

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 16

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III that establish	)	PROPOSED ADOPTION
criteria to be used by the board's	)	
actuary to obtain information related	)	
to PERS, its amortization period, its	)	
funding status, its future GABA rates,	)	
and its actuarial equivalent factors	)	

TO: All Concerned Persons

1. On September 23, 2013 at 10:00 a.m., the Public Employees' Retirement Board will hold a public hearing in Room 201, 100 N. Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employee Retirement Administration no later than 5:00 p.m. on September 16, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employee Retirement Administration, P.O. Box 200131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [kvladic@mt.gov](mailto:kvladic@mt.gov).

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

NEW RULE I APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING GABA (1) For purposes of determining the PERS GABA rates referenced in 19-3-1605(5), MCA, the actuary will:

(a) reduce the 1.5% GABA rate established in 19-3-1605(4), MCA by 0.1% for each full 2 percentage points the funded percentage is below 90%;

(b) establish a GABA rate expressed in tenths of a percent.

(2) This rule will not apply until the PERS amortization period is under 40 years.

(3) Once the PERS amortization period is under 40 years, the actuary will adjust the 1.5% GABA each year, based on that year's funding percentage.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining the GABA rate to be applied to PERS retiree benefits on an annual basis.

The actuary questioned whether GABA should be reduced proportionately. For example, if the funded percentage is 79%, should the GABA be reduced from 1.5% to .95% ( $90\% - 79\%/2 = .55\%$ ;  $1.5\% - .55\% = .95\%$ )? The board determined that reductions in one tenth of one percent would be sufficient to meet the legislative goal of bringing the system to a position of actuarially sound funding while maintaining the ability to explain the GABA reductions to members and without causing undue administrative hardship. Thus, in the above example, the GABA rate would be reduced from 1.5% to 1% ( $90\% - 80\%/2 = .5\%$ ;  $1.5\% - .50\% = 1.0\%$ ).

Sections (2) and (3) are necessary to specify how the GABA rate will be calculated each year after the amortization period is below 40 years. Members and stakeholders have questioned whether the legislation provides a mechanism for changing the GABA each year. The board believes the legislation was intended to allow the GABA to be recalculated and reset each year in a manner consistent with 19-3-1605(5), MCA.

NEW RULE II APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS (1) For purposes of determining actuarial equivalent factors for optional benefit determinations, early retirement factors, money purchase benefit calculations, and service purchases, the actuary will:

- (a) assume a 1.5% GABA rate for future years; and
- (b) establish new actuarial equivalent factors effective January 1, 2014

following the fiscal year 2013 actuarial valuation.

(2) The 1.5% GABA rate established in (1)(a) is prospective only. Optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases implemented prior to July 1, 2013, will not be affected.

(3) Prior to January 1, 2014, MPERA will work with members regarding the options available to them regarding optional benefit determinations, early retirement factor reductions, money purchase benefit calculations, and service purchases.

(4) In the event of a court order prohibiting the board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will assume a GABA rate consistent with the court order for purposes of this administrative rule until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is necessary to provide direction to the actuary regarding assumptions required for determining actuarial equivalent factors used for calculating various actuarially equivalent benefits and the cost of various service purchases. The GABA rate is an important assumption in these calculations.

Chapter 390, Laws of 2013 establishes a GABA with 0% floor and a 1.5% ceiling, together with contribution and funding triggers designed to amend the GABA in

increments of one tenth of one percent. Actuarial valuations based on assumptions that change based on other assumptions are not as reliable as valuations based on established assumptions. The board has determined to use the ceiling of 1.5% because it will result in the largest possible liability, and the highest average service purchase cost, thus assuring the legislative goal of bringing the system to a position of actuarially sound funding.

Sections (2) and (3) are necessary as the board has been contacted by members concerned that their prior service purchases were based on assumptions that are no longer true.

Section (4) is necessary as the board has been advised that a lawsuit challenging the constitutionality of a decreased GABA rate is pending and that the plaintiffs would be seeking an injunction to prevent implementation of the new GABA rate pending resolution of the lawsuit.

NEW RULE III APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORILY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND (1) For purposes of determining the annual amount of coal severance tax and interest income from the coal severance tax permanent fund that will be statutorily appropriated to the PERS defined benefit plan trust fund, the actuary will rely on information provided by the Office of Budget and Program Planning.

AUTH: 19-2-403, MCA  
IMP: 19-2-405, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 1 and 2, Chapter 390, Laws of 2013 provide for payment of an unknown amount of coal severance tax funds and a maximum amount of interest income from the coal severance tax permanent fund. The exact amount of those statutory appropriations must be provided to the board so that its actuary can include those amounts in the annual PERS actuarial valuation. The Office of Budget and Program Planning has indicated that it will provide this information as needed.

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: Kris Vlastic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0513; telephone (406) 444-2578; fax (406) 444-5428; or e-mail [kvlastic@mt.gov](mailto:kvlastic@mt.gov), and must be received no later than 5:00 p.m., September 23, 2013.

5. Kris Vlastic, Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. The primary bill sponsor was contacted by mail on May 21, 2013 and July 31, 2013.

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the board has determined that adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
President  
Public Employees' Retirement Board

Certified to the Secretary of State August 12, 2013

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
2.43.2114 pertaining to required	)	AMENDMENT
employer reports regarding employer	)	
contributions paid on behalf of	)	
university employees who elect to	)	
participate in the Optional Retirement	)	
Program rather than in the Public	)	
Employees' Retirement System	)	

TO: All Concerned Persons

1. On September 23, 2013, at 9:00 a.m., the Public Employees' Retirement Board will hold a public hearing in Room 201, 100 N. Park Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employee Retirement Administration no later than 5:00 p.m. on September 16, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employee Retirement Administration, P.O. Box 200131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

NEW RULE I ALLOCATION OF ADDITIONAL EMPLOYER CONTRIBUTIONS ON BEHALF OF MONTANA UNIVERSITY SYSTEM EMPLOYEES IN THE OPTIONAL RETIREMENT PROGRAM

(1) The additional employer contributions provided for in 19-3-316(3), MCA that are paid on behalf of MUS employees in the optional retirement program will be allocated as follows:

- (a) The 1.00% additional employer contribution will be directed to the PERS defined benefit plan trust fund.
- (b) The 0.27% additional employer contribution is already allocated to the PERS defined benefit retirement plan's plan choice rate pursuant to 19-21-214(2)(b), MCA.
- (c) The 0.1% additional employer contribution that commences July 1, 2014, will be directed to the PERS defined benefit plan trust fund unless the board determines pursuant to 19-3-2121, MCA that an increase in the plan choice rate is required to actuarially fund the PERS Defined Contribution Retirement Plan's share of the PERS defined benefit's plan unfunded liability. In that event, the 0.1%



additional employer contribution will be directed to the PERS Defined Contribution Retirement Plan's plan choice rate.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-3-2104, MCA

STATEMENT OF REASONABLE NECESSITY: Section 6, Chapter 390, Laws of 2013 amends 19-3-2117, MCA to allocate the additional employer contributions paid on behalf of PERS Defined Contribution Retirement Plan members. Unfortunately, there is no allocation for MUS employees in PERS-covered positions who elect to participate in the Optional Retirement Program (ORP) rather than either the PERS Defined Benefit Retirement Plan or the PERS Defined Contribution Retirement Plan. Section 19-21-214, MCA instructs the board regarding allocation of employer contributions to the ORP. That statute is silent regarding the additional employer contributions provided for in Section 4, Chapter 390, Laws of 2013. However, 19-21-214(3), MCA provides that employer contribution allocations are subject to adjustment by the board provided the adjustments are consistent with 19-3-2121, MCA.

Section 19-3-2121, MCA allows the board to use employer contributions to increase the plan choice rate contribution under certain circumstances. If those circumstances are met, the board has determined it to be appropriate to allocate the 0.1% increase to the plan choice rate. If the circumstances are not met, the 0.1% increase will go to help the defined benefit retirement plan's unfunded liability.

The board will ask the 2015 Legislature to amend 19-21-214, MCA to address the allocation of the additional employer contributions on behalf of MUS employees in PERS-covered positions who elect to participate in the ORP. The board will propose to the 2015 Legislature that the allocation mirror that in 19-3-2117, MCA for PERS Defined Contribution Retirement Plan members.

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

2.43.2114 REQUIRED EMPLOYER REPORTS (1) through (5) remain the same.

(a) Commencing July 1, 2013, MUS shall transmit to MPERA the 1.0% additional employer contribution provided for in Chapter 390, Laws of 2013.

(b) Commencing July 1, 2014, MUS shall also transmit to MPERA the 0.1% additional employer contribution provided for in Chapter 390, Laws of 2013.

(6) remains the same.

AUTH: 19-2-403, MCA

IMP: Section 4, Chapter 390, Laws of 2013, 19-20-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-21-214, MCA allocates

the current 0.27% additional employer contribution to the PERS defined benefit plan to eliminate the plan choice rate unfunded actuarial liability. However, Chapter 390, Laws of 2013 does not address the allocation of the additional employer contributions paid by MUS on behalf of employees in covered PERS positions who elect to participate in the ORP. Therefore, this amendment is necessary to ensure that MUS transmits the new additional employer contributions to MPERA for proper accounting.

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: Kris Vladoic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0513; telephone (406) 444-2578; fax (406) 444-5428; or e-mail [kvladoic@mt.gov](mailto:kvladoic@mt.gov), and must be received no later than 5:00 p.m., September 23, 2013.

6. Kris Vladoic, Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on May 21, 2013 and July 31, 2013.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the board has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
President  
Public Employees' Retirement Board

Certified to the Secretary of State August 12, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
17.36.802 and 17.36.805 pertaining to ) PROPOSED AMENDMENT  
fee schedules and changes in )  
subdivision ) (SUBDIVISIONS)

TO: All Concerned Persons

1. On September 17, 2013, at 1:00 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., September 3, 2013, 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:

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds shall pay the following fees:

	<u>UNIT</u>	<u>UNIT COST</u>
<u>TYPE OF LOTS</u>		
Subdivision lot	lot/parcel	\$ <del>400</del> <u>125</u>
Condominium/trailer court/recreational camping vehicle campground	unit/space	\$ <del>40</del> <u>50</u>
Resubmittal fee – previously approved lot, boundaries are not changed	lot/parcel	\$ <del>60</del> <u>75</u>
<u>TYPE OF WATER SYSTEM</u>		
Individual or shared water supply system (existing and proposed)	unit	\$ <del>60</del> <u>85</u>

Multiple user system ( <u>non-public</u> ) - new system	each	<del>\$250</del> <u>315</u> (plus <del>\$75</del> <u>105</u> / hour for review in excess of four hours)
- connection to <del>approved</del> <del>existing</del> distribution system	lot/unit	\$ <del>20</del> <u>70</u>
- <del>extension to existing</del> distribution system	lot/unit	\$ <del>50</del>
- new distribution system	lot/unit <u>lineal foot</u>	\$ <del>50</del> <u>0.50</u>
Public water system New system per DEQ-1	component	per ARM 17.38.106 fee schedule
- connection to <del>existing</del> <u>distribution</u> system	lot/structure	\$ <del>20</del> <u>70</u>
- <del>extension of existing</del> system	lot/structure	\$ <del>40</del>
- new distribution system	lot/structure <u>lineal</u> <u>foot</u>	\$ <del>40</del> <u>0.50</u>
<u>TYPE OF WASTEWATER DISPOSAL</u>		
Existing systems	unit	\$ <del>60</del> <u>75</u>
New subsurface system	drainfield	\$ <del>75</del> <u>95</u>
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	design	<del>\$150</del> <u>190</u> (plus <del>\$75</del> <u>105</u> / hour for review in excess of two hours)
Drainfields for pressured-dosed, intermittent sand filter, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, and nutrient removal	drainfield	\$ <del>40</del> <u>50</u>
Gray water reuse systems. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost	unit	<del>\$75</del> <u>95</u> (plus <del>\$75</del> <u>105</u> /hour in excess of two hours)
Multiple user wastewater system ( <u>non-public</u> ) - connection <u>to collection system</u> - <del>extension</del>	lot/unit lot/unit	\$ <del>20</del> <u>70</u> \$ <del>50</del>

- new collection system	lot/unit <u>lineal foot</u>	\$ <del>50</del> <u>0.50</u>
New public wastewater system per DEQ-2	component	per ARM 17.38.106 fee schedule
<del>- New connection to existing collection system</del>	lot/structure	\$ <del>20</del> <u>70</u>
<del>- New extension to existing public wastewater system</del>	lot/structure	\$ <del>50</del>
- new public wastewater collection system	lot/structure <u>lineal foot</u>	\$ <del>50</del> <u>0.50</u>
<u>OTHER</u>		
Deviation from circular	request or per design	<del>\$150</del> <u>200</u> (plus <del>\$75</del> <u>105</u> /hour for review in excess of two hours)
Waiver from rule	request	<del>\$150</del> <u>200</u> (plus <del>\$75</del> <u>105</u> /hour for review in excess of two hours)
Reissuance of original approval statement	request	\$ <del>50</del> <u>60</u>
Municipal facilities exemption checklist (former master plan exemption)	application	\$ 100
Nonsignificance determinations/categorical exemption reviews		
- individual/shared systems	drainfield	\$ <del>50</del> <u>60</u>
- multiple-user <del>and</del> <u>non-public</u> systems	lot/structure	\$ <del>25</del> <u>30</u>
- <u>public systems</u>	<u>drainfield</u>	<u>per ARM</u> <u>17.38.106 fee</u> <u>schedule</u>
Storm drainage plan review		
- plans exempt from Circular DEQ-8	lot	\$ <del>30</del> <u>40</u>
- Circular DEQ-8 review	<u>design</u>	<u>\$180</u>
	lot	<u>\$30</u> <u>40</u> (plus <del>\$75</del> <u>105</u> /

		hour for review in excess of 30 minutes per lot)
Preparation of environmental assessments/environmental impact statements	----	actual cost

AUTH: 76-4-105, MCA  
 IMP: 76-4-105, 76-4-128, MCA

17.36.805 CHANGES IN SUBDIVISION (1) remains the same.

(2) Other changes for plan components not listed in ARM 17.36.802 are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of ~~\$75~~ 105 per hour with a minimum charge of ~~\$75~~ 105.

AUTH: 76-4-105, MCA  
 IMP: 76-4-105, MCA

REASON: Section 76-4-105, MCA, of the Sanitation in Subdivisions Act requires the department to adopt rules establishing subdivisions fees that do not exceed actual cost for performing reviews, conducting inspections, and conducting enforcement activities. ARM 17.36.802 and 17.36.805 establish those fees. The fees have not been increased since 2009 and it is necessary to raise fees to maintain minimum subdivision program functions. Revenue from fees in FY 13 was approximately \$433,000 and expenses were \$630,000. The department projects that expenses in FY14 will be approximately \$700,000. The proposed amendments would raise lot fees and non-public component review fees by about 25 percent and amend current hourly fees, waivers, deviations, multiuser, and public component fees to match the fees in ARM 17.38.106 for review of similar facilities under the Public Water Supply Act. The department estimates that the fee increase will affect approximately 500 applicants in the next year for a total cumulative impact of approximately \$150,000 in increased subdivision program revenue. These fees will substantially reduce the revenue deficit without exceeding actual program costs.

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., September 19, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Nicol, attorney for the Department of Environmental Quality, 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.

8. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, August 12, 2013.



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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.17.107 and 24.17.121 and the ) PROPOSED AMENDMENT AND  
adoption of NEW RULES I through III ) ADOPTION  
pertaining to prevailing wage rates and )  
districts for public works projects )

TO: All Concerned Persons

1. On September 16, 2013, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 the department no later than 5:00 p.m., on September 11, 2013, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail [mikesmith@mt.gov](mailto:mikesmith@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The department has determined that there is reasonable necessity to amend and adopt new rules regarding the establishment of prevailing wage districts and the rate-setting methodologies for public work projects in order to implement the provisions of Chapter 373, Laws of 2013 (House Bill 464). As part of the drafting of the proposed rule changes, on June 13, 2013, the department met with and obtained the informal input of various interested parties, including the prime sponsor of HB 464, representatives of labor organizations, representatives of contracting firms and contractor associations, and engineers, regarding the proposed new rules and amendments. Following several hours of in-person discussions with those parties, the department refined the following proposals. While the following proposals may not represent an absolute consensus among all of the interested parties, the department believes that the proposed changes fairly represent a reasonable balance of the competing viewpoints and concerns expressed by the interested parties.

The department considered whether four or five prevailing wage districts should be established in Montana. In determining the number of districts and the counties within them, the department considered: where universities and hospitals were located, commonalities of economies, home bases of major general contractors, urban centers, geography, and size that would generate sufficient data collection. The department presented maps with four districts and with five districts

that met the criteria described above at the June 13, 2013, meeting and took an informal poll of the attendees. Those interested parties voted 10-3 in favor of four districts, and therefore the department is proposing four districts.

The department has considered whether merely amending the existing rules would accomplish the same results. The department believes that the separation of the various categories of prevailing wage projects into separate rules will allow government agencies, contractors, and the public at large a clearer picture of how prevailing wage rates and districts are determined. The department believes that it will be easier for users to look at a rule regarding the specific area of public works contracting (whether building construction services, highway construction services, heavy construction services, or non-construction services), rather than read through a more lengthy rule that addresses all four categories of services. The department notes that the decision to separate the categories was supported by the various interested parties during the informal discussion period.

The department notes that although the rules are being substantially reorganized, the department believes that effect on businesses in complying with the rules will not change significantly compared to the existing rules. The department believes that the proposed changes will not significantly affect the time or recordkeeping an employer uses in responding to the department's annual wage surveys.

This general statement of reasonable necessity applies to all of the following proposed amendments and adoptions, and will be supplemented as appropriate for any given rule change.

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

24.17.107 PREVAILING WAGE DISTRICTS ESTABLISHED

(1) Pursuant to 18-2-411, MCA, the commissioner has established ~~40~~ 4 districts for the purpose of setting the standard prevailing rate of wages for building construction services [New Rule I] ~~(other than heavy construction or highway construction)~~ and nonconstruction services [New Rule II]. Heavy construction services rates [New Rule III] and highway construction services rates (ARM 24.17.121) are set on a statewide basis pursuant to 18-2-414, MCA.

(2) The districts are composed of the following counties:

(a) District 1: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders;

(b) District 2: ~~Mineral, Missoula, and Ravalli;~~ Beaverhead, Broadwater, Deer Lodge, Glacier, Granite, Jefferson, Lewis and Clark, Liberty, Madison, Pondera, Powell, Silver Bow, Teton, and Toole;

(c) District 3: ~~Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;~~ Blaine, Carbon, Cascade, Chouteau, Fergus, Gallatin, Golden Valley, Hill, Judith Basin, Meagher, Musselshell, Park, Petroleum, Phillips, Stillwater, Sweet Grass, and Wheatland;

(d) ~~District 4: Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole; Big Horn, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, Wibaux, and Yellowstone~~

~~(e) District 5: Broadwater, Jefferson, Lewis and Clark, and Meagher;~~

~~(f) District 6: Gallatin, Park, and Sweet Grass;~~

~~(g) District 7: Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;~~

~~(h) District 8: Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone;~~

~~(i) District 9: Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;~~

~~(j) District 10: Carter, Custer, Dawson, Fallon, Prairie, Powder River, and Wibaux.~~

(3) Districts and their contiguous districts are as follows:

(a) the contiguous district for District 1 is district 2;

(b) the contiguous districts for District 2 are districts 1 and 3;

(c) the contiguous districts for District 3 are districts 2 and 4; and

(d) the contiguous districts for District 4 is district 3.

AUTH: 18-2-431, MCA

IMP: 18-2-411, ~~18-2-414~~, MCA

REASON: There is reasonable necessity to amend the IMP citation to reflect that the rule is being changed to simply identify the prevailing wage districts, and not the establishment of any wage rates.

#### 24.17.121 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS -- HIGHWAY CONSTRUCTION SERVICES

(1) ~~The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in each district engaged in highway construction services statewide. Except as used in (3) and (4), the term "prevailing rate of wages" includes both wages and fringe benefits. Although the commissioner establishes wage rates and fringe benefit rates, including travel, zone pay, and per diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.~~

(2) ~~The commissioner uses various data sources to determine the standard prevailing rate of wages is based upon the following data sources: \_~~

~~(a) with respect to building construction services, The standard prevailing rate of wages may be based upon an annual statewide survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-413 18-2-414, MCA, who are licensed or registered on June 15 February 1 of the year in which the survey is being conducted;\_~~

~~(b) with respect to heavy construction services, as provided for by 18-2-414, MCA, the The standard prevailing rate of wages may instead be based upon~~

applicable federal Davis-Bacon Act rates for highway construction services in effect for Montana on September 1 of that year;

(c) ~~with respect to highway construction services, as provided for by 18-2-414, MCA, if, with respect to any given occupation, there is a difference in the standard prevailing rate of wages (including the value of fringe benefits) surveyed for under this section, and the applicable federal Davis-Bacon Act rates in effect statewide for highway construction services in effect for Montana as of or on September 1 of that year; and , the commissioner shall adopt the higher of the two as the standard prevailing rate of wages.~~

~~(d) with respect to nonconstruction services, an annual survey of employers pursuant to 18-2-415, MCA, as known to the department as of June 15 of the year in which the survey is being conducted.~~

(3) Based on survey data collected by the department ~~for each district statewide~~, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated for each occupation will be ~~set~~ established using the following procedure:

(a) If a minimum of ~~five~~ 40 or more workers is ~~are~~ reported for the occupation ~~within the district statewide~~, and 50 percent or more of those workers receive the same wage, that rate is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district ~~then the statewide surveyed prevailing wage rate for that occupation is the higher of:~~

~~(i) that wage; or~~

~~(ii) the highest applicable collectively bargained rate. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.~~

(b) If ~~five~~ 40 or more workers are reported for the occupation ~~within the district statewide~~, but 50 percent of those workers are not paid the same rate ~~wage~~, the weighted average wage rate, weighted by the number of workers, is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district ~~then the statewide surveyed prevailing wage rate for that occupation is the higher of:~~

~~(i) the weighted average wage; or~~

~~(ii) the highest applicable collectively bargained rate. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.~~

(c) If less than ~~five~~ 40 workers are reported for the occupation ~~within the district statewide~~, the ~~district surveyed~~ prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district ~~statewide~~.

~~(d) If a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district weighted by number of workers will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are as follows:~~

~~(i) District 1 (Flathead, Lincoln, Sanders, and Lake counties): districts 2, 3, 4, and 5.~~

~~(ii) District 2 (Missoula, Ravalli, and Mineral counties): districts 1 and 3.~~

~~(iii) District 3 (Granite, Powell, Deer Lodge, Silver Bow, Madison, and Beaverhead counties): districts 1, 2, 5, and 6.~~

~~(iv) District 4 (Cascade, Choteau, Toole, Liberty, Glacier, Pondera, Teton, Hill, and Blaine counties): districts 1, 5, 7, and 9.~~

~~(v) District 5 (Lewis and Clark, Broadwater, Meagher, and Jefferson counties): districts 1, 3, 4, 6, and 7.~~

~~(vi) District 6 (Gallatin, Park, and Sweet Grass counties): districts 3, 5, 7, and 8.~~

~~(vii) District 7 (Wheatland, Fergus, Musselshell, Petroleum, Golden Valley, and Judith Basin counties): districts 4, 5, 6, 8, and 9.~~

~~(viii) District 8 (Stillwater, Yellowstone, Rosebud, Treasure, Big Horn, and Carbon counties): districts 6, 7, 9, and 10.~~

~~(ix) District 9 (Valley, Phillips, Sheridan, Daniels, Garfield, McCone, Richland, and Roosevelt counties): districts 4, 7, 8, and 10.~~

~~(x) District 10 (Carter, Wibaux, Dawson, Fallon, Prairie, Custer, and Powder River counties): districts 8 and 9 less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for highway construction services for the occupation in effect statewide for Montana on September 1 of that year is the prevailing wage rate for that occupation.~~

~~(e) If contiguous district data do not sum to a minimum of five workers, a statewide weighted average wage rate will be calculated for the occupation.~~

~~(f) If a minimum of five workers is not reported for the occupation in the entire state, no No rate will be established for that an occupation where:~~

~~(i) a minimum of 40 workers is not reported statewide;~~

~~(ii) a collective bargaining agreement does not exist; and~~

~~(iii) a federal Davis-Bacon Act rate for highway construction services has not been established on a statewide basis as of September 1 of that year.~~

~~(4) Based on survey data collected by the Department of Labor and Industry department, for each district statewide, the commissioner will compile fringe benefit information for a given occupation by district statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be set established for bona fide benefits paid or contributed to approved plans, funds or programs for health insurance, life insurance, pension or retirement, vacations, holidays and sick leave, using the following procedure:~~

~~(a) If a minimum of five 40 or more workers is are reported for the occupation within the district statewide, and 50 percent or more of those workers receive the same dollar value of fringe benefits, that rate is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district then the statewide surveyed prevailing fringe benefit rate for that occupation is the higher of:~~

~~(i) that fringe benefit; or~~

~~(ii) the highest applicable collectively bargained fringe benefit rate. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.~~

(b) If ~~five~~ 40 or more workers are reported for the occupation ~~within the district~~ statewide, but 50 percent of those workers are not paid the same fringe benefit rate, ~~the weighted average fringe benefit rate, weighted by the number of workers, is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district~~ the surveyed prevailing fringe benefit rate for that occupation statewide is the higher of:

(i) the weighted average fringe benefit; or

(ii) the highest applicable collectively bargained fringe benefit rate. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.

(c) If less than ~~five~~ 40 workers are reported for the occupation ~~within the district~~ statewide, the ~~district~~ surveyed prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation ~~in that district~~ statewide.

(d) ~~If a collective bargaining agreement does not exist for the occupation in that district, but a minimum of five workers are reported in the combined contiguous districts, a weighted average fringe benefit rate for the district, weighted by the number of workers, will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are the same as provided by (3)(d) of this rule~~ less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for highway construction services for the occupation in effect statewide for Montana on September 1 of that year is the surveyed prevailing fringe benefit rate for that occupation.

(e) ~~If contiguous district fringe benefit data do not sum to a minimum of five workers, statewide weighted average fringe benefit rates will be calculated for the~~ No fringe benefit rate will be established for an occupation where:

(i) a minimum of 40 workers is not reported statewide;

(ii) a collective bargaining agreement does not exist; and

(iii) a federal Davis-Bacon Act rate for highway construction services has not been established on a statewide basis as of September 1 of that year.

(f) ~~If a minimum of five workers are not reported for the occupation in the entire state, no fringe benefit rate will be established for that occupation.~~

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine ~~that whether~~ the rate is incorrect. If found to be incorrect, the prevailing wage rate and fringe benefit rates will revert to the last published wage and fringe benefit rate for that occupation that was adopted via the rulemaking and public hearing process.

For temporary rates which have not been adopted via the rulemaking and the public hearing process, ~~an amended~~ a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or it is desired that the commissioner consider, to timely deliver such information to the commissioner.

~~(8) Wage information may be considered by the commissioner only if such information is delivered to the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.~~

~~(9) Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers. Except as provided in (2), all rates shall be adopted in accordance with ARM 24.17.127.~~

AUTH: ~~18-2-409, 18-2-431, 39-3-202~~, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, ~~18-2-411, 18-2-413, 18-2-414, 18-2-415~~, [Chap. 373, section 6, L. of 2013], MCA

REASON: There is reasonable necessity to amend the AUTH and IMP citations to reflect the reorganization of the rule and to clarify the authority for the rule.

5. The new rules as proposed to be adopted provide as follows:

NEW RULE I ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – BUILDING CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in building construction services in each district. Although the commissioner establishes wage rates and fringe benefit rates including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The standard prevailing rate of wages is based upon an annual survey in each of the districts established in ARM 24.17.107, of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-413, MCA, who are licensed or registered on February 1 of the year in which the survey is being conducted.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same wage, then

the higher of that wage or the highest applicable collectively bargained rate is the prevailing wage rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same wage, the weighted average wage rate is the prevailing wage rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district will be computed using data submitted from that district and its contiguous districts.

(e) If contiguous district data do not sum to a minimum of 10 workers, a statewide weighted average wage rate will be calculated for that occupation.

(f) If a minimum of 10 workers is not reported for the occupation statewide, no wage rate will be established for that occupation.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the higher of that dollar value of fringe benefits, the highest applicable collectively bargained rate, or other predominate, established trade organization fringe benefit funds, plans, or programs is the prevailing fringe benefit rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same fringe benefit rate, the weighted average fringe benefit rate is the prevailing fringe benefit rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the higher of the highest applicable collectively bargained fringe benefit rate or other predominate, established trade organization fringe benefit funds, plans, or programs for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement or other predominate, established trade organization funds, plans, or programs does not exist for the occupation in that district, a weighted average fringe benefit rate for the district will be computed using data submitted from that district and all contiguous districts.

(e) If contiguous district fringe benefit data do not sum to a minimum of 10 workers, a statewide weighted average fringe benefit rate will be calculated for that occupation.



(f) If a minimum of 10 workers are not reported for the occupation statewide, no fringe benefit rate will be established for that occupation.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-413, [Chap. 373, section 6, L. of 2013], MCA

#### NEW RULE II ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – NONCONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in nonconstruction services in each district. Although the commissioner establishes wage rates and fringe benefit rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The standard prevailing rate of wages is based upon an annual survey in each of the districts established in ARM 24.17.107 of employers pursuant to 18-2-415, MCA, as known to the department as of February 1 of the year in which the survey is being conducted.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same wage, then

the higher of that wage or the highest applicable collectively bargained rate is the prevailing wage rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same wage, then the higher of the weighted average wage rate, or the highest applicable collectively bargained rates is the prevailing wage rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district will be computed using data submitted from that district and its contiguous districts.

(e) If contiguous district data do not sum to a minimum of 10 workers, a statewide weighted average wage rate will be calculated for that occupation.

(f) If a minimum of 10 workers is not reported for the occupation statewide, no wage rate will be established for that occupation.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 10 or more workers is reported for the occupation within the district and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the higher of that rate or the highest applicable collectively bargained rate is the prevailing fringe benefit rate for that occupation in that district.

(b) If 10 or more workers are reported for the occupation within the district but 50 percent of those workers are not paid the same fringe benefit rate, then the higher of the weighted average fringe benefit rate or the highest applicable collectively bargained rate is the prevailing fringe benefit rate for that occupation in that district.

(c) If less than 10 workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation in that district.

(d) If less than 10 workers are reported for the occupation within the district and a collective bargaining agreement does not exist for the occupation, a weighted average fringe benefit rate for the district will be computed using data submitted from that district and all contiguous districts.

(e) If contiguous district fringe benefit data do not sum to a minimum of 10 workers, a statewide weighted average fringe benefit rate will be calculated for that occupation.

(f) If a minimum of 10 workers are not reported for the occupation statewide, no fringe benefit rate will be established for that occupation.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

(6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-415, [Chap. 373, section 6, L. of 2013], MCA

### NEW RULE III ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HEAVY CONSTRUCTION SERVICES

(1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations engaged in heavy construction services statewide. Although the commissioner establishes wage rates and fringe benefit rates, including travel, zone pay, and per-diem allowance rates separately, an employer's obligation to pay the "prevailing rate of wages" includes paying the combined value of both wages and fringe benefits, including travel, zone pay, and per-diem.

(2) The commissioner uses various data sources to determine the standard prevailing rate of wages.

(a) The standard prevailing rate of wages may be based upon an annual statewide survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-414, MCA, who are licensed or registered on February 1 of the year in which the survey is being conducted.

(b) The standard prevailing rate of wages may instead be based upon applicable federal Davis-Bacon Act rates for heavy construction services in effect on a statewide basis for Montana as of September 1 of that year.

(c) If, with respect to any given occupation, there is a difference in the standard prevailing rate of wages (including the value of fringe benefits) surveyed for under this section, and the applicable federal Davis-Bacon Act rates in effect

statewide for heavy construction services in Montana as of September 1 of that year, the commissioner shall adopt the higher of the two as the standard prevailing rate of wages.

(3) Based on survey data collected by the department statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

- (i) that wage; or
- (ii) the highest applicable collectively bargained rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same wage, then the statewide surveyed prevailing wage rate for that occupation is the higher of:

- (i) the weighted average wage; or
- (ii) the highest applicable collectively bargained rate.

(c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing wage rate is the highest applicable collectively bargained rate for that occupation statewide.

(d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the prevailing wage rate for that occupation.

(e) No wage rate will be established for an occupation where:

- (i) a minimum of 40 workers is not reported statewide;
- (ii) a collective bargaining agreement does not exist; and
- (iii) a federal Davis-Bacon Act rate for heavy construction services has not

been established on a statewide basis as of September 1 of that year.

(4) Based on survey data collected by the department statewide, the commissioner will compile fringe benefit information for a given occupation statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) If a minimum of 40 or more workers are reported for the occupation statewide and 50 percent or more of those workers receive the same dollar value of fringe benefits, then the statewide surveyed prevailing fringe benefit rate for that occupation is the higher of:

- (i) that fringe benefit; or
- (ii) the highest applicable collectively bargained fringe benefit rate.

(b) If 40 or more workers are reported for the occupation statewide but 50 percent of those workers are not paid the same fringe benefit rate, the surveyed prevailing fringe benefit rate for that occupation statewide is the higher of:

- (i) the weighted average fringe benefit rate; or
- (ii) the highest applicable collectively bargained fringe benefit rate.
- (c) If less than 40 workers are reported for the occupation statewide, the surveyed prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation statewide.
- (d) If less than 40 workers are reported for the occupation statewide and a collective bargaining agreement does not exist for the occupation, the federal Davis-Bacon Act rate for heavy construction services for the occupation in effect statewide for Montana on September 1 of that year is the surveyed prevailing fringe benefit rate for that occupation.
- (e) No fringe benefit rate will be established for an occupation where:
  - (i) a minimum of 40 workers is not reported statewide;
  - (ii) a collective bargaining agreement does not exist; and
  - (iii) a federal Davis-Bacon Act rate for heavy construction services has not been established on a statewide basis as of September 1 of that year.
- (5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.
  - (a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.
  - (b) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.
- (6) In the event of an incorrect prevailing wage rate or fringe benefit rate being published, the commissioner will review additional data submitted to determine whether the rate is incorrect. If found to be incorrect, the prevailing wage and fringe benefit rates will revert to the last published wage and fringe benefits rate for that occupation that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, a corrected rate will be calculated based on information collected and submitted.
- (7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or desires that the commissioner consider, to timely deliver such information to the commissioner.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, [Chap. 373, section 6, L. of 2013], MCA

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to [mikesmith@mt.gov](mailto:mikesmith@mt.gov), and must be received no later than 5:00 p.m., September 23, 2013.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing 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.

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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, have been complied with. The prime sponsor of HB 464 was contacted on May 15, 2013, by e-mail.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment for ) NOTICE OF PROPOSED  
ARM 32.3.214 special requirements ) AMENDMENT  
for goats )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On September 21, 2013, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.214 SPECIAL REQUIREMENTS FOR GOATS (1) remains the same.

(2) Dairy and breeding goats may enter the state of Montana provided they animals:

(a) originate from a certified brucellosis-free herd, for which the certified herd number and date of last herd test are shown on the permit, or health certificate; or

(b) ~~they~~ have been tested for brucellosis with negative results within 30 days of the date of shipment; or

(c) are for exhibition purposes only and are not originating from a brucellosis management area.

(3) All test-eligible dairy breeds of goats originating from a tuberculosis accredited-free U.S. state or zone must have one negative tuberculosis test within 60 days prior to importation unless:

(a) remains the same.

(b) they originate directly from an tuberculosis-accredited ~~tuberculosis-free~~ herd; or

(c) remains the same.

(4) All test-eligible goats originating from a tuberculosis modified accredited-advanced U.S. state or zone must have one negative tuberculosis test within 60 days prior to importation unless:

(a) they originate directly from an tuberculosis-accredited ~~tuberculosis-free~~ herd; or

(b) through (5)(b) remain the same.

(c) one negative tuberculosis test within 60 days prior to importation into Montana and must originate directly from an accredited tuberculosis-free herd.

(6) and (7) remain the same.

AUTH: 81-2-102, 81-20-101, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-20-101, 81-2-103, 81-2-701, MCA

REASON: Department of Livestock has received two requests asking the agency to reconsider the requirements of a negative brucellosis test on dairy goats imported into Montana or re-entering Montana after attending an out of state exhibition. The proposed change would exempt animals for exhibition that do not originate from a brucellosis management area from a negative brucellosis test prior to importation into Montana.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., September 19, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., September 19, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

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



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

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

#### DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State August 12, 2013.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 36.12.101 and the adoption of ) PROPOSED AMENDMENT AND  
New Rules I and II regarding water ) ADOPTION  
right combined appropriation )

To: All Concerned Persons

1. On September 19, 2013, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and adoption of 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 September 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (12) remain the same.

(13) "Combined appropriation" means two or more wells or developed springs from the same source aquifer that are: ~~an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.~~

(a) physically connected into a single system;

(b) located within 1,320 feet of one another and are on the same tract of record;

(c) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with 40 acres or less which may not exceed ten acre-feet per year, including any subsequent subdivision or division of land thereof;

or

(d) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with more than 40 acres which may not exceed ten acre-feet per year for every 40 acres or 0.25 acre-foot per year for every additional acre over 40 acres in the subdivision or division of land, including any subsequent subdivision or division of land thereof.

(14) through (79) remain the same.

AUTH: 85-2-113, 85-2-306, MCA  
IMP: 85-2-306, MCA

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

NEW RULE I NOTICE OF COMPLETION (1) A notice of completion is correct and complete pursuant to 85-2-306(3)(b) and (c), MCA:

- (a) if it limits the total combined appropriation to the requirements under ARM 36.12.101(13) and is consistent with a pre-approval, if applicable; and
- (b) if it contains all the information on Form No. 602.

AUTH: 85-2-306, MCA  
IMP: 85-2-306, MCA

NEW RULE II PRE-APPROVAL OF EXEMPT WELLS (1) A combined appropriation of two or more wells or developed springs from the same source aquifer does not need a permit if the total volume does not exceed ten-acre feet per year.

(2) A subdivision or division of land may seek pre-approval from the department to determine if the combined appropriation for all wells or developed springs serving the subdivision or division of land is within the requirements of (1) and ARM 36.12.101(13).

(3) The department shall make a determination on a pre-approval that a proposed plan for development is within the requirements of (1) and ARM 36.12.101(13) within 20 days.

AUTH: 85-2-306, MCA  
IMP: 85-2-306, MCA

**REASONABLE NECESSITY:**

By order of the Montana First Judicial District Court, Lewis and Clark County, in CFC et al. v. DNRC, Cause No. BDV-2010-874, the department is required to define the term "combined appropriation" in 85-2-306, MCA, because no legislation was passed during the 2013 legislative session that defined the term. The amendments to ARM 36.12.101 and the adoption of New Rules I and II are reasonably necessary because the order requires that the definition be broader than, and not solely limited to: wells or developed springs that are physically manifold or connected together; and, that the department consider cumulative or collective impacts as a result of multiple, unconnected wells or developed springs that appropriate water from a single source aquifer and for a single project.

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail

mheffner@mt.gov, and must be received no later than 5:00 p.m. on September 19, 2013.

6. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 19, 2013.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendments and adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Anne Yates  
ANNE YATES  
Rule Reviewer

Certified to the Secretary of State on August 12, 2013.

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

In the matter of the amendment of )  
ARM 37.34.2101, 37.34.2102, and )  
37.34.2111 and the repeal of ARM )  
37.34.2106, 37.34.2107, and )  
37.34.2112 pertaining to )  
developmental disabilities program )  
staffing )

NOTICE OF EXTENSION OF  
COMMENT PERIOD ON  
PROPOSED AMENDMENT AND  
REPEAL

TO: All Concerned Persons

1. On February 28, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-625 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 249 of the 2013 Montana Administrative Register, Issue Number 4. On July 11, 2013, the Department of Public Health and Human Services published an Amended Notice of Proposed Amendment and Repeal at page 1173 of the 2013 Montana Administrative Register, Issue Number 13. The purpose of the amended notice was to propose additional amendments based on public comment.

2. On March 20, 2013, at 10:00 a.m., the Department of Public Health and Human Services held a public hearing to consider the proposed amendment and repeal of the above-stated rules.

The reason for the extension of the comment period is to accommodate all interested persons who may not have been able to review the amended rule notice online at the department's web site when it was first published on July 11, 2013. It was discovered that the link on the web site was incorrect and the original proposed notice was uploaded for viewing instead of the amended notice. The department is extending the comment period for this rulemaking to September 5, 2013 to ensure that all interested parties have been notified of these proposed amendments and repeals to administrative rules and have an opportunity to comment.

3. 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 August 29, 2013, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 5, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

/s/ Cary B. Lund  
Cary B. Lund  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State August 12, 2013.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.59.101, 37.59.102, ) PROPOSED AMENDMENT  
37.59.105, 37.59.109, 37.59.110, )  
37.59.201, 37.59.202, 37.59.203, )  
37.59.301, 37.59.302, 37.59.303, )  
37.59.401, and 37.59.402 pertaining )  
to the update of the special )  
supplemental nutrition program for )  
women, infants, and children (WIC) )

TO: All Concerned Persons

1. On September 17, 2013, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 September 9, 2013, 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:

37.59.101 PURPOSE OF RULES (1) The purpose of the rules in subchapters 1 and 2 ~~of this chapter~~ is to provide a clear procedural framework under which the department administers the federal ~~s~~Special ~~s~~Supplemental ~~food~~ Nutrition ~~p~~Program for ~~w~~Women, ~~i~~Infants, and ~~e~~Children, ~~the so-called "WIC" program~~ (WIC Program), which is sponsored by the ~~f~~Food and ~~n~~Nutrition ~~s~~Service (FNS) of the United States ~~d~~Department of ~~a~~Agriculture (USDA) and which has been administered in Montana by the department of ~~public health and human services~~ since approximately 1974.

AUTH: 50-1-202, MCA  
IMP: 50-1-202, MCA

37.59.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Administrative and program services costs" means those direct and indirect costs, exclusive of food costs, as defined in 7 CFR 246.14(c), which the department determines to be necessary to support local agency program operations. Administrative and program services costs include, ~~but are not limited to,~~ the costs of program administration, start-up, monitoring, auditing, the development of and accountability for food delivery systems, nutrition and breastfeeding education, outreach, certification, information technology, and developing and printing food instruments benefits.

(2) remains the same.

(3) "Breastfeeding women" means women up to 4 one year postpartum who are breastfeeding their infants.

(4) "Caseload" means the number of persons certified by the local agencies, eligible and participating in the WIC ~~p~~Program at any point in time. Persons certified eligible but wait-listed are not considered to be participating in the WIC ~~p~~Program, and therefore are not included when the department assigns caseload limits or tallying caseload being carried at a point in time.

(5) "Categorical eligibility" means persons who meet the definitions of pregnant women, breastfeeding women, postpartum women, ~~or~~ infants, or children.

(6) remains the same.

(7) "Children" means persons who have had their ~~4<sup>st</sup>~~ first birthday but have not yet attained their ~~5<sup>th</sup>~~ fifth birthday.

~~(8) "Client" means a WIC program participant.~~

(9) remains the same but is renumbered (8).

~~(10)~~ (9) "Competent professional authority (CPA)" means an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the department may authorize to serve as a ~~competent professional authority~~ CPA: physicians, nutritionists (bachelor's or master's degree in nutritional sciences, community nutrition, clinical nutrition, dietetics, public health nutrition, or home economics with emphasis in nutrition), dietitians, registered nurses, physician's assistants (certified by the national committee on certification of physician's assistants, or certified by the state medical certifying authority), or state or local medically trained health officials. This definition also applies to an individual who is not on the staff of the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a ~~competent professional authority~~ CPA on the staff of the local agency.

(11) remains the same but is renumbered (10).

~~(12)~~ (11) "Disqualification" means the act of ending the program participation of a participant, authorized ~~food vendor~~ retailer, authorized farmer, or local agency, whether as a punitive sanction or for administrative reasons.

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

(13) "Dyad" means a breastfeeding woman and the infant to whom she is providing breast milk who are participating on WIC.

(14) remains the same.

(15) "Family" means a group of related or non-related individuals ~~who are not residents of an institution but who are~~ living together as one economic unit and



whose production of income and consumption of goods and services are shared. Residents of a homeless facility or an institution will not be considered as members of a single family. Students who are temporarily away at school may be counted as members of the family.

(16) "Farmer" means an individual authorized by the state agency to sell eligible fruits and vegetables to participants at a farmers' market or roadside stand. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized.

(16) and (17) remain the same but are renumbered (17) and (18).

~~(18)~~ (19) "Food instrument benefit" means a voucher, check, coupon, or other document electronic benefit transfer which is used by a participant to obtain supplemental foods.

~~(19)~~ (20) "Food package" means supplemental foods prescribed by a ~~competent professional authority~~ CPA for a WIC participant to meet demonstrated nutritional needs.

~~(20) "Food vendor" means a local grocer, dairy, or other merchant who, through a signed agreement with the local agency, provides WIC foods in exchange for the WIC voucher.~~

(21) remains the same.

(22) "Infants" means persons under 4 one year of age.

(23) "Initial visit" means the first time a person visits a WIC clinic to request program benefits, whether by an in-person inquiry or by ~~a visit for an appointment previously established by telephone.~~

(24) "Local agency" means:

(a) and (b) remain the same.

(c) an Indian tribe, band, or group recognized by the United States ~~d~~Department of the ~~i~~nterior which operates a health clinic or is provided health services by an Indian health service unit; or

(d) an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the United States ~~d~~Department of the ~~i~~nterior, which operates a health clinic or is provided health services by an Indian health service unit.

(25) and (26) remain the same.

(27) "Monthly participation" means a total number of ~~clients~~ participants actually receiving benefits in any month, and the breastfeeding dyad member who does not receive food benefits while the other member does.

(28) remains the same.

(29) "Nutrition counseling" means individualized professional guidance to assist a person in adjusting ~~his/her~~ their daily food consumption to meet ~~his/her~~ their health needs.

(30) remains the same.

(31) "Nutrition services" means nutrition intervention planned for and provided to a ~~client~~ participant, such as assessment of nutritional health status, counseling, provision of nutrition information, prescription of a food package, referral to other health, financial, or social services, and evaluation of change in behavior and nutritional health status.

(32) "Nutritional risk" means:

(a) and (b) remain the same.

(c) dietary deficiencies that impair or endanger health; or

(d) conditions that directly affect the nutritional health of a person; or

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

(33) remains the same.

(34) "Participants" means pregnant women, breastfeeding women, postpartum women, infants, and children who are receiving supplemental foods or food ~~instruments~~ benefits under the program, and the breastfeeding dyad member who does not receive food benefits while the other member does.

(35) "Participation" means the number of persons who have received supplemental foods or food ~~instruments~~ benefits during a reporting period, and the breastfeeding dyad member who does not receive food benefits while the other member does.

(36) "Postpartum women" means women up to ~~6~~ six months after termination of pregnancy.

(37) remains the same.

(38) "Poverty income guidelines" means the poverty income guidelines prescribed by the United States ~~d~~Department of hHealth and hHuman sServices (DHHS). These guidelines are adjusted annually by the ~~department of health and human services~~ DHHS, with each annual adjustment effective July 1 of each year. The poverty income guidelines prescribed by the ~~department of health and human services~~ DHHS are used for the Montana WIC ~~p~~Program.

(39) "Pregnant women" means women ~~determined to~~ who have one or more embryos or fetuses in utero.

(40) remains the same.

(41) "Program" means the ~~s~~Special sSupplemental food Nutrition pProgram for ~~w~~Women, ~~i~~nfants and ~~e~~Children (WIC), authorized by section 17 of the Child Nutrition Act of 1966, as amended.

(42) "Reallocation" means the process by which the United States Department of Agriculture (USDA) monies are moved from one state agency which is spending at a lower rate and given to another state agency that is able to spend the money more rapidly due to larger caseloads and a similar process used by the department among local agencies.

(43) "Registered dietitian (RD)" means a professional who meets the academic and experience requirements described in ~~37-21-302~~ 37-25-302, MCA.

(44) "Retail purchase system" means a system in which the participant obtains WIC foods through an authorized ~~food vendor~~ retailer or farmer, i.e., grocer or dairy.

(45) "Retailer" means an entity that, through a signed agreement with the state agency, provides WIC foods in exchange for WIC benefits. Each individual retailer must be contracted separately.

~~(45)~~ (46) "Satellite" means a WIC ~~program~~ clinic operated by ~~another the~~ WIC program agency which has primary administrative responsibility for a program and contracts directly with the department. A satellite differs from a site in that it is located outside the defined project area, i.e., county or reservation.

(46) remains the same but is renumbered (47).

~~(47)~~ (48) "Staffing pattern" means the recommended ratio of WIC staff ~~needed to~~ the number of participants served.

~~(48)~~ (49) "State plan" means the "~~1990~~ 2014 State Plan for Montana's Special Supplemental Food Nutrition Program for Women, Infants and Children (WIC)" (~~October 1989 edition~~), a plan of program operation and administration that describes the manner in which the department intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR 246.4.

~~(49)~~ (50) "Supplemental foods" means those foods containing nutrients determined ~~to be beneficial for~~ by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, and foods that promote the health of the population served by the WIC Program as indicated by relevant nutrition science, public health concerns, and cultural eating patterns as prescribed by the United States Secretary of Agriculture in 7 CFR 246.10.

~~(50)~~ "Voucher" means ~~a check-like document which is traded by WIC participants for food at their local food vendors.~~

~~(51)~~ "Waiting list" means a list of applicants waiting to be accepted in the WIC ~~p~~Program when vacancies occur.

~~(52)~~ The department hereby incorporates herein by reference the following:

~~(a)~~ 7 CFR 246.4, which is a federal agency WIC regulation concerning state agency program operations and administration;

~~(b)~~ 7 CFR 246.5, which is a federal agency WIC regulation concerning selection of local agencies;

~~(c)~~ 7 CFR 246.10, which is a federal agency WIC regulation concerning the supplemental foods prescribed for eligible persons;

~~(d)~~ 7 CFR 246.14(b) and (c), which is a federal agency WIC regulation concerning the allowable administrative and program services costs;

~~(e)~~ 7 CFR Part 3015, which is a federal agency regulation containing the USDA's uniform federal assistance regulations. Part 3015 implements the policies established by the office of management and budget (OMB) in circulars A-21, A-87, A-102, A-110, A-122, and A-128, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977;

~~(f)~~ the poverty income guidelines contained in volume 54 of the Federal Register, issue 89 (May 10, 1989);

~~(g)~~ section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1771, et seq., as amended; and

~~(h)~~ the "~~1990~~ State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (~~October 1989 edition~~), which is a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

~~(i)~~ Copies of the above materials may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.105 INCORPORATIONS BY REFERENCE (1) This chapter of ARM Title 37 establishes a state WIC pProgram which is essentially the equivalent of the federal WIC pProgram.

~~(2) In view of the requirements of equivalence with the federal program and in order to simplify the rulemaking process and make the rules less cumbersome, the department has relied heavily upon incorporation and adoption by reference of federal requirements as set forth in Title 7 of the Code of Federal Regulations (CFR).~~

~~(3) (2) Where the department has adopted a federal regulation by reference, the following shall apply applies:~~

~~(a) References in the federal regulations to "Administrator" or "Regional Administrator," or the like, should be read to mean "department."~~

~~(b) remains the same.~~

~~(4) All of the incorporations by reference of federal agency rules are listed below by state rule number, together with the CFR edition date. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.~~

State Rule <del>37.59.</del>	Federal rule Incorporated 7 CFR	CFR Edition Date
102	246.4, 246.5, 246.10, 246.14(b) & (c); and Part 3015	January 1, 1989
109	Parts 15, subparts A & B; Part 246; and Part 3015	January 1, 1989
201	246.5(a) through (e)	January 1, 1989
202	246.6	January 1, 1989
203	246.5(d)(1) and 246.18	January 1, 1989
301	246.12(e) through (o)	January 1, 1989
302	246.12(f)	January 1, 1989
303	246.18	January 1, 1989
401	246.9	January 1, 1989
402	246.18	January 1, 1989

(3) The department adopts and incorporates by reference the following:

(a) the poverty income guidelines as published under the "Annual Update on the HHS Poverty Guidelines" 78 Federal Register 16, pp 5182-5183, January 24, 2013;

(b) section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1771, et seq., as amended and reauthorized in 2010; and

(c) the "2014 State Plan for Montana's Special Supplemental Nutrition Program for Women, Infants and Children (WIC)" which is a comprehensive summary of applicable federal regulations, procedures, and forms used by the department.

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

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.109 PROGRAM ADMINISTRATION AND GUIDANCE (1) As the state agency to which the United States Department of Agriculture (USDA) has delegated the administration of the WIC ~~p~~Program, the department is responsible for the effective and efficient administration of the program in accordance with the USDA program regulations set forth in 7 CFR Part 246, USDA's regulations governing the WIC ~~p~~Program; 7CFR Part 15, subparts A and ~~B~~ C, USDA's regulations governing nondiscrimination; and 7 CFR Part 3015, USDA's regulations governing the administration of grants.

(2) In addition to the documents referred to in (1) ~~above~~, the department, as the state agency to which the USDA has delegated administration of the WIC ~~p~~Program, also receives numerous policies, forms, guidelines, and instructions from the USDA ~~f~~Food and ~~n~~Nutrition ~~s~~Service (FNS) issued under the FNS directives management system. The department has assembled such policies, forms, guidelines, ~~and instructions~~, (and the state forms and guidelines required by such directives), ~~into three department documents: the state plan which is distributed to each participating local agency and is to be followed by each local agency in administering the program.~~

(a) ~~the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a comprehensive summary of applicable federal regulations (all of which are elsewhere incorporated in this chapter), procedures, and forms used by the department, and which is distributed to each participating local agency and is to be followed by each local agency in administering the program; and~~

(b) ~~"Guidelines on Management and Operations of the WIC program in Montana" (January 1988 edition), a series of instructions, guidelines, and interpretations developed by the USDA and periodically received by the department, to which the department refers in resolving management issues under the WIC program, including but not limited to financial management issues.~~

(3) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

(a) 7 CFR Part 246, which are USDA regulations governing the WIC ~~p~~Program, edition date January 1, 2013 and may be obtained at [www.fns.usda.gov/wic/lawsandregulations/wicregulations-7cfr246.pdf](http://www.fns.usda.gov/wic/lawsandregulations/wicregulations-7cfr246.pdf);

(b) 7 CFR Part 15, subparts A and ~~B~~ C, which are USDA regulations governing nondiscrimination, edition date January 1, 2013 and may be obtained at [www.law.cornell.edu/cfr/text/7/part-15/subpart-A](http://www.law.cornell.edu/cfr/text/7/part-15/subpart-A) and [www.law.cornell.edu/cfr/text/7/part-15/subpart-C](http://www.law.cornell.edu/cfr/text/7/part-15/subpart-C);

(c) 7 CFR Part 3015, which are USDA regulations governing the administration of grants, edition date January 1, 2013 and may be obtained at [www.law.cornell.edu/cfr/text/7/3015](http://www.law.cornell.edu/cfr/text/7/3015); and

(d) ~~the "1990 2014 State Plan for Montana's Special Supplemental Food Nutrition Program for Women, Infants and Children (WIC)." (October 1989 edition), which is a department handbook setting forth~~

procedures, practices, and forms used for the implementation of the federal WIC program in Montana.

(e) remains the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.110 NUTRITION SERVICES STANDARDS (1) ~~Standardized nutritional risk assessment procedures as developed and defined in "Nutritional Problems, Codes, Criteria and References for Public Health Nutrition Services" (December 1986 edition) and "Weighing and Measuring Children: A Training Manual for Supervisory Personnel" must be used by all participating local WIC agencies, in a form and manner prescribed by the department as included in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), which is a comprehensive summary of applicable federal regulations (all of which are elsewhere incorporated in this subchapter), procedures, and forms used by the department. Local agency staff will provide participants with nutrition services developed and defined in the state plan, including the following:~~

(a) a complete nutrition assessment including hematological and anthropometric measures as indicated;

(b) CPA-identified nutrition risk code(s);

(c) CPA-assigned food package based on participant age, need, category, and preference;

(d) CPA-developed care plan to include documentation of participant goals, frequency of follow up, referrals, and plan for future education needs;

(e) breastfeeding education, promotion, and support for participants as appropriate; and

(f) at least four nutrition education contacts per annual certification or two education contacts per six-month certification, to be offered approximately every quarter.

~~(2) Local agencies shall arrange for standard nutrition education contacts between local agencies and participating clients, which include appropriate type and number of contacts for high risk and lower risk participants as described in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), and shall utilize nutrition education materials which have met the criteria in "E.M.P.O.W.E.R. -- Evaluate Materials to Promote Optimal Use of WIC Education Resources" (April 1985 edition).~~

~~(3) Policies and procedures for authorizing specific WIC foods based on cost, availability, nutritional value, and participant acceptance are set forth in the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition).~~

~~(4) The department hereby adopts and incorporates herein by reference the following documents:~~

~~(a) "Nutritional Problems, Codes, Criteria and References for Public Health Nutrition Services" (December 1986 edition), which is a document developed to provide uniform nutrition risk criteria classification in the state of Montana, for use in~~

~~the Montana WIC program to record assessment of client nutrition conditions and to determine eligibility for program benefits;~~

~~(b) the "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition);~~

~~(c) "Weighing and Measuring Children: A Training Manual for Supervisory Personnel" (November 1980 edition), which is a federal department of health and human services reference publication concerning standardized methods for weighing and measuring children; and~~

~~(d) "E.M.P.O.W.E.R. — Evaluate Materials to Promote Optimal Use of WIC Education Resources" (April 1985 edition), which is a Massachusetts department of public health publication concerning evaluation of nutrition education materials.~~

~~(e) Copies of these documents may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.201 SELECTION OF LOCAL AGENCIES (1) In selecting new local agencies, the department will apply the criteria in 7 CFR 246.5(a) through ~~(e)~~ (f) together with the following criteria:

(a) and (b) remain the same.

(c) whether there are documented, written procedures for making referrals to and coordinating with the following services and programs which are operating in the service area of the local agency: prenatal care, immunizations, postnatal care, family planning, well-child services, early periodic screening and development testing, schools, dental screening, private physicians, health maintenance organizations, hospitals, expanded food and nutrition education program, community relief agencies, ~~USDA food stamp program~~ Supplemental Nutrition Assistance Program (SNAP), ~~handicapped children's services~~ Children's Special Health Care Services, and maternal and child health services.

(2) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 7 CFR 246.5(a) through ~~(e)~~ (f), which is a federal agency rule setting forth requirements and procedures for local agency selection and the expansion, reduction, and disqualification of participating local agencies. Copies of 7 CFR 246.5(a) through ~~(e)~~ (f) may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.202 AGREEMENTS WITH LOCAL AGENCIES (1) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 7 CFR 246.6, which is a federal agency rule setting forth terms and requirements for agreements between the department and local agencies. Copies of 7 CFR 246.6 may be obtained from the Department of Public Health and Human Services, Special

Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.203 PERIODIC REVIEW AND DISQUALIFICATION OF LOCAL AGENCIES

(1) The department ~~shall~~ will conduct periodic reviews of the qualifications of authorized local agencies under its jurisdiction. In conducting such reviews, the department ~~shall~~ will consider the program's history of prior program performance and the factors listed in (2) ~~of this rule~~. Based upon the results of such reviews, the department may make appropriate adjustments among the participating local agencies, including the disqualification of a local agency when the department determines that another local agency can operate the program more effectively and efficiently. The department ~~shall~~ must implement the procedures established in (3) ~~of this rule~~ when disqualifying a local agency.

(2) The department may disqualify a local agency upon consideration of:

(a) and (b) remain the same.

(c) whether, following a review of local agency credentials in accordance with (4) ~~of this rule~~, another local agency can operate the program more effectively and efficiently;

(d) the availability of other community resources to participants and the cost efficiency and cost effectiveness of the local agency in terms of both food and administrative and program services costs;

(e) through (h) remain the same.

(3) When disqualifying a local agency under the program, the department ~~shall~~ must:

(a) remains the same.

(b) provide the affected local agency with written notice not less than 60 days in advance of the pending action, ~~which~~ the notice shall must include an explanation of the reasons for disqualification, the date of disqualification, and, except in cases of the expiration of a local agency's agreement, the local agency's right to appeal as set forth in 7 CFR 246.18; and

(c) remains the same.

(4) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

(a) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies, ~~and food vendors~~ retailers, and farmers who are denied participation or are disqualified from the program; and

(b) and (c) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.301 REQUIREMENTS FOR LOCAL STATE AGENCY SELECTION OF FOOD VENDORS RETAILERS AND FARMERS

(1) In selecting ~~food vendors~~ retailers to participate in the program, ~~local agencies~~ the state WIC



agency shall will apply the requirements of 7 CFR 246.12(e) through ~~(e)~~ (v), and the following criteria:

- (a) whether the place of the ~~vendor's~~ retailer's business is permanent; no stores on wheels may be allowed;
- (b) whether the ~~vendor~~ retailer stocks and maintains appropriate quantities of authorized WIC foods;
- (c) whether the ~~vendor~~ retailer is accessible to WIC clients;
- (d) whether the ~~vendor~~ retailer has been disqualified from the USDA ~~food stamp program~~ SNAP;
- (e) whether the ~~vendor~~ retailer has a valid, current business license from each appropriate Montana state agency, as may be required by law.

(2) In selecting farmers to participate in the program, the state agency will apply the requirements of 7 CFR 246.12(v):

(a) The farmer must grow farm-direct approved fruits and vegetables themselves and may sell only locally grown produce as part of their farm-direct participation.

(b) The farmer will agree to sell only the eligible, locally grown foods in exchange for Montana WIC benefits.

(c) The farmer will ensure that no conflict of interest exists between the farmer and the Montana WIC Program.

(d) Farmers must have and maintain a positive compliance history with any and all USDA FNS programs in which they are participating or have participated.

~~(2)~~ (3) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

(a) 7 CFR 246.12(e) through ~~(e)~~ (v), which is a federal agency rule setting forth the authorization of ~~food vendors~~ retailers and farmers; requirements for ~~food vendor~~ agreements; periodic review of ~~food vendor~~ qualifications; guidelines for ~~food vendor~~ training; monitoring of ~~food vendors~~; participant, retailer, and ~~vendor~~ farmer complaints and sanctions; requirements for control and reconciliation of food ~~instruments~~ benefits; and payment to ~~food vendors~~ retailers and farmers.

(b) remains the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

### 37.59.302 AGREEMENTS WITH FOOD VENDORS RETAILERS AND

FARMERS (1) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 7 CFR 246.12~~(f)~~ (h) and (v), which is a federal agency rule setting forth terms and requirements for agreements between the department and ~~food vendors~~ retailers and farmers. Copies of this document may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.303 PERIODIC REVIEW AND DISQUALIFICATION OF FOOD VENDORS RETAILERS AND FARMERS (1) The department (or local agency in consultation with the department), before re-authorization, ~~shall~~ will conduct periodic reviews of the operations of participating ~~food vendors~~ retailers and farmers. In conducting such reviews, the department or local agency may utilize an "educational buy" or a "compliance buy", as described in the state plan, "1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)" (October 1989 edition), and shall will consider the following:

(a) and (b) remain the same.  
(c) shared information from the Montana ~~food stamp~~ SNAP officer-in-charge;  
(d) ~~file review of one-half of the total currently authorized vendors;~~  
(e) (d) on site follow-up to ~~(1)(a) and (d) above~~ when warranted by incomplete information or complaint;  
(f) (e) whether the ~~vendor~~ retailer or farmer demonstrates ability to meet Montana WIC ~~p~~Program requirements, as evidenced by performance during the current agreement; and

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

(2) Based upon such review, the department may take an adverse action, ~~(other than a warning letter)~~, against the ~~vendor~~ retailer or farmer, including disqualification of the ~~food vendor~~ retailer or farmer from participation in the program.

(3) When taking an adverse action, ~~(other than a warning letter)~~, against a ~~vendor~~ retailer or farmer, including disqualification of a ~~food vendor~~ retailer or farmer from the program, the department shall must provide the affected ~~vendor~~ retailer or farmer with written notice not less than 15 days in advance of the pending action, ~~which~~ The notice must include the reasons for the adverse action, the date of adverse action, and, except in cases of the expiration of the ~~vendor's~~ retailer's or farmer's WIC agreement, the ~~vendor's~~ retailer's or farmer's right to appeal as set forth in 7 CFR 246.18.

(4) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

(a) the "~~1990~~ 2014 State Plan for Montana's Special Supplemental ~~Food~~ Nutrition Program for Women, Infants and Children (WIC)" (~~October 1989 edition~~), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department; and

(b) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies, retailers, and ~~food vendors~~ farmers who are denied participation or are disqualified from the program.

~~(c) Copies of these documents may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.401 APPEALS BY PROGRAM PARTICIPANTS (1) remains the same.

(2) The processing of such requests and the conduct of such hearing shall ~~be is~~ in accordance with 7 CFR 246.9 and applicable sections of the "~~1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)~~" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department state plan.

(3) The department ~~hereby~~ incorporates ~~herein~~ by reference the following:

(a) remains the same.

(b) the fair hearing requirements of the "~~1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)~~" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department state plan.

(c) remains the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.59.402 APPEALS BY LOCAL AGENCIES, AND FOOD VENDORS RETAILERS, AND FARMERS

(1) A local agency, ~~or a food vendor~~ retailer, or farmer which is denied participation or, during the course of a contract or agreement, is disqualified or its participation is otherwise adversely affected may request a fair hearing before the department. Expiration of a contract or agreement with a ~~food vendor~~ retailer, farmer, or local agency is not subject to appeal.

(2) The issuance of notice of adverse action, the processing of fair hearing requests, and the conduct of such hearings shall ~~be are~~ in accordance with the provisions of 7 CFR 246.18 and applicable sections of the "~~1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)~~" (October 1989 edition) state plan.

(3) The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the following:

(a) 7 CFR 246.18, which is a federal agency rule setting forth the notice and hearing procedures for local agencies, retailers, and ~~food vendors~~ farmers who are denied participation or are disqualified from the program; and

(b) the fair hearing requirements for local agencies, retailers, and ~~food vendors~~ farmers set forth in the "~~1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)~~" (October 1989 edition), a comprehensive summary of applicable federal regulations, procedures, and forms used by the department state plan.

(c) Copies of 7 CFR 246.18 and the local agency and food vendor fair hearing provisions of the "~~1990 State Plan for Montana's Special Supplemental Food Program for Women, Infants and Children (WIC)~~" (October 1989 edition) state plan may be obtained from the Department of Public Health and Human Services, Special Supplemental Nutrition Program for Women, Infants & Children (WIC), P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The department is proposing amendments to ARM 37.59.101, 37.59.102, 37.59.105, 37.59.109, 37.59.110, 37.59.201, 37.59.202, 37.59.203, 37.59.301, 37.59.302, 37.59.303, 37.59.401, and 37.59.402 pertaining to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). WIC is located in the Family and Community Health Bureau of the Montana Department of Public Health and Human Services. The program is sponsored by the Food and Nutrition Services (FNS) division of the United States Department of Agriculture (USDA).

The purpose of the proposed rule amendments is to update the administrative rules governing the WIC program. The rules have not been updated since their implementation in 1988. Most of the updates are simple changes in terminology, formatting, and references; however, there have also been some policy changes since that time.

ARM 37.59.101, 37.59.109, 37.59.201, 37.59.202, 37.59.203, 37.59.302, 37.59.303, 37.59.401, and 37.59.402

The department is proposing amendments to these rules to simplify the language used and to update terminology, formatting, and references to federal code. These amendments are necessary to ensure that these rules are current with the latest language used in the WIC Program.

##### ARM 37.59.102

The proposed amendments to the definitions serve to provide updates and clarification to terminology used in the administration of the WIC program. The chart that contained the incorporation citations and cross-referenced the CFR to the administrative rule number in this rule was deleted due to duplication. The chart will be added to the state plan so providers may use it as a tool to help them access the administrative rules.

##### ARM 37.59.105

The proposed amendment reflects the incorporation of the current year's CFR, which is updated annually. The incorporation by reference to the federal poverty guidelines, the Child Nutrition Act, and the WIC state plan were moved from ARM 37.59.102 to this rule.

##### ARM 37.59.110

The amendments to this rule include changing the name to more accurately reflect the rule. The previous title, "Nutrition Services Standards," could be confused with a document produced by FNS of the same name. The new title identifies the nutrition services of the program in general. References to outdated materials have been

deleted and a summary of nutrition services provided by local staff have been added. The rule refers back to and incorporates by reference the state plan which provides more extensive detail of the activities at the local level.

### ARM 37.59.301

The amendments to this rule consist of updates to references, terminology, and formatting. The term "vendor" has been replaced by "retailer" to reflect the addition of farmers as part of the program. The policies outlined in the state plan regarding the use of farmer's market benefits have also been summarized.

### Fiscal Impact

There is no anticipated fiscal impact as a result of the proposed amendments to the ARM for the WIC program.

### Alternative Considered

No alternatives to the proposed amendments have been considered. WIC policies reflect federal regulations and guidelines and are outlined in the state plan annually; the plan is then approved through FNS and thereby implemented.

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: 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., September 19, 2013.

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

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

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

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

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

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Shannon L. McDonald  
Shannon L. McDonald  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State August 12, 2013.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 1.3.307 pertaining to rulemaking ) PROPOSED AMENDMENT  
notice requirements )

TO: All Concerned Persons

1. On September 12, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov).

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

1.3.307 RULEMAKING, INTRODUCTION

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

(b) Notice of proposed agency action. See ARM 1.3.309 regarding the following components:

(i) notice in the register;

(ii) contact with sponsor as required;

(iii) notice to interested persons; ~~and~~

(iv) statement of reasonable necessity for the proposed action; and

(v) beginning on July 1, 2013, and ending on July 1, 2015, a statement as to whether a proposed rule significantly and directly impacts small businesses.

(c) through (7) remain the same.

AUTH: 2-4-202, 2-15-401, MCA

IMP: Ch. 318, Sec. 1, L. 2013, 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

REASON: The amendments to (4)(b) are reasonably necessary to implement the requirements imposed on state agencies by the 2013 Legislature to include a determination of a proposed rule's impact on small businesses in the Montana Administrative Register. The implementation citations were reviewed and updated.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., September 20, 2013.

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

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on August 7, 2013.

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ JORGE QUINTANA  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH  
Linda McCulloch  
Secretary of State

Dated this 12th day of August, 2013.



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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.43.2114 and 2.43.2608 )  
establishing a process for the )  
payment of employer contributions on )  
behalf of working retirees, including )  
independent contractors and other )  
workers in PERS-covered positions )

TO: All Concerned Persons

1. On July 11, 2013, the Public Employees' Retirement Board published MAR Notice No. 2-43-483 pertaining to the proposed amendment of the above-stated rules at page 1161 of the 2013 Montana Administrative Register, Issue Number 13.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

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

COMMENT 1: A representative of the Legislative Services Division commented that the rule notice proposing these rules should have contained a statement regarding the effect the rules could have on small businesses. SB 139 requires that in certain circumstances state agencies conduct a small business impact analysis prior to the adoption.

RESPONSE 1: The Public Employees' Retirement Board determined that the proposed rules did not directly impact small business. Therefore the board is adding the following statement with regard to the requirements of SB 139: the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
Board President  
Public Employees' Retirement Board

Certified to the Secretary of State August 12, 2013

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

In the matter of the repeal of	)	NOTICE OF REPEAL AND
Temporary Emergency Rule I that	)	AMENDMENT OF TEMPORARY
establishes actuarial assumptions for	)	EMERGENCY RULES
testing purposes and the amendment	)	
of Temporary Emergency Rule III that	)	
applies actuarial assumptions and	)	
establishes a process for determining	)	
actuarial equivalent factors	)	

TO: All Concerned Persons

1. The Public Employees' Retirement Board is repealing temporary emergency rule I because the Public Employees' Retirement Board has determined that statute is clear that the guaranteed annual benefit adjustment (GABA) rate to be applied by the actuary for testing purposes is 1.5% and that due to the clarity of the statute, a rule addressing the GABA rate to be applied by the actuary for testing purposes is not necessary. Additionally, the board wishes to retain its flexibility under 19-2-405, MCA to instruct the actuary to perform any valuation necessary to address changes in law and circumstance that may result from decisions impacting the funding of the Public Employees' Retirement System.

The board is amending temporary emergency rule III because it is uncertain whether a court will issue an injunction and if an injunction is issued, it is uncertain what GABA rate will be imposed.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on August 23, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladoic, Montana Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131 telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [kvladoic@mt.gov](mailto:kvladoic@mt.gov).

3. The temporary emergency rules were effective July 1, 2013 and were published in 2013 MAR Issue No. 12.

4. The repeal of temporary emergency rule I is effective August 23, 2013.

5. The amended temporary emergency rule III provides as follows, new matter underlined, deleted matter interlined and is effective August 23, 2013:

RULE III APPLICATION OF ACTUARIAL ASSUMPTIONS AND PROCESS FOR DETERMINING ACTUARIAL EQUIVALENT FACTORS (1) through (3) remain the same.

(4) In the event of a court order prohibiting the board from implementing a 1.5% GABA rate pursuant to 19-3-1605, MCA, the actuary will ~~continue assuming~~ assume a 3% GABA rate consistent with the court order for purposes of this administrative rule until the court order is amended or lifted.

AUTH: 19-2-403, 19-3-1605, MCA

IMP: 19-2-405, 19-3-1605, MCA

6. The Public Employees' Retirement Board is filing MAR Notice No. 2-43-490, which addresses a public hearing on this same subject to adopt the amended temporary emergency rule III as a permanent rule. That notice is also available in this issue of the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Kris Vlastic at the address above.

8. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by mail on May 21, 2013 and July 31, 2013.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the board has determined that the repeal and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie Symons  
Melanie Symons, Legal Counsel  
and Rule Reviewer

/s/ Scott Moore  
Scott Moore  
President  
Public Employees' Retirement Board

Certified to the Secretary of State August 12, 2013

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 23.3.129, 23.3.131, and )  
23.3.147 pertaining to collection and )  
verification of social security numbers )  
for drivers' licenses and identification )  
cards )

TO: All Concerned Persons

1. On June 20, 2013, the Department of Justice published MAR Notice No. 23-3-229 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 996 of the 2013 Montana Administrative Register, Issue Number 12.

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

3. The department received one comment. A general statement of support for this rulemaking action was made at the public hearing by Kristine Thatcher, Bureau Chief, Field Operations Bureau, Motor Vehicle Division, Montana Department of Justice.

/s/ Matthew T. Cochenour  
Matthew T. Cochenour  
Rule Reviewer

/s/ Tim Fox  
Tim Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State August 12, 2013.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I through IV, pertaining to )  
Chrome for Kids Motorcycle License )  
Plates )

TO: All Concerned Persons

1. On June 20, 2013, the Department of Justice published MAR Notice No. 23-3-233 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1000 of the 2013 Montana Administrative Register, Issue Number 12.

2. The department has adopted the above-stated rules as proposed: New Rule I (23.3.1001), II (23.3.1002), III (23.3.1003), and IV (23.3.1004).

3. The department received one comment. A general statement of support for this rulemaking action was made at the public hearing by Brenda Nordlund, Administrator of the Motor Vehicle Division, Montana Department of Justice.

/s/ Matthew T. Cochenour  
Matthew T. Cochenour  
Rule Reviewer

/s/ Tim Fox  
Tim Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State August 12, 2013.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.141.405 fee schedule )

TO: All Concerned Persons

1. On June 6, 2013, the State Electrical Board (board) published MAR Notice No. 24-141-36 regarding the public hearing on the proposed amendment of the above-stated rule, at page 907 of the 2013 Montana Administrative Register, Issue No. 11.

2. On June 27, 2013, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the July 8, 2013, deadline.

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

COMMENT 1: One commenter opposed the fee increase and stated that licensees get nothing for their fees, such as newsletters or correspondence during the year. This commenter noted that a North Dakota license costs \$25 a year and suggested the budget be trimmed or that fees for inspections should go up.

RESPONSE 1: The board appreciates all comments received during the rulemaking process. Staff time, including the Executive Officer's time, has been distributed between several boards, and the department has trimmed costs by sharing other staff, including increased efficiencies in compliance, investigations, and inspections.

COMMENT 2: One commenter expressed extreme dismay and disappointment at the increase from \$135 to \$200 biennially, noting that this is almost a 50 percent increase. This commenter noted that a Montana engineer license fee is only \$90 biennially and suggested that board staff should be cut or shared with other boards, so the workload is commensurate with licensee-based costs.

RESPONSE 2: The board appreciates all comments received in the rulemaking process and notes that staff time, including the Executive Officer's time, has been trimmed and distributed between several boards.

COMMENT 3: One commenter was not totally opposed to the fee increase, since "everything else in the economy is going up," but asked why only the contractors have a token increase if the masters, journeyman, and residential licensee fees are increasing by 48 percent. The commenter suggested that everyone in the industry should share the load equally.

RESPONSE 3: The board notes that the last fee increase was in 2011, which raised the contractor's fee from \$200 to \$275. Contractor license fees were raised first and equalized the load.

COMMENT 4: One commenter said the proposed fee increase was "steep" and suggested that \$175 might be more appropriate.

RESPONSE 4: The fee increase has been an ongoing process. If it is reconsidered now, the board may have to raise fees again in the coming years.

COMMENT 5: One commenter stated that a 48 percent increase is way out-of-line and asked how a fee increase now would help, since licenses do not renew until July 2014.

RESPONSE 5: It will take approximately six months to process the fee increase through the rulemaking process. The board is trying to be proactive by giving the licensees time to adjust to the new fee.

COMMENT 6: One commenter noted that there was nothing in the statement of reasonable necessity outlining how increased efficiency might help, such as in the audits of CEUs that often are duplicative. This commenter suggested renewing licenses on birthdays to avoid an increased workload every two years, or going back to the three-year code cycle to reduce expenses. This commenter also asked about the rules comment process and asked to be placed on the interested parties' list.

RESPONSE 6: The board cannot enact a three-year renewal cycle due to the mandatory biennial (two-year) budget period. To have licensees renew every year on their birthdays would actually increase fees, as the board would have to reinvent the database for the board and each person would have to renew and have their CEUs due on a different date. This would be too difficult to track. Staff has placed the commenter on the interested parties' list.

COMMENT 7: One commenter stated that a \$65 increase is too much for a journeyman to pay, since work has fallen for journeymen, and asked why a shortage could not have been foreseen and forestalled with a slight increase earlier.

RESPONSE 7: There was a slight increase in 2011 from \$100 to \$135. The board held off on this increase as long as they could. Additionally, the board hoped that 2013 legislation would give them a reimbursement on costs and that did not happen.

COMMENT 8: One commenter suggested that since the workload has fallen due to fewer licensees, the man-hours needed in the office must have decreased as well. A 48 percent increase does not keep fees commensurate with costs, as provided in 37-1-134, MCA.

RESPONSE 8: The board notes that it takes the same amount of staff and workload to administer 3,500 licensees as it does 4,500. The fee increase is not always or solely based on the number of licensees.

COMMENT 9: One commenter noted the increase in costs of doing business and the hardship this increase will cause to electricians who might not renew in Montana, since they can be licensed in other states for as little as \$25 a year.

RESPONSE 9: The board has no control over whether or not licensees renew, and notes that many factors may determine a licensee's continued desire to renew in Montana.

COMMENT 10: One commenter noted that a 32.5 percent increase was too "steep" in times of recession, and asked the board to reconsider and "trim the fat" from the board's operations.

RESPONSE 10: The fee increase has been an ongoing process. It is needed now to avoid increases in the coming years. Staff time, including the Executive Officer's time, has been distributed between several boards, and the department has trimmed costs by sharing other staff, including increased efficiencies in compliance, investigations, and inspections.

COMMENT 11: Once commenter stated the fee was too high and asked who it would benefit.

RESPONSE 11: The board's legislative mandate is to protect the public and the public is protected when electricians are licensed and regulated.

COMMENT 12: One commenter simply opposed the fee increase.

RESPONSE 12: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.141.405 exactly as proposed.

STATE ELECTRICAL BOARD  
RICK HUTCHINSON, MASTER  
ELECTRICIAN, PRESIDENT

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013



BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT,  
ARM 24.201.301 definitions, ) ADOPTION, AND REPEAL  
24.201.707 discreditable acts, )  
24.201.1108 alternatives and )  
exemptions, 24.201.2101 renewals, )  
the adoption of NEW RULES I )  
through III peer review programs, and )  
the repeal of ARM 24.201.1102 )  
definitions, 24.201.1106 statement by )  
permit holders, 24.201.1107 filing of )  
reports, and 24.201.1115 profession )  
monitoring program reviews and )  
enforcement )

TO: All Concerned Persons

1. On May 9, 2013, the Board of Public Accountants (board) published MAR Notice No. 24-201-46 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 763 of the 2013 Montana Administrative Register, Issue No. 9.

2. On May 30, 2013, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 7, 2013, deadline.

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

COMMENT 1: Noting that the terms "assure" and "ensure" were used throughout the proposal notice, one commenter suggested the board use "reasonable assurance" instead.

RESPONSE 1: The board agrees that the term "reasonable assurance" may more accurately express the board's intent, but notes that "ensure" and "assure" appeared predominately in the reasonable necessity statements. The board is striking "assurance" from ARM 24.201.1108(1)(b) in this final notice.

COMMENT 2: One commenter suggested reordering the definitions rule, adding a definition of "Engagement review," and amending ARM 24.201.301(3), (4), and (5) to more closely align the definitions with nationally recognized terminology.

RESPONSE 2: The board notes that definitions are organized alphabetically per ARM formatting standards of the Secretary of State. The board decided not to make

the other suggestions at this time, but will consider them in future relevant rules discussions.

COMMENT 3: Several commenters recommended the board add language to ARM 24.201.301(4) and (5), to align with the Peer Review Standards of the AICPA.

RESPONSE 3: The board decided not to make the suggested changes at this time, but will consider them in future relevant rules discussions.

COMMENT 4: A commenter recommended eliminating the reference to the Montana Society of Certified Public Accountants (MSCPA)-sponsored peer review program from ARM 24.201.301(11). The commenter pointed out that while the MSCPA administers the AICPA peer review program, it does not sponsor a separate peer review program.

RESPONSE 4: The board determined that the definition as proposed allows for possible alternatives should the MSCPA develop an alternative program. The board wants the flexibility to accept those alternatives.

COMMENT 5: One commenter suggested using the existing statutory language in 37-50-101(9), MCA, for the definition of "peer review" at ARM 24.201.301(11).

RESPONSE 5: The board is attempting to further clarify the statutory language by this definition of "peer review."

COMMENT 6: A commenter suggested the board amend ARM 24.201.301(12), (13), and (14) to use the term "Systems Peer review report," in lieu of "Peer review report," for better differentiation between systems and engagement reviews. The commenter opined that the titles of the engagement review definitions in (3), (4), and (5) of this rule are properly titled.

RESPONSE 6: See response 3.

COMMENT 7: Several commenters recommended adding additional clarifying language at the beginning of ARM 24.201.301(14). The commenters also suggested the board amend the definition of "Peer review report 'Pass with deficiencies'" to identify the extent of the deficiency or deficiencies, which would result in a "Pass with deficiency" rating.

RESPONSE 7: The board is relying on the MSCPA peer review program. The board does not want to tie the hands of an approved peer review program in administering their own program. These deficiency elements would be included in the review process when the board considers an alternative program for approval.

COMMENT 8: One commenter recommended that the board amend ARM 24.201.301(18)(c) to clarify that it is the licensee that is subject to peer review, not the governmental organization.

RESPONSE 8: See response 3.

COMMENT 9: A commenter asked the board to clarify ARM 24.201.707(1)(b) by identifying who would impose the conditions that must be complied with, to avoid a board finding that a licensee committed discreditable acts.

RESPONSE 9: The board agrees that clarifying language should be added to identify who imposed the conditions and is amending the rule accordingly.

COMMENT 10: One commenter praised the board for identifying the failure to comply with conditions imposed by the sponsoring organization as a discreditable act in ARM 24.201.707(1)(b). The comment further suggested adding as a discreditable act when a firm misrepresents in writing that it is not subject to peer review when the firm is performing attest or compilation services that are subject to peer review.

RESPONSE 10: The board believes that it already has authority over this type of activity. Misrepresentation by a firm is a violation of current board statutes and rules and the board has the authority to take appropriate action.

COMMENT 11: Several commenters recommended eliminating the reference to compilation when identifying who is exempt from the peer review requirement in ARM 24.201.1108(1)(a), (b), and (c). Both comments indicated a compilation service is an attest service and it is redundant to include "attest and compilation services" when compilation is an attest service.

RESPONSE 11: The board notes that this issue is under consideration at NASBA, being that compilations may be removed from attest services. The board will make a determination once a consensus is reached, and is striking (1)(b) from the rule at this time.

COMMENT 12: One commenter requested clarification to the exemption of an out-of-state firm's peer review requirement in ARM 24.201.1108(1)(a). The comment suggested that if the out-of-state firm has a peer review report of "Pass with deficiencies" or "Fail" from their resident state, they must provide a copy of the administering entity's acceptance letter, which confirms the firm has agreed to certain corrective action.

RESPONSE 12: See response 3.

COMMENT 13: A commenter pointed out that the MSCPA administers the AICPA peer review program, but the AICPA program is not an alternative to the MSCPA program. ARM 24.201.1108(2) clarifies it is not necessary to list the AICPA peer review program as an alternative to the MSCPA program.

RESPONSE 13: The board agrees with the commenter and is striking ARM 24.201.1108(2)(b).

COMMENT 14: One commenter stated that clarification is necessary to ARM 24.201.1108(2)(a), because the Public Company Accounting Oversight Board (PCAOB) inspection program only covers PCAOB standards. The firm's overall system of quality control and engagements outside of the PCAOB should be reviewed.

RESPONSE 14: The board believes the current drafted language for PCAOB inspections does not eliminate the peer review requirement on work outside PCAOB standards.

The board did decide to clarify in the rule that the board would be required to approve and identify acceptable alternative programs, and is therefore amending ARM 24.201.1108(2) accordingly.

COMMENT 15: A commenter suggested the board adopt a definition of expert knowledge as it is used in ARM 24.201.2101(6)(a).

RESPONSE 15: See response 3.

COMMENT 16: Several commenters suggested that New Rule I should include a requirement for practitioners to enroll in and meet board-approved peer review program standards if they perform engagements under the attestation standards (SSAE), which is more comprehensive than an agreed upon procedures engagement found in New Rule I (1)(d).

RESPONSE 16: See response 3.

COMMENT 17: A commenter noted that in New Rule I (4), the board intends to require that all Montana practice units have a peer review completed and must enroll in the MSCPA program or other board-approved program. The MSCPA administers the AICPA peer review program and does not have a separate peer review program.

RESPONSE 17: The board concluded that the language as proposed is appropriate.

COMMENT 18: One commenter requested clarification of what is intended as a follow-up action in New Rule I (5) and recommended alternative language in lieu of "follow-up actions."

RESPONSE 18: The board agrees and is amending (5) by replacing "follow-up actions" with "remediation."

COMMENT 19: One commenter suggested the board add a new rule(s) that would clarify the relationship of peer review sponsoring organizations, establish program and standard minimums, and identify who would approve sponsoring organizations.

The commenter recommended this section should adopt the AICPA and those entities administering the AICPA peer review program as the board-recognized peer review program. The new rule(s) should adopt the Standards for Performing and Reporting on Peer Reviews as the minimum peer review standards, while acknowledging there may be other organizations the board might consider.

RESPONSE 19: See response 3.

COMMENT 20: A commenter recommended the board add a new rule(s) that would allow the board to utilize the AICPA Facilitated State Board Access Process (FSBA) in its practice unit reporting requirements. FSBA is a web-based process that gives the board electronic access to a variety of peer review documents and several reports, allowing the board to easily monitor the performance of remedial action required of firms. The recommended new rule(s) would require practice units to submit documents to the board, but would not mandate the use of FSBA. The commenter did provide additional recommended language if the board wanted to mandate the use of FSBA.

RESPONSE 20: See response 3.

COMMENT 21: A commenter recommended expanding the types of engagements that would require a firm to enroll in peer review. The recommendation is to add a new rule(s) that would include the existing types of engagements, but would also add another engagement level. The board should also create an effective date for transition to the peer review requirement.

RESPONSE 21: The board determined the transition date is included in the proposed notice and the recommended additional language will be considered in a future rulemaking package.

4. The board has amended ARM 24.201.301 and 24.201.2101 exactly as proposed.

5. The board has adopted NEW RULES II (24.201.1105) and III (24.201.1112) exactly as proposed.

6. The board has repealed ARM 24.201.1102, 24.201.1106, 24.201.1107, and 24.201.1115 exactly as proposed.

7. The board has amended ARM 24.201.707 and 24.201.1108 with the following changes, stricken matter interlined, new matter underlined:

24.201.707 DISCREDITABLE ACTS (1) and (a) remain as proposed.

(b) a practice unit fails to comply with conditions imposed by the peer review program as a result of a "pass with deficiencies" or "failed" peer review classification.

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) remains as proposed.

(a) out-of-state practice units that do not have a physical location in this state, but perform attest or compilation services in this state, and have a peer review in the state in which they are located, and are otherwise qualified for practice privileges; or

~~(b) practice units that do not perform attest services, compilation services, or other professional services for which a report expressing assurance is prescribed by professional standards in Montana; or~~

(c) remains as proposed, but is renumbered (b).

(2) Alternative programs to the board-approved peer review program of the AICPA, administered by the Montana Society of Certified Public Accountants Accountants (MSCPA), shall include:

~~(a) the inspection processes of the Public Company Accounting Oversight Board (PCAOB);~~

~~(b) peer review programs administered by the American Institute of CPAs (AICPA); and~~

~~(c) other non-AICPA programs recognized and approved by the board.~~

8. The board has adopted NEW RULE I (24.201.1103) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I PEER REVIEW ENROLLMENT (1) through (4) remain as proposed.

(5) A practice unit enrolled in a peer review program that receives a "pass" or "pass with deficiencies," and completes all ~~follow-up~~ remediation actions must have a peer review completed every three years. A practice unit that receives a "fail" rating must follow peer review program requirements for subsequent peer reviews.

(6) and (7) remain as proposed.

BOARD OF PUBLIC ACCOUNTANTS  
BEATRICE ROSENLEAF, CPA,  
PRESIDING OFFICER

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.210.401 and 24.210.801 fee )  
schedule )

TO: All Concerned Persons

1. On May 9, 2013, the Board of Realty Regulation (board) published MAR Notice No. 24-210-39 regarding the public hearing on the proposed amendment of the above-stated rules, at page 773 of the 2013 Montana Administrative Register, Issue No. 9.

2. On May 30, 2013, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the June 7, 2013, deadline.

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

COMMENT 1: Numerous commenters opposed the fee increases and pointed out that the real estate industry has not fully recovered from the recent economic downturn in the market. The commenters encouraged the board to review ways to curb expenses and payroll, rather than increase revenues. Several referenced the Consumer Price Index (CPI) and stated that it does not correlate to the percentage increase proposed by the board. The commenters stated that a much smaller increase in fees – one which is closer to the increase in CPI – would be reasonable, and that subsequent smaller increases over the next few years would be in order.

Another commenter asserted that the board should have been increasing fees incrementally over the last decade and that failure to do so is gross mismanagement.

Numerous commenters requested that the board cut its expenses and reduce its budget by cutting payroll and evaluating the necessity of certain expenses, including travel, seminars, staff, meetings, per diem, and other "optional" expenses. The commenters further stated that the board has not demonstrated sufficient justification for the fee increases.

One commenter stated the fee increase is only justifiable due to an increase in staff workload. The commenter asked if there had been a reduction in staff, resulting in a heavier workload to individual staff persons, and stated that since licensee numbers were down, there should not be an increase in board workload.

Numerous commenters noted that there appears to be a decrease in board provided services, while expenses keep increasing. The commenters said that the decline in board service does not justify the substantial fee increase. They stated that there should be an equal balance between a rate increase and the services and

products rendered by the board. Commenters requested to know if the fee increase is due to an increase in bureaucracy.

One commenter stated that the board previously had an experienced and capable staff, which is no longer the case because duties are now assigned to pools based on function. The commenter does not believe the pool system is efficient or responsive. The commenter suggested the licensing agencies should be returned to their prior status of independent units, and urged that the board and department consider improving efficiencies before burdening licensees with large fee increases.

RESPONSE 1: The board's budget and expenses are available for inspection by the public. A rational and demonstrable basis exists for a fee increase at this time and not later. It is true that other than the executive director, the board no longer has the same specific staff assigned directly to them. Rather, the board shares department employees in various licensing/investigation/audit units. Under the new structure, those employees only bill the board for time spent directly on board business. Other generalized expenses are also proportioned among the licensing boards based on usage.

Five of the seven board members are real estate licensees themselves. Thus, the board understands and is sympathetic with those opposed to the proposed fee increases. However, the board is amending the rules exactly as proposed.

COMMENT 2: Some commenters encouraged the board to implement alternative practices that would depend less on the complaint/contested case process, thus saving the board money.

RESPONSE 2: The board strives to keep disciplinary expenses as low as possible, while still working within the requirements of law. It may not be readily apparent, but the board does not always file a disciplinary action against a licensee for whom a complaint has been filed. In fact, most complaints result in no discipline at all as they are dismissed. Those dismissed complaints typically are completely unknown to other licensees and the public at large. Many licensees only receive letters of instruction or warning, while others receive simple citations, which are not included in the licensee's disciplinary record.

The board points out that statute dictates whether the board can implement alternatives to disciplinary actions. If discipline is warranted, the board is constrained to follow – and does follow – certain mandatory processes. Due process, providing notice to the public, open meetings, and keeping a public record play key roles in determining how the board addresses disciplinary issues.

Once a complaint is filed, the board is required by law to consider it, though it may eventually be dismissed. Even dismissed cases have a cost in board time, legal time, staff time, etc. Further, by law, none of the costs can be recouped from the individual licensees. Even the fines assessed against licensees are not retained by the board, as statute mandates that fine money goes to the state general fund. Therefore, costs can only be recouped through fees assessed to all licensees. The board is therefore amending the rules as proposed.



COMMENT 3: Numerous commenters expressed opposition to the fee increase, because the board has also increased continuing education (CE) requirements, which adds to the cost for a licensee to maintain licensure.

RESPONSE 3: The board realizes the requirements to maintain a license have increased, resulting in higher costs to the licensee. The board is charged with protection of the public, and as the real estate profession becomes more complex, more CE is needed to stay abreast of the changing real estate transaction environment. The increase in education requirements also increases the board expenses in this area by requiring more oversight, more course approvals, and more board education offerings. The board is amending the rules exactly as proposed.

COMMENT 4: Numerous commenters opposed the current fee increases and proposed the board instead consider a graduated schedule to increase the fees over a period of several years.

RESPONSE 4: The board did previously consider increasing fees incrementally over a period of a few years. Based on the comments submitted in this rulemaking, the board again seriously considered this suggestion at the July 2, 2013 meeting. The board reviewed fiscal projections and noted that having multiple increases would likely lead to more confusion. It was determined that increasing the fee one time was more cost-effective, simpler, and subject to less confusion. The board is amending the rules exactly as proposed.

COMMENT 5: Two commenters believed the increase may result in embezzlement and stated the board's and department's finances and operations should be audited.

RESPONSE 5: The board is subject to regular audits by third parties of both board operations and finances. In fact, very soon, the board will again be reviewed by a legislative interim committee. Further, no board member or current staff holds any monies received in the course of business. Legislative and financial oversight by third parties helps to ensure accountability of staff and board members, and that processes are followed and monies are handled properly.

COMMENT 6: Some commenters supported the proposed fee increases, stating that few licenses in any field are available for as reasonable a fee as real estate licenses. Some commenters believe the fees are so reasonable that they should be even higher and suggested that additional (higher) fees be phased in over the next few years.

RESPONSE 6: The board appreciates all comments made during the rulemaking process and the understanding for why the fees are increasing. The board does not believe that higher fees are appropriate at this time.

COMMENT 7: One commenters questioned the board changing the renewal date from December 31 to October 1 a few years ago, and asked whether the board had made any fee adjustment following the change.

RESPONSE 7: The board notes that the change to the renewal cycle in ARM 24.101.413 occurred when the board rules were transferred to the Department of Labor and Industry in MAR Notice No. 24-101-202, and became effective July 1, 2006. As this rule is not proposed for change in this notice, it is outside the scope of this current rulemaking project.

4. The board has amended ARM 24.210.401 and 24.210.801 exactly as proposed.

BOARD OF REALTY REGULATION  
C.E. "ABE" ABRAMSON,  
PRESIDING OFFICER

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 12, 2013

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 1.3.309 pertaining to rulemaking )  
notice requirements )

TO: All Concerned Persons

1. On June 20, 2013, the Secretary of State published MAR Notice No. 44-2-188 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1077 of the 2013 Montana Administrative Register, Issue Number 12.

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

1.3.309 RULEMAKING, PROPOSAL NOTICE

(1) through (3)(a)(ii) remain as proposed.

(iii) If an agency is proposing to adopt a ~~new~~ rule that it determines will significantly and directly impact small businesses, the agency shall include a statement of that determination in its proposal notice. This requirement begins on July 1, 2013, and expires on July 1, 2015.

(iv) through (4) remain as proposed.

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

COMMENT #1: Glenn Oppel, Government Relations Director for the Montana Chamber of Commerce, attended the rule hearing and provided oral and written comments regarding the proposed amendments. His basic concern was that the rule does not provide complete guidance for agencies to comply with Senate Bill 139, which was passed by the 2013 Montana Legislature. He recommended that the rule be amended to provide guidance to agencies on what must be included in a rule notice.

RESPONSE #1: The Secretary of State is charged with the responsibility of compiling and publishing all rules filed pursuant to the Montana Administrative Procedure Act. Along with this responsibility, the Secretary of State is authorized to prescribe a format, style, and arrangement for the rules. Each state agency is responsible for preparing its portion of the rules in accordance with the format, style, and arrangement required by the Secretary of State. The Secretary of State provides tools for state agencies in the form of online templates that depict standard boilerplate language and layout for rulemaking notices. These templates provide skeletal rule notices which state agencies fill in and complete according to their own

needs. The purpose is to ensure that the Secretary of State's formatting requirements are met and that basic rulemaking requirements are met, i.e., whether sponsor notification is required or not and, in this instance, whether a small business impact analysis is required pursuant to the passage of Senate Bill 139. It is incumbent upon each agency to determine whether a small business impact analysis is required. The Governor's Office issued a memorandum on July 22, 2013, providing assistance and guidelines to state agencies on the implementation of Senate Bill 139. Therefore, the Secretary of State has not modified the rule as proposed by the Montana Chamber of Commerce because the suggested modifications repeat statutory language, which is prohibited pursuant to 2-4-305(2), MCA, and because the purpose of the rule amendment was not to provide guidance to state agencies on the implementation of Senate Bill 139, but to modify the rulemaking templates to include language regarding the new requirement to determine whether a small business impact statement was required or not. As directed by the Montana Legislature, the Governor's Office of Economic Development has provided guidance to agencies as to the implementation of Senate Bill 139 in the form of a memorandum as referenced above.

COMMENT #2: Cleo Anderson and Laurie Logan from the Montana Department of Revenue attended the hearing and proposed that the Secretary of State modify ARM 1.3.309(3)(iii) by deleting the word "new" and inserting the word "proposal."

RESPONSE #2: The Secretary of State agrees and has modified the rule as recommended.

COMMENT #3: Glenn Oppel, Government Relations Director for the Montana Chamber of Commerce, provided written comments requesting that ARM 1.3.307 be amended to include language regarding the requirements of a small business impact analysis to comply with Senate Bill 139.

RESPONSE #3: The Secretary of State will amend ARM 1.3.307 to include a statement regarding the requirement for a small business impact analysis in a future rule notice.

/s/ JORGE QUINTANA \_\_\_\_\_  
Jorge Quintana  
Rule Reviewer

/s/ LINDA MCCULLOCH \_\_\_\_\_  
Linda McCulloch  
Secretary of State

Dated this 12th day of August, 2013.

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

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

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

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

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

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

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

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

- Department of Public Health and Human Services.

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

- Department of Corrections; and
- Department of Justice.

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

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

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

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

**Environmental Quality Council:**

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

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

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

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

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

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

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

- |               |   |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.<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 March 31, 2013. This table includes those rules adopted during the period April 1, 2013, through June 30, 2013, 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 March 31, 2013, 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 2013 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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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in July 2013 appear. Vacancies scheduled to appear from September 1, 2013, through November 30, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2013.

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

## BOARD AND COUNCIL APPOINTEES FROM JULY 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Director of the Office of Community Affairs (Governor)</b>			
Mr. Dan Ritter Helena	Governor	not listed	6/24/2013 0/0/0
Qualifications (if required): none specified			
<b>District Court Judge District 16 (Justice)</b>			
Judge Michael Hayworth Forsyth	Governor	Day	6/19/2013 1/1/2015
Qualifications (if required): appointed			
<b>Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)</b>			
Mr. Gary Wolfe Missoula	Governor	Ream	6/14/2013 1/1/2017
Qualifications (if required): District 1			
<b>Montana Health Coalition (Public Health and Human Services)</b>			
Rep. Edith J. Clark Sweet Grass	Director	not listed	6/7/2013 6/7/2015
Qualifications (if required): none specified			
Ms. Mary Dalton Helena	Director	not listed	6/7/2013 6/7/2015
Qualifications (if required): none specified			
Dr. Steve Helgerson Helena	Director	not listed	6/7/2013 6/7/2015
Qualifications (if required): none specified			

**BOARD AND COUNCIL APPOINTEES FROM JULY 2013**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Health Coalition</b> (Public Health and Human Services) cont.			
Mr. Travis Hoffman Missoula Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Mr. S. Kevin Howlett Arlee Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Ms. Leigh Ann Logan Billings Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Mr. Bob Marsalli Helena Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Dr. Gary Mihelish Helena Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Mr. Shane Roberts Ronan Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015
Mr. Eric Shields Missoula Qualifications (if required): none specified	Director	not listed	6/7/2013 6/7/2015

**BOARD AND COUNCIL APPOINTEES FROM JULY 2013**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Health Coalition</b> (Public Health and Human Services) cont.			
Ms. Jane Smilie Helena	Director	not listed	6/7/2013 6/7/2015
Qualifications (if required): none specified			
Ms. Kristianne Wilson Billings	Director	not listed	6/7/2013 6/7/2015
Qualifications (if required): none specified			
<b>Tourism Advisory Council</b> (Governor)			
Ms. Stacey Kiehn Charlo	Governor	DesRosier	6/14/2013 7/1/2014
Qualifications (if required): Glacier Country Tourism Region			

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Alternative Health Care Board</b> (Labor and Industry)                      Ms. Molly Danison, Missoula                      Qualifications (if required): midwife</p>	Governor	9/1/2013
<p><b>Board of Athletic Trainers</b> (Labor and Industry)                      Mr. Bob Fletcher, Bozeman                      Qualifications (if required): public representative</p>	Governor	10/1/2013
<p>Mr. Shawn Ruff, Great Falls                      Qualifications (if required): public representative</p>	Governor	10/1/2013
<p><b>Board of Barbers and Cosmetologists</b> (Labor and Industry)                      Mr. Wendell Petersen, Missoula                      Qualifications (if required): cosmetologist</p>	Governor	10/1/2013
<p>Ms. Jamie Ausk Crisafulli, Glendive                      Qualifications (if required): public representative</p>	Governor	10/1/2013
<p>Mr. William Graves, Great Falls                      Qualifications (if required): barber</p>	Governor	10/1/2013
<p>Ms. Sherry Dembowski-Wieckowski, Thompson Falls                      Qualifications (if required): barber</p>	Governor	10/1/2013
<p><b>Board of Medical Examiners</b> (Labor and Industry)                      Ms. Carole Erickson, Missoula                      Qualifications (if required): public representative</p>	Governor	9/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Medical Examiners</b> (Labor and Industry) cont. Mr. Dwight Thompson, Harlowton Qualifications (if required): licensed physician assistant	Governor	9/1/2013
Dr. Kris Spanjian, Billings Qualifications (if required): doctor of medicine	Governor	9/1/2013
Ms. Patricia Bollinger, Helena Qualifications (if required): nutritionist	Governor	9/1/2013
Ms. Linda Cetrone Levy, Billings Qualifications (if required): public representative	Governor	9/1/2013
Mr. Ryan Burke, Great Falls Qualifications (if required): volunteer emergency medical technician	Governor	9/1/2013
Ms. Eileen Sheehy, Billings Qualifications (if required): public representative	Governor	9/1/2013
Mr. Charles Farmer, Cut Bank Qualifications (if required): volunteer emergency medical technician	Governor	9/1/2013
Mrs Ana Diaz, Billings Qualifications (if required): public representative	Governor	9/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Outfitters</b> (Labor and Industry)                      Mr. John Wilkinson, Miles City                      Qualifications (if required): fishing and hunting outfitter</p>	Governor	10/1/2013
<p><b>Board of Psychologists</b> (Labor and Industry)                      Dr. Susan Mattocks, Miles City                      Qualifications (if required): private practice psychologist</p>	Governor	9/1/2013
<p><b>Claims Data Analysis Council</b> (State Auditor)                      Rep. Chuck Hunter, Helena                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013
<p>Rep. Monica J. Lindeen, Huntley                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013
<p>Ms. Claudia Clifford, Helena                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013
<p>Ms. Tanya Ask, Helena                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013
<p>Mr. Gregg Davis, Missoula                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013
<p>Mr. Don Creveling, Missoula                      Qualifications (if required): none specified</p>	State Auditor	10/13/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Claims Data Analysis Council</b> (State Auditor) cont. Mr. Barnard Khomenko, Missoula Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Frank Cote, Helena Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Robert Shepard, Clancy Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Jon Bennion, Helena Qualifications (if required): none specified	State Auditor	10/13/2013
Dr. Tom Roberts, Missoula Qualifications (if required): none specified	State Auditor	10/13/2013
Dr. William Reiter, Anaconda Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Joseph Lotus, Chicago Qualifications (if required): none specified	State Auditor	10/13/2013
Ms. Megan O'Halloran, Milwaukee Qualifications (if required): none specified	State Auditor	10/13/2013
Ms. Roberta Yager, Helena Qualifications (if required): none specified	State Auditor	10/13/2013



**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Claims Data Analysis Council</b> (State Auditor) cont. Ms. Jan Hoy, Billings Qualifications (if required): none specified	State Auditor	10/13/2013
Ms. Rebecca Kelly, Billings Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Dror Baruch, Billings Qualifications (if required): none specified	State Auditor	10/13/2013
Mr. Alan Hall, Missoula Qualifications (if required): none specified	State Auditor	10/13/2013
<b>Flathead Basin Commission</b> (Natural Resources and Conservation) Ms. Jan Metzmaker, Whitefish Qualifications (if required): public representative	Governor	10/1/2013
Ms. Margaret Sogard, Bigfork Qualifications (if required): public representative	Governor	10/1/2013
Mr. Thompson R. Smith, Charlo Qualifications (if required): public representative	Governor	10/1/2013
Mr. Chas Cartwright, Columbia Falls Qualifications (if required): public representative	Governor	10/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Preservation Review Board</b> (Historical Society) Mr. Donald Matlock, Hamilton Qualifications (if required): public representative	Governor	10/1/2013
<b>Historical Records Advisory Council</b> (Historical Society) Ms. Ellen Crain, Butte Qualifications (if required): public representative	Governor	10/12/2013
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative	Governor	10/12/2013
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public representative	Governor	10/12/2013
Ms. Anne L. Foster, Huntley Qualifications (if required): public representative	Governor	10/12/2013
Ms. Jodie Foley, Helena Qualifications (if required): state archivist	Governor	10/12/2013
Mr. Jon Ille, Hardin Qualifications (if required): public representative	Governor	10/12/2013
Mr. Samuel Meister, Missoula Qualifications (if required): public representative	Governor	10/12/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture)		
Mr. James Bouma, Choteau Qualifications (if required): forage producer	Director	9/17/2013
Mr. Kehoe Wayman, Ronan Qualifications (if required): representative of the outfitters and guides	Director	9/17/2013
Mr. Mark Siderius, Kalispell Qualifications (if required): forage producer	Director	9/17/2013
<b>Statewide Interoperability Governing Board</b> (Administration)		
Mr. Tim Reardon, Helena Qualifications (if required): Director of the Montana Department of Transportation	Governor	9/30/2013
Mr. Dick Clark, Helena Qualifications (if required): Chief Information Officer	Governor	9/30/2013
Sheriff Leo C. Dutton, Helena Qualifications (if required): representative of the Montana's Sheriffs and Peace Officers Association	Governor	9/30/2013
Ms. Sheena Wilson, Helena Qualifications (if required): Governor's office representative	Governor	9/30/2013
Atty. General Steve Bullock, Helena Qualifications (if required): Attorney General	Governor	9/30/2013

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2013 THROUGH NOVEMBER 30, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services)		
Mr. Bob Maffit, Helena Qualifications (if required): statewide independent living council representative	Governor	10/1/2013
Ms. Nina Cramer, Missoula Qualifications (if required): representative of organized labor	Governor	10/1/2013
Ms. Mary Hall, Missoula Qualifications (if required): parent organization representative	Governor	10/1/2013
Ms. Chanda Hermanson, Helena Qualifications (if required): advocacy program representative	Governor	10/1/2013
Ms. Nikki Sandve, Helena Qualifications (if required): state education agency representative	Governor	10/1/2013
Ms. Kate Gangner, Great Falls Qualifications (if required): community rehabilitation program representative	Governor	10/1/2013
Ms. Marla Swanby, Helena Qualifications (if required): State education agency representative	Governor	10/1/2013
<b>Water and Waste Water Operators' Advisory Council</b> (Environmental Quality)		
Mr. Donald Coffman, Harlem Qualifications (if required): water treatment plant operator	Governor	10/16/2013