

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULE I concerning audit data storage)	PROPOSED ADOPTION AND
devices and the amendment of ARM)	AMENDMENT
23.16.1802 concerning definitions and)	
ARM 23.16.1827 concerning record)	
keeping requirements)	

TO: All Concerned Persons

1. On January 7, 2009, at 11:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice 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 December 30, 2008, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I AUDIT DATA STORAGE DEVICES (1) The department may approve a VGM (video gambling machine) utilizing an ASD (audit storage device) for use in place of duplicate printed audit tapes. Each VGM providing ASD support must operate in the following manner:

- (a) the ASD must have a minimum capacity of 2GB;
- (b) at a minimum, record information on the ASD as required in ARM 23.16.1901(1)(d)(vii) and(xi) as defined by the department;
- (c) at a minimum, maintain current record of \$\$IN, \$\$PL, \$\$WN, \$\$PD electronic meters as defined by department;
- (d) utilize directory and file layout specifications for all ASD data as provided by the department;
- (e) retain ASD data records for a minimum of four quarters;
- (f) record required data and confirm in real time;
- (g) the ASD must reside in a locked area within the VGM;
- (h) each record stored on the ASD must be digitally signed as defined by the department;
- (i) the department will administer the distribution of private encryption keys to manufacturers as defined by the department;

- (j) the department must be able to authenticate records through the use of external software utility and public encryption keys as defined by the department;
- (k) game play will be suspended when:
 - (i) an ASD is not present;
 - (ii) communication with an ASD is lost;
 - (iii) data written to an ASD does not conform to file conventions and cannot be corrected by the VGM;
 - (iv) the ASD has insufficient memory to record the largest record possible;
 - (v) a newly installed ASD has unexpected files, directories, or contains files from a machine with a different VGMID;
- (l) ASD data should not be cleared during a Lifetime Memory Clear;
- (m) ASD Data must be displayed on VGM via use of the audit key; and
- (n) ASD data must display externally on personal computers using common applications such as Word or Excel.

AUTH: 23-5-621, 23-5-637, MCA
IMP: 23-5-112, 23-5-115, 23-5-616, 23-5-621, 23-5-628, 23-5-637,
MCA

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonable and necessary because it will allow video gambling machine (VGM) manufacturers to replace impact printers with digital data storage devices for recording audit ticket and ticket voucher data. Current rules specify that VGMS contain impact printers in order to print duplicate audit tapes, i.e., audit tickets and ticket vouchers, to satisfy the record keeping requirements of the department. This duplication of printed audit tapes is accomplished by impact printers that create carbon copies on dual layer paper tapes. The tapes are bulky and heavy, and the retention requirements for those records can be burdensome.

Montana manufacturers of VGMS argue that only a few companies currently manufacture impact printers, and continued supply and after-sales support for the impact printers is uncertain. VGM manufacturers propose the substitution of the printed duplicate audit tapes and the impact printer, with digital data storage devices (commonly referred to as thumb drives). These devices will serve as an alternative method to preserve the records as currently required, but in an electronic digital format rather than on paper medium.

The rule establishes technical standards regarding data security and storage capacity that are designed to assure accurate collection, retention, and reporting of VGM audit tape data.

The department has evaluated the proposal to use ASD as a suitable replacement for the impact printers. The department believes the digital recordation of audit tape data can be done efficiently and securely, and satisfies its requirements for records duplication and retention. A digital record will eliminate the onerous storage requirements currently required for the paper audit tape rolls, and will ease the

burden of data retrieval and evaluation if it becomes necessary for the department to conduct an examination or audit of the VGM records.

The department believes digital records stored to an ASD will serve to achieve the goals expressed by the Legislature when it authorized use of approved automated accounting and reporting systems in 23-5-637, MCA, including to: minimize regulatory costs, simplify the reporting of video gambling machine revenue data, lessen administrative and record keeping burdens for machine owners and operators, and enhance the management tools available to the industry and the state.

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

23.16.1802 DEFINITIONS (1) and (2) remain the same.

(3) "ASD" (audit storage device) means a removable, portable, nonvolatile, electronic, memory storage device that is compatible with a standard port on a personal computer and is used to store electronic records of audit tapes.

(3) through (26) remain the same but are renumbered (4) through (27).

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603,
23-5-610, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: It is reasonable and necessary to amend this rule to provide a definition of the acronym "ASD." The acronym derives from the adoption of NEW RULE I that authorizes use of digital data storage devices in video gambling machines, and from amendment to ARM 23.16.1827 that provides storage retention requirements for VGMs using ASD for the collection and retention of those records. The department concluded that maintaining definitions within a single rule eliminates redundancy and lessens confusion among readers.

23.16.1827 RECORD KEEPING REQUIREMENTS (1) remains the same.

(2) Except as provided in (4), Rrecords to be maintained by machine owners continuing to file reports and maintain records manually and those using tier II automated accounting and reporting systems must include:

(a) through (4) remain the same.

(a) machine owners who continue to file reports and maintain records manually must retain those records a minimum of 12 full quarters from the previous quarterly report due date; and

(b) machine owners using a tier I or tier II system must maintain records for a period of four quarters; ~~and~~

~~(c) machine owners using a tier II system must maintain records for a period of eight quarters.~~

(5) Records to be maintained by machine owners on machines with approved audit storage devices (ASD units) must include:

(a) all video gambling machine records required pursuant to [NEW RULE I] either on the original ASD device or other electronic media which allow for retrieval and review or transmittal to the department for review; and

(b) all other machine records as required in (2)(c), (d), and (e).
(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 23-5-115, 23-5-621, 23-5-637, MCA

IMP: 23-5-115, 23-5-136, ~~23-5-605~~, 23-5-610, 23-5-621, 23-5-628, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department concludes it is reasonable and necessary to amend this rule because it reduces to four quarters the record retention period for video gambling machine (VGM) audit tape records, i.e., audit tickets and voucher tickets, for those VGM owners that report VGM tax data using a tier II automated accounting and reporting system. The amendment will make the retention period for tier II system reporting equal to the retention period for tier I system reporting, as provided for in this rule. The department concluded the reduced retention period is warranted because the automated system requires a numerical reconciliation of the submitted data, and the department's subsequent evaluation of the reported data will be faster and less cumbersome. The amendment achieves the goals articulated in 23-5-637, MCA, when the Legislature authorized the use of approved automated accounting and reporting systems, including to: minimize regulatory costs, simplify the reporting of video gambling machine revenue data, lessen administrative and record keeping burdens for machine owners and operators, and enhance the management tools available to the industry and the state.

The amendment also defines the record keeping process for video gambling machine audit tapes collected and retained through the use of digital data storage devices, or ASD, as authorized under NEW RULE I.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than January 8, 2009.

6. An electronic copy of this Notice of Proposed Adoption and Amendment is available through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department of Justice 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.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

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

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

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

Certified to the Secretary of State December 1, 2008.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.114.101 board organization,)	PROPOSED AMENDMENT,
24.114.201 procedural rules,)	ADOPTION, AND REPEAL
24.114.301 definitions, 24.114.401)	
fees, 24.114.402 architect seal,)	
24.114.403 architect business entity)	
practice, 24.114.407 emergency use,)	
24.114.501 and 24.114.502 licensure)	
by examination, 24.114.2301)	
unprofessional conduct, 24.114.2402)	
screening panel, the adoption of NEW)	
RULES I through VII, and the repeal of)	
24.114.404 architect partnerships, and)	
24.153.101 through 24.153.2301)	
pertaining to landscape architect)	
licensure)	

TO: All Concerned Persons

1. On January 6, 2009, at 10:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects and Landscape Architects (board) no later than 5:00 p.m., on January 2, 2009, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsduc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted Chapter 11, Laws of 2007 (Senate Bill 54), an act generally revising laws relating to licensing boards and combining the Board of Architects with the Board of Landscape Architects. The combined Board of Architects and Landscape Architects determined it is reasonable and necessary to combine the individual boards' administrative rules wherever possible for simplicity, clarity, and ease of use. The board is proposing to amend and repeal certain rules and adopt new rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

The board is amending catchphrases for clarity when needed. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the specific rule and to provide the complete sources of the board's rulemaking authority.

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

24.114.101 BOARD ORGANIZATION (1) The Board of Architects and Landscape Architects consists of six members, including three licensed architects, two licensed landscape architects, and one public member.

(2) The Board of Architects and Landscape Architects hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, 37-65-204, MCA
IMP: 2-4-201, MCA

24.114.201 PROCEDURAL RULES (1) The Board of Architects and Landscape Architects hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title.

AUTH: 2-4-201, 37-65-204, MCA
IMP: 2-4-201, MCA

24.114.301 DEFINITIONS (1) "CLARB" means the Council of Landscape Architects Registration Boards, an international professional organization that provides testing and certification of landscape architects. CLARB may be contacted at www.clarb.org.

(1) remains the same but is renumbered (2).

(2) (3) "NCARB" means the National Council of Architectural Registration Boards, located at 1801 K Street NW, Suite 1100, Washington, DC 20006-1310 NCARB may be contacted at www.ncarb.org.

(3) (4) "Responsible control" means the amount of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects and landscape architects applying the required professional "standard of care."

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

AUTH: 37-1-131, 37-1-319, 37-65-204, MCA
IMP: 37-1-131, 37-1-319, 37-65-303, 37-66-304, 37-65-308, MCA

24.114.401 FEE SCHEDULE (1) The following fees apply to architects:

(a) remains the same.

(b) Application fee for licensure by examination

50

(b) remains the same but is renumbered (c).

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

<u>(e) Emeritus license fee</u>	<u>25</u>
<u>(2) The following fees apply to landscape architects:</u>	
<u>(a) Application fee for license by examination</u>	<u>325</u>
<u>(b) License renewal</u>	<u>250</u>
(3) remains the same.	
<u>(4) Fee abatement for renewal fees is specified by ARM 24.101.301.</u>	
(2) remains the same but is renumbered (5).	

AUTH: 37-1-131, 37-1-134, 37-65-204, MCA
IMP: 37-1-134, 37-1-141, 37-65-307, 37-66-309, MCA

REASON: The board is amending this rule to add an application fee for architect licensure by examination. The department recently conducted a Business Process Analysis (BPA) in which board business processes were compared with current board statutes and rules. During this process, it was discovered that the board staff expends significant time, resources, and costs in processing examination applications without receiving any income to support the processes. It is reasonably necessary to amend this rule to set a fee commensurate with the costs of processing these examination applications. The board estimates that approximately 30 exam applicants will be affected by the proposed \$50 fee and result in \$1,500 in additional annual board revenue.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), which created an emeritus status for architects no longer practicing but desiring to maintain licensure. The board is adding the \$25 emeritus licensing fee to implement the legislation and to keep the board's fees commensurate with costs. The board estimates that approximately 20 licensees will be affected by the proposed new fee and result in \$500 in additional annual board revenue.

The board is also adding (4) to this rule to provide the location of the department's fee abatement rule, ARM 24.101.301, for the licensees' information.

24.114.402 INDIVIDUAL ARCHITECT SEAL (1) Every licensed architect shall have a seal ~~which must that~~ contains the name of the architect, the city and state of the architect's place of business, the architect's Montana license number and the words "LICENSED ARCHITECT, STATE OF MONTANA".

(2) remains the same.

(3) When there is a partnership or other business entity of architects, the individual names and license numbers of members may appear on one seal.

AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-65-308, MCA

REASON: The board determined it is reasonably necessary to amend this rule to maintain all provisions for architects' seals in one rule. The board is moving the provision for including individual architects' names and license numbers on a partnership or entity seal from ARM 24.114.403 to this rule for ease of reference and clarity.

24.114.403 ARCHITECT BUSINESS ENTITY PRACTICE ~~(1) When there is a partnership or other business entity of architects, the individual names and license numbers may appear on one seal.~~

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

(a) and (b) remain the same.

(2) All licensees who enter into partnerships, limited partnerships or profit corporations, subchapter S corporations, or any other form of business entity in which their professional talent and service are utilized, shall file with the board office a statement of the existence of the business entity and the licensee's relationship to it.

AUTH: 35-4-301, 35-8-1304, 37-1-131, 37-65-204, MCA

IMP: 35-4-205, 35-4-207, 35-4-208, 35-4-209, 35-4-301, 35-8-1301, 35-8-1304, 37-65-101, 37-65-302, MCA

REASON: The board is amending this rule to maintain all provisions regarding architect business entity practice in one rule for easier reference and clarity. The board is adding into this rule the requirement that architects submit documentation of involvement in a business entity practice from ARM 24.114.404, which is proposed for repeal in this notice.

24.114.407 EMERGENCY USE OF ARCHITECTS (1) ~~Nothing shall prevent a~~ A person who is not currently registered licensed to practice architecture in this state and is currently registered licensed in another United States or Canadian jurisdiction, ~~from providing~~ may provide uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector, acting in an official capacity.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-101, 37-65-301, MCA

REASON: It is reasonably necessary to amend this rule to more clearly set forth the board's intent regarding out-of-state licensed architects providing services in Montana under emergency circumstances.

24.114.501 ARCHITECT EXAMINATION (1) through (2)(a) remain the same.

(b) hold a degree in architecture from a school of architecture, the degree curriculum of which was accredited by the National Architectural Accrediting Board (NAAB) not later than two years after graduation; or meet the alternate education criteria available on the NCARB web site; and

~~(c) meet the alternate education criteria available on the NCARB web site.~~

(c) submit an application for examination on the form prescribed by the department.

(3) Prior to application for licensure applicants shall:

(a) pass all sections of the ARE and request submittal to the board of all exam scores for every section of the exam passed. Applicants may retake any section of the examination that the applicant failed to pass in accordance with the NCARB requirements; and

(b) and (4) remain the same.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-303, MCA

REASON: During the department's BPA process, it was discovered that the requirement that examination candidates submit an application form to the board had been inadvertently omitted from this rule, although an application has always been required. The board is amending this rule to set forth that requirement.

The board is also amending this rule to clarify that applicants may retake failed portions of the ARE only in accordance with NCARB requirements. This omission was also discovered during the BPA process and is not a new requirement.

24.114.502 LICENSURES ARCHITECT LICENSURE BY EXAMINATION

(1) Applicants for licensure by examination shall:

(a) submit to the board a completed application, on forms prescribed by the ~~board~~ department, including all required fees and documentation;

(b) take and pass the ARE;

(c) submit the ARE scores from the applicant's designated state; and

(d) meet all the requirements set forth in ARM 24.114.501.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-65-301, 37-65-303, MCA

REASON: The board is amending this rule to correct an error discovered through the department's BPA process. The amendment is necessary to clarify that standardized forms, including application forms, are prescribed and adopted by the department and not the board.

24.114.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) accepting compensation for ~~architectural~~ professional services from more than one party on a project, unless the circumstances are fully disclosed to and agreed to in writing by all interested parties;

(e) remains the same.

(f) misrepresenting to a prospective or existing client or employer the licensee's qualifications and the scope of ~~architectural~~ responsibility in connection with work for which the ~~architect~~ licensee is claiming credit or being compensated;

(g) offering or making any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the ~~architect~~ licensee is interested;

(h) making public statements on architectural professional questions, without disclosing that the architect licensee is being compensated for making such statements;

(i) knowingly injuring or attempting to injure, falsely or maliciously, directly or indirectly, the professional reputation, prospects or practice of another licensed architect or landscape architect;

(j) representing the work of others as the architect's licensee's own;

(k) remains the same.

(l) performing professional services which have not been authorized by the client or the client's legal representative; and

(m) failure to disclose in writing to a client any business association or direct or indirect financial interest that is substantial enough to influence the licensee's professional judgment in connection with the performance of services to a client;

(n) signing or attaching a seal to drawings, specifications, reports, or other professional work for which the licensee does not have responsible control or direct professional knowledge;

(o) ~~(m)~~ willfully making or filing false reports or records; and

(p) failure to comply with the provisions of Title 37, chapter 65 or chapter 66, MCA, or these rules.

AUTH: 37-1-131, 37-1-319, 37-65-204, MCA

IMP: 37-1-131, 37-1-316, MCA

REASON: The board is amending this rule to incorporate provisions previously located in ARM 24.153.2301, the rule on landscape architect unprofessional conduct, which is proposed for repeal. Following the combination of the two boards, the board concluded it is reasonably necessary to set forth unprofessional conduct for both architects and landscape architects in a single rule.

24.114.2402 SCREENING AND ADJUDICATION PANELS ~~PANEL~~ (1) The board screening panel ~~shall~~ consists of three members of the board including and includes at least one architect and one landscape architect, the current president of the board, and two other board members, as chosen by the board president. The president may reappoint or replace screening panel members as necessary at the president's discretion.

(2) The screening panel ~~shall review anonymous~~ reviews all complaints related to unprofessional conduct to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.

(3) The board adjudication panel consists of three members of the board and includes at least one architect and one landscape architect, as chosen by the board president. The president may reappoint or replace adjudication panel members as necessary at the president's discretion.

(4) The adjudication panel issues all final orders in disciplinary proceedings involving licensees.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-1-307, MCA

REASON: The board is amending this rule to specify the board's intent to have at least one architect and one landscape architect on the board's screening and adjudication panels. The board determined that this amendment is reasonable and necessary to ensure equal representation on each panel.

5. The proposed new rules provide as follows:

NEW RULE I ARCHITECT EMERITUS STATUS (1) A licensee who has terminated his or her practice of architecture may apply for a certificate of emeritus status by submitting to the board a completed application for emeritus status and the fee established by ARM 24.114.401.

(2) Emeritus status does not require annual renewal.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-311, MCA

REASON: The 2007 Montana Legislature created an emeritus status for architects who are no longer practicing but desire to maintain licensure. It is reasonable and necessary to adopt this rule to implement the legislation and clarify that emeritus status does not require annual renewal.

NEW RULE II EDUCATION AND EXPERIENCE REQUIRED FOR LANDSCAPE ARCHITECT LICENSURE (1) Applicants for licensure must meet the following minimum requirements for education and experience:

(a) An applicant with an accredited landscape architect degree must have at least two years of practical experience in landscape architecture.

(b) An applicant with a nonaccredited landscape architect degree must have three years of practical experience in landscape architecture.

(c) An applicant with an accredited bachelor's degree must have four years of practical experience in landscape architecture.

(d) An applicant with no post-secondary education must have eight years of practical experience in landscape architecture.

(2) Practical experience must be gained under the direct supervision of a licensed landscape architect and is subject to review and approval by the board.

(3) All applicants for licensure must successfully pass the LARE.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-304, MCA

REASON: The board is adopting this new rule to provide a route to licensure for landscape architecture applicants who have not graduated from an accredited school. This new rule will require applicants with lower academic credentials to have obtained greater levels of professional experience under the direct supervision of a licensed landscape architect. The board concluded that these requirements

adequately protect the public by ensuring the licensure of competent landscape architects.

NEW RULE III LANDSCAPE ARCHITECT SEAL (1) Every licensed landscape architect must have a seal that contains the name of the landscape architect, the landscape architect's Montana license number, the signature of the licensed landscape architect who applied the seal, and the words "LICENSED LANDSCAPE ARCHITECT, STATE OF MONTANA."

(2) For the purpose of sealing printed drawings, specifications, and other appropriate documents, each landscape architect must obtain an embossing or rubber stamp and a reproduction facsimile of the seal to be used on documents prepared by or under the supervision of a licensed landscape architect. The seal or reproducible facsimile must be applied on all original drawings to produce legible reproduction on all copies or prints made from the drawings.

(3) A signature is an original manual signature of the landscape architect or a digital signature. A digital signature must either have an electronic authentication process attached or must be logically associated with an electronic document and unique to the person using it; capable of verification; under the sole control of the person using it; and linked to a document in such a manner that the digital signature is invalidated if any data in the document are changed.

(4) When the efforts of more than one licensed landscape architect combine to produce documents requiring a seal, only one licensed landscape architect is required to affix a seal to the document.

AUTH: 37-65-204, MCA

IMP: 37-66-308, MCA

REASON: The board determined that it is reasonably necessary to adopt New Rules III through VI to more clearly delineate the existing requirements regarding landscape architect seals and licensure. These provisions are currently set forth at ARM 24.153.402, 24.153.501, 24.153.502, and 24.153.503, and are proposed for repeal in this notice.

NEW RULE IV LANDSCAPE ARCHITECT APPLICATIONS (1) An application for license, examination, or reinstatement must be made on a form provided by the board. The application may be submitted on-line or by mail accompanied by the nonrefundable fee(s), and contain sufficient evidence that the applicant possesses the qualifications as set forth in Title 37, chapter 66, MCA, and these rules.

(2) The board or its designee reviews complete applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications are returned to the applicant with a statement regarding incomplete portions.

(3) The applicant must correct any deficiencies and resubmit the application within 60 days or the application will be treated as voluntarily withdrawn. After a

voluntary withdrawal, an applicant must submit an entirely new application and nonrefundable fee(s) to begin the process again.

(4) The board shall notify an applicant in writing of the results of the evaluation of the application within ten days of receipt of a complete application.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-301, 37-66-304, MCA

NEW RULE V LANDSCAPE ARCHITECT EXAMINATIONS (1) All candidates must sit for the landscape architect registration examination (LARE) to be held at such time and place as the board may designate. Applications for examination must be received in the board office 90 days prior to the next scheduled examination. The applicant will be notified in writing approximately 30 days prior to the examination date of whether the applicant may sit for the examination.

(2) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 U.S.C. 12101, et seq., relative to a board administered examination, must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

(3) Candidates must provide a picture form of identification before being admitted to the examination.

(4) Applications of candidates who fail to sit for the examination within one year, after being notified of their eligibility, will be considered voluntarily withdrawn and must reapply for the examination and pay the appropriate fees.

(5) The board shall notify candidates in writing of the results of the examination. Scores may not be released over the telephone or facsimile. The board may release scores to the candidate or the candidate's legal representative only.

(6) Candidates who fail the examination and wish to review their examination must contact the testing agency directly.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-66-304, MCA

NEW RULE VI REPLACEMENT LICENSES (1) Licensees may notify the board of lost, damaged, or destroyed licenses and obtain a duplicate license by written request to the board, stating the reason for issuance of a duplicate and by paying the appropriate fee.

(2) Licensees who have lawfully changed their names may obtain a replacement license, but must notify the board of the name change in writing.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, MCA

NEW RULE VII LANDSCAPE ARCHITECT LICENSURE BY ENDORSEMENT (1) Applicants for a landscape architect license by endorsement must submit an application to the board and provide written verification of prior licensure in another state or jurisdiction.

(a) Verification of prior licensure must disclose the date of licensure and the specific educational and experiential requirements for licensure in the jurisdiction. The applicant must submit copies of pertinent statutes and rules of licensure from the jurisdiction of original licensure to the board.

(b) Verification of prior licensure must disclose whether the licensee has pending or completed discipline in any jurisdiction of licensure.

(2) Applicants must submit a CLARB record or verification from CLARB as evidence of passing all sections of the LARE.

(3) The board shall determine whether the education and experience qualifications for original licensure are substantially equivalent to the Montana qualifications.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, 37-1-304, 37-66-304, MCA

REASON: The board is adopting this new rule to provide an avenue of licensure for landscape architect applicants who are licensed in another state or jurisdiction. It is reasonable and necessary to propose this new rule and set forth the provisions for landscape architect licensure by endorsement, which were not previously set forth in the rules.

6. The rules proposed to be repealed are as follows:

24.114.404 ARCHITECT PARTNERSHIPS TO FILE STATEMENT WITH BOARD OFFICE found at ARM page 24-8024.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 35-4-209, 37-65-302, MCA

24.153.101 BOARD ORGANIZATION found at ARM page 24-14507.

AUTH: 37-66-202, MCA

IMP: 2-4-201, MCA

24.153.201 PROCEDURAL RULES found at ARM page 24-14511.

AUTH: 37-66-202, MCA

IMP: 2-4-201, MCA

24.153.202 PUBLIC PARTICIPATION RULES found at ARM page 24-14511.

AUTH: 37-66-202, MCA

IMP: 2-3-103, MCA

24.153.401 QUORUM found at ARM page 24-14531.

AUTH: 37-66-202, MCA

IMP: 37-66-201, MCA

24.153.402 SEALS found at ARM page 24-14531.

AUTH: 37-66-202, MCA

IMP: 37-66-308, MCA

24.153.403 FEE SCHEDULE found at ARM page 24-14532.

AUTH: 37-1-131, 37-1-134, 37-66-202, MCA

IMP: 37-1-134, 37-66-202, 37-66-301, 37-66-304, 37-66-307, MCA

24.153.501 APPLICATIONS found at page 24-14541.

AUTH: 37-66-202, MCA

IMP: 37-66-202, MCA

24.153.502 EXAMINATIONS found at ARM page 24-14542.

AUTH: 37-66-202, MCA

IMP: 37-66-304, MCA

24.153.503 REPLACEMENT LICENSES found at ARM page 24-14542.

AUTH: 37-66-202, MCA

IMP: 37-66-202, 37-66-303, MCA

24.153.2101 RENEWALS found at ARM page 24-14545.

AUTH: 37-1-131, 37-66-202, MCA

IMP: 37-1-131, 37-66-307, MCA

24.153.2301 UNPROFESSIONAL CONDUCT found at ARM page 24-14551.

AUTH: 37-1-319, MCA

IMP: 37-66-202, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdark@mt.gov, and must be received no later than 5:00 p.m., January 14, 2009.

8. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.architect.mt.gov. The department strives to make the electronic copy of this Notice conform to the official

version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

11. Patricia Bik, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, ARCHITECT, PRESIDENT

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

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

Certified to the Secretary of State December 1, 2008

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.10.401 relating to farm applicator)
licensing schedule)

TO: All Concerned Persons

1. On October 23, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-183 relating to the amendment of the above-stated rule at page 2198 of the 2008 Montana Administrative Register, Issue Number 20.

2. The agency has amended ARM 4.10.401 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, December 1, 2008.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
24.210.301 definitions, 24.210.611) ADOPTION
licensure, 24.210.641 unprofessional)
conduct, and the adoption of NEW RULE)
I supervising broker endorsement and)
NEW RULE II citations and fines)

TO: All Concerned Persons

1. On August 14, 2008, the Board of Realty Regulation (board) published MAR Notice No. 24-210-32 regarding the amendment and adoption of the above-stated rules, at page 1679 of the 2008 Montana Administrative Register, issue no. 15.

2. On September 4, 2008, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.210.301 and 24.210.611 exactly as proposed.

4. The board has adopted NEW RULE I (24.210.604) and NEW RULE II (24.210.643) exactly as proposed.

5. The board is not amending ARM 24.210.641 at this time.

BOARD OF REALTY REGULATION
CINDY WILLIS, CHAIRPERSON

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

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

Certified to the Secretary of State December 1, 2008

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

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
36.10.132, and adoption of New Rule I)	AND ADOPTION
(36.10.133) and New Rule II (36.10.134))	
regarding firewarden qualifications,)	
duties, and legal representation for state)	
firefighters)	

To: All Concerned Persons

1. On October 23, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-132 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2246 of the 2008 Montana Administrative Register, Issue No. 20.
2. The department has amended ARM 36.10.132 exactly as proposed and adopted New Rule I (36.10.133) and New Rule II (36.10.134) exactly as proposed.
3. The following comments and testimony were received and appear with the department's responses:

COMMENT 1

A commenter suggested adding "or appointed" following "a person employed" in ARM 36.10.132(6)(a), i.e., "(6) 'Firewarden' includes the following: (a) a person employed or appointed by a local government fire protection...". The commenter expressed concern that as worded, the definition would allow DNRC to appoint firewardens who are not employees of the state or a county.

RESPONSE 1

DNRC appreciates this comment. Inserting the words "or appointed" in front of "by a local government fire protection" would violate 2-4-305(6)(a), MCA, which provides that if a statute gives an agency the authority to adopt administrative rules, the rules must be consistent, and not in conflict with the statute. 76-13-104(7), MCA, provides DNRC with the sole mandate to appoint firewardens in the numbers and localities it considers necessary. 76-13-104(7), MCA, also mandates that DNRC adopt rules prescribing the qualifications and duties of firewardens that are in addition to those found in 76-13-116, MCA. The DNRC may not, through administrative rule, authorize a local government entity to appoint a firewarden when the Legislature has expressly provided DNRC with the sole mandate to do so. Doing so would be inconsistent, and in conflict with (and outside of the scope of) the rulemaking authority granted DNRC in 76-13-104(7), MCA.

COMMENT 2

A commenter asked why DNRC proposed to amend the term "recognized fire protection agency," currently provided for in ARM 36.10.132(10), by deleting "fire

protection." The commenter stated that the term "recognized fire protection agency" was carefully articulated during the House Joint Resolution 10 study that arose out of the 2005 legislative session.

RESPONSE 2

Deleting "fire protection" from ARM 36.10.132(1), the administrative rule that employs and defines the term "recognized fire protection agency," brings that term into conformity with the term "recognized agency," employed in and defined at 76-13-102(8), MCA. For reasons similar to those described in Response 1, employing a term in an administrative rule that has the same definition as a different, albeit similar, term found in a statute is problematic because doing so may bring the term employed in the administrative rule into conflict with the statutory term, or may lead to an inconsistency between the administrative rule and the statute in which the term is employed and defined.

COMMENT 3

A commenter suggested that the proposed rules should identify where the word "employed" (as that word is used in the proposed definition of "firewarden" in ARM 36.10.132) is defined.

RESPONSE 3

Although the department appreciates this comment, it feels that showing in the proposed rule where the word "employed" is defined is too complicated an issue to address in these rules and is outside of the scope of the specific rulemaking authority granted the department by the Legislature. To the extent a dispute arises concerning whether someone is "employed," it will be necessary that the dispute is addressed on a case-by-case, fact-specific basis.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Mark Phares

MARK PHARES

Rule Reviewer

Certified to the Secretary of State on December 1, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	CORRECTED NOTICE OF
ARM 42.21.113, 42.21.123,)	AMENDMENT
42.21.131, 42.21.137, 42.21.138,)	
42.21.139, 42.21.140, 42.21.151,)	
42.21.153, 42.21.155, 42.21.156, and)	
42.22.1311 relating to personal and)	
industrial assessed property taxes)	

TO: All Concerned Persons

1. On October 9, 2008, the department published MAR Notice No. 42-2-799 regarding the proposed amendment of the above-stated rules at page 2134 of the 2008 Montana Administrative Register, Issue Number 19. On November 26, 2008, the department published the notice of amendment at page 2502 of the 2008 Montana Administrative Register, Issue Number 22.

2. The reason for the correction is that the reasonable necessity and the heading pertaining to this rule action included a reference to centrally assessed property, which is incorrect. The notice of amendment published on November 26, 2008, stated that the third sentence of the reasonable necessity statement for ARM 42.22.1311 should have included the words "and industrial" after "centrally assessed", when in fact it should have stricken the reference to centrally assessed completely. The confusion regarding the terminology occurred because ARM 42.22.1311 is located in the chapter titled "Centrally Assessed Property" even though that rule pertains solely to industrial property. For further clarification, the department will amend the title of chapter 22 to add the term "industrial" when replacement pages are completed at the end of this quarter.

3. An electronic copy of this Corrected Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under the Notice of Rulemaking section. The department strives to make the electronic copy of this Corrected Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State December 1, 2008

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2008. This table includes those rules adopted during the period September 1, 2008, through December 31, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2008, 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 2008 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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- I Notice of Adoption of a Temporary Emergency Rule - Closing the Big Hole River, Silver Bow County, From Silver Bridge to Divide Bridge, p. 1698, 1976
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