.312 incorporate changes proposed under ARM 17.38.301. The proposed amendments are necessary to incorporate standard industry definitions and language for clarification.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., March 8, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406)

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

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

Certified to the Secretary of State, January 30, 2012.

BEFORE THE DEPARTMENT OF JUSTICE  
BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

|  |   |                           |
|--|---|---------------------------|
| In the matter of the repeal of ARM         | ) | NOTICE OF PROPOSED REPEAL |
| 23.14.204, 23.14.205, and 23.14.206, and   | ) | AND AMENDMENT             |
| the amendment of ARM 23.14.101,            | ) |                           |
| 23.14.201, 23.14.203, 23.14.302,           | ) | NO PUBLIC HEARING         |
| 23.14.303, 23.14.304, 23.14.305,           | ) | CONTEMPLATED              |
| 23.14.601, 23.14.603, 23.14.604,           | ) |                           |
| 23.14.605, 23.14.606, and 23.14.2008,      | ) |                           |
| concerning the duties and functions of the | ) |                           |
| Board of Crime Control                     | ) |                           |

TO: All Concerned Persons

1. On March 23, 2012, the Department of Justice proposes to repeal and amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov).

3. The board proposes to repeal the following rules:

23.14.204 REQUEST TO REVIEW, found at page 23-523 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.205 HEARING, found at page 23-523 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

23.14.206 FINAL DETERMINATION, found at page 23-524 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA  
IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The board has adopted an appeal policy that varies from these administrative rules. Rather than update ARM when this type of policy changes, it will be maintained internally.

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

23.14.101 BOARD OF CRIME CONTROL FUNCTIONS (1) remains the same.

(2) The board ~~currently~~ functions through ~~a single~~ an executive director and ~~planning staff who are responsible for directing and supervising the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.~~

(3) It is the responsibility of the board to administer the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351), ~~as amended by P.L. 91-644, 93-415, 94-430, 94-503, 96-157, 98-473, 99-570, 100-690, and 101-647,~~ the Victims of Crime Assistance Act and the Drug Free Schools and Communities Act. Under these provisions, the board may:

(3)(a) through (5) remain the same.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The changes to (2) are added to provide clarification on staff functions. In (3), the public laws related to this Act continually change. Rather than change ARM each time, the board has decided to generally refer to the amendments encompassed by the two listed Acts.

23.14.201 INCORPORATION OF MODEL RULES (1) The board adopts the ~~Attorney General's model procedural rules one (1) ARM 1.3.201 through twenty-eight (28) 1.3.313~~ and incorporates herein those rules by reference.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The model rules were modified in 2008. The changes to this rule are necessary to bring it into compliance with the new model rules.

23.14.203 APPLICATIONS FOR FINANCIAL ASSISTANCE (1) remains the same.

~~(2) The following rules of procedure are applicable for all subgrant requests and applications for financial assistance which are directed to the board.~~

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: ARM 23.14.204 – 23.14.206 are being repealed so this section no longer applies.

23.14.302 MATCHING REQUIREMENTS (1) and (2) remain the same.

(3) Matching funds need not be expended concurrently with federal funds, but must be expended prior to the ~~time the last federal dollar has been spent~~ closure of the subgrant.

(4) and (5) remain the same.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: This rule is necessary to clarify that federal dollars may be spent prior to matching funds but the matching funds must be expended prior to the grant closing.

23.14.303 BUDGET REQUIREMENTS (1) Expenses that are unallowable under federal law are described in federal guidelines such as the Office of Justice Programs M7100.1D and Education Department General Administrative Regulations (EDGAR) Financial Guide. An announcement for solicitation of subgrant applications will describe such expenses for applicants.

~~(2) Federal funds may not be allocated for routine maintenance and/or repair of existing jail or detention facilities.~~

~~(3) All funds granted to a district court and/or a county attorney's office shall be considered as local funds provided that the funds in fact pass through the county in which the respective offices of the subgrantee are located.~~

~~(4) Travel allowances must be in accordance with prevailing state rates unless an alternative travel allowance schedule is approved by the board upon the request of a subgrantee. Fund requests for travel may not be for amounts greater than the least expensive mode of travel.~~

~~(5) Any excess cost over the federal contribution under one grant agreement may not be paid under another grant agreement.~~

~~(6) Expenditures other than those listed on the original grant application budget are subject to refund and/or penalty. Variances may be allowed if requested in advance and written authorization is received from the board.~~

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: (1) These deletions are necessary because EDGAR is no longer utilized and the board no longer receives Department of Education grant funds. These items in (2)-(6) are now covered in Requests for Proposals, federal guidelines, and grant special conditions and thus need not be stated here.

23.14.304 GENERAL REQUIREMENTS (1) remains the same.



(2) Federal funds are not assured until an award letter signed by a representative of the board has been received by the applicant agency. The signed award letter, returned to the board, constitutes a binding contract between the applicant agency and the board, contingent upon availability of federal funds.

~~(3) Applications which do not comply with the above statements shall be returned to the applicant agency for corrections or amendment prior to presentation to the board.~~

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The addition to (2) is necessary because federal funds may not always be available or could be pulled, and the board does not want to be in a position to be obligated for subgrant awards if federal funding is not available. The deletion to (3) is necessary because the board awards are made prior to sending award letters, so this process is outdated.

23.14.305 APPLICANTS AGREEMENT (1) through (1)(b) remain the same.

(c) appropriate grant records and accounts will be maintained and made available for audit as ~~prescribed~~ prescribed by the U.S. Department of Justice, U.S. Department of Education, or other federal grantor agency; and

(d) reports from subgrantees are due as ~~prescribed~~ prescribed by the board ~~are due 20 days after the end of each quarter on October 20, January 20, April 20 and July 20.~~ The board may cancel any award to a subgrantee if such reports are twice delinquent.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

RATIONALE AND JUSTIFICATION: The change in (c) is necessary to address the grammatical error. The change in (d) is necessary because the reports are now due on the 5th and may change in the future. The board therefore has chosen to reference a due date as prescribed by the board, as opposed to including a specific date or timeline in the rule.

23.14.601 GENERAL DEFINITIONS (1) remains the same.

(2) "Regional plan" means the plan for providing youth detention services as required in ~~41-5-1003~~ 41-5-1903, MCA, submitted to the board from regions created under ~~41-5-812~~ 41-5-1805, MCA.

(3) "Regional planning board" means the board created to implement ~~41-5-812~~ 41-5-1805, MCA, and prepare regional plans.

(4) "Region" means the youth detention region established in ~~41-5-812~~ 41-5-1805, MCA.

(5) "Detention services" means youth detention services as defined in ~~41-5-1001~~ 41-5-1901, MCA.

AUTH: 41-5-1008, MCA

IMP: 41-5-812, 41-5-1003, MCA

RATIONALE AND JUSTIFICATION: These sections of the MCA were modified and the changes are necessary to stay consistent with the correct MCA cite.

23.14.603 REGIONAL PLAN (1) remains the same.

(2) Regional plans prepared by regional planning boards must fully describe the information required in ~~41-5-1003~~ 41-5-1903, MCA.

(3) Regional plans must be submitted to the board annually ~~by May 15~~ for the next fiscal year.

(4) through (7) remain the same.

AUTH: 41-5-1008, MCA

IMP: 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1007, MCA

RATIONALE AND JUSTIFICATION: In (2), this section of the MCA was modified, so the change is necessary to stay consistent with that change. In (3), the regional plan due date now varies from year-to-year, so a specific date is no longer needed or accurate.

23.14.604 PLAN APPROVAL PROCESS (1) The regional plan submitted by the regional planning board will be ~~first~~ reviewed by the youth justice council. The youth justice council will recommend to the board whether the regional plan should be approved, modified, rejected, or terminated.

~~(2) If action is recommended to the board by the youth justice council which alters, terminates, or rejects a plan, the regional planning board may request a review of the youth justice council's recommendation by following ARM 23.14.204 through 23.14.207.~~

AUTH: 41-5-1008, MCA

IMP: 41-5-1002, 41-5-1005, MCA

RATIONALE AND JUSTIFICATION: ARM 23.14.204 – 23.14.206 are being repealed so this section no longer applies.

23.14.605 AMENDMENTS TO THE REGIONAL PLAN (1) remains the same.

(2) Modification of budget line items by ~~five~~ ten percent or less ~~of the total budget amount~~ may be approved by the regional planning board.

(3) Modifications of budget line items exceeding ~~five~~ ten percent ~~of the total budget~~ must be requested of the board in writing and approved by the board prior to adjustment of the budget.

(4) through (5)(a) remain the same.

(b) approval by the board after written notice ~~to the board~~ which describes the impact of the new detention services on the overall plan and budget.

(6) remains the same.

~~(7) A regional planning board may follow ARM 23.14.204 through 23.14.207 if its request to amend a plan is rejected.~~

AUTH: 41-5-1008, MCA  
IMP: 41-5-1003, 41-5-1004, 41-5-1005, MCA

RATIONALE AND JUSTIFICATION: For (2) and (3), the board is increasing this threshold to 10% to stay consistent with other grants and internal policy. In (7), because ARM 23.14.204 – 23.14.206 are being repealed, this section no longer applies.

23.14.606 REPORTS (1) Counties participating in regional plans must submit regular and accurate reports to the board using the ~~juvenile probation information system~~ reporting system prescribed by the board.

(2) Failure by a county or counties to use or to accurately report using the ~~juvenile probation information system~~ reporting system prescribed by the board will be reviewed by the regional planning board, which may recommend to the board that the nonreporting county or counties be prohibited from using funds provided to a region for implementing its regional plan.

(3) remains the same.

~~(4) A county or counties may request a reconsideration of the regional planning board's recommendation by following ARM 23.14.204 through 23.14.207.~~

AUTH: 41-5-1008, MCA  
IMP: 41-5-1003, MCA

RATIONALE AND JUSTIFICATION: For (1) and (2), the juvenile probation information system has been replaced by a new system and thus the reporting system will be prescribed by the board. In (4), because ARM 23.14.204 – 23.14.206 are being repealed, this section no longer applies.

23.14.1008 RECOMMENDATION OF THE APPEAL REVIEW COMMITTEE

(1) The committee must render a written recommendation suggesting that the board ~~either~~ affirm the council's decision, reverse the council's decision, or remand to the hearing examiner for additional findings.

(2) A copy of the committee's recommendation shall be delivered or mailed to each party, as well as the executive director, who will then ~~mail~~ provide a copy of the recommendation to each noncommittee board member.

AUTH: 44-4-301(2), 44-4-403(3), MCA  
IMP: 44-4-301(2), 44-4-403(3), MCA

RATIONALE AND JUSTIFICATION: The change to (1) corrects a grammatical error. The change to (2) allows for electronic correspondence of recommendation.

5. Concerned persons may submit their data, views, or arguments

concerning the proposed action in writing to: Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [kstelling@mt.gov](mailto:kstelling@mt.gov), and must be received no later than 5:00 p.m. on March 8, 2012.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kathy Stelling at the above address no later than March 8, 2012.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is less than 250, therefore a public hearing will be held if 25 or more people request one.

8. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/agooffice/administrative-rules/>. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/agooffice/administrative-rules/>, and mailed to the rule reviewer.

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

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General  
Department of Justice

/s/ Stuart Segrest  
STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State January 30, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

|                                   |   |                             |
|-----------------------------------|---|-----------------------------|
| In the matter of the amendment of | ) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.29.601, 24.29.604,         | ) | PROPOSED AMENDMENT AND      |
| 24.29.607, 24.29.608, 24.29.610,  | ) | ADOPTION                    |
| 24.29.611, 24.29.616, 24.29.617,  | ) |                             |
| 24.29.618, and 24.29.623, and the | ) |                             |
| adoption of NEW RULES I and II,   | ) |                             |
| related to workers' compensation  | ) |                             |
| insurance coverage under          | ) |                             |
| compensation plan No. 1 and plan  | ) |                             |
| No. 2                             | ) |                             |

TO: All Concerned Persons

1. On March 2, 2012, at 10:00 a.m., a public hearing will be held in the first floor conference room, room 104, Walt Sullivan Building, 1315 E. Lockey Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 27, 2012, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Attention: Bill Wheeler, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail bwheeler@mt.gov.

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

24.29.601 DEFINITIONS For the purposes of ARM Title 24, chapter 29, subchapter 6, the following definitions apply:

(1) and (a) remain the same.

(b) pay ~~compensation~~ benefits and all liabilities which are likely to be incurred under the Workers' Compensation Act, and ~~the Occupational Disease Acts~~ Act for occupational diseases that occurred prior to July 1, 2005; and

(c) have sufficient cash or cash equivalents, security deposit, and excess insurance to ~~make benefit and compensation payments~~ pay benefits as they come due.

(2) and (3) remain the same.

~~(4)~~ (5) "Claims summary" means a compilation of information relating to prior and existing claims made under the Workers' Compensation Act and ~~the Occupational Disease Acts of Montana~~ Act for occupational diseases that occurred

prior to July 1, 2005, showing by policy year, the total number of medical and indemnity claims, total compensation benefits paid, and the total amount reserved for future liabilities.

~~(5)~~ (4) "~~Compensation benefits~~ Benefits" means wage loss, legal, medical, rehabilitation, and all other benefits that are payable under the Montana Workers' Compensation Act and the Occupational Disease Act (Title 39, chapter 72, MCA) for occupational diseases that occurred prior to July 1, 2005, including assessments or financial obligations.

(6) and (7) remain the same.

(8) "Employer group" means employers engaged in the same ~~trades, businesses, occupations or professions~~ trade, business, occupation, or profession who are members of an association which was formed for ~~purposes other than the purpose of becoming a self-insurer and has existed for a period of at least two years~~ self-insured.

(9) remains the same.

(10) "Net worth" means total tangible assets minus total liabilities.

(11) "Occupational Disease Act" means Title 39, chapter 72, MCA, as it existed prior to July 1, 2005.

(10) remains the same, but is renumbered (12).

~~(11)~~ (13) "Reviewed financial statements" means a set of documents that includes the applicant's:

(a) income statement<sub>;</sub>

(b) balance sheet<sub>;</sub>

(c) statement of cash flow<sub>;</sub>

(d) notes to the financial statements<sub>;</sub> and

(e) a signed, dated statement from an independent certified public accountant expressing limited assurance that there are no material modifications that should be made to the statements, in order for them to be in conformity with generally accepted accounting principles.

(14) "Workers' Compensation Act" means Title 39, chapter 71, MCA.

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2101 through 39-71-2108, MCA

REASON: There is reasonable necessity to amend ARM 24.29.601 to define various terms used in the substantive rules, which are proposed for amendment or adoption by this notice. In addition, there is reasonable necessity to make various technical corrections in language, punctuation, and earmarking to improve the readability of the rule, while the rule is otherwise being amended.

24.29.604 MONTANA SELF-INSURERS GUARANTY FUND--ACCEPTANCE REQUIRED (1) and (2) remain the same.

(3) The guaranty fund shall demonstrate its concurrence/ ~~or~~ nonconcurrence with department approval of a private plan no. 1 applicant by submitting in writing to the department, a formal acceptance or denial of the plan no. 1 applicant.

(4) remains the same.

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2101, 39-71-2103 through 39-71-2106, 39-71-2608, MCA

REASON: There is reasonable necessity to amend ARM 24.29.604 and 24.29.607 to improve clarity and conform the rules to current usage guidelines, while related rules are otherwise being amended.

24.29.607 PUBLIC EMPLOYERS OTHER THAN STATE AGENCIES

(1) The provisions of ARM Title 24, chapter 29, subchapter 6 apply to public employers and public employer groups, other than state agencies as defined in 39-71-403, MCA, except that the guaranty fund has no involvement in department decisions regarding public employers or public employer groups.

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2101 through 39-71-2108, 39-71-2603, 39-71-2609, MCA

24.29.608 ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 1--

ELIGIBILITY (1) Any employer or employer group, except state agencies specified in 39-71-403, MCA, may elect to apply to be bound as a self-insurer under plan no. 1, if in accordance with 39-71-2102, MCA, and ARM 24.29.609, the employer or employer group submits, on forms provided by the department, satisfactory proof of ability to pay the compensation benefits, which are reasonably likely to be incurred under the Workers' Compensation Act, and the Occupational Disease Acts Act for occupational diseases that occurred before July 1, 2005, during the year or the portion of the year for which election under this plan is effective. Approval to be bound as a self-insurer under plan no. 1 will be granted by the department with the concurrence of the guaranty fund.

AUTH: 39-71-203, ~~39-71-2102~~, MCA

IMP: 39-71-403, 39-71-2101 through 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.608 and 24.29.610 to clarify the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Occupational Disease Act in 2005 and the incorporation of those provisions into the Workers' Compensation Act, while rules on the same general subject matter are otherwise being amended. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.610 WHEN SECURITY REQUIRED (1) remains the same.

(2) The security deposit requirement may be waived in whole or in part by the department, with the concurrence of the guaranty fund, for applicants who provide substantive evidence that the statutory amount of the security deposit is not needed. This evidence must reflect the applicant's ability to pay the compensation benefits provided for in ~~Title 39, chapter 71, of the Montana Code Annotated~~ the Workers'



Compensation Act, and the Occupational Disease Act for occupational diseases that occurred before July 1, 2005.

(3) ~~The~~ A self-insurer who does not have sufficient securities on deposit with the department, with which to pay the compensation benefits, shall be required to furnish additional security.

AUTH: 39-71-203, ~~39-71-2106~~, MCA

IMP: 39-71-403, 39-71-2106, MCA

24.29.611 SECURITY DEPOSIT -- CRITERIA (1) remains the same.

(a) The department shall accept a surety bond only from companies certified by the United States ~~department~~ Department of treasury ~~Treasury~~ as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most recent Federal Register.

(i) A surety bond issued by a company that has a Best's rating of "A-" or better and a financial size rating of VI or greater will be approved.

(ii) A surety bond issued by a company that is rated by Best's, but does not meet the criteria specified in (1)(a)(i) will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.

(iii) A surety bond issued by a company not rated by Best's will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.

(b) The security deposit must name the department as obligee and must be held by the department as security for payment of all ~~workers' compensation and occupational disease~~ liabilities likely to be incurred under the Workers' Compensation Act, or the Occupational Disease Act for occupational diseases that occurred before July 1, 2005. The department, with the concurrence of the guaranty fund, shall retain a security deposit until all liabilities have been paid. In the event liabilities have not been met by the self-insurer, the department shall proceed pursuant to 39-71-2108, MCA. If the self-insurer has placed multiple forms of security deposits, the department shall, at its discretion, convert the deposits needed to pay claims.

(c) and (d) remain the same.

(e) Certificates of deposits must be issued by financial institutions insured by the FDIC ~~or FSLIC~~ and may not exceed the limits of the FDIC ~~or FSLIC~~ insurance coverage.

(f) Letters of credit must be issued by a financial institution located within the United States with a ~~Sheshunoff percentile ranking of 50 or greater~~ investment grade ratings issued by Moody's Investors Service, Standard & Poor's, or Fitch Ratings. If ratings from those rating entities are not available, the approval of the financial institution will be made at the discretion of the department, with the concurrence of the guaranty fund.

AUTH: 39-71-203, ~~39-71-2106~~, MCA

IMP: 39-71-403, 39-71-2106, MCA

REASON: There is reasonable necessity to amend ARM 24.29.611 to update references to various technical terms and standards now used within the bond rating industry in response to recent developments in the rating industry. In addition, there is reasonable necessity to remove references to a federal insurance, which is no longer applicable in context, and to make other technical language changes, which are consistent with the usage in related rules. There also is reasonable necessity to clarify the effect of certain ratings on the approval of a selected surety, in line with prudent financial standards applicable to surety providers. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.616 EXCESS INSURANCE -- WHEN REQUIRED (1) through (3)(e) remain the same.

(f) Copies of the certificates and policies of the excess insurance must be filed with the department for a determination that such certificates and policies fully comply with the provisions of the Workers' Compensation and Act, the Occupational Disease Acts Act, and ARM Title 24, chapter 29, subchapter 6.

AUTH: 39-71-203, ~~39-71-2103~~, MCA  
IMP: 39-71-403, 39-71-2101, 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.616 to clarify the applicability of the former Occupational Disease Act to a self-insurer's liability, despite the repeal of the Occupational Disease Act in 2005, and the incorporation of those provisions into the Workers' Compensation Act, while rules on the same general subject matter are otherwise being amended. In addition, there is reasonable necessity to delete an inappropriate AUTH citation.

24.29.617 INITIAL ELECTION -- INDIVIDUAL EMPLOYERS (1) through (1)(d) remain the same.

~~(e) evidence that it had a minimum of 50 employees per year over the preceding 2 years; however, an employer with a minimum of less than 50 employees per year over the preceding 2 years may be considered if its liability is guaranteed by a parent corporation as provided in ARM 24.29.617(1)(c)(iii). The department, with the concurrence of the guaranty fund, may accept a guarantee from an employer in lieu of a parental guarantee. [This paragraph will sunset January 1, 1998];~~

(f) through (1)(j) remain the same, but are renumbered (e) through (1)(i).

~~(k) (j)~~ (j) evidence that internal policies and procedures are satisfactory to administer a self-insurance program; ~~and~~

~~(l) (k)~~ (k) evidence of permission to self-insure in other states, if applicable; ~~and~~

(l) evidence of a net worth of at least 25 percent of the value of its tangible assets. If the applicant does not have a minimum net worth of 25 percent, it must in order to be approved, provide additional security in an amount determined by the department, with the concurrence of the guaranty fund. The applicant's ability to provide additional security does not in itself guarantee approval to self-insure.

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2101 through 39-71-2103, MCA

REASON: There is reasonable necessity to amend ARM 24.29.617 and 24.29.618 in order to clarify the requirements with respect to applicant's net worth, in response to recent applications, where applicants with a low net worth believed that the applicant's willingness to provide additional security was an adequate substitute for its financial ability to pay. The proposed amendments clarify that while additional security may be appropriate, it does not assure the approval to self-insure.

In addition, there is reasonable necessity to delete obsolete language from the rules, while the rules are otherwise being amended. Finally, there is reasonable necessity to make clarifications and technical language changes to ARM 24.29.618, regarding the applicability of various provisions to the individual members or to the group as a whole, while the rule is otherwise being amended.

24.29.618 INITIAL ELECTION -- EMPLOYER GROUPS (1) through (1)(d) remain the same.

(e) a copy of at least the most recent year's audited financial statements, or reviewed financial statements, if audited statements are not prepared as part of the employer's normal business practice, from each member of the employer group. The total premiums payable to the group from employers having reviewed financial statements shall not constitute more than 10% percent of the group's total premium. The department or the guaranty fund may require copies of additional years' audited or reviewed financial statements from the applicant. Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant (CPA). The department will advise the CPA of the nature and format of the information to be provided to the department. The applicant shall pay the cost of such a submission and review;

(f) evidence that each private employer in the group has been in business for a period of not less than 3 three years;

~~(g) evidence the employer group had a combined minimum of 100 employees per year over the preceding 2 years. [This paragraph will sunset January 1, 1998];~~

~~(h)~~ (g) a claims summary from insurance carriers who provided coverage for claims incurred in Montana for each member of the employer group for the preceding 3 three years;

(i) through (1)(t) remain the same, but are renumbered (h) through (1)(s).

(t) a business plan for the employer group;

~~(u) a general plan of operation;~~

~~(v)~~ pro forma financial statements for each of the first 2 five years of the employer group's operation, to include any assumptions made; and

~~(w)~~ (v) copies of any contracts including, but not limited to, contracts with an administrative service company, claims ~~adjuster~~ examiner, and fiscal agent.

(2) A self-insured group applicant shall demonstrate that it has, or will have, a net worth of at least 25 percent of the value of its tangible assets within five years of beginning its self-insured operations. The net worth calculation for the initial application must be based on the group's projected liabilities at the end of its first five

years of operations. If the group does not have a minimum net worth of 25 percent at the time of the application, the group must, in order to be approved, provide additional security in an amount determined by the department, with the concurrence of the guaranty fund. The applicant's ability to provide additional security does not in itself, guarantee approval to self-insure.

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2101 through 39-71-2103, 39-71-2106, MCA

24.29.623 RENEWAL REQUIRED (1) An employer who has been self-insured may renew the election each ensuing year, by meeting all the requirements of these rules, except that the claims summary required in ARM 24.29.617(1)(f)(e) must be a claims summary for the preceding year(s) for claims incurred as a self-insurer in Montana. Application for renewal must be made 60 days prior to the renewal date, or on such other date as determined by the department and the guaranty fund.

(2) An employer group which has elected to be bound by plan no. 1 may renew the election for each ensuing year by meeting all the requirements of these rules, except ARM 24.29.618(1)(c), (1)(d), (1)(e), (1)(f), (1)(h)(g), (1)(l), (1)(m), (1)(n)(g), (1)(r), (1)(s), (1)(t), (1)(u), and (1)(v), and (1)(w). Application for renewal must be made at least 90 days prior to the renewal date, or on such other date as determined by the department and the guaranty fund. In addition to the information required in ARM 24.29.618, the employer group shall submit:

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

(3) If the self-insured group does not have a net worth of at least 25 percent of its tangible assets, as described in ARM 24.29.618(2), it must implement a plan acceptable to the department, by which it will accumulate a net worth of at least 25 percent of its tangible assets by no later than five years from the effective date of the 25 percent net worth requirement. The department, with the concurrence of the guaranty fund, may require additional security from the group as a condition of the continuing of renewing the approval of the group to self-insure. The group's ability to provide additional security does not in itself guarantee continuing approval to self-insure.

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

AUTH: 39-71-203, MCA

IMP: 39-71-403, 39-71-2104, MCA

REASON: There is reasonable necessity to amend ARM 24.29.623 to update internal citations to rules that are being proposed for amendment or renumbering, and to insert conforming language concerning the minimum net worth provisions provided for by ARM 24.29.617 and 24.29.618.

4. The proposed new rules provide as follows:

NEW RULE I SELF-INSURED EMPLOYERS AND GROUPS -- TRANSFER OF CLAIM LIABILITIES (1) Any current or former self-insurer or group may transfer

existing workers' compensation liabilities to another entity upon authorization from the department and concurrence of the guaranty fund. The self-insurer or group shall:

- (a) make application for the transfer of the claims; and
- (b) provide an actuarial analysis of the claims to be transferred.
- (2) The transfer application and approval process and guidelines will be consistent with the application and approval process for all new or proposed self-insured entities as provided by part 21 of the Workers' Compensation Act and ARM Title 24, chapter 29, subchapter 6. The application must include:
  - (a) a list of the claims that are proposed for transfer;
  - (b) identification of the entity to which the claims liability is to be transferred;
  - (c) an explanation of the financial transaction associated with the proposed transfer of liability; and
  - (d) an explanation of how the applicant and the proposed transferee intend to provide security for payment of the liabilities proposed for transfer.
- (3) An independent actuarial analysis of the employer's or group's claim liabilities made using the preceding year's data, including all years of self-insurance liabilities, must accompany the application. The report must be completed by a qualified actuary as defined by the American Academy of Actuaries.
- (4) After the transfer of claims liabilities is complete, the new owner of the claims liabilities will have the same reporting requirements as all other prior self-insureds in Montana.

AUTH: 39-71-203, MCA  
IMP: 39-71-2115, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to implement the provisions of section 2, Chapter 112, Laws of 2009, which require rulemaking on the subject.

NEW RULE II SECURITY DEPOSITS FOR PLAN NUMBER TWO INSURERS -- REPORTS (1) All insurers authorized by the Montana insurance commissioner's office to write workers' compensation must place a deposit with the department. The deposit amount is determined by calculating the sum of the medical and indemnity payments from the most recently closed calendar year and multiplying that total by 40 percent, subject to the minimums and maximums required by the department.

- (a) Periodic review by the department of an insurer's future claims liabilities may result in an increase in deposit requirements pursuant to 39-71-2215, MCA.
- (b) Upon proof from the insurer that its liabilities have been reduced, a reduction of the amount held on deposit by the department may be granted at the department's discretion. Requests for reduction in deposit may be submitted in writing to the department no more frequently than once every 12 months.
- (c) The department may require 30 days advance written notice by the insurer of the insurer's intent to exchange one form of securities for another.
- (d) Securities must remain on deposit until the department is satisfied all liabilities of the insurer arising under Title 39, chapter 71, MCA, have been met.

(2) A plan number two insurer may deposit one or more of the following securities to meet its obligation to make a security deposit as required by 39-71-2215, MCA:

- (a) a United States Treasury note;
- (b) a certificate of deposit; or
- (c) an irrevocable letter of credit.

(3) The security deposit must be issued in the form prescribed by the department and must include a statement that the grantor of the security deposit is required to give the department 60 days advance notice of its intent to terminate future liability. The grantor of the security deposit is not relieved of the liability for claims arising under Title 39, chapter 71, MCA, prior to the effective date of the termination. Notice must be sent to the department via certified or registered mail.

(a) A security deposit in the form of a certificate of deposit must be issued by a financial institution located within the United States and must be fully insured by federally chartered insurance corporation.

(b) A security deposit in the form of an irrevocable letter of credit must be issued by a financial institution located within the United States that is acceptable to the department, based on its financial ratings.

(4) The security deposit must name the department as obligee and must be held by the department.

(a) A safekeeping or custodial arrangement with a bank or trust company located in the city of Helena, Montana, may be authorized if:

(i) the department is satisfied such securities are held under the same conditions of security as if the securities had been deposited with the department; and

(ii) the department is satisfied the hours of business do not hinder department access to or ability to sell and/or collect on the securities.

(b) If the deposit of securities with the department will result in the need to handle the securities for exchange or remittance of coupons for collection of interest then the department, in its discretion, may require the securities be held in the safekeeping or custodial arrangement described above at the insurer's direct expense.

(5) The insurer is required to submit the following reports:

(a) a copy of the "Exhibit of Premium and Losses-Business in the State of Montana During the Year," from the insurer's annual statement of the preceding calendar year, as filed with the Montana insurance commissioner;

(b) a total summary of experience claim losses including, but not limited to, compensation and medical benefits and reserves for future liability as of May 1 of each year; and

(c) other reports and information as required by the department.

(6) The reports required by (5) must be filed with the department:

(a) upon the insurer's initial authorization by the Montana insurance commissioner's office to write workers' compensation insurance;

(b) by May 1 of each following year; and

(c) upon request of the department.

AUTH: 39-71-203, MCA

IMP: 39-71-2215, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE II to clarify the financial conditions required by the type of security deposit placed by plan number two insurers with the department, and to implement 39-71-2215, MCA (enacted as Chap. 117, L. of 2007). The purpose of the deposit is to provide a ready source of funds to pay claims arising under Title 39, chapter 71, MCA, in the event the plan number two insurer becomes insolvent, is placed in receivership, declares bankruptcy, seeks protection from its creditors, or is otherwise unwilling or unable to pay its liabilities.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bill Wheeler, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail [bwheeler@mt.gov](mailto:bwheeler@mt.gov), and must be received no later than 5:00 p.m., March 9, 2012.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all department administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Department of Labor and Industry, Office of Legal Services, attn: Mark Cadwallader, P.O. Box 1728, Helena, Montana 59624-1728; faxed to the office at (406) 444-1394; e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov); or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply to portions of this rulemaking notice and have been fulfilled. The primary bill sponsor of Chap. 117, Laws of 2007 (Senate Bill 108), was contacted on June 14, 2007, by mail. Bill

sponsor notification concerning the 2005 repeal of the Occupational Disease Act, and consolidation of occupational disease into the Workers' Compensation Act, was given to the primary bill sponsor on October 17, 2005, via mail.

9. The department's hearings bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State January 30, 2012



BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.150.301 definitions, )  
24.150.401 fees, 24.150.402 record )  
retention, 24.150.501 examination, )  
and 24.150.602 transactional )  
document requirements )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 1, 2012, at 10:00 a .m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers (board) no later than 5:00 p.m., on February 24, 2012, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsddhad@mt.gov.

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

24.150.301 DEFINITIONS (1) "Dispensing fee" means a fee chargeable by the hearing aid dispenser, subject to ARM 24.150.602, for the initial hearing evaluation, consultation, fitting, and ~~follow-up~~ follow-up visit.

(2) through (5) remain the same.

(a) ~~the written International Hearing Society examination and a practical examination through the International Hearing Society, verifying the minimum competencies to fit and dispense hearing aids and related devices, with a passing score of 75 percent or greater on each examination as required in ARM 24.150.501;~~  
and

(b) remains the same.

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-131, 37-1-304, 37-16-301, 37-16-303, 37-16-304, MCA

REASON: The board determined it is reasonably necessary to amend the definition of "substantially equivalent," because ARM 24.150.501 sets forth the exam requirements and it is unnecessary to restate the requirements in this rule.

24.150.401 FEES (1) through (1)(f) remain the same.

|   |                |
|---|----------------|
| (g) Renewal active license:                   | <u>1000</u>    |
| <del>(i) for the 2010 renewal cycle</del>     | <del>650</del> |
| <del>(ii) for 2011 and subsequent years</del> | <del>450</del> |
| (h) through (3) remain the same.              |                |

AUTH: 37-1-131, 37-1-134, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-402, 37-16-405, 37-16-406,

MCA

REASON: The 2011 Montana Legislature enacted Chapter 342, Laws of 2011 (Senate Bill 132), an act allowing audiologists to sell hearing aids without a hearing aid dispenser license. The bill was signed by the Governor on May 5, 2011, and became effective October 1, 2011. Revenue will be lost because approximately 30 licensed audiologists will no longer be required to renew and hold their hearing aid dispenser licenses and the financial burden will fall upon the remaining 60 hearing aid dispensers. The board determined it is reasonably necessary to increase renewal fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs.

The board currently has a negative cash balance and the department has determined that unless renewal fees are increased as proposed, the board will continue to have a shortage of operating funds through fiscal year 2012. The board estimates that the proposed fee increases will affect approximately 60 active licensees and result in \$33,000 in additional annual revenue. In addition to the fee increases, the department and the board will continue to seek and implement ways to reduce costs associated with board functions.

24.150.402 RECORD RETENTION (1) and (1)(a) remain the same.

(b) method of contact, whether in home, office, or by telephone, and the identity of the individual initiating the contact;

(c) and (1)(d) remain the same.

(e) a copy of the sale contract, purchase agreement, or bill of sale, including a three-day cancellation notice, where applicable, signed and dated by the parties, the original delivered to the patient;

(f) remains the same.

(g) a copy of the delivery verification form, in accordance with ARM ~~24.150.510~~ 24.150.602, the original delivered to the patient;

(h) through (4) remain the same.

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

REASON: The board is amending this rule to provide the correct location of the delivery verification form requirements at ARM 24.150.602, which was relocated from ARM 24.150.510 on April 30, 2010.

24.150.501 EXAMINATION - PASS/FAIL POINT (1) remains the same.

(2) The written and practical examination will be provided by the International Hearing Society. The board may, in its discretion, approve and adopt another equivalent examination for hearing aid dispensers.

~~(2) (3) The passing score on the written examination shall be is the national passing score or 75 percent, whichever is greater. The written examination shall include a Montana jurisprudence section.~~

~~(3) (4) Each section of the oral and practical examination must be passed by a minimum grade of 75 percent~~ An applicant must achieve a passing score on each section of the practical examination. An applicant who fails any section only has to retake section(s) failed and pay the full reexamination fee.

~~(4) (5) All applicants, original or licensed in other states, shall be required to pass a jurisprudence examination on Montana laws and rules, administered by the board. The passing score on the jurisprudence examination is 75 percent.~~

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-16-405, 37-16-406, MCA

REASON: The board is adding (2) to clearly delineate the approved written and practical exam provider for potential applicants. The amendment will also allow the board flexibility to approve other equivalent exams, should they become available.

The board is amending (3) and (4) since national exam passing rates are subject to change and the board concluded that applicants must be held to a minimum standard of 75 percent to ensure the licensure of qualified practitioners. The board is amending (5) to clarify that the jurisprudence exam also requires a 75 percent passing rate.

24.150.602 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) In addition to the requirements of 37-16-303, MCA, all written memorialization of the sale, including, but not limited to bills of sale, cancellation notices, contracts, and purchase agreements, shall be no smaller than 12-point type face and appear on forms no smaller than 8 1/2 x 11 inches.

(2) If a hearing aid or related device may be programmed or adjusted only by an authorized dealer or dispenser, the licensee must provide a plain and simple notice of that fact either in a separate writing signed by the licensee and by the customer, or in the written purchase agreement.

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

~~(4) (5) Any trainee, who provides service to a patient, must legibly print or type the trainee's name, the designation "trainee," and license number on the document, along with the name and license number of the trainee's supervisor.~~

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

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-303, 37-16-304, MCA

REASON: Proprietary hearing aids are those that can only be programmed without additional cost to the customer by offices within a particular franchise or provider

network. To ensure public and consumer protection, the board is adding (2) to require that licensees inform their customers when hearing aids are proprietary.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsddhad@mt.gov](mailto:dlibsddhad@mt.gov), and must be received no later than 5:00 p.m., March 9, 2012.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsddhad@mt.gov](mailto:dlibsddhad@mt.gov); or 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. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS  
GENE BUKOWSKI, CHAIRPERSON

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

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

Certified to the Secretary of State January 30, 2012

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

In the matter of the amendment of )  
ARM 37.82.701, 37.86.1701, )  
37.86.1705 and 37.86.1706 )  
pertaining to plan first 1115 waiver )  
implementation )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 29, 2012, at 10:00 a.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, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on February 22, 2012, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

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

(ii) have received nonmedically needy family Medicaid in Montana for three of six months prior to the closure of nonmedically needy family Medicaid. The coverage will continue for four consecutive months. This program is known as the "family-extended group".

(o) women ages 19 through 44, who have not been otherwise determined eligible for Medicaid under this title, who are able to become pregnant but are not now pregnant, whose household income does not exceed 200% of the federal poverty level, and do not have third party insurance coverage for family planning services. Services are limited to those family planning services defined at ARM 37.86.1701. This program is limited to 4,000 women at any given time and is known as Plan First.

(2) and (3) remain the same.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA

IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

37.86.1701 FAMILY PLANNING SERVICES (1) Family planning services may be provided by a physician in accordance with ARM 37.86.101 through 37.86.105, a nurse-practitioner mid-level practitioner in accordance with ARM 37.86.201 through 37.86.205 or a local delegate agency of the Family Planning program of the Department of Public Health and Human Services, or a local family planning program defined at ARM 37.19.101. Family planning services provided by a local delegate agency may include:

(a) ~~annual visit;~~  
(b) ~~(a) comprehensive history;~~  
(b) contraceptive supplies and procedures;  
(c) ~~initial physical examination;~~  
(d) ~~(c) initial, routine, and annual visits and examinations;~~  
(e) ~~(d) laboratory services;~~  
(f) ~~(e) medical counseling; and~~  
(g) ~~(f) routine visit testing and treatment for sexually transmitted infections and testing for human immunodeficiency virus (HIV).~~

(2) ~~"Annual visit" means a return visit at least once per year, following the initial visit, for a physical examination, laboratory services, and health history. The physical will include all examinations and services required for the initial physical. The laboratory services may include a urinalysis, hematocrit, and Pap test.~~

(2) A copy of the family planning procedures and service code table for Plan First may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) ~~"Comprehensive history" means a complete history of obstetrical/gynecological conditions, significant illnesses, disease, hospitalization, problems relating to previous contraceptive use, and relevant family health, psychiatric or social information which is recorded and maintained in the recipient's medical record.~~

(4) ~~"Contraceptive supplies" means FDA approved intrauterine devices (IUD), spermicidals, barrier methods, implants, and oral contraceptives.~~

(5) ~~"Local delegate agency" means a clinic receiving funding through the department under Title X, the Family Planning Services and Population Research Act of 1970, under the Public Health Services Act, 42 USC 300 et seq.~~

(6) ~~"Initial physical examination" means an examination that may include the following procedures conducted at the initial visit of the recipient:~~

(a) ~~thyroid palpation;~~  
(b) ~~inspection and palpation of breasts and axillary glands, with instruction to the recipient for self-examination;~~  
(c) ~~auscultation of heart and lungs;~~  
(d) ~~blood pressure;~~  
(e) ~~weight and height;~~  
(f) ~~abdominal examination;~~  
(g) ~~pelvic, including speculum, bimanual, and recto vaginal examination;~~  
(h) ~~insertion, fitting, or removal of an IUD or diaphragm; and~~

- ~~(i) implantation or removal of subcutaneous contraceptives.~~
- ~~(7) "Initial visit" means the first contact of the recipient and may include:~~
  - ~~(a) initial comprehensive review of medical history;~~
  - ~~(b) physical examination;~~
  - ~~(c) information and education regarding contraceptive methods;~~
  - ~~(d) ordering of laboratory services;~~
  - ~~(e) prescription for contraceptive supplies;~~
  - ~~(f) postexamination interview;~~
  - ~~(g) any counseling rendered the day of the visit;~~
  - ~~(h) insertion fitting or removal of an IUD or diaphragm; and~~
  - ~~(i) implantation or removal of subcutaneous contraceptives.~~
- ~~(8) "Laboratory services" means the delegate agency ordered tests with~~

~~specimen collection carried out by the provider.~~

~~(9) "Medical counseling" means counseling services provided by a physician, mid-level practitioner, or other medical professional under the supervision of the clinic's medical director regarding:~~

- ~~(a) preconceptual problems;~~
- ~~(b) problem pregnancies;~~
- ~~(c) HIV sexuality issues;~~
- ~~(d) sexually transmitted diseases;~~
- ~~(e) abnormal Pap smears;~~
- ~~(f) sexuality and the developmentally disabled client; and~~
- ~~(g) sterilization.~~

~~(10) "Routine visit" means a visit to provide contraceptive follow-up and monitoring and to correct any problems associated with utilization of medical services including treatment for vaginal infections. Medical revisit may be used for a return visit for a diaphragm, IUD, or subcutaneous device and includes the insertion, fitting, implantation, or removal of the device.~~

AUTH: 53-6-113, MCA

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

37.86.1705 FAMILY PLANNING SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 37.85.401, 37.85.406, 37.85.407, 37.85.410, and 37.85.414.

~~(1) (a) Contraceptive clinic services are the services of a physician, a mid-level practitioner or the services of the local delegate agencies of the Family Planning program of the Department of Public Health and Human Services, or a local family planning program defined at ARM 37.19.101.~~

~~(2) (b) Laboratory services must be ordered by a physician or a mid-level practitioner.~~

~~(3) (c) Contraceptive supplies must be prescribed by a physician or a mid-level practitioner with prescriptive authority.~~

~~(4) (d) Eligible recipients clients requesting family planning services must be free from coercion or mental pressure and free to choose the method of family planning to be used.~~

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

37.86.1706 FAMILY PLANNING SERVICES, REIMBURSEMENT

(1) Reimbursement for family planning services is as follows:

(a) remains the same.

(b) for mid-level practitioners reimbursement is provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.205 and ~~37.86.212~~;

(c) ~~for local delegate agencies the lowest of the provider's usual and customary charge for this service or the department's fee schedule for local family planning programs as defined at ARM 37.19.101~~ reimbursement is provided in accordance with the methodologies described in ARM 37.85.212, 37.86.105, and 37.86.205.

~~(2) The fees in the department's fee schedule for the local delegate agencies are for each item or procedure the average of the charges for that item or procedure submitted by the delegate agencies during the preceding fiscal year. The adjustments to the fee schedule based upon the annual averaging may not exceed the adjustment for family planning services authorized by the legislature for that fiscal year. The fees in the fee schedule for services provided by physicians or mid-level practitioners may not exceed the fees available for those services set forth in ARM 37.86.105 or 37.86.205 and 37.86.212.~~

~~(3)~~(2) The procedure billing codes and department fee schedules are available from at the department's fiscal agent web site located at <http://medicaidprovider.hhs.mt.gov/providerpages/providertype/16.shtml#feeschedules>.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.82.701, 37.86.1701, 37.86.1705 and 37.86.1706. These rule amendments are necessary to implement the Plan First waiver.

Plan First is a waiver for a new eligibility group that would consist of women ages 19 through 44, who have not been determined eligible for Medicaid, who are able to become pregnant but are not now pregnant, whose household income does not exceed 200% of the federal poverty level, and do not have third party insurance coverage for family planning services. Services are limited to those family planning services defined at ARM 37.86.1701. This program is limited to 4,000 women at any given time.

Since Plan First would be implemented strictly in accordance with the terms of a waiver, no alternative was considered.

ARM 37.82.701



The department is proposing to amend this rule by adding a new eligibility group called Plan First.

ARM 37.86.1701, 37.86.1705, and 37.86.1706

The department is proposing to amend these rules by updating the family planning services definitions, requirements, and reimbursement.

Fiscal Impact

The estimated cumulative fiscal impact of these rules is:

|          | <u>Total Cost</u> | <u>State General Fund</u> | <u>Federal Match</u> |
|----------|-------------------|---------------------------|----------------------|
| SFY 2012 | \$1,088,950       | \$369,045                 | \$719,905            |
| SFY 2013 | (\$64,614)        | (\$22,137)                | (\$42,477)           |

This rule amendment is estimated to impact 4,000 Montana women and 500 Medicaid providers.

5. The department intends the proposed rule changes to be applied effective February 1, 2012.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., March 8, 2012.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

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

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State January 30, 2012.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 6.6.6705, 6.6.6707, 6.6.6709, )  
6.6.6711, and 6.6.6713 pertaining to )  
Valuation of Life Insurance Policies )

TO: All Concerned Persons

1. On December 8, 2011, the Office of the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-195 regarding the public hearing on the proposed amendment of the above-stated rules at page 2584 of the 2011 Montana Administrative Register, issue number 23.

2. On January 4, 2012, the Office of the Commissioner of Securities and Insurance, Montana State Auditor held a public hearing to consider the proposed amendment of the above-stated rules

3. No comments were heard at the hearing, and no written comments were received up to the comment deadline of January 12, 2012.

4. The commissioner has amended ARM 6.6.6705, 6.6.6707, 6.6.6709, 6.6.6711 and 6.6.6713 exactly as proposed.

/s/Brett O'Neil  
Brett O'Neil  
Rule Reviewer

/s/Jesse Laslovich  
Jesse Laslovich  
Chief Legal Counsel

Certified to the Secretary of State January 30, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 10.55.909 relating to student )  
records )

TO: All Concerned Persons

1. On November 25, 2011, the Board of Public Education published MAR Notice No. 10-55-258 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2461 of the 2011 Montana Administrative Register, Issue Number 22.

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

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

COMMENT #1: Madalyn Quinlan, Chief of Staff for Superintendent of Public Instruction Denise Juneau, supported the amendment and stated that adding the statewide student identifier to the permanent record file will aid the transfer of student information throughout the K-20 system and that there was no anticipated costs to the school districts to add this information to the permanent record file.

RESPONSE: The board thanks Ms. Quinlan for her comments and concurs.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chair  
Board of Public Education

Certified to the Secretary of State January 30, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.17.127 related to prevailing )  
wage rates for public works projects - )  
building construction services, )  
highway construction services, heavy )  
construction services and )  
nonconstruction services )

TO: All Concerned Persons

1. On November 25, 2011, the Department of Labor and Industry published MAR Notice No. 24-17-260 regarding the public hearing on the amendment of the above-stated rule on page 2484 of the 2011 Montana Administrative Register, issue no. 22.

2. On December 16, 2011, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

COMMENT 1: Keith Allen, Business Manager, IBEW Local #532, said there are the following errors in the heavy rates: General Decision #MT100077 Modification no. 5 for Electricians Local #233 reflects rates from the Butte area, and they should reflect the rates from the Great Falls area. Also, General Decision #MT100079 Modification no. 6 reflects rates from Wyoming Local #322 instead of the appropriate Local #532 out of Billings.

RESPONSE 1: In light of the errors discovered in the federal wage determinations, the department has decided to not to adopt the proposed heavy rates. The current Montana Prevailing Wage Rates for Heavy Construction Services 2011, Revised June 24, 2011, will remain in effect until the federal government issues modifications that correct the errors. Once the errors have been corrected the department will again propose heavy construction services rates and undertake rulemaking to adopt those rates.

COMMENT 2: Lee Vaughn, Service Representative, PNWRCC #82, said the dispatch points for Carpenters in the heavy rates are incorrect.

RESPONSE 2: See Response 1 above.

COMMENT 3: Mario Martinez, Service Representative, PNWRCC #82, said there are errors for the Carpenters classification in General Decision #s MT100076, MT100077, MT100078, and MT100079, and he requests the department adopt the Carpenter's current heavy/highway agreement for the Carpenters classification in the heavy rates.

RESPONSE 3: See Response 1, above.

COMMENT 4: Kim Rickard, Business Manager, LIUNA #1686, said the rates for Laborers Group 2 are low in all districts and not in line with Local #1686's collective bargaining agreement (CBA) especially when compared to Groups 1, 3, and 4, and present a financial hardship to the workers and extra costs to employers as they cannot recruit and retain skilled Laborers. Ms. Rickard requests the department use the wages and benefits Laborers #1686 provided the department. Ms. Rickard also states that several of Local #1686's occupations are missing from the heavy rates. Ms. Rickard requests the department exercise its ability to survey for the 2012 heavy rates or keep the current 2011 heavy rates in effect.

RESPONSE 4: The rates vary depending on number and type (union or nonunion) of responses. The rates for Group 2 Laborers were set according to ARM 24.17.121. Generally the department receives more data for Group 2 Laborers than the other groups; therefore, Group 2 Laborers have greater tendency than other groups to be set with survey data rather than with a CBA. The rates set with survey data are generally lower than those set with a CBA as the survey data is a mix of union and nonunion rates. The department also notes that prevailing wage rates merely establish a minimum level for wages paid on a public works project, not a ceiling or maximum. In light of the errors discovered in the federal wage determinations, the department has decided to hold off on adopting the proposed heavy rates. The missing occupations in the Laborers Groups are not an error, but a result in the change in the methodology used by the federal government. Any wage rates needed for occupations missing from the Laborers Groups can be obtained by referencing the Montana Prevailing Wage Rates for Heavy Construction Services 2011, until the department surveys for its own heavy rates.

COMMENT 5: Carey Hegreberg, Montana Contractors Association (MCA), voiced concern that the prevailing wage rates, especially the benefit rates in some trades are vastly skewed. Mr. Hegreberg suggests that the department use its statutory authority to change the number of districts or develop some type of mechanism to deal with the inconsistencies within the prevailing wage rates.

RESPONSE 5: The department acknowledges the inconsistencies in the prevailing wage rates. The greater the survey response, the more reflective the prevailing wage rates are of what is happening in the market place. The department suggests that the MCA encourage its contractors to participate in the survey. The department welcomes any suggestions on how to realign districts and/or improve the rate setting process.

COMMENT 6: In written comments to the department, Anderson Masonry asked why its trade classifications of Bricklayer, Stone Masons, and Hod Carrier are not listed in the heavy or highway wage determinations. It noted that it is signed to union collective bargaining agreements and performs masonry work on projects that are highway and heavy projects.

RESPONSE 6: The department currently adopts the heavy and highway rates directly from the federal Davis-Bacon web site. The department suggests that Anderson Masonry contact the USDOL to assist them in adding the Bricklayer and Hod Carrier classifications to the federal heavy and highway determinations.

COMMENT 7: Anderson Masonry also stated that the preliminary building construction wage rate and fringes are higher than its signed agreement with the Laborers Union Local #1686 Montana statewide agreement, and stated that District 1 for Hod Carrier should only be \$16.35 with fringes of \$6.91

RESPONSE 7: The rate for Hod Carriers in District 1 was set with the highest CBA submitted to the department since there was insufficient survey data to set the rate as provided in 18-2-402(3), MCA, and ARM 24.17.121(3)(c) and (4)(c).

COMMENT 8: Anderson Masonry also asked why the trade of Hod Carriers is listed as part of the Group 4 Laborers and not listed with the Group 2 General Laborers and Tenders.

RESPONSE 8: The department concludes that because Hod Carriers have a different skill set than General Laborers and Tenders, they are in a group that justifies a different wage classification.

COMMENT 9: In written comments to the department, Mark Meek, Owner, Frontline Glass, said he was concerned there was an error in the benefit rates for Glaziers in Districts 3, 6, and 10, because they were disproportionate to those in District 5.

RESPONSE 9: The rates vary depending on number and type (union or nonunion) of responses. The rates for Glaziers in District 6 have been revised (see Response 11). The benefit rates for Glaziers in Districts 3 and 10 were set pursuant to ARM 24.17.121 (4)(c) and are correct.

COMMENT 10: In written comments and subsequent telephone conversations with the department, Sean Smith, Business Manager, UA #41, asked why the rates for Plumbers were lower than those in UA #41's CBA.

RESPONSE 10: The original data submitted by Mr. Smith was from a CBA outside of the survey period, so the department asked for the CBA that was in effect during the survey period. The survey data reported by Mr. Smith also reflected amounts on the CBA that are outside of the survey period, so the department asked Mr. Smith to resubmit data or allow the department to change the data to reflect the correct amounts from the CBA in effect during the survey period. On November 2, 2011,

Mr. Smith submitted the correct CBA that became effective January 1, 2011 and his data was changed to reflect those amounts. After reviewing those sequences of events Mr. Smith agreed that the preliminary rates for Plumbers were correct.

COMMENT 11: In an e-mail to the department, Jess Labuff, Assistant Business Manager, Boilermakers #11, informed the department that the data he submitted for Districts 3, 4, and 8 for Boilermakers was incorrect, and the correct data should reflect a wage of \$30.16 and a benefit of \$25.20. Mr. Labuff also mentioned that the travel amounts listed were for all districts and not all districts except District 3.

RESPONSE 11: The prevailing wage rates for Boilermakers in Districts 3, 4, and 8 and the travel rates have been revised. Revised rates are identified below in paragraph 5.

COMMENT 12: Roy Levine, Assistant Business Agent, IBEW #768, reviewed the surveys after the rules hearing and said the survey from the University of Montana should be thrown out, because it is a service contract. Mr. Levine also submitted additional data for District 2.

RESPONSE 12: Following a review of the information submitted, the department concludes that the work done by the Electricians at the University of Montana does not meet the department's definition of building construction or the criteria to be used in the calculation of the rates. The data for Electricians in the University of Montana's survey have been omitted, and the new data from Mr. Levine has been incorporated into the rates. The rates for Electricians in District 2 have been revised. Revised rates are identified below in paragraph 5.

COMMENT 13: In a letter to the department, Jeff Neitzel, Assistant Business Manager, IBEW #532, writes that the federal mileage for Electricians and Telecommunications Equipment Installers in districts 6, 8, 9 and 10 is paid both ways per their agreement.

RESPONSE 13: To reflect the amounts paid for travel in IBEW #532's CBA and still meet the travel requirements enforced by the department the travel pay amount of "the federal mileage rate/mi." for Electricians and Telecommunications Equipment Installers in districts 6, 8, 9 and 10 will be changed to "two times the federal mileage rate/mi." The travel rates for Electricians and Telecommunications Equipment Installers have been revised. Revised rates are identified below in paragraph 5.

COMMENT 14: Leo Marsura, Business Manager, Roofers #189, requested the department to review the data submitted from Miller Roofing in District 2.

RESPONSE 14: The department contacted Barb Biggs from Miller Roofing and found that various workers identified as Roofers on Miller Roofing's survey response were really temporary laborers. The department removed Miller Roofing's data for Roofers and recalculated the rates. The rates for Roofers in District 2 have been revised. Revised rates are identified below in paragraph 5.



COMMENT 15: The department received additional data for Glaziers in District 6 from Valley Glass & Windows.

RESPONSE 15: The rates for Glaziers in District 6 have been revised. Revised rates are identified below in paragraph 5.

COMMENT 16: In written comments received from Bill Hurt, Business Manager, IUPAT #1922, the department was notified that the \$13.24 benefit amount for Painters in Districts 6, 8 and 10 is from a CBA that was effective after the survey period. He stated that the correct benefit rate should be \$11.23.

RESPONSE 16: The benefit rates for Painters in Districts 6, 8 and 10 have been revised. Revised rates are identified below in paragraph 5.

COMMENT 17: In written comments to the department, John Johnson, Dispatcher, IUOE #400, requested the department survey to set the state's heavy rates instead of adopting them from the federal government.

RESPONSE 17: In light of the errors discovered in the federal wage determinations the department has decided to hold off on adopting the proposed heavy rates. The missing occupations in the Operators Groups are not an error, but a result in the change in the methodology used by the federal government. Any wage rates needed for occupations missing from the Operators Groups can be obtained by referencing the Montana Prevailing Wage Rates for Heavy Construction Services 2011 until the department surveys for its own heavy rates.

4. ARM 24.17.127 has been amended as follows, stricken material interlined, new material underlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(g) The current heavy construction services rates are contained in the ~~2012~~ 2011, Revised June 24, 2011, version of "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) through (3) remain as proposed.

5. The following rates in "Montana Prevailing Wage Rates for Building Construction Services 2012" publication incorporated by reference in the rule have been amended as follows, stricken matter interlined, new matter underlined:

Boilermakers

| District | Wage    | Benefit                           |
|----------|---------|-----------------------------------|
| 3        | \$30.16 | <del>\$19.79</del> <u>\$25.20</u> |
| 4        | \$30.16 | <del>\$21.76</del> <u>\$25.20</u> |
| 8        | \$30.16 | <del>\$21.76</del> <u>\$25.20</u> |

Boilermakers

Travel:

All Districts ~~Except 3~~

0-70 mi. free zone

>70-120 mi. \$55/day

>120 mi. \$70/day + federal mileage rate/mi.

Electricians

| District | Wage                              | Benefit                          |
|----------|-----------------------------------|----------------------------------|
| 2        | <del>\$26.08</del> <u>\$27.02</u> | <del>\$9.42</del> <u>\$11.64</u> |

Electricians

Travel:

District 6

0-18 mi. free zone

>18-60 mi. two times the federal mileage rate/mi.

>60 mi. \$65/day

(Big Sky and West Yellowstone \$75/day)

Electricians

Travel:

Districts 8, 9, 10

0-18 mi. free zone

>18-60 mi. two times the federal mileage rate/mi.

>60 mi. \$75/day

Telecommunications Equipment Installers

Travel:

All Districts

Two times the federal mileage rate/mi. if transportation is not provided.

Roofers

| District | Wage                              | Benefit |
|----------|-----------------------------------|---------|
| 2        | <del>\$10.00</del> <u>\$20.05</u> | \$9.47  |

Glaziers

| District | Wage                              | Benefit                          |
|----------|-----------------------------------|----------------------------------|
| 6        | <del>\$19.08</del> <u>\$19.92</u> | <del>\$11.23</del> <u>\$2.65</u> |

Painters

| District | Wage    | Benefit                           |
|----------|---------|-----------------------------------|
| 6        | \$18.98 | <del>\$13.74</del> <u>\$11.23</u> |
| 8        | \$21.50 | <del>\$13.74</del> <u>\$11.23</u> |
| 10       | \$21.50 | <del>\$13.74</del> <u>\$11.23</u> |

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State January 30, 2012

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

In the matter of the amendment of ) CORRECTED NOTICE OF  
37.115.1840 pertaining to pools, ) AMENDMENT  
spas, and other water features )

TO: All Concerned Persons

1. On August 11, 2011 the Department of Public Health and Human Services published MAR Notice No. 37-553 pertaining to the proposed amendment of the above-stated rule at page 1482 of the 2011 Montana Administrative Register, Issue Number 15. On December 8, 2011 the department published the notice of amendment at page 2657 of the 2011 Montana Administrative Register, Issue Number 23.

2. This corrected notice is being filed because new text added to the proposed rule was not underlined. The department has underlined the word "container" to show that it was new text added to this rule. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.115.1840 WADING POOL RESTROOM AND CHANGING TABLE REQUIREMENTS (1) remains the same.

(2) Each restroom shall provide at least one changing table station and a waste disposal ~~facility~~ container for used diapers.

3. The replacement page for this corrected notice was submitted to the Secretary of State on December 30, 2011.

/s/ Kurt Moser  
Rule Reviewer

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

Certified to the Secretary of State January 30, 2012.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I and II pertaining to Business     )  
Services Division requirements         )

TO: All Concerned Persons

1. On December 22, 2011, the Secretary of State published MAR Notice No. 44-2-175 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2797 of the 2011 Montana Administrative Register, Issue Number 24.

2. The Secretary of State has adopted the above-stated rules as proposed: New Rules I (44.5.302) and II (44.5.202).

3. No comments or testimony were received.

/s/ JORGE QUINTANA  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH  
Linda McCulloch  
Secretary of State

Dated this 31st day of January, 2012.

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

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

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

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

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

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

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

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

- Department of Public Health and Human Services.

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

- Department of Corrections; and
- Department of Justice.

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

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

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

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

**Environmental Quality Council:**

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

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

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

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

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

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

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

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



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2011. This table includes those rules adopted during the period October 1, 2011, through December 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 September 30, 2011, 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 2011/2012 Montana Administrative Register.

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

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