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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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PROPOSAL NOTICE SECTION

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

In the matter of the amendment of ARM 2.43.1302, 2.43.1306, 2.43.2102, 2.43.2105, 2.43.2109, 2.43.2110, 2.43.2114, 2.43.2115, 2.43.2120, 2.43.2301, 2.43.2309, 2.43.2310, 2.43.2317, 2.43.2319, 2.43.2608, 2.43.2609, 2.43.2702, 2.43.2703, 2.43.2704, 2.43.2901, 2.43.3001, 2.43.3004, 2.43.3005, 2.43.3009, 2.43.3402, 2.43.3540, 2.43.3545, 2.43.4616, 2.43.4617, and 2.43.4807, all pertaining to the operation of the retirement systems and plans administered by the Montana Public Employees' Retirement Board	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 3, 2011, at 9:00 a.m., the Public Employees' Retirement Board (PER Board) will hold a public hearing in its board room, at 100 North Park Ave., Suite 200, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The PER 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 PER Board no later than 5:00 p.m. on August 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

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

2.43.1302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) through (8) remain the same.

(9) "Direct rollover" means a payment by a retirement plan or system to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan or system specified by the distributee.

(9) through (27) remain the same but are renumbered (10) through (28).

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-2-403, 19-2-1007, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances. Specifically, payments can now be rolled over to any beneficiary, not just a surviving spouse. These changes require the frequent use of the term "direct rollover" in forms, letters and other communication relied on by the Montana Public Employee Retirement Administration (MPERA) and members of the retirement systems administered by MPERA. The term "direct rollover" is being defined to assist retirement system members in understanding what is meant by the term and because the term is now used in ARM 2.43.3009.

2.43.1306 ACTUARIAL RATES AND ASSUMPTIONS (1) and (2) remain the same.

(3) This rule applies to all systems administered by MPERA, including the VFCA but excluding the deferred compensation (457) plan.

AUTH: 19-2-403, MCA
IMP: 19-2-405, 19-17-107, MCA

REASON: The Volunteer Firefighters' Compensation Act (VFCA) requires consideration of actuarial rates and assumptions. Therefore, the policies, actuarial rates, and assumptions adopted by ARM 2.43.1306 are used for valuation and actuarial equivalence purposes in the administration of the VFCA. According to ARM 2.43.1301, the rules in this subchapter apply only to the Public Employees', Game Wardens' and Peace Officers', Judges', Highway Patrol Officers', Sheriffs', Municipal Police Officers', and Firefighters' Unified Retirement Systems, unless an individual rule specifically notes otherwise. Therefore, it is necessary to specifically state that the policies, rates, and assumptions adopted in this rule apply to the VFCA.

2.43.2102 OPTIONAL MEMBERSHIP (1) remains the same.

(2) The board may permit an employee to discontinue optional membership if the employee submits proof that the employee was not informed membership was optional. The employee must submit such proof within ~~180~~ 90 days of the employee's first day of employment, or within ~~180~~ 30 days of the filing of the application form, whichever is later.

(a) Membership discontinued pursuant to (2) must be treated as a reporting error and will be corrected pursuant to ARM 2.43.2115.

(b) The board shall issue a credit to the employer for all erroneous contributions.

(c) The employer is responsible for refunding appropriate contributions to the employee.

(3) If an employer discovers that an eligible employee was not notified of the option to join PERS, the employer must:

(a) provide the employee the optional membership application form immediately upon discovery of the omission;

(b) notify the employee that the application must be completed within ~~180~~ 90 days of employment, or within 30 days after receipt of the application, whichever is later; and

(c) notify MPERA of the omission and the employee's decision whether or not to join PERS.

(4) and (5) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-903, 19-3-412, MCA

REASON: Chapter 284 Montana Session Laws of 2009 changed optional membership election windows from 180 and 300 days to 90 days for consistency purposes. ARM 2.43.2102 references these same election windows when describing the election process. It is necessary to change the length of the election windows to be consistent with statute and for internal consistency.

2.43.2105 BASIC PERIOD OF SERVICE (1) through (3) remain the same.

(4) Upon retirement, MPERA will adjust the service credit for members who work less than full time. ~~The~~

(a) For a member initially hired prior to July 1, 2011, the service earned during the member's normal work year will be the total service earned during the period of the "highest average compensation" or "final average compensation" divided by three ~~will define the service earned during the member's normal work year~~.

(b) For a member initially hired on or after July 1, 2011, in a PERS, SRS, or GWPORS-covered position, the service earned during the member's normal work year will be the total service earned during the period of the "highest average compensation" divided by five.

~~(a)~~(c) The member must be granted proportional service credit for each fiscal year of employment on the basis of the member's normal work year.

~~(b)~~(d) The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the period of the "highest average compensation" or "final average compensation" times 12, but may not be greater than 1.

AUTH: 19-2-403, MCA
IMP: 19-2-701, 19-3-108, 19-3-904, 19-5-502, 19-6-502, 19-7-101, 19-7-503, 19-8-101, 19-8-603, 19-9-804, 19-13-704, MCA

REASON: The proposed amendments are necessary to reflect provisions in the Montana Session Laws of 2011 increasing from 36 months to 60 months the period over which "highest average compensation" is calculated for new hires in PERS

(Chapter 369), SRS (Chapter 155), and GWPORS (Chapter 154). Because of these statutory amendments, the factor by which total service must be divided increases from three years to five years in order to correctly calculate the service credit for PERS, SRS and GWPORS members initially hired on or after July 1, 2011, who work less than full time.

2.43.2109 RECEIPT OF SERVICE CREDIT ON OR AFTER TERMINATION OF EMPLOYMENT (1) A member terminating employment shall receive service credit for lump sum payments of severance pay or paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave, received in the month following termination of employment unless the member elects to retire effective that month. No member can receive both service credit and a retirement benefit for the same month.

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

REASON: Chapter 99 Montana Session Laws of 2011 added "banked holiday time" as a defined term meaning "the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy." Lump-sum payment of banked holiday time was then included in the types of lump-sum payments for which service credit is awarded, provided the lump sum is paid out at termination of employment. Accordingly, lump-sum payments of banked holiday time must be included in the calculation of a member's service credit under this rule.

2.43.2110 CALCULATION OF HIGHEST AVERAGE COMPENSATION OR FINAL AVERAGE COMPENSATION (1) For "highest average compensation" and "final average compensation" purposes:

(a) for a member initially hired prior to July 1, 2011, compensation means the total compensation earned during 36 consecutive calendar months divided by 36; and

(b) for a member initially hired on or after July 1, 2011 in a PERS, SRS, or GWPORS-covered position, compensation means the total compensation earned during 60 consecutive calendar months divided by 60.

~~(a)~~(2) Lump-sum payments of paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave must be used to extend the compensation on the basis of either the regular hourly rate in effect for the employee at the time of termination and on identified future regular payroll reports, or the monthly salary earned at the time of termination.

~~(b)~~(3) The lump-sum payment of paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave, for members whose monthly compensation varies will be extended by multiplying their hourly rate times 2080 (the assumed number of hours worked in a fiscal year) divided by 12 to determine the monthly wage going forward.

~~(2)~~(4) Lump-sum payments for banked holiday time, compensatory leave, sick leave, or vacation leave paid without termination of employment will not be

considered as compensation for any purpose regardless how the payout is classified, including identifying the payout as a bonus.

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-2-506, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

REASON: The proposed amendments are necessary to reflect provisions in the Montana Session Laws of 2011 increasing the period over which "highest average compensation" is calculated for new hires in PERS (Chapter 369), SRS (Chapter 155), and GWPORS (Chapter 154). Further, Chapter 99 of the Montana Session Laws of 2011 added "banked holiday time" as a defined term to be treated the same as vacation and sick leave for compensation purposes.

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file required employer reports, other than working retiree reports required by ARM 2.43.2608 and optional member election applications required by ARM 2.43.2102, no later than five working days after each regularly occurring payday.

(a) Each report must be accompanied by statutorily required employer and employee contributions to the retirement system. The required contribution rate is the rate in effect at the time the employees are paid, and not the contribution rate in effect when the compensation was earned.

(b) Beginning July 1, 2003, reporting agencies shall use MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH).

(c) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by MPERA, and must be accompanied by the payment of applicable contributions.

(2) through (5) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

REASON: With the advent of web reporting and the Employers Reporting All Employees initiative, employers now file optional membership election forms separate from and more frequent than they file regular payroll reports. It is therefore necessary to exclude these reports from the "no later than five working days after each regularly occurring payday" requirement contained in this rule and which is applicable only to regular payroll reports.

2.43.2115 CORRECTION OF DEFINED BENEFIT RETIREMENT SYSTEM REPORTING ERRORS (1) through (5) remain the same.

(6) The employer must correct its payroll records and pay the refund to the ~~DCRP~~ DBRP participant.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-2-903, MCA

REASON: A typographical error was made during the 2008 rulemaking process. ARM 2.43.2115 addresses the correction of errors in a defined benefit plan retirement account. Therefore the refund goes to a DBRP participant, not to a DCRP participant. The proposed change is necessary to fix this inadvertent error.

2.43.2120 REINSTATEMENT – CREDIT FOR LOST TIME (1) and (2) remain the same.

(3) In order to receive full membership service and service credit, employee and employer contributions must be paid by the employer on the ~~gross~~ total compensation the member would have received, including any interim earnings. Proportional service credit will be granted if employee and employer contributions are paid on a lesser amount of compensation. Any statutorily required state contributions must also be received.

(4) remains the same.

AUTH: 19-2-403, MCA
IMP: 19-2-303~~(47)~~(46), MCA

REASON: The term "gross compensation" includes compensation that is not considered compensation for retirement system purposes, for instance contributions to group insurance under certain circumstances. The intent of the rule is to ensure contributions are paid on the amount of compensation the member would have received had the member not been terminated. This includes the compensation awarded as a result of the suit, court order, arbitration, or out-of-court settlement, plus any compensation earned in the interim. Therefore, the better descriptor is "total" compensation.

2.43.2301 PROCESS FOR PURCHASING SERVICE (1) through (4) remain the same.

(5) Lump-sum payment methods include cash, personal check, and direct rollovers or trustee-to-trustee transfers from an eligible retirement plan ~~or IRA~~.

(a) Lump-sum payments by cash or personal check require completion of the service purchase contract only.

(b) Payment by direct rollover or trustee-to-trustee transfers from an eligible retirement plan require completion of the service purchase contract and the rollover/transfer notification.

(6) through (8) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-303(22), 19-2-704, MCA

REASON: The Internal Revenue Service added Roth IRAs to available distribution and payment options in 2007. Chapter 284 Montana Session Laws of 2009 adopted that change for Montana's public employee retirement systems. Therefore, the term "eligible rollover distributions" now includes IRAs of any type. The change is

necessary because current language distinguishing an eligible retirement plan from an IRA may mislead the reader to believe an IRA is not an eligible retirement plan.

2.43.2309 SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) An inactive vested member may purchase any service for which the member is eligible any time prior to retirement.

(2) The inactive vested member's most recent termination date will be considered the purchase request date for all service purchases other than refunded service, which is addressed in 19-2-603, MCA.

(a) The actuarial cost of the service purchase will be determined based on the member's age at the time of the purchase and the member's salary at the time of the member's most recent termination.

(b) Interest ~~at an effective annual rate of 8 % per year~~, compounded monthly, will be charged from the member's most recent termination date to when the member completes payment for the cost of the purchase:

(i) for members terminated prior to July 1, 2010, at an effective annual rate of 8% per year; and

(ii) for members terminated on or after July 1, 2010, at an effective annual rate of 7.75% per year.

(3) An inactive vested member who purchases service may not elect a retirement date prior to the date the service purchase is completed.

AUTH: 19-2-403, MCA
IMP: 19-2-403, 19-2-603, 19-2-715, 19-2-908, 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA

REASON: Pursuant to 19-2-403(9), MCA and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including purchase of service by inactive vested members. The proposed amendment is necessary to reflect the new rate.

2.43.2310 PURCHASE OF FULL-TIME SERVICE OR ONE-FOR-FIVE SERVICE BY PART-TIME MEMBERS (1) remains the same.

(2) If the member later retires with a full-time final average compensation or highest average compensation, the member may either:

(a) have the amount of full-time service purchased under (1) proportionally reduced based upon the ratio of time worked when the service was purchased to full-time work; or

(b) retain the full-time service by paying the difference between the cost actually paid and the cost had the member been paid a full-time salary at the time of the purchase, plus ~~8 %~~ interest:

(i) for members who purchased the service prior to July 1, 2010, at a rate of 8%; and

(ii) for members who purchased the service on or after July 1, 2010, at a rate of 7.75%.

AUTH: 19-2-403, MCA
IMP: 19-2-403, 19-2-704, 19-2-715, MCA

REASON: Pursuant to 19-2-403(9), MCA and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including service purchases by part-time members. The proposed amendment is necessary to reflect the new rate.

2.43.2317 PURCHASE OF REFUNDED SERVICE OR SERVICE FROM ANOTHER MPERA-ADMINISTERED RETIREMENT SYSTEM (1) At any time prior to retirement, a member who is statutorily eligible to do so may:

(a) elect to purchase into their current retirement system all or any portion of their previously refunded service in that system; or

(b) elect to purchase service from another MPERA-administered retirement system for which the member has received or is eligible to receive a refund.

(2) Section (1)(b) shall not be construed to allow the purchase of service between two retirement systems while the individual is a member of both systems.

(3) In order to purchase the ~~previously refunded~~ service, an eligible member must file a request to purchase service with MPERA identifying, in writing, the system to which the member currently contributes and the period of employment which is to be purchased.

(4) After reviewing the ~~refund~~ information in its files, MPERA shall notify the member of the amount of service eligible to be purchased and the cost of that service.

AUTH: 19-2-403, MCA
IMP: 19-2-704, 19-2-709, 19-2-710, 19-2-715, MCA

REASON: Certain MPERA employees have incorrectly construed ARM 2.43.2317 to only permit the purchase of service that has already been refunded. In fact, statute permits the purchase of service that has been or can be refunded. The proposed change makes this clarification and ensures proper interpretation by both staff and retirement system members.

2.43.2319 PURCHASE OF "ONE-FOR-FIVE" SERVICE BY EMPLOYERS FOR REDUCTION IN FORCE EMPLOYEES (1) through (5) remain the same.

(6) A cost statement for the employer's portion of the cost of the one-for-five service will be sent to the member's former employer after the member terminates. The employer may pay the amount in full within one month of billing, or may select an installment plan of no more than ten years duration. Installment plans will include interest ~~at an effective annual rate of 8%,~~ compounded monthly:

(i) for members terminated prior to July 1, 2010, at an effective annual rate of 8%; and

(ii) for members terminated on or after July 1, 2010, at an effective annual rate of 7.75%.

(7) and (8) remain the same.

AUTH: 19-2-403, MCA
IMP: 19-2-403, 19-2-706, MCA

REASON: Pursuant to 19-2-403(9), MCA, and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including purchases of one-for-five service for employees subject to a reduction in force. The proposed amendment is necessary to reflect the new rate.

2.43.2608 RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) through (3) remain the same.

(4) The certification report must include the following information for each individual referred to in (1) through (3):

(a) name and social security number;

(b) pay period being reported;

(c) name and address of employer;

(d) the daily and total number of regular, overtime, holiday, sick leave, and vacation or annual leave hours worked for the employer;

(e) ~~gross~~ compensation received from the employer; and

(f) the employer's verification that the employer provided the working retiree with the information submitted to MPERA.

(5) The employer must submit the certification report by filing it with MPERA no later than ten working days after each regularly occurring payday. The certification report may be submitted electronically using MPERA's online web-based reporting system.

(6) A separate certification report must be filed with MPERA for each position held by the working retiree.

AUTH: 19-2-403, MCA
IMP: 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

REASON: The term "gross compensation" includes compensation that is not considered compensation for retirement system purposes, for instance contributions to group insurance under certain circumstances. Statute uses the defined term "compensation". Rule should do the same.

MPERA has enacted changes to its web-reporting system through the "Employers Reporting All Employees" initiative that now permit the electronic filing of working retiree certifications. The rule is being changed to inform and remind employers of this reporting option.

2.43.2609 RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION

(1) remains the same.

(2) A retired member who returns to employment ~~under (1)~~ as a working retiree must notify the board and ensure a working retiree report is filed with MPERA ~~on a monthly basis~~ for each payroll period worked. Service performed under a

contract that fails the tests set out in ARM 2.43.1302 is employment subject to the 960-hour limitation and reporting requirements.

(3) When a member who has returned to work under (1) exceeds 960 hours in a calendar year, the member forfeits the additional service ~~received~~ attributable to the contributions paid by the employer. Pursuant to 19-2-706, MCA, the board will credit the member's employer with the employer's contribution for the additional service that exceeds the total retirement benefits paid to the member from retirement to forfeiture.

(a) If the employer paid the contributions owed MPERA in a lump sum, the employer will be credited with the difference between contributions paid and benefits received;

(b) If the employer is paying the contributions owed MPERA on an installment contract and the total retirement benefits received by the member:

(i) do not exceed the amount that has been paid on the installment contract, the employer will be credited with the difference between contributions paid and benefits received;

(ii) exceed the amount that has been paid on the installment contract but not the total amount due on the installment contract, the employer will be required to continue paying on the installment contract until the amount paid equals the retirement benefits received. Any outstanding balance due on the installment contract will continue to be charged interest at the actuarially assumed rate of interest, compounded monthly.

(c) If the total benefits received by the member exceed the total contributions owed by the employer, no adjustment will be made to the employer's contributions.

(4) Additional service purchased by the member pursuant to 19-2-706(4) is not forfeited.

AUTH: 19-2-403, MCA
IMP: 19-2-706, MCA

REASON: MPERA has enacted changes to its web-reporting system through the "Employers Reporting All Employees" initiative that now permit the electronic filing of working retiree certifications every payday as opposed to monthly. Section (2) applies only to working retirees, not to individuals who return to active service under (1). Section (2) is proposed to be amended to require payday-based reporting so that MPERA will be better able to track the hour and wage limitations applicable to working retirees, resulting in more timely correction of errors.

Changes to (3) and adoption of (4) are proposed as MPERA sees no reason to return employee contributions for this additional service. The contributions and associated service will remain in the member's account.

2.43.2702 PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS – INITIAL NOTICE TO MEMBER (1) MPERA will send written notification of medical review to a member receiving a disability benefit which is subject to periodic review. The notice will be sent to the member at the most recent address provided and will inform the member of~~:~~

~~(a)~~ the date by which medical information and records must be filed~~; and~~

~~(b) any specific medical tests or diagnosis required for the review~~.

(2) The member will be required to have the results of a current medical examination~~, including any specifically required tests or diagnosis,~~ filed directly with MPERA by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination must be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to the date filed with MPERA.

~~(3) Members receiving a disability benefit who are required by MPERA or the board to obtain tests pursuant to (2) will be reimbursed for travel necessary to obtain the MPERA-required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for lodging, meals, and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA.~~

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: ARM 2.43.2702 was meant to address only the initial notice to a member of a pending periodic medical review of the member's disability. The language proposed to be deleted applies to follow-up testing requirements, not to the initial notice. Reimbursement language related to follow-up testing is found in the more appropriate rule, ARM 2.43.2703.

2.43.2703 PERIODIC REVIEW OF MEDICAL EVIDENCE – NOTICE OF ADDITIONAL EVIDENCE REQUIRED (1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If MPERA determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, MPERA will send written notice to the member of the specific examinations, diagnoses, or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) Any medical tests requested under this rule will be paid for by MPERA.

(4) Members will be reimbursed for travel necessary to obtain the MPERA-required examinations or tests. Reimbursement for lodging, meals, and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA.

~~(3)~~(5) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to MPERA by the examining physician.

~~(4)~~(6) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence filed will

be presented to the board along with staff recommendations regarding continuing disability of the member.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-2-406, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: The Montana Public Employees' Retirement Board has determined that MPERA will pay for all MPERA-required medical tests of individuals seeking a disability benefit, as well as associated travel costs; not just costs incurred by members receiving a disability benefit. The rule is proposed to be amended to provide that the board will pay the medical expenses and that the member will be reimbursed for any travel expenses related to any MPERA-required medical tests.

2.43.2704 FAILURE TO RESPOND – SECOND NOTICE (1) A member who fails to file all medical information as required in the initial notice will be sent a second notice by certified mail, return receipt requested. The second notice will inform the member of:

(a) ~~any specific~~ their failure to submit current medical ~~tests~~ information and ~~diagnoses~~ records required by the board for the review; and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate scheduled appointments. The written request justifying the need for additional time must be filed with MPERA at least 15 days prior to the end of the time period. Any requests for extensions in excess of 30 days will not be approved.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: Questions have arisen regarding the initial and second notices provided to disabled members whose eligibility for disability is being reviewed. The proposed amendments to ARM 2.43.2704 are necessary to clarify the nature of the information required of disabled members at various stages of the review process.

2.43.2901 REFUNDS TO MEMBERS (1) Any contributing member who has terminated employment for any reason other than death or retirement may elect to withdraw their accumulated contributions provided:

(a) the member makes written request within three months of termination on the most recent application provided by MPERA;

(b) the refund application is completed by both the member and the employer, and forwarded to MPERA by the employer;

(c) the contribution and service credit from the report on which the member last appears is credited to the member's account;

(d) the employer's report indicates the member has terminated;

(e) the member will not return to covered employment for at least 30 days; and

(f) the member does not have an established agreement for reemployment in a position covered by the retirement system providing the refund.

(2) Correctly completed and submitted refund applications will be processed within three weeks after the member's final contributions are credited to the member's account, including termination payments of sick and annual leave.

(3) An alternative refund form is available from MPERA for the member who has terminated and whose member's account has been inactive for more than three months. Termination will be verified with the employer if not satisfactorily indicated on the refund form.

(4) No partial refunds of normal contributions will be made.

AUTH: 19-2-403, MCA
IMP: 19-2-303, 19-2-602, 19-5-403, 19-6-403, MCA

REASON: MPERA previously issued different refund forms, one for recent terminations that could be easily submitted by both the member and the employer and one for more dated terminations that required follow-up with an employer. MPERA has determined to use only one refund form that provides for additional follow-up with the employer as necessary. The rule is being proposed to be amended to reflect this change in process.

2.43.3001 FAMILY LAW ORDERS – GENERAL REQUIREMENTS

(1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.

(2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.1405, and policies adopted by MPERA and the board.

(3) ~~Except with respect to the DCRP, an~~ An account cannot be established for an alternate payee in a retirement system or plan.

(4) A FLO may not force a member to:

(a) terminate employment;

(b) retire from employment; or

(c) belong to a specific retirement system or plan.

(5) through (9) remain the same.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Since the

alternate payee's portion will be immediately paid to the alternate payee, a separate account for the alternate payee is no longer necessary.

2.43.3004 FAMILY LAW ORDERS FOR THE PERS DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the ~~PERS defined contribution retirement plan~~ DCRP.

(2) A "participant" may be a member or a "primary" or "contingent beneficiary."

(3) Disability benefits under the defined contribution plan may not be divided by a FLO.

(4) In the PERS defined contribution retirement plan, the payments to an alternate payee are allowed as follows:

(a) The FLO must state the amount or the proportion, or it must describe the method for calculating the amount or proportion.

(b) If the participant is not eligible for a distribution of their account, the alternate payee's amount or proportion must be paid as soon as administratively feasible.

~~(b)~~(c) If the participant is receiving or is eligible to receive distributions from their account, the alternate payees' amount or proportion must be paid from the distributions as set out in the applicable family law order. ~~receives lump sum payments in addition to periodic payments, the FLO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.~~

~~(c)~~(d) The fixed amount, the designated monthly dollar amount, the designated number of months, and the proportion may not be changed by future conditions or events.

~~(d)~~(e) Payments will end when:

(i) payments to the participant end;

(ii) the fixed amount is paid; or

(iii) the account is depleted.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Proposed (4)(b) is necessary to provide for immediate payment of the alternate payee's portion in the event the member is not eligible for distribution of their account. Proposed amendments to (4)(c) are needed to ensure that the terms of the family law order can be followed with respect to both lump-sum and periodic payments.

2.43.3005 FAMILY LAW ORDERS – APPROVAL AND IMPLEMENTATION FOR THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the DCRP.

(2) A participant or alternate payee must submit a certified copy of a family law order (FLO) to MPERA for board approval. The board has delegated authority for approval to the executive director.

(3) MPERA will notify the participant and the alternate payee when it receives a certified copy of a FLO. The notice will explain the procedures for determining if the FLO can be approved.

(4) While reviewing the FLO, MPERA will work with the record keeper to prevent distributions from the participant's account~~, but allow the participant to manage the investments~~ and to segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the FLO is approved. The participant will remain eligible to manage and invest the funds not owed to the alternate payee.

(5) The segregated amount, with any earnings thereon, will be distributed to the participant if the FLO is not approved within 18 months of the date it was received by MPERA and the participant is entitled to and requests distribution of the account.

(6) ~~Upon approval of the FLO,~~ MPERA will~~:~~

~~(a)~~ notify the participant and the alternate payee ~~that~~ when the FLO is approved~~; and~~

~~(b) work with the recordkeeper to ensure a separate subaccount containing the alternate payee's entitlement is created.~~

~~(i) The alternate payee will be given necessary information for managing the investments in the subaccount.~~

~~(ii) The subaccount will be distributed to the alternate payee upon termination of service or death of the participant~~.

(7) The FLO will be applied prospectively if approved more than 18 months after the date it was first received by MPERA.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Since there will be no separate account established for an alternate payee, the processes proposed to be repealed are no longer necessary or appropriate.

2.43.3009 FAMILY LAW ORDERS – APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS (1) through (3) remain the same.

(4) If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment ~~or may roll the payment over~~ or a direct rollover to another eligible plan. Within 60 days of the date of notification, the

alternate payee must inform MPERA of his or her choice and if necessary, provide MPERA with any information necessary for a rollover ~~to MPERA~~. Otherwise a direct payment will be made to the alternate payee after 60 days.

(5) and (6) remain the same.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-303(18), 19-2-907, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances, including the direct rollover of an alternate payee's portion of a member's funds to an eligible retirement plan. This rule is proposed to be amended to reflect the specific options now available to alternate payees and to clarify the rollover process.

2.43.3402 RETIREMENT SYSTEM MEMBERSHIP OPTIONS FOR LEGISLATORS (1) remains the same.

(2) A legislator's application to join PERS, to join their existing public retirement system, or to decline retirement system membership must be filed with MPERA within ~~180~~ 90 days of the first day of the legislator's term of office.

(3) through (5) remain the same.

(6) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new ~~180-day~~ 90-day election period under (1) if they previously declined participation in any public service retirement system.

(7) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new ~~180-day~~ 90-day election period.

(8) A PERS DBRP member who elects to purchase into PERS previous service as a legislator must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993.

(9) A PERS DCRP member cannot purchase noncompensated legislative service into the DCRP as service purchases are not available in the DCRP plan.

AUTH: 19-2-403, MCA
IMP: 5-2-304, 19-2-715, ~~19-2-718,~~ 19-3-412, 19-3-521, 19-3-522, MCA

REASON: Chapter 284 Montana Session Laws of 2009 changed optional membership election windows from 180 days to 90 days for consistency purposes. ARM 2.43.3402 references these same election windows when describing the election process for legislators. It is necessary to change the length of the election windows to be consistent with statute. Section (9) is proposed to be adopted as certain legislators have not understood that pursuant to 19-3-522, MCA, service purchases do not apply in the DC plan. They have requested clear documentation of that limitation and the reason for it.

There is no 19-2-718, MCA. Sections 19-3-412 and 19-3-521, MCA apply to legislators and are implemented by this rule.

2.43.3540 DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Members of the Defined Contribution Retirement Plan (DCRP) who are found by the board to be disabled are entitled to a disability benefit pursuant to 19-3-2141, MCA.

(2) The disability benefit awarded a member of the DCRP is calculated based on the member's years of service credit, not years of membership service. The applied factor~~, either 1/56 or 1/50,~~ is based on membership service and the member's initial hire date, pursuant to 19-3-2141, MCA.

(3) The disability benefit awarded a member of the DCRP is not a retirement benefit, but a benefit paid from the long-term disability trust fund established pursuant to 19-3-2141, MCA.

(4) through (6) remain the same.

AUTH: 19-3-2104, 19-3-2141, MCA
IMP: 19-3-2141, MCA

REASON: Chapter 369 Montana Session Laws of 2011 added provisions specifying different disability calculation factors for members hired prior to July 1, 2011, and members hired on or after that date, eliminating the need to include the factors in rule.

2.43.3545 DISTRIBUTION TO PARTICIPANT (1) and (2) remain the same.

(3) The participant shall also, no later than 30 days before the start of the distribution of the accounts, select a payment option.

(a) Payment options include:

(i) a lump-sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan~~, a traditional or Roth individual retirement account, or an annuity~~;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount; or

(v) periodic payments based on the participant's life expectancy, determined annually.

(b) A payment option may only be selected if the amounts payable to the participant are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) If the participant does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(4) If the participant fails to choose a payment option or a distribution time, a lump-sum distribution with 20% withheld for federal taxes will occur 120 days after termination of service from a PERS-covered position.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-2-303(22), 19-3-2123, 19-3-2124, MCA

REASON: The Internal Revenue Service added Roth IRAs to available distribution and payment options in 2007. Chapter 284 Montana Session Laws of 2009 adopted that change for Montana's public employee retirement systems. Therefore, the term "eligible rollover distributions" now include IRAs of any type. The change is necessary because current language distinguishing an eligible retirement plan from an IRA may mislead the reader to believe an IRA is not an eligible retirement plan.

2.43.4616 INTEREST PAID TO PARTICIPANTS (1) A participant's DROP account must include compounded annual interest.

(2) Subject to (3), the interest rate will be fixed at the end of each fiscal year and will equal the ~~total rate~~ actuarially assumed rate of return for the trust fund. ~~Interest rates for any part of the current fiscal year will be based on the previous fiscal year's total rate of return.~~

(3) Interest credited on the DROP account shall comply with any applicable provisions of 29 USC section 623(i)(10)(B)(i) of the federal Age Discrimination in Employment Act (ADEA) and any applicable federal treasury regulations establishing market rates of return for purposes of complying with ADEA.

~~(4) When the total rate of return for the trust fund is less than zero, participants will receive zero interest.~~

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1206, 19-9-1208, MCA

REASON: Chapter 283 Montana Session Laws of 2009 changed the interest on a deferred retirement option plan account from the Municipal Police Officers' Retirement System's actual annual investment rate to the actually assumed rate of return. The change eliminates the sometimes wildly fluctuating annual changes in interest and replaces it with a smoothed rate of return. This change eliminates the possibility of receiving no interest on the DROP account, while capping the interest at the actuarially assumed rate. The proposed amendments to ARM 2.43.4616 will result in a rule with requirements that are consistent with statute.

2.43.4617 DISTRIBUTION OF DROP BENEFIT (1) through (4) remain the same.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient ~~is the surviving spouse, in which case the surviving spouse may choose~~ chooses to receive the DROP benefit in a ~~lump sum or in~~ direct rollover to another eligible retirement plan, as allowed by the IRS.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-2-1007, 19-9-1206, 19-9-1208, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances. Specifically, payments can now be rolled over to any beneficiary, not just a surviving spouse. The proposed amendments are necessary to reflect this change in the availability of direct rollovers to all designated beneficiaries.

2.43.4807 PART-PAID FIREFIGHTERS' SERVICE (1) and (2) remain the same.

(3) A part-paid firefighter will accrue service credit of one month for each calendar month during which contributions are made; however, if and when the part-paid service is qualified into another system, or if the part-paid firefighter also has full-paid firefighter service credit, each calendar month of part-paid service shall be credited as only ~~15~~ .15 months of service.

AUTH: 19-2-403, MCA
IMP: 19-13-301, MCA

REASON: A typographical error was made during the 2008 rulemaking process. The error is proposed to be corrected as part-paid firefighters receive only a fraction of a month of service credit, not multiple months of service credit, for each month of service.

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: Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., August 12, 2011.

5. Dena Helman, Montana Public Employee Retirement Administration has been designated to preside over and conduct this hearing.

6. The PER 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, do not apply.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

Certified to the Secretary of State July 5, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the Montana Mortgage Loan Origination Disclosure Form	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 15, 2011, the Department of Administration proposes to adopt the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 5, 2011, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The rule proposed to be adopted effective October 1, 2011, provides as follows:

NEW RULE I MONTANA MORTGAGE LOAN ORIGINATION DISCLOSURE FORM (1) Licensees shall use a form that is substantially similar to this and may customize the form to meet individual needs.

MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a Montana-licensed mortgage loan originator authorized to provide mortgage loan origination services to (borrower and co-borrower(s) name – printed) in connection with your real estate loan. Lender(s) whose loan products (name of licensee) distributes generally provide their loan products to (name of licensee) at a wholesale rate.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

1. (name of licensee) is acting as an independent contractor and not as your agent;

2. (name of licensee) enters into separate independent contractor agreement(s) with one or more lender(s); and

3. while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of every lender(s) or

investor(s) in the market and cannot guarantee the lowest price or best terms available in the market.

SECTION 2. OUR COMPENSATION.

1. The retail price (name of licensee) offers you may include (name of licensee's) compensation.

2. If you would rather pay a lower interest rate, you may pay higher up-front costs.

3. If you would rather pay less up front, you may pay all of (name of licensee's) compensation indirectly through a higher interest rate in which case (name of licensee) will be paid by the lender.

4. If you compensate (name of licensee) directly, (name of licensee) cannot be compensated by any other person for the same transaction.

By signing below, you acknowledge that you have received a copy of this disclosure.

_____ _____
BORROWER DATE

_____ _____
CO-BORROWER DATE

_____
MORTGAGE LOAN ORIGINATOR NMLS # DATE

_____
Employing Entity NMLS #

The State of Montana, Department of Administration, Division of Banking and Financial Institutions (Division), is the licensing agency of mortgage lenders, mortgage brokers, mortgage servicers, and mortgage loan originators. Any consumer with a comment, question, or concern should contact the Division by the means listed within this disclosure.

(2) The disclosure must include the address, phone number, facsimile number, e-mail address, and web site of the division.

(3) The disclosure must include the unique identifier issued by the Nationwide Mortgage Licensing System and Registry for the mortgage broker and mortgage loan originator.

(4) The disclosure must be signed by the borrower and co-borrower, if any, and the mortgage loan originator.

AUTH: Ch. 317, L. 2011, Section 23; 32-9-130, MCA
IMP: Ch. 317, L. 2011, Section 23

STATEMENT OF REASONABLE NECESSITY: On September 24, 2010, the Board of Governors of the Federal Reserve System issued final rules regarding mortgage loan originator compensation. The new rules were adopted to implement the federal Truth in Lending Act and amended Regulation Z. The final rules became effective April 5, 2011. The rules provide that if a loan originator is compensated by a consumer directly, no other person may pay any compensation to the loan originator for that transaction. In addition, the rules prohibit any person from compensating a loan originator directly or indirectly based on the terms or conditions of the loan secured by a dwelling. *See* 12 CFR 226.36.

Prior to the passage of House Bill 90 (HB 90) in the 2011 Legislature, the Montana Mortgage Loan Originator Disclosure Form (MLOD form) was contained in the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act at 32-9-124(3), MCA. The MLOD form in statute conflicted with the new federal rules in the following respects.

The new federal rules do not allow a loan originator to be compensated by both the consumer and the lender. Paragraph one of the MLOD form may or may not be correct depending on whether the borrower compensates the loan originator or not. Paragraph two is correct only if the loan originator is compensated by either the borrower or the lender, but not both. Paragraph three of the MLOD form is not correct under the new federal rules because a loan originator cannot be compensated by both the consumer and the lender. The MLOD form was confusing consumers because it was inconsistent with the federal rules.

In light of the conflicts between the MLOD form and the new federal rules on loan originator compensation, the Governor issued an amendatory veto of HB 90 on April 7, 2011. HB 90, with the Governor's proposed amendments, was passed by both houses of the 2011 Legislature. It was signed by Governor Schweitzer on May 5, 2011. The amendatory veto removed the MLOD form from statute [32-9-124(3), MCA] and gave the division rulemaking authority to adopt a form by rule.

The division is adopting this form because it complies with 12 CFR 226.36. The division has taken the old MLOD form that was in statute and modified it to conform to the federal rules. Those portions of the MLOD form that do not conflict with the federal rules are being maintained in the proposed form. The proposed form also updates the old MLOD form by requiring the unique identifier, not the state license number, of the loan originator. Since the licensing of all loan originators is now done on the Nationwide Mortgage Licensing System (NMLS), the state no longer issues license numbers. NMLS unique identifiers are used instead. Some language of the old MLOD form has been updated for ease of reading.

This rule is intended to be effective October 1, 2011, to coincide with the effective date of HB 90.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov; and must be received no later than 5:00 p.m., August 12, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above at the above address no later than 5:00 p.m., August 12, 2011.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 15 persons based on the number of licensed mortgage brokers and mortgage loan originators employed by mortgage brokers.

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

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Walter McNutt, was contacted by mail on May 20, 2011.

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

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

Certified to the Secretary of State July 5, 2011.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VII, regarding the Montana Veterans' Home Loan Program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 9, 2011, at 1:00 p.m., the Board of Housing will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., July 28, 2011, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD 841-2702; or e-mail ploving@mt.gov.

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

NEW RULE I PURPOSE AND OBJECTIVE (1) These rules are adopted to implement the Montana Veterans' Home Loan Act, Title 90, chapter 6, sections 1 through 6, MCA. These rules provide explanation and guidance to loan applicants and participating lenders and servicers.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: The 2011 Montana Legislature enacted Senate Bill 326, Chapter 349, L. 2011 (the "Act"), creating the Montana Veterans' Home Loan Mortgage Program with money from the Permanent Coal Tax Trust Fund to be administered by the Board of Housing. The Act requires the Board of Housing to adopt administrative rules necessary for the administration of the program and to address specified areas of the program. The Act is effective July 1, 2011.

The Board of Housing administers various existing loan programs. Although the Act creates a new loan program to be administered by the board, some aspects of the new program can be handled in the same manner as other existing programs.

New Rule I is reasonably necessary to identify and state that the purpose of the proposed new rules is to implement the program and provide explanation and guidance to loan applicants and participating lenders and servicers.

NEW RULE II DEFINITIONS As used in these rules, the following words and phrases have the following meanings:

(1) "Act" means the Montana Veterans' Home Loan Act, Title 90, chapter 6 sections 1 through 6, MCA.

(2) "Board" means the Montana Board of Housing established under 2-15-1814, MCA.

(3) "Deceased eligible veteran" means an eligible veteran who was killed in the line of duty while in military service.

(4) "Eligible veteran" means an individual who is in military service or has been in military service and was discharged under honorable conditions.

(5) "First time home buyer" means an individual who has not previously owned an interest in real property occupied by the individual as their primary residence. An applicant must provide proof of first time home buyer status satisfactory to the board.

(6) "Guide" means the board's Mortgage Purchase and Servicing Guide referenced in ARM 8.111.305.

(7) "Honorable conditions" means a discharge or separation from service characterized by the applicable military authority as under honorable conditions. The term includes honorable discharge and general discharge, but does not include a dishonorable discharge or other administrative discharge characterized by military regulation as other than honorable.

(8) "Montana Resident" means an individual who has established and maintains a permanent place of abode within the state of Montana and has not established residence elsewhere although the individual may be temporarily absent from the state. An applicant must provide proof of Montana residence satisfactory to the board.

(9) "Program" means the Montana Veterans' Home Loan Program established by the Act and administered by the board pursuant to these rules.

(10) "Property" means the residential real property purchased or to be purchased with a veteran's loan.

(11) "Military Service" means:

(a) Membership in the Montana National Guard;

(b) Membership in the federal reserve forces of the armed forces of the United States pursuant to Title 10 of the U.S. Code; or

(c) Service on federal active duty pursuant to Title 10 of the U.S. Code.

(12) "Veteran's loan" means a mortgage loan made pursuant to the Act and these rules.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule II is reasonably necessary to specify the definitions of terms used in the proposed rules. The proposed definitions are consistent with and implement the terms and definitions of the Act.

NEW RULE III APPLICANT ELIGIBILITY REQUIREMENTS (1) To qualify for a veteran's loan, an applicant must:

(a) be a Montana resident;

(b) be an eligible veteran or a deceased eligible veteran's surviving spouse who is not and has not remarried since the death of the deceased eligible veteran;

(c) be a first time home buyer; and

(d) have successfully completed a homebuyer education class approved by the board.

(2) There is no income limit for veteran's loan eligibility.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule III is reasonably necessary to specify the eligibility requirements for veterans' loan applicants. To comply with the authorization of the Act, applicant eligibility requires that an applicant meet the particular eligibility requirements stated in proposed Rule III.

NEW RULE IV APPLICATION PROCEDURES (1) Application for a veteran's loan must be made using the same process established by the board for regular bond program loans, as specified in the guide.

(2) In addition to other documents required by the guide, the application materials submitted to the participating lender must include:

(a) a completed application on an application form approved by the board; and

(b) satisfactory proof of eligibility under [New Rule III].

(3) Additional information and forms for the program may be obtained by contacting the board by mail at P.O. Box 200528, Helena, Montana 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov. Such additional information and forms include but are limited to requirements for satisfactory proof of eligibility, requirements for satisfactory proof of Montana residence and first-time home buyer status, board-approved homebuyer education classes, participating lender information, lender reservation and purchase forms, current statewide allowable purchase price, and current program interest rates.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule IV is reasonably necessary to specify the loan application procedures and requirements, and to specify where and how program information and forms may be obtained. Section 5 of the Act requires that the Board of Housing adopt rules specifying the loan application process. The board proposes to adopt the application process specified in the board's existing Mortgage Purchase and Servicing Guide, because this process is already established, loan originators are familiar with this process, and it would be an unwarranted use of resources to establish a new and separate process.

NEW RULE V LENDER AND SERVICER REQUIREMENTS AND LIMITS (1) The program will be governed by and subject to the Act and these rules.

(2) Veteran's loans shall be originated and serviced using the processes established for the board's regular bond program loans, as specified in the guide, subject to the following:

(a) where the provisions of the guide are inconsistent with the Act or these rules, the provisions of the Act or these rules shall govern;

(b) terms defined in the Act or these rules shall have the meaning provided in the Act or these rules where used in the guide; and

(c) the sections of the guide pertaining to requirements of the Internal Revenue Service and the bond indentures (currently sections 2.01(a), 2.04(a)(i) and (ii), 2.05, 2.05.1, 2.06, 2.11 and 2.12) shall not apply for purposes of the veteran's loan program.

(3) To participate as a lender under the veteran's loan program, a lender must be a board-approved participating lender under the requirements of ARM 8.111.305. The lender must comply with the applicable provisions of the guide.

(4) A single lender may reserve or originate no more than ten veteran's loans until at least a total of $10 million in loans has been originated by all lenders under the veteran's loan program. The board may waive the ten-loan limit where necessary to provide an opportunity for an eligible applicant to obtain a loan where the loan is not otherwise available to the applicant from another participating lender. Once a total of $10 million in loans has been originated by all lenders under the veteran's loan program, the ten-loan limit shall no longer apply to any lender.

(5) Veteran's loans will be serviced by the board or its designee. Servicing fees shall be 0.375% per annum. A servicing release premium will be paid by the board to the lender.

(6) Lenders must provide the board and the legislative auditor access to all records and documents related to veteran's program loans.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule V is reasonably necessary to specify the requirements to qualify and participate in the program as a loan originator or servicer. Section 5 of the Act requires that the Board of Housing adopt rules specifying what financial institutions may participate in the program, specifying the maximum servicing fees that may be charged by lenders, and providing the legislative auditor with access to program loan records. The board proposes to adopt the lender participation requirements already established in the board's administrative rules for its existing loan programs. The board chose these requirements because the requirements and processes for approving and reapproving lenders are already established, lenders are familiar with these requirement and processes, and it would be an unwarranted use of resources to establish new and separate requirements and processes.

New Rule V is also reasonably necessary to specify the process and requirements for originating and servicing loans. Again, the Board of Housing proposes to adopt processes and requirements specified in the board's existing Mortgage Purchase and Servicing Guide, because these processes and requirements are already established, loan originators are familiar with these

processes and requirements, and it would be an unwarranted use of resources to establish new and separate processes and requirements.

The board proposes in Rule V to adopt a servicing fee amount of 0.375% per annum, which the board has determined is necessary to cover servicing costs for program loans. It is also necessary to provide for payment of a servicing release premium to originating lenders, because without such payment, lenders will not be willing to originate program loans for which they would lose the valuable servicing rights.

Section 4(6) of the Act requires that the Board of Housing adopt rules specifying the maximum amount of mortgage loans that any one lender may make under the program, in order to allow small lenders to participate equitably in the program along with large lenders. The board proposes in Rule V that each lender may make no more than ten loans until at least $10 million of the total available $15 million in funding is exhausted. Given the number of lenders in Montana likely to participate, the board believes that this limit will permit all interested lenders an equitable opportunity to originate program loans. The board also has determined, however, that it is necessary to provide for an exception to these limits in the event that a loan would not otherwise be available to an applicant, for example, where the only lender servicing a geographical area had exhausted its ten-loan limit.

NEW RULE VI QUALIFYING PROPERTY (1) The property to be purchased with a veteran's loan must be:

(a) located in the state of Montana;

(b) actually occupied by the borrower as the borrower's primary residence;

(c) if manufactured housing, de-titled and fixed to a permanent foundation.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule VI is reasonably necessary to specify requirements for the property that is to be purchased with a program loan. Section 5 of the Act requires that the Board of Housing adopt rules specifying other loan conditions determined to be necessary by the board. The Act requires that property be located within the state of Montana, and that the property be used for residential purposes. The proposed rule is necessary to specify and implement these requirements. The Act requires that the residential use requirement must specify that the property must be actually occupied as the borrower's primary residence. Otherwise, this might be construed to permit occasional residential occupation as a second home. The board has determined it is necessary to specify that manufactured housing must be de-titled and affixed to a permanent foundation, to guarantee that property financed in the program qualifies as real property and is therefore eligible loan security.

NEW RULE VII LOAN TERMS AND CONDITIONS (1) The purchase price for the property, as agreed upon in a written buy-sell agreement, may not exceed 95% of the value of the statewide allowable purchase price determined by the board.

(2) The borrower must contribute a minimum of $2,500 of the borrower's own funds toward the down payment for the purchase of the property or the closing costs of the loan, with no cash back to the borrower at closing.

(3) The lender may charge and collect lender fees not exceeding the amount allowable under the board's regular bond program. No points may be charged. All fees must be paid by the borrower or seller and will not be paid or financed by the board.

(4) Loans must meet FHA, VA, RD, or HUD 184 underwriting standards as specified by the board and must be guaranteed by FHA, VA, RD, or HUD 184.

(5) Loans will be 30-year, fixed rate loans.

(6) Loan interest rates will be one percent below the lower of the Federal National Mortgage Association's 60-day delivery rate or the board's regular bond home loan mortgage program. The interest rate will be posted on the board's web site and updated every two weeks.

(7) Loans must be documented with a standard promissory note used by FHA, Fannie Mae, or Freddie Mac; secured by a first priority trust indenture under the Montana Small Tract Financing Act, Title 71, chapter 1, part 3, MCA; and covered by a lender's policy of title insurance.

(8) The loan agreement must provide that taxes and insurance payments will be escrowed, including hazard and mortgage insurance. Hazard insurance must meet the standards specified in the guide and the terms and conditions specified in the lender's contract with the board.

(9) The loan documents shall provide that, in the event the borrower ceases to occupy the property as the borrower's primary residence, the loan interest rate shall increase by one percent per annum six months after such event and, at the option of the board, the entire loan indebtedness shall become immediately due and payable 12 months after such event.

(a) The board or its designee may require the borrower to periodically verify continued occupancy of the property as a primary residence, and failure to comply with such verification requests shall constitute a default under the loan, except for good cause shown.

(b) Upon written request of the borrower, the board in its sole discretion may extend or decline to extend the 12-month repayment period based upon the borrower's inability to sell the property despite good faith efforts, considering the following factors:

(i) prompt and continuing listing of the property for sale;

(ii) reasonableness of the listing price and other offering terms;

(iii) any offers the borrower has received and refused;

(iv) market conditions;

(v) preservation of the loan collateral; and

(vi) any other factors deemed relevant by the board.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-104, 90-6-106, MCA

REASON: New Rule VII is reasonably necessary to specify the required terms and conditions of program loans. Section 5 of the Act requires that the Board of Housing

adopt rules specifying underwriting criteria for program loans, the statewide allowable purchase price of a home for the purposes of the program, the security required for a mortgage loan financed by the program, and the maximum origination fees that may be charged by participating financial institutions. Proposed Rule VII specifies these items and other loan terms and conditions.

The proposed rule would establish the maximum purchase price, which is based upon the value of the statewide allowable purchase price, continuously maintained and updated by the board, and the borrower's required minimum contribution of $2,500 toward the down payment or closing costs for the loan. The board proposes to limit lender fees to those amounts allowable under the board's regular bond loan program, to prohibit charging for points, and to specify for clarity that none of the permissible lender fees will be paid or financed by the board.

The board proposes that loans will be required to meet FHA, VA, RD, or HUD 184 underwriting guidelines, because loans must be guaranteed by one of these federal programs. This is necessary to reasonably assure the security of permanent coal tax trust funds which are being used to facilitate program loans. The rule is necessary to specify the loan term, the interest rates upon which program interest rates will be based, the form and priority of loan documents and security required, and escrowing of tax and insurance payments. These proposed rules are necessary to assure that loans are made and secured in accordance with the requirements of the Act and in a manner reasonably assuring repayment of the permanent coal tax trust funds being used to facilitate program loans.

The rule is also necessary to provide a mechanism for enforcement of the primary residence requirement. Borrowers may periodically cease to occupy the property as their primary residence for a variety of reasons, for example, relocating for employment purposes or as a result of being reassigned to a different military duty location. The proposed rule is necessary to allow for a period of transition and an opportunity for the borrower to sell the residence and repay the loan. The proposed rule provides an incentive for sale within the first six months after ceasing to occupy the property as a primary residence, by providing that the loan interest rate will increase by 1% after six months. The board would have discretion to declare the loan due and payable after one year, but would retain discretion to consider requests to extend the 12-month repayment requirement based upon consideration of the stated factors, where the borrower has been unable to sell the property despite good faith efforts to do so. The board considered an automatic loan due date, but believes that it would be inconsistent with the program purposes and would preclude the board from considering hardship circumstances.

Section 5(2) of the Act also allows the board to change certain requirements of the Act regarding the definition of eligible veteran, loan security, and minimum borrower participation if determined necessary by the board for program purposes. The board has not determined that such changes are necessary for the initial implementation of the program. The board may consider such rules in the future as deemed necessary based upon experience with the program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Nancy L. Leifer, Homeownership Program Manager, Montana Board

of Housing, P.O. Box 200528, Helena, MT 59620-0528; telephone (406) 841-2849; fax (406) 841-2841; or e-mail nleifer@mt.gov, and must be received no later than 5:00 p.m., August 11, 2011.

5. Nancy L. Leifer, Montana Board of Housing, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 in person on May 31, 2011, by e-mail on June 10, 2011, and by telephone on June 13, 2011.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State July 5, 2011.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.617 and 17.30.638 pertaining to outstanding resource water designation for the Gallatin River	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5. On September 11, 2008, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1953, 2008 Montana Administrative Register, issue number 17. On February 26, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 162, 2009 Montana Administrative Register, issue number 4. On August 13, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1324, 2009 Montana Administrative Register, issue number 15. On February 11, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 264, 2010 Montana Administrative Register, issue number 3. On July 29, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1648, 2010 Montana Administrative Register, issue number 14. On January 27, 2011, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 89, 2011 Montana Administrative Register, issue number 2.

2. During the initial comment period and extensions of the original comment period, the board was advised that members of the Big Sky community, which would be affected by this rulemaking, had formed a collaborative, called the "Wastewater Solutions Forum," and had hired an engineering firm, which completed a feasibility study on extending the coverage of the Big Sky Water and Sewer district service area. The board received comments indicating that this would protect water quality

in the Gallatin River as well as or better than adoption of the proposed rule. The Forum was exploring funding options when the economic downturn began. That downturn resulted in an interruption of those efforts. However, those efforts have now resumed. During the comment period, the board received comments indicating that the Forum has funding for and will conduct a pilot test to determine the feasibility of disposing of wastewater from the Big Sky and Yellowstone Mountain Club wastewater treatment facilities using snow making at a confined site at the Yellowstone Mountain Club. If successful, this will provide a method for disposal of wastewater without affecting the Gallatin River, which may allow for expansion of the sewer system and protection of the Gallatin. During the most recent comment period, the board received three comments requesting that the board further extend the comment period and one comment recommending that the board adopt the rule without further comment. The board has determined that it will further extend the comment period in order to allow submission of comments and information on the feasibility of this option.

3. Written data, views, or arguments may 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, no later than November 8, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., July 25, 2011, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, July 5, 2011.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I-IX establishing the 24/7 sobriety program	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 18, 2011, at 1:30 p.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on August 4, 2011, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

NEW RULE I DEFINITIONS Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

(1) "Data management system" means a data management technology plan approved by the Attorney General that is designed to manage testing, data access, fees and fee payments, and any required reports.

(2) "Department" means the Montana Department of Justice.

(3) "Participant" means a person who has been ordered by a court or directed by the Board of Pardons and Parole, Department of Corrections, or a parole officer to participate in the 24/7 sobriety program.

(4) "Participating agency" means a sheriff's office or an entity designated by a sheriff that has agreed to participate in the 24/7 sobriety program.

(5) "Participating vendor" means a vendor that meets the 24/7 sobriety program criteria established by the Attorney General to provide equipment or services to implement and operate the 24/7 sobriety program.

(6) "Preliminary alcohol screening test device" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration.

(7) "Program requirements" means a document that sets forth the type and frequency of testing, the testing location, the testing fees and payment procedures, and the participant's responsibilities under the 24/7 sobriety program.

(8) "24/7 sobriety program" or "program" means the program established in 2011 Mont. Laws, ch. 318, § 3. The program is a continuous sobriety program in

which a participant submits to testing of breath or other bodily substances to determine whether alcohol or drugs are present in the participant's body.

(9) "Transdermal alcohol monitoring device" means a device that is capable of continuous or transdermal alcohol monitoring that can be attached directly to the participant. The term includes any associated equipment necessary for the device to perform properly.

(10) "Vendor agreement" means an agreement approved by the Attorney General that establishes the services the participating vendor will provide and the related costs and fees.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, § 4

REASON: This rule is reasonably necessary to define significant terms used in the rules related to the 24/7 sobriety program.

NEW RULE II PLACEMENT IN THE 24/7 SOBRIETY PROGRAM (1) A participant may be placed in the 24/7 sobriety program as a condition of bond or pretrial release, a condition of sentence or probation, or as a condition of parole.

(2) An order or directive placing a participant in the program must include the type of testing and the length of time that the participant is to remain in the program.

(3) A participant shall report for twice-daily breath tests or submit to testing through a transdermal alcohol monitoring device for the length of time ordered by the court, the Board of Pardons and Parole, the Department of Corrections, or a parole officer.

(4) A participating agency must receive a copy of the order or directive before enrolling a participant in the program.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4

REASON: This rule is reasonably necessary to ensure that the participating agency is informed of the entity that ordered or directed the participant to enroll in the program, the type of testing required, and the length of time that the participating agency must test or monitor the participant.

NEW RULE III ENROLLMENT (1) A representative of a participating agency shall enroll a participant in the 24/7 sobriety program prior to testing.

(2) During enrollment, the representative of a participating agency shall enter the participant's information in the data management system. The representative of a participating agency shall provide the participant with the appropriate program requirements, inform the participant that information may be shared for law enforcement and reporting purposes, and provide the participant with information related to testing, procedures, and fees.

(3) The participant shall sign the program requirements and release of information form.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4

REASON: This rule is reasonably necessary to ensure that the participant's information is entered into the data management system before the participant begins the program. This rule also ensures that a participant is informed of the program requirements, including what conduct may constitute a violation, and that information will be shared for reporting and law enforcement purposes.

NEW RULE IV TESTING AUTHORIZED (1) Except as provided in (3), a participant in the 24/7 sobriety program shall submit to alcohol testing through twice-daily breath tests on a preliminary alcohol screening test device.

(2) A participant who has been ordered to provide twice-daily breath tests shall report to the participating agency's testing location at two daily testing times approximately 12 hours apart.

(3) A participant may be ordered to submit to transdermal alcohol monitoring on a transdermal alcohol monitoring device if:

(a) a device is available;

(b) the participant is capable of paying the fees and costs associated with transdermal alcohol monitoring;

(c) the participant is capable of wearing the device; and

(d) it is determined that the participant does not qualify for twice-daily breath tests because of one or more of the following:

(i) the participant lives in a rural area and submitting to twice-daily breath tests would be unduly burdensome;

(ii) the participant's employment requires job performance at a location remote from the testing location and submitting to twice-daily breath tests would be unduly burdensome; or

(iii) the participant repeatedly has violated the 24/7 sobriety program while submitting to twice-daily breath tests and poses a substantial risk of future violation.

(4) A participating agency shall record all testing results in the data management system.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4

REASON: This rule is reasonably necessary to establish the program's approved testing methodologies and to explain the nature and manner of testing.

NEW RULE V PARTICIPANT FEES (1) A participating agency shall charge a participant who has been ordered to provide twice-daily breath tests a fee, which may not exceed the amount provided for in the vendor agreement.

(2) A participating agency shall charge a participant who has been ordered to submit to transdermal alcohol monitoring the following fees and costs, which may not exceed the amounts provided for in the vendor agreement:

(a) a daily monitoring fee as provided for in the vendor agreement, which must be paid in advance on a one-week, two-week, or four-week basis;

(b) an installation/activation fee as provided for in the vendor agreement; and
(c) any repair or replacement costs due to misuse.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4, 6

REASON: This rule is reasonably necessary to set reasonable testing fees for the 24/7 sobriety program.

NEW RULE VI COLLECTION, DISTRIBUTION, AND USE OF TESTING FEES (1) A participant shall pay all fees directly to the participating agency.

(2) A participating agency shall distribute a portion of the fees to the participating vendors in accordance with the vendor agreements.

(3) The remainder of the fee proceeds is for the use of the participating agency and must be placed in the sobriety program account authorized in [NEW RULE VII]. The fee proceeds may be used only for the purposes of administering the 24/7 sobriety program.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4, 6

REASON: This rule is reasonably necessary to set forth the manner in which a participating agency collects, distributes, and uses fees generated by the program. This rule establishes that a participating agency shall use a portion of the fees to pay the vendors that provide the equipment and services necessary for the 24/7 sobriety program, such as the vendors of the preliminary alcohol screening test devices, the transdermal alcohol monitoring devices, and the data management system. This rule also establishes that proceeds remaining after the vendors have been paid must be placed in a 24/7 sobriety program account for the participating agency's benefit, rather than in an unrelated, or general fund.

NEW RULE VII ACCOUNT FOR TESTING FEES (1) A participating agency shall establish and maintain a sobriety program account.

(2) A participating agency shall collect and deposit testing fees and any other funds received for the 24/7 sobriety program into the sobriety program account for administration of the program.

AUTH: 2011 Mont. Laws, ch. 318, § 4
IMP: 2011 Mont. Laws, ch. 318, §§ 4, 6

REASON: This rule is reasonably necessary to authorize and require a participating agency to establish an account devoted to the 24/7 sobriety program.

NEW RULE VIII DATA MANAGEMENT SYSTEM (1) A participating agency shall use the data management system, including hardware and software, approved and provided by the Attorney General.

(2) The data management system must feature a secure, remotely hosted, demonstrated, web-based management application that allows multiple concurrent users to access and input information.

(3) The data management system must support breath testing, transdermal alcohol monitoring, drug patch testing, and urinalysis testing.

(4) The data management system must be capable of tracking and storing an unlimited number of events, including, but not limited to, participant enrollment, testing activity, accounting activity, and participating agency activity.

(5) The data management system must be capable of generating reports with any combination of system fields and data. The data management system must allow reports to be generated as needed and on a scheduled basis and allow reports to be exported over a network connection or by remote printing.

AUTH: 2011 Mont. Laws, ch. 318, § 4.
IMP: 2011 Mont. Laws, ch. 318, §§ 3, 4, 6

REASON: This rule is reasonably necessary to establish specific minimal requirements for a data management technology plan. A fundamental component of the 24/7 sobriety program is that agencies throughout the state must have access to information about the program and the ability to generate any necessary reports. This rule establishes that multiple users in multiple locations simultaneously can use the data management system to input and retrieve information securely within the system and generate any necessary reports. This rule establishes that participating agencies are required to use the data management system approved by the Attorney General.

NEW RULE IX 24/7 SOBRIETY PROGRAM MANAGEMENT GROUP

(1) The Attorney General shall establish a 24/7 sobriety program management group. The group must include:

(a) a representative from the department;

(b) two representatives from rural participating agencies, one representing eastern Montana and one representing western Montana;

(c) two representatives from urban participating agencies, one representing eastern Montana and one representing western Montana; and

(d) a representative from the Lewis and Clark County participating agency.

(2) The Attorney General shall meet at least annually with the 24/7 sobriety program management group to review the program and administrative rules.

AUTH: 2011 Mont. Laws, ch. 318, § 4.
IMP: 2011 Mont. Laws, ch. 318, § 4

REASON: This rule is reasonably necessary to ensure that the rules adopted by the Attorney General continue to further the legislative goal of implementing the 24/7 sobriety program. Because the 24/7 sobriety program initially was implemented in Lewis and Clark County as a pilot program, a representative from the county is specifically included so that the group may benefit from the experience gained during the pilot program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: J. Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than August 20, 2011.

5. J. Stuart Segrest, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 e-mail on June 16, 2011.

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

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State July 5, 2011.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I concerning advertising restrictions for video gambling machines, NEW RULE II concerning expiration date for video gambling machine ticket vouchers, NEW RULE III concerning software specifications for video line games, NEW RULE IV concerning special bingo sessions, and amendment of ARM 23.16.1802, 23.16.1901, 23.16.1906, 23.16.1909A, 23.16.1910A, 23.16.1920, 23.16.1924, 23.16.1927, 23.16.1931, 23.16.2001, 23.16.2101, 23.16.2109, 23.16.2401, and 23.16.2406, concerning definitions, general specifications of video gambling machines, general software specifications of video gambling machines, software specifications for video multigame machines, bonus games, automated accounting and reporting system, video gambling machine, hardware and software specifications, prohibited machines, approval of video gambling machines and/or modifications to approved video gambling machines, inspection and seizure of machines, manufacturer of illegal gambling devices – department contact information, combination of video poker, keno, bingo, and video line games, testing of automated accounting and reporting systems, definitions, and prize awards for live keno and bingo games	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 9, 2011, at 9:00 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 August 3, 2011, 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 rules provide as follows:

NEW RULE I ADVERTISING RESTRICTIONS FOR VIDEO GAMBLING MACHINES (1) A licensed video gambling machine operator, distributor, route operator, or manufacturer may only advertise the play, lease, or sale of video gambling machines authorized by Title 23, part 5, MCA. No signs or advertisements may make any explicit or implicit reference to illegal gambling devices, such as slot machines, including equipment associated with illegal gambling devices.

AUTH: 23-5-115, 23-5-603, 23-5-621, MCA
IMP: 23-5-603, MCA

RATIONALE AND JUSTIFICATION: Senate Bill 361, enacted by the 2011 Legislature, prohibits any reference to authorized gambling activity in advertisements, promotions, or inducements to gamble, and it requires the department to seek compliance with the advertising prohibition through rule adoption. This proposed new rule is necessary to define and implement the advertising prohibition in 23-5-603, MCA by providing a sufficiently broad definition of the type of advertising that is allowed, in conjunction with a more specific prohibition against any advertising that references illegal gambling devices such as slot machines.

NEW RULE II EXPIRATION DATE FOR VIDEO GAMBLING MACHINE TICKET VOUCHERS (1) Except as provided in (2), location operators must immediately pay all valid ticket vouchers in full and in cash upon presentation of the ticket for payment.

(2) A video gambling machine ticket voucher that is printed more than 48 hours before it has been presented for payment may, at the discretion of the location operator, be deemed invalid and not payable, only if there has been notice to the player of the expiration period by the presence of a sign that is not less than 24 inches by 36 inches displayed in a licensed premises at the time of play, in plain view of the gambling public, which reads "Promptly Redeem Your Win Tickets -- Tickets Void After 48 hours;" and

(a) for machines and programs approved prior to adoption of this rule, the face of the video gambling machine ticket voucher paper has been preprinted with the expiration notice required by ARM 23.16.1901; or

(b) for machines and programs approved after adoption of this rule, the expiration notice is printed on the face of the video gambling machine ticket voucher as required by ARM 23.16.1901.

AUTH: 23-5-115, 23-5-608, MCA
IMP: 23-5-608, MCA

RATIONALE AND JUSTIFICATION: The 2011 Legislature enacted HB 127, which in part authorizes the department to establish by rule a reasonable expiration period for video gambling machine (VGM) ticket vouchers. Currently, video gambling machine ticket vouchers must be paid in cash whenever the ticket is presented for payment, even months after the ticket is printed from the VGM. This proposed new rule is reasonable and necessary to create a period of time after the printing of a VGM ticket voucher for a player to present the ticket to the operator for payment. The proposed 48-hour expiration period is believed to be reasonable so long as a VGM player has reasonable notice that the ticket will expire. Such notice is considered reasonable when there is a sign posted on the premises of sufficient size that the average VGM player would view it, and with text, clearly printed on the face of the VGM ticket voucher, that notifies the VGM player of the expiration time for redemption of the ticket. Under this proposed new rule, it is within the operator's discretion whether or not to pay an expired VGM ticket voucher.

NEW RULE III SOFTWARE SPECIFICATIONS FOR VIDEO LINE GAMES

(1) Each video line game must meet the following specifications for approval for use within the state of Montana. In order to be approved the game must:

(a) draw and display a minimum of three numbers or symbols in a line;

(b) clearly identify each individual line that is brought into play by wagering additional money when more than one line is played during a game;

(c) display and identify each winning combination of numbers or symbols, if any, and the amount won, if any, at the end of each game;

(d) the movement of numbers or symbols stops automatically, or the player may manually stop the movement prior to the automatic stop;

(e) provide winning combinations that form a vertical, horizontal, or diagonal line or other specified shapes that may include:

(i) matching numbers or symbols; or

(ii) particular numbers or symbols that appear in any sequence or position; and

(f) provide a theoretical return of each bet increment not to exceed 92%.

(2) Licensed machine manufacturers submitting video line games for approval must supply written verification from a qualified independent testing service that the theoretical return for each bet increment does not exceed 92%. For purposes of this rule, a qualified independent testing service means a person or entity that:

(a) holds a current Montana Associated Gambling Business License;

(b) shares no common ownership interests with the licensed machine manufacturer that submits the video line game to the department for approval; and

(c) has at least one contract with, or is licensed by, another governmental entity to test gambling machines and provide mathematical certification for the maximum theoretical return for video gambling machine software.

AUTH: 23-5-115, 23-5-602, 23-5-603, 23-5-621, MCA
IMP: 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: The 2011 Legislature enacted SB 361, which authorized video line games to be included with video keno, video bingo and video poker in multigame video gambling machines. This proposed new rule is reasonable and necessary to provide the software specifications for manufacturers of video gambling devices, in the same manner that the department provides by rule the software specifications for video keno, video poker, and video bingo. In drafting these software specifications, the department looked to state administrative regulations of jurisdictions that have authorized video line games.

While 23-5-607, MCA directs the department to prescribe a minimum theoretical payback of at least 80% for all video gambling machines, SB 361 amends 23-5-607, MCA to provide an additional requirement that each video line game may not have an expected payback greater than 92%. This proposed rule is therefore necessary to implement the new payout restrictions on video line games. The proposed rule requires manufacturers who submit video line game software for approval to provide the department with a certification from a qualified testing laboratory that the video line game does not have an expected payback of greater than 92%. The proposed rule establishes criteria for the labs that may provide the maximum theoretical return certification. The criteria will ensure that the certifying entity meets Montana's suitability requirements for an associated gambling business, is independent of the submitting manufacturer, and is qualified to do the mathematical computations and analysis necessary to determine the maximum theoretical return of the video line game submitted for approval.

NEW RULE IV SPECIAL BINGO SESSIONS (1) A licensed operator granted an annual permit by the department to conduct live bingo games on a specified premises may apply for a permit to conduct a special bingo session.

(2) To apply for a special bingo session permit, the operator shall submit an application to the department on Form 38, which is available from the department. The application for a special bingo session must include:

(a) licensed operator's name;
(b) operator license number;
(c) location of the special bingo session;
(d) date and start time of the special bingo session;
(e) date of applicant's most recent special bingo session; and
(f) $10 processing fee.

(3) The special bingo session application must be received by the department at least ten working days before the start of the proposed special bingo session. The department may process an application received by fax but shall not issue a permit on such an application until the fee is received by the department. An

application may not receive approval if received by the department less than ten working days before the date of the proposed start of the special bingo session.

(4) A special bingo session permit issued to an operator shall be counted against the allotment of annual special bingo sessions whether or not the special bingo session was held by the operator.

(5) A special bingo session must be publicly identified as being a special bingo session.

(6) An operator's special bingo session permit must be posted and clearly visible to the public. The permit is specific to an operator and location. An operator may conduct up to five special bingo sessions per year. At least 30 days must elapse between each special bingo session.

(7) Special bingo sessions must comply with the requirements of Title 23, chapter 5, MCA, and the rules of the department.

AUTH: 23-5-115, MCA
IMP: 23-5-112, 23-5-412, MCA

RATIONALE AND JUSTIFICATION: HB 127, enacted by the 2011 Legislature, provides general revisions to the maximum prices and payouts for live bingo games. The bill provides for limited special bingo sessions which are subject to department approval and permitting in a manner similar to other special gambling event permits, such as calcutta pools, casino nights, and poker tournaments. This proposed new rule is reasonable and necessary to establish the criteria for the issuance of a special bingo session permit, and it establishes the application and permitting procedures required by the department for a person to obtain a special bingo session permit. These procedures are borrowed in large part from the procedures and language previously adopted in ARM 23.16.1101 for the permitting of live card game tournaments.

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

23.16.1802 DEFINITIONS (1) through (13) remain the same.

(14) "Multigame machine" means a video gambling machine that at all times offers for play to the public, within the same video gambling machine cabinet, a combination of ~~approved poker, keno and bingo games within the same video gambling machine cabinet that has~~ at least two of the following types of games that ~~has~~ have been approved by the department:

(a) video poker;

(b) video keno;

(c) video bingo; and

(d) video line games.

(15) through (23) remain the same.

(24) "Video gambling machine" means a video poker, video keno, or video bingo machine as defined in 23-5-112, MCA, and ~~including~~ a multigame machine as defined in 23-5-602, MCA and in this rule and authorized in 23-5-621, MCA.

(25) remains the same.

(26) "Video line game" means a game in which numbers and/or symbols are drawn using a random number generator and displayed on a video screen in a variety of alignments or orders with a chance of achieving a defined outcome.

(26) and (27) remain the same but are renumbered (27) and (28).

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The 2011 Legislature enacted SB 361, which authorized video line games to be included with video keno, video bingo, and video poker in multigame video gambling machines. This proposed rule amendment is reasonable and necessary to provide the definition of a video line game, and to clarify the definition of a multigame machine. This rule amendment is also necessary to clarify that a multigame video gambling machine must at all times offer to the public at least two types of the video gambling approved by the Legislature. SB 361 amends 23-5-602, MCA to provide definitions for "multigame" and "video line game," but the law directs the department to define video line games, and restricts video line games to the confinement of multigame machine cabinets. This proposed rule amendment clarifies that an approved multigame machine may not be manipulated in such way as to offer only a single type of video gambling game. This amendment makes plain that a gambling machine operator, for example, may not inactivate video keno and video poker games in a multigame machine cabinet in a manner that results in only video line games being available for play on the machine.

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(d)(vii)(J) remain the same.

(K) this notice clearly displayed on the ticket: "Ticket Void After 48 hours."

(viii) through (3) remain the same.

AUTH: 23-5-621, 23-5-602, MCA
IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-608, 23-5-609, 23-5-610, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: HB 127, enacted by the 2011 Legislature, authorizes the department to establish by rule a reasonable expiration period for video gambling machine (VGM) ticket vouchers. The expiration period will be reasonable when a VGM player receives notice that the ticket will expire. This proposed rule amendment is reasonable and necessary to create a period of time after the printing of a VGM ticket voucher for a player to present the ticket to the operator for payment.

23.16.1906 GENERAL SOFTWARE SPECIFICATIONS FOR VIDEO GAMBLING MACHINES (1) through (1)(g) remain the same.

(h) poker, keno, ~~or~~ bingo, or video line game programs submitted for approval on or after October 1, 2003 and all multigame programs must comply with ARM 23.16.1920;

(i) prominently displays the message "Promptly Redeem Your Win Tickets – Tickets Void After 48 hours" when the printing of a cash ticket is initiated;

(i) and (j) remain the same but are renumbered (j) and (k).

(2) remains the same.

(3) Unattended or auto-play is prohibited except for free games initiated by or as a result of a trigger game.

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

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The 2011 Legislature authorized video line games to be included with video keno, video bingo, and video poker in multigame video gambling machines. This proposed rule amendment is reasonably necessary to include video line games in the software specifications. The 2011 Legislature also authorized the department to establish a reasonable stale date for video gambling machine ticket vouchers. The amendment requires video gambling machines to display a screen that gives notice to a player that a win ticket will become invalid after 48 hours, and the department believes notice to the player is of central importance to the reasonableness of the 48-hour stale date.

The amendment also clarifies that video gambling machines may not allow unattended play (auto-play) when wagers are at risk and player intervention and/or choices are required in the play of the game. An exception is included for free games won as the result of a trigger game because the games are free, and do not risk or require a wager.

23.16.1909A SOFTWARE SPECIFICATIONS FOR VIDEO MULTIGAME MACHINES (1) remains the same.

(a) offer at least two approved types of games as follows:

~~(a)~~(i) video poker games ~~must~~ that comply with ARM 23.16.1907;

~~(b)~~(ii) video keno games ~~must~~ that comply with ARM 23.16.1908; ~~and~~

~~(c)~~(iii) video bingo games ~~must~~ that comply with ARM 23.16.1909; and

(iv) video line games that comply with [New Rule III].

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-602, 23-5-603, 23-5-608, 23-5-611, 23-5-621, 23-5-631, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: As explained in the rationale and justification for New Rule III and the proposed amendment to ARM 23.16.1802, the 2011 Legislature authorized video line games to be offered by licensed gambling operators only in multigame machines. This proposed amendment to ARM 23.16.1909A is reasonable and necessary to include video line games to the other

regulated types of video gambling, clarifies that multigame machines must offer at least two types of approved video gambling, and makes other nonsubstantive stylistic changes to the rule.

23.16.1910A BONUS GAMES (1) The department may approve bonus games that can be awarded to the player as a result of playing video poker, keno, ~~or~~ bingo, or video line games under the following conditions:

(a) before a bonus game may be awarded to the player, the player must achieve a ~~win~~ defined outcome by playing a video game authorized in Title 23, chapter 5, part 6, MCA; and

(b) the theoretical return of ~~the~~ all bonus games must be less than 50% of the overall theoretical return for that game.

(2) remains the same.

(3) Video ~~P~~poker, keno, ~~and~~ bingo, and video line games, authorized in Title 23, chapter 5, part 6, MCA, with or without altered play whether awarded free or for consideration, are not classified as bonus games. When subsequent games are awarded as a result of playing an authorized video poker, keno, ~~or~~ bingo, or video line game, awards in the corresponding trigger game cannot be affected by the play of those subsequent games.

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-112, 23-5-602, 23-5-603, 23-5-608, 23-5-611, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: As explained in the rationale and justification for New Rule III and the proposed amendment to ARM 23.16.1802, the 2011 Legislature enacted SB 361 which authorized video line games to be offered by licensed gambling operators in multigame machines. SB 361 also amended the definition of a "bonus game" in 23-5-602, MCA to a prize for achieving a "defined outcome" instead of a "win." This proposed amendment to ARM 23.16.1910A is reasonable and necessary to include video line games to the other regulated types of video gambling, to update the reference from "win" to "defined outcome," and make other nonsubstantive stylistic changes to the rule.

23.16.1920 AUTOMATED ACCOUNTING AND REPORTING SYSTEM, VIDEO GAMBLING MACHINE, HARDWARE AND SOFTWARE SPECIFICATIONS

(1) remains the same.

(a) The GSA SAS protocol specification documents may be obtained from GSA Main Office, ~~39355 California St., Suite 307~~ 48377 Fremont Blvd., Suite 117, Fremont, CA 94538; phone: (510) ~~744-4007~~ 492-4060; e-mail: sec@gamingstandards.com; or its web site (www.gamingstandards.com).

(b) The required minimum implementation of the GSA SAS protocol is defined in the Montana SAS Serial Protocol Implementation Guide. The guide is available on the Montana Department of Justice, Gambling Control Division web site (www.doj.mt.gov/gaming) and is available by request from the Gambling Control Division, Technical Services Section, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971.

(2) remains the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-603, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.1920 to correct and update the address, phone number, and e-mail address of the Gaming Standards Association (GSA), and to correct and update the web site information for the Gambling Control Division. These are clerical corrections and are not intended to have a substantive effect on the rule itself.

23.16.1924 PROHIBITED MACHINES (1) Any machine which, in substance, simulates the game of video poker, keno, ~~or~~ bingo, or video line games, without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited.

(2) Except as provided in ARM 23.16.~~2004~~2001, a person who owns or operates a machine described in (1) is in violation of the act, these rules, and Title 23, chapter 5, MCA. The civil and criminal penalties provided in those titles shall apply.

AUTH: 23-5-115, 23-5-602, 23-5-605, MCA
IMP: 23-5-152, 23-5-602, 23-5-603, 23-5-605, 23-5-606, 23-5-607, 23-5-608, 23-5-609, 23-5-611, 23-5-613, MCA

RATIONALE AND JUSTIFICATION: As explained in the rationale and justification for New Rule III and the proposed amendment to ARM 23.16.1802, the 2011 Legislature authorized video line games to be offered by licensed gambling operators. This proposed amendment to ARM 23.16.1924 is reasonable and necessary to include video line games to the other regulated types of video gambling referred to in the rule. This amendment also updates and corrects the citation to another rule. This is a clerical correction and is not intended to have a substantive effect on the rule itself.

23.16.1927 APPROVAL OF VIDEO GAMBLING MACHINES AND/OR MODIFICATIONS TO APPROVED VIDEO GAMBLING MACHINES BY DEPARTMENT (1) through (3)(a) remain the same.

(b) all the information required in ARM 23.16.~~1808~~1911 must accompany the machine or modification; and

(c) through (4) remain the same.

AUTH: 23-5-115, 23-5-602, 23-5-605, 23-5-621, MCA
IMP: 23-5-605, 23-5-606, 23-5-611, 23-5-621, 23-5-631, MCA

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.1927 to correct the citation to another rule and add authorizing and implementing statutes. This is a clerical correction and is not intended to have a substantive effect on the rule itself.

23.16.1931 INSPECTION AND SEIZURE OF MACHINES (1) The department has the right at all times to make an examination of any machine being used to play or simulate video poker, ~~video~~ keno, ~~or video~~ bingo, or video line games. Such right of inspection includes immediate access to all machines and unlimited inspection of all machine parts. The department may immediately seize and remove any machine or device which violates state law or these rules.

(2) and (3) remain the same.

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-113, 23-5-602, 23-5-603, 23-5-608, 23-5-611, 23-5-613, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: As explained in the rationale and justification for New Rule III and the proposed amendment to ARM 23.16.1802, the 2011 Legislature authorized video line games to be offered by licensed gambling operators. This proposed amendment to ARM 23.16.1931 is reasonable and necessary to include video line games to the other regulated types of video gambling referred to in the rule.

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) through (8) remain the same.

(9) Form 22 is available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site (www.doj.mt.gov/gaming/forms.asp).

AUTH: 23-5-115, 23-5-152, 23-5-621, MCA
IMP: 23-5-112, 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.2001 to add the Gambling Control Division's web address where Form 22 may be obtained online. This is merely an update to the rule. No substantive change is intended.

23.16.2101 COMBINATION OF VIDEO POKER, KENO, ~~AND~~ BINGO, AND VIDEO LINE GAMES (1) through (5) remain the same.

AUTH: 23-5-115, 23-5-602, 23-5-612, 23-5-621, MCA
IMP: 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: As explained in the rationale and justification for New Rule III and the proposed amendment to ARM 23.16.1802, the 2011 Legislature authorized video line games to be offered by licensed gambling operators. This proposed amendment to ARM 23.16.2101 is reasonable and

necessary to include video line games to the other regulated types of video gambling referred to in the rule.

23.16.2109 TESTING OF AUTOMATED ACCOUNTING AND REPORTING SYSTEMS (1) remains the same.

(a) the continued reporting and maintenance of records as provided in ARM 23.16.1826, 23.16.1826A, and 23.16.1827, during the test period;

(b) through (5) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-631, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.2109 to include reference to rule ARM 23.16.1826A, which was adopted in 2009 but inadvertently not included by reference in ARM 23.16.2109. The proposed amendment is reasonably necessary to include the reporting requirements under ARM 23.16.1826A to the tests contemplated under ARM 23.16.2109.

23.16.2401 DEFINITIONS Throughout this subchapter, the following definitions apply:

(1) remains the same.

(2) "Bingo" means a game of chance played for prizes with cards bearing numbers as described in law, in which the holder covers such numbers when objects similarly numbered are drawn or electronically determined, and in which the game is won by persons covering one or more previously designated arrangements of numbers on such cards. A game of bingo begins with the first number called and ends when an individual or individuals cover~~s~~ the previously designated arrangements, declare~~s~~ bingo, and the game is verified. ~~The value of prizes awarded during the game may not exceed a total of $100, or for approved variations, $100 for each winning pattern.~~

(3) remains the same.

(4) "Game" means a ~~session~~ single period of play during a bingo session in which a winner or winners are chosen or the game as defined in law or administrative rule ends.

(5) through (14) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-112, 23-5-409, 23-5-412, MCA

RATIONALE AND JUSTIFICATION: HB 127, enacted by the 2011 Legislature, provides general revisions to the maximum prices and payouts for live bingo games, and defines regular and special live bingo sessions, and established maximum total prize payouts for each of the regular and special sessions. The proposed amendments to ARM 23.16.2401 are reasonable and necessary because the definition of bingo need not include prize limits, as those limits are provided in ARM 23.15.2406. The amendment also attempts to clarify the definition of "game,"

which should now omit the word "session" to avoid confusion with the definition of "bingo session" now in statute.

23.16.2406 PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES
(1) through (2)(b) remain the same.
(i) the prizes paid out exceed ~~$100~~ $800 per winning pattern;
(ii) the total prizes paid during a regular bingo session exceed $3,000;
(iii) the total prizes paid during a special bingo session exceed $5,000;
(ii) and (iii) remain the same but are renumbered (iv) and (v).

AUTH: 23-5-115, MCA
IMP: 23-5-412, MCA

RATIONALE AND JUSTIFICATION: The 2011 Legislature enacted HB 127 which defined regular and special live bingo sessions, and established maximum total prize payouts for each of the regular and special sessions. This proposed amendment to ARM 23.16.2406 is therefore reasonable and necessary to correct and update the references to these new prize limitations.

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 August 11, 2011.

6. An electronic copy of this Notice of Proposed 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. A copy of the interested persons request form may be printed from the Department of Justice's web site at http://www.doj.mt.gov/resources/forms/interestedperson.pdf, and mailed to the rule reviewer.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and the primary bill sponsors were initially contacted on April 13, 2011 by e-mail and U.S. Postal mail.

By:	/s/ Steve Bullock	/s/ J. Stuart Segrest
	STEVE BULLOCK	J. STUART SEGREST
	Attorney General, Department of Justice	Rule Reviewer

Certified to the Secretary of State July 5, 2011.

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

In the matter of the amendment of ARM 24.171.401 fees, 24.171.408 outfitter records, 24.171.412 safety provisions, 24.171.512 inactive license, 24.171.602 guide license, 24.171.701 determination of client hunter use, 24.171.2101 renewals, and the adoption of NEW RULES I and II web site posting and successorship	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 8, 2011, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (board) no later than 5:00 p.m., on August 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2373; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdout@mt.gov.

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

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

~~(f) Annual fee for each additional hunting camp meeting the criteria in 37-47-318, MCA 5000~~

~~(g) Amendments to operations plan proposing an increase in net client hunter use (NCHU) 2000~~

~~(h) Fee for each new client added to operations plan by NCHU expansion request 500~~

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

(k) Notwithstanding the foregoing, the following fees will control for the 2012 license year:

(i) outfitter annual license	400
(ii) outfitter inactive status	225
(iii) initial and renewal guide license	175

(iv) activating inactive guide license 125

(n) remains the same, but is renumbered (l).

~~(2) The initial $5000 fee for each additional hunting camp approved for inclusion in the outfitter's operations plan pursuant to 37-47-318, MCA must be paid before the camp is used and in no event later than ten business days after written notice to the outfitter of the board's approval. Thereafter the annual fee is due on December 31. Inclusion of the camp in the outfitter's approved operations plan and the outfitter's authority to use the camp terminate automatically on December 31 of each year unless renewed for the following year by payment of the $5000 annual fee by that date.~~

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-47-201, 37-47-306, MCA
IMP: 37-1-134, 37-1-141, 37-1-319, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, ~~37-47-317,~~ 37-47-318, MCA

REASON: The 2011 Montana Legislature enacted Chapter 328, Laws of 2011 (House Bill 458), an act eliminating net client hunter use expansion, revising the board's duties regarding net client hunter use (NCHU), and eliminating certain fees. The chapter number was assigned May 6, 2011, and the bill goes into effect October 1, 2011.

The bill will eliminate the annual hunting camp fee and the fees associated with NCHU expansion requests. This board determined it is reasonably necessary to amend this rule and delete the NCHU expansion fees to align with the statutory changes.

The board determined that it is reasonably necessary to raise certain fees for the 2012 license year to ensure that licensure fees remain commensurate with costs. Due in part to additional information technology costs related to a new database, and also due to costs associated with a statutorily required, labor-intensive NCHU audit, the board is facing a revenue shortfall. It is expected that this temporary fee increase, combined with a number of cost-saving measures the board has already implemented, will be adequate to balance the board's budget. This increase will affect approximately 2,577 licensees and license applicants and result in $64,425 of additional revenue for the 2012 license year.

The board is amending the implementation cites to delete reference to a statute repealed by HB 458.

24.171.408 OUTFITTER RECORDS (1) Outfitters shall maintain current, true, complete, and accurate records at all times, submit the records to the board with application to renew ~~license~~ licenses, and make the records available at all times at the outfitter's main base camp or business office to enforcement or investigative personnel authorized or appointed by the board.

(2) remains the same.

(a) names and addresses of clients, except that fishing outfitters may omit client addresses;

(b) through (3) remain the same.

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

IMP: 37-47-301, MCA

REASON: Licensed outfitters are required to gather only the information necessary to identify clients served. Identifying information associated with individuals' conservation numbers is kept with the Department of Fish, Wildlife, and Parks (FWP). The board is amending this rule to no longer require fishing outfitters to gather client address information since it is kept by and available from another department. The board is not amending this requirement for hunting outfitters because fishing outfitters serve a substantially greater number of clients than hunting outfitters, and changing this requirement for hunting outfitters would require input from either the FWP or the Private Lands/Public Wildlife Council, which has not yet been provided.

24.171.412 SAFETY PROVISIONS (1) remains the same.

(2) Basic first aid certification must be obtained through a provider or course approved by the board on a case-by-case basis. A list of approved providers and courses shall be maintained on the board web site. An applicant may also meet basic first aid certification if the applicant provides proof of a certification, license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the board. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.

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

~~(3)~~ (4) ~~Each~~ Whenever guests are present, each watercraft~~,~~; vessel~~,~~; vehicle~~,~~; primary, secondary, and temporary base of ~~operation~~ operations ~~with guests present will~~ must possess a serviceable basic first aid kit.

~~(4)~~ (5) Each watercraft or vessel shall contain a serviceable U.S. Coast Guard approved personal floatation device for each person ~~on board~~ onboard. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable Type IV floatation device.

~~(5)~~ (6) All watercraft or vessels are required to carry ~~on board~~ onboard a supplementary means of power, such as an extra motor or extra oar that will adequately motivate the craft.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: The board is amending this rule to address existing confusion and debate concerning how guides, professional guides, and outfitters can satisfy the basic first aid requirement under this rule and ARM 24.171.602. The board concluded that it is best to approve providers, courses, and substitute training on a case-by-case basis, while also maintaining an updated list of approved methods on the board web site.

24.171.512 INACTIVE LICENSE (1) through (3) remain the same.

~~(4) An inactive outfitter who wishes to reactivate his or her license and has not previously established net client hunter use shall establish net client hunter use pursuant to 37-47-201(5)(d), MCA.~~

AUTH: 37-1-319, MCA
IMP: 37-1-319, MCA

REASON: The board is amending this rule to delete (4), because it specifies one particular requirement that is already mandatory under the general language of (3). Also, (4) contains a reference to a statutory provision that no longer exists.

24.171.602 GUIDE OR PROFESSIONAL GUIDE LICENSE (1) and (2) remain the same.

(3) Basic first aid certification must be obtained through a provider or course approved by the board on a case-by-case basis. A list of approved providers and courses shall be maintained on the board web site. An applicant may meet basic first aid certification if the applicant provides proof of a certification, license, or other credential that is equivalent to or greater than basic first aid certification, approved on a case-by-case basis by the board. The board may also maintain on its web site a list of certifications, licenses, and other credentials that will be routinely accepted as equivalent to or greater than basic first aid.

~~(3)~~ (4) ~~Except as provided below, when issued, the license shall be mailed to the endorsing outfitter retaining or employing the guide or professional guide. Thereafter, each additional~~ Each outfitter who uses the services of the guide during the license year shall sign the guide's license, and, following completion of the guide's service on behalf of the outfitter, shall specify dates on which the guide or professional guide provided service for the outfitter.

~~(4)~~ (5) An applicant for a guide or professional guide license who delivers a completed application and application fee to the board office will receive the license at that time~~, providing the endorsing outfitter has furnished the board office with written notice authorizing release of that guide's license to the guide~~.

~~(5) An outfitter may not endorse an application or a license for a guide or professional guide in the same license year that the outfitter sponsors the applicant or licensee for an outfitter sponsored license issued by the Montana Department of Fish, Wildlife and Parks.~~

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-101, 37-47-201, 37-47-301, 37-47-303, 37-47-307, 37-47-308, MCA

REASON: The board is proposing the addition of (3) for the reasons provided in the statement of reasonable necessity for ARM 24.171.412. The board is deleting (5) to align with the removal of outfitter sponsored licenses in I-161.

The board is amending renumbered (4) and (5) to address issues that have arisen involving guide licenses. Although an outfitter may endorse a guide for licensure, the guide is able to provide services to many outfitters in a season. A license is the property of the licensee and not that of the endorsing outfitter. The

board is aware that some outfitters have withheld a guide's license to prevent the guide from providing services to competing outfitters. Following amendment, the license will be issued directly to the guide, while still requiring that an outfitter signs the license of each guide providing services to that outfitter.

24.171.701 ~~DETERMINATION OF NET CLIENT HUNTER USE AND REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET CLIENT HUNTER USE UNDER EXISTING AND NEW OPERATIONS PLAN(S)~~ NCHU CATEGORIES, TRANSFERS, AND RECORDS

~~(1) An outfitter shall not expand net client hunter use without first applying for and receiving approval from the board for such expansion.~~

~~(2) Except as provided in (4) and (5), net client hunter use for outfitters shall be determined by taking the highest total number of hunting clients served by the outfitter and any guides working under the endorsement of the outfitter in a year during which the outfitter was licensed in the state of Montana, with a categorical breakdown of hunting clients served using licenses issued no later than December 31, 1995 as follows:~~

~~(a) Category 1, consisting of nonresident deer or elk clients holding B-10 or B-11 licenses ("big game outfitter sponsored");~~

~~(b) Category 2, consisting of all non-outfitter sponsored big game species clients; and~~

~~(c) Category 3, consisting of upland game bird and migratory game bird (waterfowl) clients ("non-big game").~~

~~(3) The outfitter shall designate net client hunter use for each of the categories, under affirmation by oath on a form provided by the board. The outfitter shall specify the year or years from which the use is designated. If use is designated from any year prior to 1988, the outfitter claiming such use must submit documentation of such use, which shall be subject to approval of the board. The use designated by the outfitter shall be subject to random audit by the board's investigators. Submission of false information regarding net client hunter use is specifically designated as unprofessional conduct, and may result in revocation of the outfitter's license.~~

~~(4) When an existing outfitter purchases an outfitting business or any portion thereof in the state of Montana and makes application to the board for an expansion, the outfitter may designate net client hunter use in an amount equal to his or her historical use, plus the net client hunter use transferred from the selling outfitter to the applicant outfitter. For proposed new use by a newly licensed outfitter, net client hunter use shall be determined by the board as part of its order under this rule.~~

~~(5) In cases where a federal agency limits use on federal lands, hunter use of the outfitter providing authorized services on such lands shall be regulated by such federal agency. In all other cases, net client hunter use on federal lands shall be determined under either (2), (3) or (4) as applicable.~~

~~(6) Net client hunter use of each outfitter must be specific as to the category designated by the outfitter (big game outfitter sponsored, big game non-outfitter sponsored and non-big game). An outfitter may, in any one year which the outfitter has unserved Category 1 clients (outfitter sponsored), serve the unserved clients~~

~~under Category 2. An outfitter shall not exchange, trade or substitute between any other category of net client use.~~

~~(7) An application for proposed expansion in net client hunter use under an existing operations plan, and applications by license applicants proposing new operations plans involving hunting use, shall be made on forms provided by the board. The board shall maintain a copy of the proposal in the board's office.~~

~~(8) The board shall issue an order, in accordance with the provisions set forth in 37-47-316 and 37-47-317, MCA, supported by findings of fact and conclusions of law, either granting, denying or modifying the proposal. A copy of the order shall be provided by regular mail to the individual submitting the request and any persons, associations or agencies submitting comments.~~

~~(9) Any party aggrieved by the board's decision may appeal such decision to the district court in the county affected by the proposal, within 30 days following the date of service by regular mail of the final order.~~

(1) NCHU categories are as follows:

(a) Category 1, consisting of all clients served in the pursuit of big game; and

(b) Category 2, consisting of all clients served in the pursuit of upland game birds, water fowl, and turkeys.

(2) Category 1 NCHU is accounted for and established on the basis of the hunting licenses held by clients served. Category 2 NCHU is accounted for and established on the basis of the individual clients served, regardless of licenses held. For example, a client having a deer/elk/upland game bird combination license requires one Category 1 NCHU of the outfitter, regardless of whether one or both big game species are pursued under that license, and the same client requires one Category 2 NCHU when the upland game bird is pursued.

(3) In cases where a federal agency limits an outfitter's use of federal lands by some means other than NCHU, an outfitter is not required to have NCHU to perform services on those lands and may not use clients served on those lands in order to establish NCHU.

(4) An outfitter's total authorized NCHU includes both established NCHU and nonestablished NCHU.

(5) An outfitter's "client base" is the NCHU that has been established in accordance with this rule. NCHU is established only if one of the following applies to it:

(a) Board records show the outfitter was licensed on or before April 28, 2001, and had established the NCHU through use of it on or before December 31, 2004.

(b) Board records show the NCHU was obtained through an approved expansion request. However, if the approved expansion was granted to an outfitter newly licensed after April 28, 2001, then it was established only if used by that outfitter within five and a half years after the expansion.

(c) Board records show the NCHU was transferred to the outfitter from another licensed outfitter and was used in any license year during the five and a half years following the transfer. An outfitter may elect an early adjustment of NCHU by:

(i) submitting a completed form prescribed by the board for the purpose of establishing NCHU prior to the expiration of the five and a half year time period; and

(ii) consenting to an adjustment of the client base to reflect the highest number of clients served in any category in any license year, since the date of the transfer.

(6) An outfitter transferring NCHU to another outfitter must do so by completing a form prescribed by the board. Only NCHU that has been established in accordance with this rule may be transferred, and a transfer of established NCHU may not occur if the licensee holds any nonestablished NCHU.

(7) NCHU adjustments shall occur based on the most clients served during the five and a half years after the board's receipt of a valid form transferring NCHU.

(8) The records of the board comprise the official records of NCHU and each purported transfer of NCHU is invalid and void, unless and until the date that the proper and completed form is received by the board office.

(9) When NCHU is transferred to a license applicant, the transfer is not valid and the time period for establishing the NCHU does not begin until the date the application is approved.

(10) An outfitter who is subject to an adjustment of NCHU under 37-47-316, MCA, that would otherwise occur on or before December 1, 2013, shall have up to and including December 1, 2013, to establish the NCHU. The category definitions under this rule may be applied retroactively for purposes of establishing NCHU.

(11) Upon an adjustment of NCHU, all of the outfitter's nonestablished NCHU subject to the adjustment ceases to exist.

(12) When the board adjusts an outfitter's NCHU, the board will provide the outfitter notice and the right to a hearing in the manner provided in disciplinary matters.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: The board is amending this rule and proposing new rules to address the NCHU adjustment requirement of 37-47-316, MCA, recently clarified in HB 458. The board concluded that a retroactive adjustment of NCHU under the former 37-47-316(5), MCA, would prejudice a great number of the outfitters. The board believes the application of the adjustment requirement has never been clearly or uniformly understood.

The board recently initiated an audit of NCHU transfers and concluded that outfitters have not fully appreciated the effect of 37-47-316, MCA, on NCHU transfers. The audit showed that licensed outfitters, who are permitted to freely transfer NCHU under 37-47-202(4)(c), MCA, have routinely failed to use NCHU within five and a half years of each transfer. Without this rule amendment, the failure to use transferred NCHU would require the adjustment and elimination of a significant amount of NCHU affecting approximately 70 percent of all outfitters.

In addition, because some unused NCHU has passed through the hands of multiple outfitters, a retroactive adjustment of NCHU to the first outfitter who received it through a transfer would negate every subsequent transfer of that NCHU, multiplying the NCHU adjustments.

HB 458 substantially amended 37-47-316, MCA, deleting all references to "newly licensed" outfitters and the distinctions between NCHU established within

specified periods of time. What remains is the requirement to adjust NCHU not used within five and a half years of a transfer. The amendments to this rule will extend the time for establishing NCHU, protect transferors of NCHU who transferred NCHU prior to the effective date of the amendments, and provide a process to allow the free transfer of established NCHU, while prohibiting the transfer of nonestablished NCHU.

The board notes that following the passage of ballot Initiative 161, outfitters may no longer serve clients under the previous NCHU "Category 1." This rule amendment will also delete outdated sections, align with changes created by I-161, reconcile the rule with the board's intent regarding NCHU application, and ensure adequate records of NCHU.

24.171.2101 RENEWALS (1) and (2) remain the same.

(a) the required renewal fee;

(b) the annual "hunting client served" fee required under ARM 24.171.401;

(b) through (e) remain the same, but are renumbered (c) through (f).

(3) An outfitter, guide, or professional guide must submit a completed renewal application with the required fee ~~in accordance with (2)~~ on or before the date set by ARM 24.101.413 of each license year.

(4) remains the same.

(5) License renewal applications for guides and professional guides shall be made on forms provided by the board and shall be accompanied by the required fee.

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

IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, 37-47-318, MCA

REASON: The board has discovered that some licensees have historically refused to pay the annual $2 fee per hunting client required by ARM 24.171.401(1)(e), without wasteful expense by the board. The board is amending this rule to allow the revision of the renewal form to include the outfitter's certification that the fee has already been paid. Renewal of a license when the fee has not been paid may become a disciplinary matter under the board's current statutes and rules.

The board is also amending this rule to reconcile with recent rule changes that provide for the renewal of guide and professional guide licenses. Implementation cites are being amended to accurately reflect all statutes implemented through this rule.

4. The proposed new rules provide as follows:

NEW RULE I WEB SITE POSTING OF LICENSE DISCIPLINE (1) For purposes of ARM 24.101.404, each first-time violation of the following acts constitutes a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law:

(a) lack of first aid card if no client is served during the lapse;

(b) an outfitter's failure to ensure that a guide has a first aid card if no client is served during the lapse;

(c) failure to display required information on a water vessel;
(d) incomplete or faulty log book entries;
(e) failure to maintain insurance if no client is served during the lapse;
(f) use of a nonsufficient funds check;
(g) failure to carry current guide or outfitter license while providing services;
(h) failure to carry a current fishing license; and
(i) failure to have a current conservation license.

(2) No conduct is a failure to file or complete in a timely manner a minor administrative requirement that is in rule or law if the board determines that the conduct constitutes fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the licensee.

(3) If an applicant is denied a license only because of an incomplete application or because the applicant lacks the required days of verified experience, a first aid card, an ALS number, the proper amount of fees, or other similar item or requirement, then the denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues.

(4) No license denial is based solely on the applicant's failure to meet minimum licensure qualifications, and not based on competence to practice issues if the board determines the application involves the applicant's fraud, dishonesty, or a careless or intentional disregard for the rules, statutes, or standards applicable to the applicant.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-1-311, MCA

REASON: Section 37-1-311, MCA, requires the department to report disciplinary actions against licensees by posting certain documents on a publicly available web site, while 37-1-101 requires the department to establish uniform rules for all boards to comply with 37-1-311. ARM 24.101.404, the department rule that implements these statutes, states that final orders based only upon a failure to file or timely complete minor administrative requirements are not disciplinary actions for the purposes of publication and notice on licensee lookup.

The board concluded that the department's rule leaves room for interpretation as to what constitutes minor administrative requirements. The board is proposing New Rule I to provide that interpretation as it applies to rules and laws specific to the board's licensees.

NEW RULE II SUCCESSORSHIP (1) The decision of whether to approve or conditionally approve a successor designated by the family of a deceased or incapacitated outfitter pursuant to 37-47-310, MCA, lies in the sole discretion of the board. However, the board chairperson may approve or conditionally approve a person designated by the family to outfit in place of the outfitter until the next regularly scheduled board meeting.

(2) Prior to approval, a successor must meet all qualifications for licensure aside from the experience and testing requirements. Among other conditions, approval may be granted upon the condition that documentation of certain licensure requirements will be received by the board no later than a specified date. If the

documentation of licensure requirements is not received in a timely manner, board staff shall immediately place the license on inactive status until the board is able to reconsider the conditional approval.

(3) A successor stands in the shoes of the outfitter for purposes of the board's power to administer and enforce the statutes and rules applicable to outfitters. Notwithstanding any agreement to the contrary, a successor is jointly and severally liable with the estate of the successor for all fines and fees owed in relation to the outfitter license. The successor continues to outfit, subject to the authority of the board, to the same extent as if the successor were the outfitter.

(4) A successor must appear before the board on an annual basis to request continuation of the successorship and to report the progress made toward licensure of the successor or sale of the business. In addition to all other powers of the board, the board may terminate a successorship at any time, and in the sole discretion of the board.

(5) NCHU allocated to the outfitter may be transferred only by a successor. The successor is authorized to transfer NCHU on behalf of the outfitter. NCHU of the outfitter is not "transferred" to the successor for purposes of 37-47-316, MCA, unless and until the successor becomes licensed.

(6) A successor seeking licensure must meet all the qualifications of an outfitter, successfully complete the required examination, and submit to the board all required applications, fees, and other documents and information no later than the date that is three years from the date the successorship was approved. If a successor obtains licensure, the NCHU is transferred to the successor as a newly licensed outfitter.

(7) If the successor does not timely meet the foregoing requirements, then the license must be immediately placed on inactive status until one of the following occurs:

(a) the board refuses to continue the successorship;

(b) the successor qualifies for licensure; or

(c) the license terminates or is revoked.

(8) In the discretion of the board, and in addition to all other waivers that the successor may qualify for, a successor may request a waiver of up to 50 days of experience for each license function (hunting and fishing) by sufficiently documenting the successor's past experience and involvement with the particular outfitting business that occurred prior to the date the successorship was approved, and the successor may also use experience gained as a successor toward the licensure requirements.

(9) The family of the outfitter designates a successor when a written application for successorship, along with all other documents showing compliance with this rule, is received by the board on a form prescribed by the department. The form must be completed by someone who is at least 18 years old.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-310, MCA

REASON: The board receives several requests for successorship each year, and there are a number of successors who have continued to operate outfitting

businesses beyond the license year, when the successorship became necessary to operate the business. New Rule II is necessary to provide reasonable limitations on and conditions for approval for board-granted successorships under 37-47-310, MCA. It also identifies specific criteria that must be met for a person to operate as a successor to an outfitter, and place a timeline for the person to obtain licensure.

New Rule II will incorporate existing board policy into rule, and is needed at this time to provide guidance in determining who may be a successor, and to ensure that individuals performing the functions of a licensed outfitter meet all qualifications required by the board.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., August 16, 2011.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 27, 2011, by regular mail.

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

BOARD OF OUTFITTERS
TIM LINEHAN, CHAIRPERSON

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

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

Certified to the Secretary of State July 5, 2011

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

In the matter of the amendment of ARM 36.12.101, 36.12.102, 36.12.103, and 36.12.1701 regarding water right permitting	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On August 10, 2011, at 1:00 p.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 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 5:00 p.m. on July 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-9754, fax (406) 444-0533, e-mail mheffner@mt.gov.

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

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 (3) remain the same.

(4) "Applicant" means the "person", as defined in 85-2-102~~(14)~~, MCA, who files a permit or change application with the department.

(5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, ~~including criteria addendum form No. 600A, 600B, or 600ACF,~~ or an application to change a water right, Form No. 606~~, including criteria addendum Form No. 606A, 606B, 606ASW, or 606T~~.

(a) through (23) remain the same.

(24) "Existing right", in addition to ~~the~~ its definition ~~given the term by~~ in 85-2-102~~(8)~~, MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.

(25) through (32) remain the same.

(33) "Manifold" means two or more diversions from the same source, which are connected into a single system for the same project or development. An example of a manifold system is two pumps on one source, or two wells pumping from the same aquifer which divert water into the same reservoir or cistern.

(33) through (78) remain the same but are renumbered (34) through (79).

AUTH: 85-2-113, 85-2-308, 85-2-370, MCA
IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, MCA

REASONABLE NECESSITY: These amendments are reasonably necessary to remove obsolete earmarks and forms. The definition for "manifold" has also been moved to this rule from ARM 36.12.1701 since it a definition that applies throughout the subchapter.

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at http://dnrc.mt.gov/wrd/default.asp. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600, "Application for Beneficial Water Use Permit", which must be submitted ~~(~~for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations~~):~~ ;

~~(i) Form No. 600A, "Criteria Addendum, Application for Beneficial Water Use Permit,"information must be submitted for appropriations of less than 4000 acre-feet and 5.5 cfs; or~~

~~(ii) Form No. 600B, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of 4000 acre-feet or more and 5.5 cfs or more.~~

(b) Form No. 602, "Notice of Completion of Groundwater Development", which must be submitted ~~(~~for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year~~)~~;

(c) Form No. 603, "Well Log Report";

(d) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir", which must be submitted for a pit or reservoir with a ~~(~~maximum capacity ~~of the pit or reservoir must be~~ of less than 15 acre-feet and a total appropriation of less than 30 acre-feet per year~~)~~;

(e) Form No. 606, "Application to Change a Water Right"~~:~~;

~~(i) submission of this application must include information required by the following criteria addenda, when applicable:~~

~~(A) Form No. 606B, "Supplement to Application to Change a Water Right"(for changes in purpose of use or place of use of 4000 or more acre-feet a year and 5.5 cfs or more);~~

~~(B) Form No. 606ASW, "Supplement to Application to Change a Water Right" (for salvage water); or~~

~~(C) Form No. 606T, "Temporary Change Supplement to Application to Change a Water Right".~~

(f) remains the same.

(g) Form No. 608, "Water Right Ownership Update"~~:~~ ;

~~(i) Form No. 608A, "Addendum to Water Right Ownership Update Form for Apportioned Water Right".~~

(h) through (p) remain the same.

(q) Form No. 634, "Replacement Well Notice", which must be submitted ~~(~~for municipal wells that do not exceed 450 gpm, or for all other wells that do not exceed 35 gpm and ten acre-fee per year~~)~~;

(r) Form No. 635, "Redundant Well Construction Notice", which must be submitted ~~(~~for redundant wells in a public water supply system as defined by 75-6-102, MCA~~)~~;

(s) remains the same.

(t) Form No. 637, "Reinstatement Request", which must be submitted ~~(for reinstating~~ to reinstate a permit or change authorization~~)~~;

(u) Form No. 638, "Water Reservation Application for Instream Flow", which must be submitted ~~(~~for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B~~)~~;

(v) Form No. 639, "Waiver of Statutory Timelines";

(~~v~~w) Form No. 640, "Certification of Water Right Ownership Update", which ~~(~~must be completed and submitted to the county clerk and recorder with a Realty Transfer Certificate when a water right is being divided or exempted ~~[~~(reserved)~~]~~ from the property~~)~~;

(~~w~~x) Form No. 641, "DNRC Ownership Update, Divided Interest", which must be submitted ~~(use~~ for a water right that will be divided~~)~~;

(~~x~~y) Form No. 642, "DNRC Ownership Update, Exempt (Reserved) Water Right", which must be submitted ~~(use~~ for a water right that will be exempted ~~[~~(reserved)~~]~~ from a sale of land, and for which the seller will retain ownership of the water right); ~~and~~

(~~y~~z) Form No. 643, "DNRC Ownership Update, Severed Water Right", which must be submitted where a water right will be severed from the land. ~~(use to sever a water right from land.~~ A severed water right does not involve a land sale~~)~~;~~.~~

(aa) Form No. 644, "Notice of Replacement Point of Diversion", which must be submitted for replacement of surface water points of diversion under 85-2-402(18), MCA;

(ab) Form No. 645, "Permit Registration for Groundwater Use Within the National Park Service Compact Area", which must be submitted for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year;

(ac) Form No. 646, "Geothermal Heating/Cooling Notice of Completion", which must be submitted for groundwater developments for a geothermal purpose with a maximum use of 350 gpm;

(ad) Form No. 647, "Notice of Completion of Emergency Fire Protection Development", which must be submitted for groundwater developments by local governmental fire agencies organized under Title 7, chapter 33, MCA, for emergency fire protection; and

(ae) Form No. 648, "Petition to Subordinate a State Water Reservation".

AUTH: 85-2-113, MCA
IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA

REASONABLE NECESSITY: The 2011 Legislature passed several bills that impact groundwater permitting. SB 103 created an exception in the permitting process for nonconsumptive geothermal use. Form No. 646 is needed to obtain the necessary information from water right owners who complete certain nonconsumptive geothermal groundwater developments. SB 128 exempts local governmental fire agencies that are organized under Title 7, chapter 33, MCA, from permitting requirements. Form No. 647 is needed to obtain the necessary information from water right owners who are completing a groundwater development for emergency fire protection. Form 644 is necessary to obtain information from water right owners replacing surface water points of diversion, and Form 645 is necessary to obtain information from an applicant who intends to appropriate groundwater in the National Park Service Compact Area under 85-2-402(18). The amendments also correct formatting and grammatical errors and remove obsolete forms.

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, or petition application (hereafter singularly or collectively referred to as application) is filed with the department.

(a) The department will not process any application without the proper filing fee.

(b) Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete and it shall be terminated.

(2) The department will assess the following filing fees:

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of $800;

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of $200;

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or

a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of $600;.

(d) $150, in addition to the fees in either (a), (b), or (c) for For an Interim Permit Request, Form No. 636;, there shall be a fee of $150 in addition to (1)(a), (b), or (c).

(e) $125 for For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year), Form No. 602, filed for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year; there shall be a fee of $125.

(f) $125 for For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, filed for a pit or reservoir with a maximum capacity less than 15 acre-feet; there shall be a fee of $125.

(g) $700 for For an Application to Change a Water Right, Form No. 606, there shall be a fee of $700, except in the following instances, where there shall be a fee of $200 fee when:

(i) if the change application, Form No. 606, concerns a replacement well, greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or

(ii) if the change application, Form No. 606, concerns only moving or adding stock tanks to an existing system;.

(h) $200 for For an Application for Extension of Time, Form No. 607;, there shall be a fee of $200.

(i) $50, plus $10 for each water right transferred after the first water right, for For a Water Right Ownership Update, Form No. 608, there shall be a fee of $50, plus $10 for each water right transferred after the first water right, . The total amount shall not to exceed a maximum of $300;.

(j) $25 for For filing an Objection to Application, Form No. 611;, there shall be a fee of $25.

(k) $200 for For an Application to Renew a Temporary Water Right Change, Form No. 626;, there shall be a fee of $200.

(l) $1500 for For a Controlled Groundwater Area Petition, Form No. 630., there shall be a fee of $1500, plus tThe petitioner shall also pay:

(i) publication costs of the proposed rules in the Montana Administrative Register;

(ii) photocopy and postage costs for copying and mailing the Administrative Rule Proposal Notice and appointment of the hearing examiner to all land owners and water right owners located within the proposed boundaries and other persons as required by 85-2-319, MCA;

(iii) photocopy and postage costs for copying and mailing the Notice of Adoption and other documents as needed;

(iv) newspaper publication of the Notice of Rulemaking Hearing;

(v) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel;

~~(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner, notice of hearing, and petition to all land owners and water right owners located within the proposed boundaries, and other persons as required by 85-2-506, MCA;~~

~~(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;~~

~~(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;~~

~~(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and~~

~~(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.~~

(m) $1500 for ~~For~~ a Petition for Closure of a Highly Appropriated Basin, Form No. 631., ~~there shall be a fee of $1500, plus~~ t~~T~~he petitioner shall also pay:

(i) through (v) remain the same.

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel;~~.~~

(n) $100 for ~~For~~ a Replacement Well Notice, Form No. 634;~~, there shall be a fee of $100.~~

(o) $50 for ~~For~~ a Redundant Well Construction Notice, Form No. 635;~~, there shall be a fee of $50.~~

(p) $200 for ~~For~~ a Reinstatement Request, Form No. 637;~~, there shall be a fee of $200.~~

(q) $800 for ~~For~~ a Water Reservation Application for Instream Flow, Form No. 638., ~~there shall be a fee of $800, plus~~ T~~t~~he applicant shall also pay:

(i) and (ii) remain the same.

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner; and

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; ~~and~~

~~(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.~~

(r) $50 for each divided water right on ~~For~~ Form No. 641, DNRC Ownership Update, Divided Interest;~~, there shall be a fee of $50 for each divided water right.~~

(s) $50 for each exempted water right on ~~For~~ Form No. 642, DNRC Ownership Update, Exempt (Reserved) Water Right;~~, there shall be a fee of $25 for each exempted water right.~~

(t) $50 for each severed water right for ~~For~~ Form No. 643, DNRC Ownership Update, Severed Water Right;~~, there shall be a fee of $50 for each severed water right.~~

(u) $400 for Form No. 644, Notice of Replacement Point of Diversion;

(v) $200 for Form No. 645, Permit Registration for Groundwater Use Within the National Park Service Compact Area;

(w) $200 for Form No. 646, Geothermal Heating/Cooling Notice of Completion; and

(x) $125 for Form No. 647, Notice of Completion of Emergency Fire Protection Development.

~~(2)~~ (3) There shall be no fees charged for filing the following forms:

~~(a) Form No. 608A, Addendum to Water Right Ownership Update Form for Apportioned Water Right;~~

(b) and (c) remain the same but are renumbered (a) and (b).

(~~d~~c) Form No. 625, Correction to a Water Right; ~~and~~

(d) Form No. 639, Waiver of Timelines;

(e) Form No. 640, Certification of Water Right Ownership Update; and~~.~~

(f) Form No. 648, Petition to Subordinate a State Water Reservation.

~~(3)~~ (4) The department will charge special service fees not to exceed reasonable amounts, including, but not limited to ~~for~~ the following ~~services~~:

~~(a) microfilm, reader-printer copies;~~

~~(b) photostatic copies;~~

~~(c) requested computer services;~~

~~(d) blueprints or tracings;~~

(a~~e~~) costs associated with contracting for professional hearings officer services;

(b) costs for computer data reports; and

(c) reasonable public information access fees including copies, blueprints or tracings, audio copies of a hearing, and other requests as per 2-6-110, MCA, and department public information policy.

~~(f) audio copy of hearing.~~

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-402, 85-2-436, 85-20-401, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, DNRC may prescribe fees for public service provided under the Montana Water Use Act. DNRC evaluated processing costs for the new forms to determine the fee amounts for forms 642, 644, 645, 646, and 647. The proposed fees are expected to generate the following revenues (for a total of $14,050 per year) and affect the following numbers of individuals: (1) Form No. 642: $400 per year, approximately eight people; (2) Form No. 644: $1600 per year, approximately four people; (3) Form No. 645: $8800 per year, approximately 44 people; (4) Form No. 646: $2000 per year, approximately ten people; and (5) Form No. 647: $1250 per year, approximately ten local governmental fire agencies. The amendments also correct formatting and grammatical errors.

36.12.1701 FILING A PERMIT APPLICATION (1) An application for beneficial water use permit (Form No. 600) must be filed when an applicant desires to use:

(a) groundwater that exceeds 35 gallons per minute or a volume of 10 acre-feet;~~,~~

(b) groundwater developments that exceed 350 gallons per minute for nonconsumptive geothermal use; ~~or for groundwater~~

(c) groundwater sources within a controlled groundwater area, as required;~~,~~ or ~~for~~

(d) all surface water appropriations.

~~(2) An application must contain sufficient factual documentation to constitute probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the application.~~

~~(3) Form No. 600 and the applicable criteria addendum must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information.~~

(2) Separate applications are required for:

(4a) ~~E~~each source of supply ~~requires a separate application~~. For example, if an application is for two diversions, one on an unnamed source and another on a source to which it is tributary, two separate applications must be submitted, one for each source of supply; and~~.~~

(b) multiple purposes supplied by different points of diversion on the same source. If the entire project is manifold into one system, then a single application is allowed.

(~~5~~3) One application is allowed for:

(a) one purpose and multiple points of diversion on the same source; and~~.~~

~~(6) One application is allowed~~

(b) for several purposes, if all the points of diversion supply all of the same purposes.

~~(7) Separate applications are required if multiple purposes are supplied by different points of diversion on the same source, except if the entire project is manifold into one system, then a single application is allowed. "Manifold" means two or more diversions from the same source, which are connected into a single system for the same project or development. An example of a manifold system is two pumps on one source or two wells pumping from the same aquifer which divert water into the same reservoir or cistern.~~

(4) An application must contain sufficient factual documentation to constitute probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the application.

(5) Form No. 600 must be completed and must describe the details of the proposed project. The form must be filled in with the required information. The following must be included in the permit application materials:

(~~8~~a) ~~C~~calculations, references, and methodologies used to determine flow rate, volume, or reservoir capacity must be included in the application materials;~~.~~

(~~9~~i) ~~F~~flow rate (in gallons per minute [gpm] or cubic feet per second [cfs]), volume (in acre-feet), or reservoir capacity (in acre-feet) figures will be rounded to the nearest tenth;~~.~~

(~~10~~b) ~~The~~ the source name, which must be identified as per ~~standards outlined in~~ ARM 36.12.114; ~~must be followed.~~

(~~11~~c) ~~The~~ the legal descriptions for the point of diversion and place of use, which must be identified as ~~required under~~ per ARM 36.12.110; ~~.~~

(~~12~~d) ~~The~~ the period of diversion, which must be identified as per ~~standards outlined in~~ ARM 36.12.112; ~~must be followed.~~

(~~13~~e) if an application involves a reservoir, the ~~The~~ reservoir standards as per ~~outlined in~~ ARM 36.12.113 must be followed; ~~if an application involves a reservoir.~~

(~~14~~f) ~~The permit application materials must include~~ a general project plan stating when and how much water will be put to beneficial use; ~~.~~

(i) ~~F~~for appropriations over 4000 af or more and 5.5 cfs or more, or for water marketing, additional information is required, as per ~~by~~ 85-2-310~~(4)(a)~~, MCA; ~~.~~

(~~15~~g) if ~~P~~photographs are included, they must include the name of the photographer, the date taken, and an explanation of what fact or issue the photograph is offered to verify; ~~.~~

(~~16~~h) ~~I~~if there are associated water rights to the application, they must be identified and additional information may be required; ~~.~~

(~~17~~i) ~~I~~if a permit application is to supplement another water right, the water right numbers and abstracts of the associated water rights; ~~must be included in the application.~~

(~~18~~j) ~~A~~an explanation of why supplemental water is needed and how the associated water rights will be managed; ~~must be included in the application materials.~~

(~~19~~k) ~~T~~the flow rate at which water will be diverted from the source of supply for each purpose, a reasonable volume of water for each purpose, and the period of time that water will be used for each purpose must be identified; ~~.~~

(~~20~~l) ~~A~~an application that is ~~to~~ only to increase the flow rate or volume must reflect a value of zero in the nonapplicable field. For example, if an applicant is applying to only increase the flow rate of water taken from a source, but no additional volume is needed, the application flow rate blank should be completed with the additional flow of water requested and the blank for acre-feet (volume) should reflect zero; ~~.~~

(~~21~~m) ~~I~~information ~~must be included in the application~~ that explains why the time period for completion is requested. The explanation may include information about the cost and magnitude of the project and the complexity of the project or any other reason for the time period identified to complete the project; and ~~.~~

(~~22~~n) ~~A~~an applicant shall explain why required information is not applicable to the applicant's proposed project.

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, 85-2-311, MCA

REASONABLE NECESSITY: The 2011 Legislature passed several bills that impact groundwater permitting. SB 103 created an exception in the permitting process for nonconsumptive geothermal use. This amendment reflects the exception for a groundwater development that exceeds 350 gallons per minute for nonconsumptive geothermal use. The amendments also correct formatting and grammatical errors.

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail mheffner@mt.gov, and must be postmarked no later than 5:00 p.m. on August 11, 2011.

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

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment 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.

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 sent 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on June 30, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne W. Yates
ANNE W. YATES
Rule Reviewer

Certified to the Secretary of State on July 5, 2011.

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

In the matter of the amendment of ARM 37.85.212 and 37.86.105 pertaining to the resource based relative value scale (RBRVS) and the reimbursement for physician administered drugs	)))))	AMENDED NOTICE OF PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-541 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 865 of the 2011 Montana Administrative Register, Issue Number 10. The department held a public hearing on June 15, 2011, and the initial comment period was scheduled to end on June 23, 2011.

2. On July 21, 2011, at 10:00 a.m., the Department of Public Health and Human Services will hold a second 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. This second hearing will supplement the hearing held on June 15, 2011.

3. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 18, 2011 to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

4. ARM 37.86.105 remains as proposed.

5. ARM 37.85.212 remains as proposed, but with the following changes to the original proposal notice, new matter underlined, deleted matter interlined:

<u>37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES</u> (1) through (1)(b) remain as proposed.

(i) physician services, which applies to the following health care professionals listed in (2): physicians, mid-level practitioners, podiatrists, public health clinics, independent diagnostic testing facilities (IDTF), qualified Medicare beneficiary (QMB) and early and periodic screening, diagnostic and treatment (EPSDT)

chiropractors, laboratory and x-ray services, family planning clinics, and dentists providing medical services. The conversion factor for physician services for state fiscal year 2012 is ~~$32.84~~ $33.23;

(ii) remains as proposed.

(iii) mental health services, which applies to the following health care professionals listed in (2): licensed psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year 2012 is ~~$22.19~~ $22.23; and

(iv) through (14) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA,
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-125, MCA

6. REASON: Given legislative appropriations and the requirements of 53-6-124 and 53-6-125, MCA, the department originally proposed in MAR 37-541 conversion factor amounts of: physician services ($32.84), allied services ($23.24), mental health services ($22.19), and anesthesia services ($27.55).

Comments were received from the provider community indicating they did not have enough information to review at the initial rule hearing. In order to accommodate public participation, inspection, and provide sufficient information we are holding a second public hearing.

Over the course of several years, providers have shifted their practice location from office settings to facility settings. Presently more than half of Medicaid dollars for physician claims have a facility place of service. Because of this changing dynamic, the department remodeled its claims data for RBRVS providers. The department now finds that the proposed conversion factor amounts are: physician services ($33.23), allied services ($23.24), mental health services ($22.23), and anesthesia services ($27.55).

Fiscal Impact

The estimated cumulative fiscal impact of these rules is:

	Total Cost	State General Fund	Federal Match
9/1/11 - 6/30/12	($327,452)	($110,712)	($216,740)

This rule amendment is estimated to impact 13,400 Medicaid providers and 108,000 Medicaid clients.

7. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Kenneth Mordan at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on July 25, 2011. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or

resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 3 above or may be made by completing a request form at any rules hearing held by the department.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail, e-mail, and telephone on July 5, 2011.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 5, 2011

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

In the matter of the amendment of ARM 37.86.2224, 37.87.808, 37.87.901, and 37.87.903 pertaining to Children's Mental Health Bureau rate reduction	)))))	AMENDED NOTICE OF PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-543 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 874 of the 2011 Montana Administrative Register, Issue Number 10. The department held a public hearing on June 15, 2011, and the initial comment period was scheduled to end on June 23, 2011.

2. On July 21, 2011, at 1:00 p.m., the Department of Public Health and Human Services will hold a second 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. This second hearing will supplement the hearing held on June 15, 2011.

3. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 18, 2011 to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

4. ARM 37.86.2224, 37.87.808, and 37.87.903 remain as proposed.

5. ARM 37.87.901 remains as proposed, but with the following change to the original proposal notice, new matter underlined, deleted matter interlined:

<u>37.87.901 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, REIMBURSEMENT</u> (1) Medicaid reimbursement for mental health services shall be the lowest of:

(a) remains as proposed.

(b) the rate established in the department's fee schedule. The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated ~~August 1, 2011~~ <u>September 1, 2011</u>. A copy of the fee schedule may be

obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at www.mt.medicaid.org.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA-

6. REASON: The proposed rule changes included notification of a draft fee schedule that reflected incorrect rates appearing to reduce mental health rates more than intended by the department. The department will post a draft of the correct proposed rates at the Children's Mental Health Bureau's web site at www.dphhs.mt.gov/mentalhealth/children/, extend the comment period, and hold a second hearing to allow for public comment.

The proposed rule notice, published on May 26, 2011, omitted the fiscal impact statement. This proposed amendment notice includes the fiscal impact statement.

Fiscal Impact

Based on year-to-date (YTD) claims information from state fiscal year (SFY) 2010, about 3,550 youth received case management for a cost of $5 million per year. Based on YTD claims information from SFY 2010, 6,057 youth received outpatient therapy services for a cost of around $4,375 million per year. These changes are not expected to have an impact on youth and families receiving targeted case management (TCM) or outpatient therapy services.

The estimated cumulative fiscal impact of the 2% rate reduction of these rules is:

	Total Cost	State General Fund	Federal Match
9/1/11 - 6/30/12	($991,309)	($335,162)	($656,147)

This rule amendment is estimated to impact 260 Medicaid providers and 10,500 Medicaid youth.

7. The department is also extending the time within which to submit written comments. Written data, views, or arguments may be submitted to Kenneth Mordan at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on July 25, 2011. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 3 above or may be made by completing a request form at any rules hearing held by the department.

10. 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.

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 5, 2011

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

In the matter of the amendment of ARM 37.82.101, 37.82.1005, and 37.82.1320 pertaining to Medicaid eligibility	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 3, 2011, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the 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 July 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.82.101 MEDICAL ASSISTANCE, PURPOSE, AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual, dated January 1, 2010, and the Aged Blind Disabled (ABD) Medicaid Manual governing the administration of the Medicaid program dated ~~January 1, 2010~~ July 1, 2011. The Family Medicaid Manual, the ABD Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, Fifth Floor, P.O. Box 202925, Helena, MT 59601-2925. The proposed manual updates are also available on the department's web site at www.dphhs.mt.gov/legalresources/ proposedmanualchange.shtml.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-131, 53-6-141, MCA

37.82.1005 MEDICAID FOR WORKERS WITH DISABILITIES: INCOME

(1) An individual is eligible for benefits through the Medicaid for Workers with Disabilities program in regard to income if the individual's net family income is less than 250% of the ~~2010~~ 2011 U.S. Department of Health and Human Services poverty level for a family of that size.

(2) remains the same.

AUTH: 53-6-113, 53-6-195, MCA
IMP: 53-6-101, 53-6-131, 53-6-195, MCA

37.82.1320 POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE (1) remains the same.

(2) Amounts will be deducted from a single individual's gross income in the following order to determine the amount applicable toward his cost of care:

(a) remains the same.

(b) a personal needs allowance of $50~~.~~;

~~(i) $90 for veterans receiving the minimum veterans administration pension; or~~

~~(ii) $40 for all other individuals.~~

(c) a home maintenance allowance, when applicable, determined in accordance with (7)~~.~~; and

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

(4) The following amounts will be deducted monthly in the following order from the gross income of an institutionalized spouse to determine the amount applicable toward the cost of care:

(a) remains the same.

(b) ~~$40~~ $50 personal needs allowance for the institutionalized spouse;

(c) through (5) remain the same.

(6) Unless the institutionalized spouse specifically objects, a community spouse monthly income allowance will be deducted from the institutionalized spouse's monthly income and must be provided to the community spouse.

(7) The home maintenance allowance for purposes of (2)(c) of this rule shall consist of ~~the greater of the following~~:

~~(a) an amount for each dependent family member equal to one-third the difference between the basic needs standard, as determined according to (9)(b)(i)(A) through (C) of this rule, and the family member's gross monthly income;~~

~~(b)~~ (a) the medically needy income level for one as defined in ARM 37.82.1106 if the client:

(i) remains the same.

(ii) leaves the facility into a community living arrangement on or before the last day of the month; and

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

(8) Medical or remedial care expenses of the institutionalized individual for purposes of (2)(d) and (4)(e) of this rule include:

(a) remains the same.

(b) for three months or until paid in full, whichever comes first, medical or remedial care expenses which:

(i) were incurred during the three months immediately prior to application for Medicaid coverage of institutional care or were incurred more than three months immediately prior to application for Medicaid coverage of institutional care if actual payments are currently being made on the expenses, and only in the amount of the payment currently being made;

(ii) were unpaid at the time of application~~; and~~ for Medicaid coverage of institutional care;

(iii) are recognized and regulated by state law as medical services, supplies, or equipment;

~~(iii)~~ (iv) are not payable by Medicaid or a third party; and

(v) are expenses that have not been applied to another month's incurment or post-eligibility treatment of income.

~~(c) medical expenses incurred by the institutionalized individual which are:~~

~~(i) for services or items prescribed by a physician;~~

~~(ii) not for a Medicaid covered service or item; and~~

~~(iii) not payable by a third party.~~

(c) no deduction is allowed for medical and remedial care expenses that were incurred during a penalty period imposed due to an uncompensated transfer of assets.

(9) remains the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-131, MCA

4. STATEMENT OF REASONABLE NECESSITY: The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.82.101, 37.82.1005, and 37.82.1320, pertaining to Medicaid eligibility.

The Montana Medicaid Program is a joint federal-state program that pays medical expenses for eligible individuals with limited income and assets. The eligibility requirements for the Montana Medicaid Program are set forth in Title 37, Chapter 82, of the Administrative Rules of Montana (ARM). Additionally, the Family Medicaid Manual and the Aged, Blind and Disabled (ABD) Medicaid Manual contain information about the eligibility requirements for Medicaid that is more detailed than that in the administrative rules. The department publishes these state policy manuals primarily to provide guidance to employees who determine Medicaid eligibility at the local Offices of Public Assistance.

ARM 37.82.101

ARM 37.82.101 adopts and incorporates by reference the Medicaid policy manuals. By incorporating these manuals into the administrative rules, the department gives the public notice and an opportunity to comment on policies governing Medicaid eligibility. Additionally, as a result of the incorporation of the manuals into the administrative rules, the policies contained in the manual have the force of law in case of litigation between the department and a Medicaid applicant or recipient concerning Medicaid eligibility.

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy manuals dated January 1, 2010. The department proposes to revise Sections 904-2 and 904-3 of the ABD Medicaid Manual to take effect on September 1, 2011. The department is not making any changes to the Family Medicaid Manual at this time. The amendment of ARM 37.82.101 is therefore necessary to incorporate the revised version of the ABD Medicaid Manual into the ARM and to permit all interested parties to comment on the policy changes in the revised version. The ABD Manual and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

The proposed changes to the ABD Medicaid Manual are as follows:

Section 904-2

Section 904-2 addresses post-eligibility treatment of income for institutionalized Medicaid recipients who are married. Medicaid recipients who reside in nursing homes or other medical institutions are required to apply a portion of their income to the cost of their institutional care. Medicaid then pays the difference between the amount the Medicaid recipient is required to pay to the nursing home and the Medicaid rate for nursing home care. In determining the amount the recipient must pay toward the cost of care, Medicaid policy takes into consideration the fact that the recipient's basic needs such as shelter and food are being met by the nursing home. However, certain expenses that the Medicaid recipient must continue to pay while living in a nursing home, such as Medicare and other health insurance premiums, are deducted from the recipient's gross income in calculating the recipient's liability for the cost of care. In the case of a Medicaid recipient who is married, known as an institutionalized spouse, some deductions are also permitted to provide for the needs of the recipient's spouse if the spouse still lives in the community rather than in an institution.

Section 904-2 lists the deductions from gross income used to determine the institutionalized spouse's liability for institutional care. A deduction is allowed for certain unpaid medical expenses of the institutionalized spouse so that the institutionalized spouse will have enough income to pay old medical bills not covered by Medicare or other third parties. The current policy allows a deduction (if all other criteria specified in the manual are met) regardless of how old the bill is, that is, how many months before the application for Medicaid coverage of institutional care the medical expense was incurred. The current policy of placing no limits on the age of incurred medical expenses that may be deducted was adopted in 2008 in response to a Montana Supreme Court decision regarding the deduction of unpaid medical expenses. Prior to the Montana Supreme Court's decision it was the department's policy not to allow a deduction for medical expenses incurred before the recipient became eligible for Medicaid unless the expense was for a type of service that Medicaid does not cover for Medicaid recipients. Based on language in Montana's State Medicaid Plan at that time, the Montana Supreme Court held that the department must allow a deduction for unpaid medical expenses incurred before the

recipient became eligible for Medicaid even if the expense was for a service that Medicaid covers for Medicaid recipients.

Montana's State Medicaid Plan has recently been amended to delete the language that was the basis for the Montana Supreme Court's ruling that a deduction must be allowed for all unpaid medical expenses incurred before an institutionalized individual became eligible for Medicaid. As a result of the amendment of State Medicaid Plan, the department is now permitted to place limits on the age of medical bills for which a deduction is allowed. The department therefore proposes to amend Section 904-2 to allow a deduction only for expenses incurred during the three months immediately prior to the application for Medicaid coverage of institutional care and for payments the recipient is currently making on expenses incurred more than three months immediately prior to the application. It is necessary to place reasonable time limits on the deduction of medical expenses in order to reduce Medicaid expenditures for institutional care. If there is no limit on the age of expenses that can be deducted, the amount Medicaid recipients with old medical bills will be required to pay for their institutional care will be reduced and the amount Medicaid will have to pay will increase. The department determined it was reasonable to allow a deduction for medical expenses incurred more than three months prior to application if the Medicaid recipient is actually making payments on the bill, but the deduction should be limited to expenses incurred within the three months immediately prior to application unless the recipient is currently making payments on the bill.

Section 904-3

Section 904-3 addresses the post-eligibility treatment of income for institutionalized individuals who are not married. A deduction is allowed for certain unpaid medical expenses of the institutionalized individual. The current policy allows a deduction (if all other criteria specified in the manual are met) regardless of how old the bill is, that is, how many months before the application for Medicaid coverage of institutional care the medical expense was incurred. For the reasons discussed in regard to Section 904-2, the department now proposes to amend Section 904-3 to allow a deduction only for expenses incurred during the three months immediately prior to the application for Medicaid coverage of institutional care and for payments the recipient is currently making on expenses incurred more than three months immediately prior to the application.

ARM 37.82.1005

The department proposes to amend ARM 37.82.1005, which sets out the income criteria to qualify for benefits under the Medicaid for Workers with Disabilities coverage group. The rule currently specifies that an individual is eligible if the individual's net family income is less than 250% of the 2010 federal poverty level for a household of that size. The federal poverty levels are issued by the U.S. Department of Health and Human Services (HHS). HHS revises the poverty levels every year to take into account increases in the cost of living. The department

proposes to amend ARM 37.82.1005 to provide that the individual may have net family income up to 250% of the 2011 federal poverty level rather than 250% of the 2010 poverty level. The department has chosen to use the 2011 version of the poverty levels because they are higher than the 2010 levels. If the department continued to use last year's poverty levels, some individuals might be ineligible for Medicaid due to inflationary increases in the family's income that are not reflective of an increase in actual buying power.

ARM 37.82.1320

Finally, the department proposes to amend ARM 37.82.1320 governing the post-eligibility application of income to the cost of care for Medicaid recipients who reside in nursing homes or other medical institutions. As discussed above in regard to the amendment of Section 904-2 of the ABD Medicaid Manual, Medicaid recipients who reside in a nursing home or similar medical institution are required to apply a portion of their income to the cost of their institutional care. ARM 37.82.1320 lists deductions from a recipient's gross income that are allowed in calculating the amount the recipient must pay for institutional care.

Subsection (2)(b) of the rule currently provides that unmarried individuals are entitled to either a personal needs allowance of $90 for veterans receiving the minimum Veterans Administration (VA) pension of $90 per month or a personal needs allowance of $50 for everyone else. Several years ago it came to the department's attention that federal Medicaid policy requires state Medicaid agencies to exclude veteran's pension payments of $90 or less as income and also deduct the standard personal needs allowance from the veteran's other income, rather than counting the pension as income and allowing a deduction of $90 for the personal needs allowance. For a veteran whose veteran's pension payments is $90 or less, this has the effect of decreasing the amount the veteran must pay for institutional care because the payment is not counted as income and they also get a deduction for the personal needs allowance. However, veterans with veteran's pension payments of more than $90 pay more under this policy, because the veteran's pension payment is counted as income and they get the standard personal allowance instead of $90.

The department changed its policy when it became aware of the federal policy to exclude all veteran's pension payments of $90 or less as income and also give veterans a deduction for the personal needs allowance. The department revised the ABD Medicaid Manual at that time to reflect the change in policy but did not amend ARM 37.82.1320 due to an oversight. The department now proposes to amend (2) by deleting (b)(i) which provides for a $90 personal needs allowance for veterans as an alternative to the standard personal needs allowance used for all other unmarried recipients. There is no Medicaid eligibility rule that lists exclusions from income, so there is no need to amend a rule to provide for the exclusion of VA pensions of $90 or less as income although that is the policy stated in the ABD Medicaid Manual. The amendment of ARM 37.82.1320 is necessary so that the rule will accurately state the department's policy and be consistent with the ABD Medicaid Manual and

federal law and so that members of the public will be able to ascertain the Medicaid policy concerning personal needs allowances for veterans by reading the rule.

Subsections (2)(b)(ii) and (4)(b) of ARM 37.82.1320 currently provide for a personal needs allowance of $40 per month. In 2007 the Montana Legislature mandated an increase in the personal needs allowance to $50 per month, and the department revised Section 904-2 and 904-3 of the ABD Medicaid Manual to provide for a $50 personal needs allowance in 2008. However, the department did not amend ARM 37.82.1320 to provide for the increased allowance at that time due to an oversight. The amendment of ARM 37.82.1320 is now necessary so that the rule will accurately state the department's policy and be consistent with the ABD Medicaid Manual and so that members of the public will be able to ascertain the correct amount of the personal needs allowance.

Section (7) of the rule specifies that the home maintenance allowance provided for in (2)(c) is the greater of: (a) an amount for each dependent family member equal to one-third of the difference between the basic needs standard and the family member's gross monthly income; (b) the medically needy income level for one if the institutionalized spouse resided in the institution during only part of the month; or (c) the medically needy income level for one, for a maximum of six months, when a physician certifies that the individual is likely to return to the home within six months. The department proposes to delete (7)(a) because federal Medicaid law does not authorize the department to give the home maintenance allowance for an institutionalized spouse. The home maintenance allowance is a deduction for an institutionalized individual. For institutionalized spouses, the community spouse income maintenance allowance listed in (4)(c) and the family income maintenance allowance listed in (4)(d) take the place of the home maintenance allowance. The department realized that its policy on the home maintenance allowance was not in compliance with federal law over five years ago and changed its policy accordingly in the ABD Medicaid Manual at that time. It is now necessary to amend ARM 37.82.1320 by deleting (7)(a) so that the rule will accurately state the department's policy and be consistent with the ABD Medicaid Manual and federal law and so that members of the public will be able to ascertain the department's policy regarding the home maintenance allowance by reading the rule.

The department proposes to amend (8)(b) of ARM 37.82.1320 regarding the deduction for medical expenses. The rule currently allows a deduction, if all other criteria specified in the manual are met, regardless of how old the bill is, that is, how many months before the application for Medicaid coverage of institutional care the medical expense was incurred. For the reasons discussed in regard to Section 904-2, the department now proposes to amend (8)(b) to allow a deduction only for expenses incurred during the three months immediately prior to the application for Medicaid coverage of institutional care and for payments the recipient is currently making on expenses incurred more than three months immediately prior to the application.

The department also proposes to add (8)(c) specifying that no deduction is allowed for medical expenses incurred during a penalty period imposed as a result of an uncompensated transfer of assets. This is being added for the purpose of clarification and does not indicate a change in policy, as it was previously specified in Section 904-2 and 904-3 of the ABD Manual. It was never the department's intention to allow medical expenses incurred during a period of ineligibility as a result of an uncompensated transfer of assets to be deducted, because this would mitigate the penalty for uncompensated transfers by decreasing the amount an individual had to pay for his or her care after becoming eligible based on payments the individual rather than Medicaid had to pay during the penalty period. The proposed amendment of ARM 37.82.1320 is now necessary so that the rule will more clearly state the department's policy and be consistent with the ABD Medicaid Manual and so that members of the public will be aware that medical expenses incurred during a transfer penalty period may not be used to reduce a Medicaid recipient's liability for the cost of institutional care.

Fiscal Impact

The fiscal impact of the proposed amendments is as follows:

It is estimated that the amendments of ARM 37.82.101 and ARM 37.82.1320 to limit the deduction of unpaid medical expenses in determining a nursing home resident's liability will reduce state general fund expenditures for Medicaid by $81,458 per year and federal expenditures for Medicaid by $264,142 per year. It is estimated that limiting the medical expense deduction will affect 1% of all institutionalized Medicaid recipients, which would be approximately 32 recipients per year.

The increase in Medicaid expenditures as a result of amending ARM 37.82.1005(1) to provide that the income limit for Medicaid for Workers with Disabilities is 250% of the 2011 federal poverty level (FPL) rather than 250% of the 2010 FPL is as follows: it is estimated that two individuals who would have been ineligible using the 2010 FPL will be eligible if the higher 2011 FPL is used. Based on an average expenditure of $1,502 per year per participant, the increased cost for two additional participants would be $3,004 per year, of which 33.81% or $1,016 is paid with general fund dollars and 66.19% or $1,988 is paid with federal dollars.

There is no current fiscal impact as a result of deleting (7)(a) regarding the home maintenance allowance, because the policy was changed in the manual over five years ago. The cost to Medicaid and the number of persons affected at the time the policy was changed is unknown.

The proposed amendment of ARM 37.82.1320 to increase the personal needs allowance from $40 to $50 will have no effect at the present time because the increase was implemented in 2008 and the rule is merely being amended so that the rule will accurately state the policy already being applied. When the increase in the personal needs allowance was implemented in 2008 it cost approximately $128,254 in state general funds per year and $279,680 in federal funds per year and affected

approximately 3,300 per month. The proposed amendment of ARM 37.82.1320 to allow veterans with veteran's pension payments of $90 or less to keep their veteran's pension payments and also get the personal needs allowance of $50 has no fiscal impact. The revised policy has the effect of increasing the amount of income the veteran is allowed to keep for veterans whose veteran's pension payments is $90 or less because their VA payments are not counted as income and the standard personal needs allowance is also deducted from the veteran's income. However, veterans with veteran's pension payments of more than $90 are allowed to retain less income under the new policy, because they now receive a personal needs allowance of $50 instead of $90. Since some veterans pay more for their institutional care under the new policy and others pay less, there has been neither an increase nor a decrease in Medicaid expenditures for nursing home care due to the revised policy.

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, and must be received no later than 5:00 p.m., August 11, 2011.

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.

/s/ Barbara B. Hoffman
Rule Reviewer

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

Certified to the Secretary of State July 5, 2011.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI, regarding Insurer Investments in Derivative Instruments	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 26, 2011, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-193 pertaining to the proposed amendment of the above-stated rules at page 762 of the Montana Administrative Register, issue number 10.

2. No written comments or testimony were received.

3. The department has adopted New Rule I (6.6.4020), New Rule II (6.6.4021), New Rule III (6.6.4022), New Rule IV (6.6.4023), New Rule V (6.6.4025), and New Rule VI (6.6.4027) exactly as proposed.

/s/ Christina L. Goe	/s/ Jesse Laslovich
Christina L. Goe	Jesse Laslovich
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State July 5, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the administration of the 2013 Biennium Quality Schools Grant Program – Planning Grants	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 12, 2011, the Department of Commerce published MAR Notice No. 8-2-92 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 708 of the 2011 Montana Administrative Register, Issue Number 9.

2. The department has adopted the above-stated rule as proposed: New Rule I (8.2.504).

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

COMMENT #1: In reference to the draft guidelines, p. 4, Section C (Preliminary Engineering Reports). The commenter has a client that desires to study the economics of a ground-source heat pump (GSHP) system for their school, however, such a project appears to fall outside the "types" of projects spelled out in Section C (PER) (i.e., drinking water, waste water, storm water or solid waste). Such an analysis would be performed by a licensed engineer and is an energy-related project; however, the study would focus on that one area (heating / cooling) versus "historical" energy audits that looked at heating / cooling, lighting, building envelope, other electrical loads and appears to also fall outside the criteria in Section B (School Energy Audit). Where would such a determination / study fall in the planning grant program?

RESPONSE #1: The scenario identified by the commenter would be appropriate for a PER and eligible for Quality Schools Planning Grant funding. The language on p.1, bullet #3 in the final planning guidelines document has been changed to read: "A Preliminary Engineering Report (PER) for drinking water, wastewater, storm water, solid waste facilities serving school facilities, specific heating or cooling systems, or projects needing in-depth engineering review as determined by the department."

COMMENT #2: Commenter recommends that the planning grant guidelines include a section specifically for architectural and engineering services to prepare construction documents on conservation measures that have been previously identified in an energy audit. This will allow schools a means to "get started" with their projects by having construction documents ready to go so that they have bid-

ready projects when they submit for emergency funding. Many schools already have the planning and audits done, they just need the resources to get started; a matching planning grant to put the project on paper says they are serious about the project. The audits done as part of the Quick Start program are "wasting away" because the schools do not have the resources to implement the identified measures.

RESPONSE #2: Quality Schools planning grants allow school districts to fund well-researched, thoroughly considered planning activities to guide and inform district and community decisions regarding alternatives for school facility problems and solutions. Final design documents should not be drafted until a district has the funding in place to move forward with construction. Accordingly, final design costs are eligible costs for Quality Schools Project Grant funding or other avenues of construction funding may also be pursued for final design, such as a Board of Investments loan or other financial resources listed on our Leveraging & Funding Sources webpage: http://commerce.mt.gov/QualitySchools/funding. The department did not revise the Quality Schools planning guidelines to allow for the payment of final design documents.

COMMENT #3: Can the maximum grant amount be raised for larger school districts? Can there be a sliding scale based on district/facility size?

RESPONSE #3: The department has determined, based on extensive experience administering grant programs and administering the first round of Quality Schools planning grants in the 2011 biennium, that the maximum number of districts is served and the greatest amount of local resources leveraged with a $25,000 grant ceiling and a 1:4 match requirement. Using these limits, the department is able to assist both urban and rural, small and large school districts in the state of Montana. During the 2011 biennium, the department was able to fund 47 school facility planning projects for a total of $900,000, against which school districts were able to leverage an additional $670,000 in local funds. The department did not revise the Quality School planning guidelines to change the maximum planning grant amount available for school districts.

COMMENT #4: Can a district that previously received a Planning Grant reapply for a follow-up grant? For example, can a district that received planning funds for planning work reapply and get a grant to complete final design documents?

RESPONSE #4: A district that has been previously awarded a planning grant may apply during the cycle following their award. Final design documents are not eligible costs for reimbursement with Quality Schools planning grant funds. (See Response #2.)

COMMENT #5: The program works well for small schools with the existing dollar limit.

RESPONSE #5: Thank you for your comment; no response is necessary.

COMMENT #6: Can schools extend a previous planning project?

RESPONSE #6: As explained in Section VII of the Quality Schools planning grant guidelines, the term for a Quality Schools planning grant is one year from the date of the Award Letter, or upon final close-out of the planning project by the grantee and the department, whichever is sooner. The department, in its sole discretion, may grant an extension before the original term is expired if the planning project is near completion but will not fully be completed by the deadline, and the grant recipient can demonstrate a good faith effort to complete the project on time and within the original budget.

COMMENT #7: How will the scoring work? Will schools that previously received a Planning Grant be lower on the list than new applicants?

RESPONSE #7: As explained in Section VI of the Quality Schools planning grant guidelines, Quality Schools planning grant applications will initially be scored based on the statutory priority of the proposed project and the extent to which the project meets the goals and objectives of that priority. Applications will then be scored based on the statutory attributes as they apply to the applicant and the project. The receipt of a previous Quality Schools planning grant will not affect the scoring of a district's planning grant application.

COMMENT #8: Do applicants have to choose only one priority? How can they stress that they should be higher priority than others?

RESPONSE #8: Applicants are responsible for identifying which statutory priority best relates to their proposed planning project. Applicants do not need to stress that they are a "higher" priority than other applicants, but should describe how their project fits into the priority selected for their project, accurately answer all questions on the application, and provide all supplemental information requested with the completed application.

COMMENT #9: How will applicants be ranked? Is there any weight given to how much a district has already invested in a project?

RESPONSE #9: Please see Response #7. Several of the statutory attributes relate to and weigh the district's investment in the project: a district's past efforts to ensure sound, effective, long term planning and management of facilities; the applicant's efforts and ability to obtain and commit matching funding; and the commitment of community support for the project.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State July 5, 2011.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.202, 8.111.305, and 8.111.305A pertaining to procedural rules and qualified lender requirements	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 28, 2011, the Department of Commerce published MAR Notice No. 8-111-89 pertaining to the proposed amendment of the above-stated rules at page 622 of the 2011 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State July 5, 2011.

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

In the matter of the adoption of a temporary emergency rule restricting Echo Lake in Flathead County to a no wake speed	))))	NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

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

(a) The Flathead County Board of Commissioners requested the restriction in response to requests from residents on the lake and also, because the Flathead County Office of Emergency Services is observing damage to homes and structures at the current water levels.

(b) Echo Lake is mostly ground water fed. The water level has far exceeded normal full pool and will most likely continue to rise due to the existing snow pack still in the drainage. Currently, there are more than fifty inches of moisture at the Noisy Basin Snotel site located just east of Echo Lake.

(c) Echo Lake does not have an outlet to drain excess water.

(d) Residents have been building protective structures, such as sandbags, around their homes.

(e) In the current condition, wake speeds create wave action subjecting buildings, homes, and structures to:

(i) integrity degradation;

(ii) possible septic contamination;

(iii) destruction of protective structures; or

(iv) damage caused by debris.

(f) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as a temporary emergency rule in Issue No. 13 of the 2011 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 29, 2011, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov.

3. The temporary emergency rule is effective June 29, 2011 when this rule notice is filed with the Secretary of State.

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

RULE I ECHO LAKE TEMPORARY EMERGENCY RESTRICTION

(1) Echo Lake is located in Flathead County.

(2) All watercraft on Echo Lake are limited to a controlled no wake speed as defined in ARM 12.11.101.

(3) This rule is effective as long as water levels are high on Echo Lake. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department), in consultation with the commissioner in the region, to determine when wakes from motorized use will no longer pose a threat to public health and human safety and rescinds the temporary emergency closure.

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

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

6. This rule will expire as soon as the department determines the water level of the lake no longer poses a threat to homes, buildings, or structures. Signs restricting use of the lake will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Fitzpatrick, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov. Any comments must be received no later than August 12, 2011.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

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

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State June 29, 2011.

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

In the matter of the adoption of New Rules I and II, and the repeal of ARM 37.34.206, 37.34.215, 37.34.216, and 37.34.221 pertaining to developmental disabilities eligibility rules for Medicaid only	))))))	CORRECTED NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On March 10, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-534 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 312 of the 2011 Montana Administrative Register, Issue Number 5. On June 23, 2011 the department published the notice of adoption and repeal at page 1158 of the 2011 Montana Administrative Register, Issue Number 12.

2. This corrected notice is being filed to correct an error in the interlining and underlining of a date in New Rule II [37.34.224] and the number of the statutory citation for authority in this same New Rule II [37.34.224]. In (3), old (2), the date February 28, 2011 was deleted. It should have been left in the rule and interlined. The date June 9, 2011 was added to the rule but should have been underlined. The statutory cite for the authority, 56-6-402, should have been 53-6-402. The rule, as amended in corrected form, read as follows, deleted matter interlined, new matter underlined:

NEW RULE II (37.34.224) DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES ADULT FINANCIAL ELIGIBILITY (1) through (2) remain as proposed.

(3) The department may apply available federal Title XX Social Services Block Grant funding under this rule to establish the eligibility of a person for developmental disabilities community services by using the method set forth in the documents dated and effective ~~February 28, 2011~~ June 9, 2011 entitled "Application for Federal Title XX Social Services Block Grant Funding" and "Directions for Federal Title XX Social Services Block Grant Funding." The department adopts and incorporates those documents by reference. The documents are available from the Developmental Disabilities Program, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604, and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

(4) remains as proposed

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-2-206, 53-6-402, 53-20-203, 53-20-205, 53-20-209, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2011.

/s/ Cary B. Lund
Rule Reviewer

/s/ Hank Hudson for Anna Whiting Sorrell
Anna Whiting Sorrell, Acting Director
Public Health and Human Services

Certified to the Secretary of State July 5, 2011.

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

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

TO: All Concerned Persons

1. On April 14, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-535 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 561 of the 2011 Montana Administrative Register, Issue Number 7.

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

3. No comments or testimony were received.

/s/ Lisa A. Swanson
Rule Reviewer

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

Certified to the Secretary of State July 5, 2011.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2011. This table includes those rules adopted during the period April 1, 2011, through June 30, 2011, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2011, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2011 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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