ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 2.5.701 and 2.5.801 and the transfer and amendment of ARM 2.5.702 pertaining to the State Surplus Property Program	)))))	NOTICE OF PROPOSED TRANSFER AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 11, 2016, the Department of Administration proposes to transfer and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 25, 2016, to advise us of the nature of the accommodation that you need. Please contact Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov.

3. The department proposes to transfer the following rules:

OLD	NEW
ARM 2.5.701	ARM 2.11.201 AUTHORITY TO DISPOSE OF SUPPLIES

AUTH: 18-4-226, MCA
IMP: 18-4-226, MCA

ARM 2.5.801	ARM 2.11.203 ADOPTION OF STATE PLAN OF OPERATION–FEDERAL SURPLUS PROPERTY

AUTH: 18-5-202, MCA
IMP: 18-5-202, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to transfer the surplus property program rules in ARM Title 2, chapter 5, subchapters 7 and 8 under the State Procurement Bureau (SPB) to ARM Title 2, chapter 11, subchapter 2 under the General Services Division (GSD). This proposal is being made because SPB has been moved from GSD to the State Financial Services Division, and the surplus property program is managed under GSD.

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

2.5.702 (2.11.202) DISPOSITION OF SURPLUS SUPPLIES (1) remains the same.

(2) The division may offer s~~S~~urplus supplies ~~may be offered~~ to the public ~~by the division~~ through ~~competitive sealed bids,~~ online and live public auctions, established markets, or posted prices. ~~It is recognized, h~~However, ~~that~~ some types and classes of items ~~can~~ may be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state.

(a) ~~On sales greater than $300, only~~ The department accepts cash, personal checks, United States postal money orders, certified checks, cashier's checks, ~~or~~ and business checks ~~may be accepted~~.

~~(3) If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least ten days before the date set for opening bids by posting the bid on the state's bids and proposals web site at http://svc.mt.gov/gsd/onestop/SolicitationDefault.aspx.~~

~~(a) Notice of the sale may also be given to prospective bidders by mail or by newspaper advertisement.~~

~~(b) The bid must list the supplies offered for sale, designate their location and how they may be inspected, and state the terms and conditions for bid opening. Bids shall be opened publicly.~~

~~(c) Award must be made in accordance with the provisions of the bid to the highest responsive and responsible bidder, if the price offered by such bidder is acceptable to the division. If the price is not acceptable, the division may:~~

~~(i) reject the bids in whole or in part and negotiate the sale, but the negotiated sale price must be higher than the highest responsive and responsible bidder's price; or~~

~~(ii) resolicit bids.~~

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

AUTH: 18-4-226, MCA
IMP: 18-4-226, MCA

STATEMENT OF REASONABLE NECESSITY: The department has discontinued offering surplus property through competitive sealed bid because with technology advancements, including online auctions, sealed bids became a less efficient sale method, thereby reducing monetary return to the agencies. The department therefore proposes the amendment of (2) and removal of (3) to address this situation. The department began using online auctions several years ago and is adding wording to clarify online auctions as an option for surplus property sale. In addition, through its experience, the department has found that accepting cash and personal checks–and not limiting acceptance of the various payment methods to sales greater than $300–makes sales easier for the buying public, which in turn may increase returns on agency surplus property. The department therefore proposes the rule be amended to reflect this practice. This rule is also proposed for transfer

for the above-stated reason. The remaining proposed changes are to improve readability.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov; and must be received no later than 5:00 p.m., April 1, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above no later than 5:00 p.m., April 1, 2016.

7. If the General Services Division receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 81 based on the approximate 810 registered public surplus donees.

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules. 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.

9. The General Services Division 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 which includes the name, 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 the person listed in 5 or may be made by completing a request form at any rules hearing held by the department.

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

11. The department has determined that under 2-4-111, MCA, the proposed rule transfer and amendment will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State February 22, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 2.59.416, and the transfer and amendment of ARM 2.59.421 pertaining to credit union investments	))))))	NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND TRANSFER AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 14, 2016, the Department of Administration proposes to adopt, amend, and transfer and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 28, 2016, 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) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

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

NEW RULE I INVESTMENT RULE – REVENUE BONDS (1) Credit unions may invest, without limitation, in revenue bonds issued by the state of Montana or its political subdivisions.

(2) Credit unions may invest up to 40 percent of their net worth, per issuer, in revenue bonds issued by any other state or its political subdivisions whereby the obligations are payable from pledged fee or tax revenue from designated sources.

(a) The issuing body must not have been in default regarding the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(b) The obligations must be rated investment grade or higher by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the credit union's investment policy.

(3) Credit unions may invest up to 20 percent of their net worth, per issuer, in industrial development revenue obligations issued by a Montana political subdivision when repayment is dependent upon a nongovernmental obligor and when such issues are consistent with the commercial lending policy of the credit union.

AUTH: 32-3-401, 32-3-422, MCA
IMP: 32-3-401, 32-3-422, MCA

STATEMENT OF REASONABLE NECESSITY: The department adopted investment rules for credit unions in MAR Notice No. 2-59-533 in October 2015. The Montana Credit Union Network commented that they would like an investment rule allowing credit unions to invest in revenue bonds. The department agreed with that comment, but proposing a new rule at that point in the rulemaking process would have delayed adoption of the other rules.

This rule is adapted from ARM 2.59.1603, the revenue bond investment rule for banks. Because credit unions do not have capital to absorb losses as banks do, it is important to limit the risk that credit unions are allowed to undertake in their investment portfolios. Since credit unions are being allowed to invest in revenue bonds of the state and its subdivisions without limitation, those obligations must be backed by the full faith and credit of the state or its political subdivision to ensure the credit union will not lose money on its investment.

Where revenue bonds are payable from pledged fee or tax revenue from designated sources, credit unions are limited to 40 percent of their net worth because fee or tax revenues are less certain than the full faith and credit of the state or a political subdivision of the state.

In addition, it is too risky for credit unions to invest in a general obligation bond of any state or political subdivision that has defaulted on its obligations in the past five years. Five years was chosen because it is long enough to ensure that the state or its subdivision is financially able to repay its debt, thus limiting risk to the credit union, but not so long as to be economically punitive. It is also consistent with the bank rule, which also sets a five-year time frame for entities that have defaulted on their obligations. Therefore, the department by this rule seeks to ensure, as much as possible, that credit unions are making safe investment choices.

The safety and security of the bonds are also reasons for including (2)(b). The department seeks to ensure that the bonds are a safe investment but give credit union boards the latitude to choose a rating organization other than the nationally recognized rating services as long as the rating organization is identified in the credit union's investment policy and the gradations are generally equivalent to investment grade or higher.

Investments in industrial development revenue bonds are limited to 20 percent of net worth because they are dependent on a nongovernmental source for repayment and, therefore, are riskier. The investment in this type of bond must be within the credit union's commercial lending policy to ensure that the credit union board has assessed and provided for the type of risk that comes with commercial lending.

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

2.59.416 NET WORTH DEFINITION – CALCULATION – DETERMINATION

(1) For purposes of ARM 2.59.417, ~~and~~ 2.59.418, and [NEW RULE I], "net worth" means the sum of regular reserves and undivided earnings. Net worth excludes the allowance for loan and lease losses. Net worth is calculated quarterly based on data from the previous call report.

(2) The department shall determine compliance with ARM 2.59.417, ~~and~~ 2.59.418, and [NEW RULE I] using quarterly net worth for the period in which the security is purchased.

(3) A security that complies with ARM 2.59.417, ~~and~~ 2.59.418, and [NEW RULE I] at the time of purchase is not in violation of ARM 2.59.417, ~~and~~ 2.59.418, and [NEW RULE I] at a later date due to a subsequent decline in net worth.

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: Reference to NEW RULE I is being added to ARM 2.59.416 because "net worth" is used in NEW RULE I as well.

5. The rule proposed to be amended and transferred provides as follows, new matter underlined, deleted matter interlined.

2.59.421 (2.59.430) DIRECTOR TRAINING (1) remains the same.

AUTH: ~~32-3-412~~ 32-3-422, MCA
IMP: ~~32-3-412~~ 32-3-422, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.59.421 was adopted with the incorrect statute listed for rulemaking authority and implementation. Section 32-3-412, MCA, was repealed in 2015, necessitating the amendment to the citations. Section 32-3-422, MCA, was adopted in place of 32-3-412, MCA, and should have been used when the rule was adopted. In addition, this rule is being transferred to ARM 2.59.430 to allow space for NEW RULE I and other possible future credit union investment rules so they can be grouped together in the subchapter.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing 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 banking@mt.gov; and must be received no later than 5:00 p.m., April 4, 2016.

7. 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 6 above no later than 5:00 p.m., April 4, 2016.

8. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those

directly affected has been determined to be one person based on the eight state-chartered credit unions.

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

10. The 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 which includes the name, 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 banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

12. The department has determined that under 2-4-111, MCA, the proposed adoption and amendment of the above-stated rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State February 22, 2016

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.10.301, 10.10.301B through 10.10.301D, 10.10.304, 10.10.311, 10.10.319, 10.10.320, 10.10.504, 10.10.613, 10.10.614, 10.15.101, 10.16.3817, 10.20.102, 10.20.104, 10.20.105, 10.21.101H, 10.22.102, 10.22.104, and 10.23.102 and the repeal of ARM 10.30.405 pertaining to school finance	))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 13, 2016, at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Superintendent of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on April 6, 2016, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

10.10.301 CALCULATING TUITION RATES (1) The maximum regular education tuition rate a district may charge per student is 20% of the per ANB rate established in 20-9-306(~~10~~ 15), MCA, for the first ANB for the year of attendance. For a kindergarten student enrolled in a half-time program as provided in 20-1-301(2)(a), MCA, and a preschool child with disabilities the rate is one-half the rate for an elementary student.

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

(b) the actual individual costs of providing that student's program minus 80% of the maximum per-ANB rate established in 20-9-306(~~10~~ 15), MCA, for the first ANB for the year of attendance.

(4) and (5) remain the same.

AUTH: 20-5-312, 20-9-102, 20-9-201, MCA
IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to correct the reference to an erroneous section of statute.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (7) remain the same.

(8) When the state is obligated to pay tuition or transportation costs for a student placed under provisions of 20-5-321(1)(d) and (e), MCA, the trustees of the district of attendance shall send a completed copy of the student's attendance agreement to the Superintendent of Public Instruction for approval. The agreement must be submitted by ~~June 30 of the year~~ December 31 following the school year of attendance to be eligible for approval.

(9) through (12) remain the same.

AUTH: 20-5-323, 20-9-102, MCA
IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to change the deadline to December 31 for submitting tuition reports and claims in order to accurately determine for the legislature whether a supplemental appropriation is needed.

10.10.301C OUT-OF-STATE ATTENDANCE AGREEMENTS (1) through (4) remain the same.

(a) Calculations will be based on the ~~county superintendents'~~ tuition reports submitted in accordance with ARM 10.10.301D.

(b) The Superintendent of Public Instruction shall provide payment of the amount calculated in (4)(a), but not more than the amount of tuition paid by the district for resident students who attended school out-of-state, in the year the out-of-district attendance report is submitted, provided it is submitted, with documentation of payment, to the Superintendent of Public Instruction ~~within the school year~~ by December 31 following the school year of attendance.

AUTH: 20-5-323, 20-9-102, MCA
IMP: 20-5-314, 20-5-316, 20-5-320, 20-5-321, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to change the deadline to December 31 for submitting tuition reports and claims in order to accurately determine for the legislature whether a supplemental appropriation is needed and to clarify accountability.

10.10.301D TUITION REPORTS (1) and (2) remain the same.

(3) To be eligible to receive state payments for tuition and tuition reimbursements under 20-5-324, MCA, the trustees of a district must submit the

tuition report in (1) and the electronic data in (2) to the Superintendent of Public Instruction by ~~June 30~~ December 31 of the year following the student's year of attendance.

AUTH: 20-5-323, 20-9-102, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to change the deadline to December 31 for submitting tuition reports and claims in order to accurately determine for the legislature whether a supplemental appropriation is needed and to clarify accountability.

10.10.304 STUDENT EXTRACURRICULAR ACTIVITY FUNDS (1) through (4) remain the same.

(5) Excess money in the student extracurricular activity fund may be invested in accordance with 20-9-213(4), MCA. Interest earned may either be credited to a general operating account within the fund to be used to offset administrative costs or distributed to the accounts within the fund based on cash balances.

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

AUTH: 20-9-102, 20-9-201, MCA
IMP: 20-9-102, 20-9-201, 20-9-504, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-9-504, MCA (SB 32, 2013 Legislative Session) allowing excess money in a school extracurricular fund to be invested.

10.10.311 BUS DEPRECIATION RESERVE FUND (1) Section 20-10-147, MCA, allows school districts to budget each year in a bus depreciation reserve fund an amount that does not exceed 20% of the original cost of a bus, communication system, or ~~a two-way radio~~ safety devices installed on the bus. The amount budgeted may not, over time, exceed 150% of the original cost of the bus, communication system, or ~~radio~~ safety devices.

(2) Annual depreciation may not exceed 20% of the bus, communication system, or ~~radio's~~ safety devices' original cost.

(3) The cost of new parts added after the original purchase of a bus, communication system, or ~~radio~~ safety devices may not be depreciated.

~~(4) Cameras for security purposes may be considered remodeling for purposes of the bus depreciation reserve fund.~~

(5) through (7) remain the same but are renumbered (4) through (6).

AUTH: 20-9-102, MCA
IMP: 20-10-147, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-10-147, MCA (HB 31, 2015 Legislative Session) expanding the use of the bus depreciation reserve fund to include communication systems and safety devices installed on a bus.

10.10.319 CLOSURE OF A SCHOOL DISTRICT FUND (1) through (3) remain the same.

~~(4) Pursuant to 20-10-147, MCA, when all the buses of a district have been sold or otherwise disposed of, trustees may close a bus depreciation reserve fund to any other fund of the district contingent on voter approval.~~

(5) through (7) remain the same but are renumbered (4) through (6).

AUTH: 20-9-102, MCA
IMP: 20-9-201, 20-9-443, 20-9-505, 20-10-147, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-10-147, MCA (SB 329, 2011 Legislative Session) removing the requirement that trustees submit to electors the proposition of transferring bus depreciation reserve funds to another fund.

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(e) remain the same.

(f) transfers under 20-3-363, MCA, from any budgeted or nonbudgeted fund, except the retirement fund, debt service fund, or compensated absence fund. Transfers from the general fund may not exceed the amount of direct state aid received by the district;

~~(f)~~ (g) closure of district funds to establish a nonoperating fund under 20-9-505, MCA;

~~(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in (4);~~

(h) through (3) remain the same.

~~(4) Pursuant to 20-10-147, MCA, when all the buses of a school district have been sold or otherwise disposed of, trustees may transfer any portion of the bus depreciation reserve fund balance to any other fund of the district contingent on voter approval.~~

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

~~(6)~~ (5) Except for the general fund, retirement fund, and debt service fund, ~~and bus depreciation fund,~~ trustees may transfer:

(a) remains the same.

(b) tax revenues from one budgeted fund to another budgeted fund, provided the transfer has been approved by the qualified electors of the district in a properly held election and the ballot must state the purpose for which the funds will be used; or

(c) tax revenues from one budgeted fund to another budgeted fund, provided the money is subsequently expended for purposes the same as, or directly related

to, the purposes for which the taxes were levied. When tax receipts are transferred, the trustees' resolution shall state the purpose for which the taxes were levied and the purposes for which the funds will be used.

(7) through (11) remain the same but are renumbered (6) through (10).

AUTH: 20-9-102, 20-10-112, MCA
IMP: 20-3-363, 20-9-208, 20-9-439, 20-9-443, 20-9-509, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-9-208 and 20-3-363, MCA (SB 329, 2011 Legislative Session) allowing for multidistrict agreements; allowing trustees to decide the disposition of inactive tuition funds; and removing the requirement that trustees submit to electors the proposition of transferring bus depreciation reserve funds to another fund.

10.10.504 FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS (1) through (4) remain the same.

(5) Revisions to the annual trustees' financial summary report made by the district or cooperative after December ~~20~~ 10 of the ensuing fiscal year will not be considered in calculating amounts used for special education reversion or for federal maintenance of effort requirements.

(6) Material revisions to the annual trustees' financial summary submitted by December ~~20~~ 10 shall be accepted, limited to the following types of adjustments:

(a) through (7) remain the same.

(8) Revisions to the annual trustees' financial summary submitted by December ~~20~~ 10 will be filed for information purposes by the Office of Public Instruction.

AUTH: 20-9-102, 20-9-201, MCA
IMP: 20-9-344, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule and change the deadline to December 10 for making revisions to the annual trustees' financial summary report to allow adequate time to compile the data in order to meet state and federal reporting requirements.

10.10.613 AGREEMENT WITH THE COUNTY TREASURER (1) through (3) remain the same.

~~(4) A separate agreement must be used for each elementary, high school, or K-12 district or full service education cooperative.~~

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

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to reflect current practices. The Office of Public Instruction accepts agreements for school systems.

10.10.614 PAYMENTS INTO AN INVESTMENT ACCOUNT (1) The school district or a full service education cooperative for special education that receives direct special education allowable cost payments and a quality educator payment for eligible full-time equivalent educators from the Superintendent of Public Instruction under 20-7-457(1), MCA, may apply in writing to the ~~state~~ Superintendent of Public Instruction to distribute the district's or cooperative's payments by direct electronic transfer of funds into an investment account as provided by 20-9-235 and 20-9-346(3), MCA.

(2) through (6) remain the same.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to include the quality educator payment to special education cooperatives.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) through (6) remain the same.

(7) "BASE budget" means the minimum general fund budget a district is allowed to adopt. It is the sum of: 80% of the district's basic and per-ANB entitlements; 100% of the quality educator payment; 100% of the at-risk student payment; 100% of the Indian ~~E~~education for ~~A~~all payment; 100% of the American Indian achievement gap payment; 100% of the data-for-achievement payment; 140% of the district's special education allowable cost payment; and 40% of the district's related services block grant payment to cooperatives.

(8) remains the same.

(9) "Basic entitlement" means the minimum dollar amount as defined in 20-9-306, MCA, that each high school, elementary, accredited middle school or 7-8 grade program, or K-12 district will receive if in operation. ~~A district's total per-ANB entitlement and its basic entitlement determine its general fund budget limits.~~

(10) "Budgeted ANB" means the ANB used on the final general fund budget for a district. Depending on calculations performed under 20-9-311, MCA, the budgeted ANB will either be the current ANB or the three-year average ANB.

(11) through (17) remain the same.

(18) "Date of official enrollment count" for purposes of determining the enrollment used for calculating ANB means the first Monday in October or the first Monday in February ~~1~~, or the ~~nearest pupil instruction day if those dates do not occur on a pupil instruction day~~ next school day if those dates do not fall on a school day.

(19) through (24) remain the same.

(25) "Eligible voters" are the voters who are eligible to vote in elections ~~in both the elementary district and the high school district with the same boundaries,~~ pursuant to the provisions of 20-20-301, MCA.

(26) through (32) remain the same.

(33) "GTBA budget area" means the portion of a district's general fund BASE budget minus direct state aid, minus state special education allowable cost payments, minus the quality educator payment, minus the Indian ~~E~~education for ~~A~~all payment, minus the at-risk student payment, ~~and~~ minus the American Indian achievement gap payment, and minus the data-for-achievement payment. For districts with lower than average tax bases, GTBA is paid to subsidize mills levied to fund the GTBA budget area.

(34) through (37) remain the same.

(38) "Maximum general fund budget" or "maximum GFB" means the maximum general fund budget a district is allowed to adopt. It is the sum of: 100% of the district's basic and per-ANB entitlements; 100% of the quality educator payment; 100% of the at-risk student payment; 100% of the Indian ~~E~~education for ~~A~~all payment; 100% of the American Indian achievement gap payment; 100% of the data-for-achievement payment; up to 200% of the district's special education allowable cost payment; and up to 100% of the district's related services block grant payment to cooperatives.

(39) through (57) remain the same.

(58) "Statewide retirement GTB mill value per elementary ANB" or "statewide retirement GTB mill value per high school ANB" means the CY 20XX-1 statewide mill value multiplied by 1.21, then divided by the statewide FY 20XX high school or elementary budgeted ANB.

(59) and (60) remain the same.

(61) "Three-year average ANB" means the average of current ANB for a three-year period, as calculated under 20-9-311, MCA. Three-year ANB for FY 20XX is based on the average of current ANB for FY 20XX, FY20XX-1, and FY 20XX-2, rounded up to the nearest whole ANB.

(62) and (63) remain the same.

AUTH: 20-9-102, MCA
IMP: Title 20, ch. 9, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to establish a data-for-achievement payment, revise the date for the enrollment count in February (SB 175, 2013 Legislative Session), and to clarify terminology.

10.16.3817 SPECIAL EDUCATION FUNDING REVERSION (1) through (3) remain the same.

(4) Revisions to the annual trustees' financial summary report must be made in accordance with ARM 10.10.504. Revisions to the annual trustees' financial summary report made by the district after December ~~20~~ 10 of the ensuing fiscal year, will not be considered in calculating the reversion amount. The Superintendent

of Public Instruction may accept the adjustments after those dates for unusual circumstances.

(5) remains the same.

AUTH: 20-9-321, MCA
IMP: 20-9-321, MCA

Statement of Reasonable Necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule and change the deadline to December 10 for making revisions to the annual trustees' financial summary report to allow adequate time to compile the data in order to meet state and federal reporting requirements.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (3) remain the same.

(4) The official count of enrolled students, as defined in ARM 10.15.101, is taken on the first Monday in October and the ~~1st of~~ first Monday in February, or the ~~first~~ next school day ~~that follows the count date if the official count date is not~~ if those dates do not fall on a school day.

(a) through (8) remain the same.

(9) A student enrolled in a course providing less than the required aggregate hours of pupil instruction who has demonstrated proficiency in the course content may be counted as enrolled and included in the calculation for ANB. The ANB for the student must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the course content.

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

~~(11)~~ (12) Trustees may apply for increased ANB for early graduates who are enrolled as of the first Monday of October as a senior in high school in the seventh semester of secondary school, and who complete the graduation requirements prior to the February ~~1~~ enrollment count date in accordance with 20-9-313, MCA, by stating in the enrollment reports submitted to the Superintendent of Public Instruction the names of pupils which were not included in the February ~~1~~ enrollment count because they graduated early and the date of the pupils' graduation. The information must be submitted by the deadline in ARM 10.20.103 preceding the year for which ANB is being calculated.

(12) and (13) remain the same but are renumbered (13) and (14).

(a) and (b) remain the same.

(c) adjust the guaranteed tax base aid payment to reflect the amount which the district would be eligible for based on the budget recalculated in ~~(13)~~(b).

(14) remains the same but is renumbered (15).

(a) through (a)(ii) remain the same.

(iii) multiplying ~~(14)~~(a)(i) by (ii) to determine the amount of the funding penalty; and

(iv) remains the same.

(b) However, if a school district fails to conduct the minimum number of hours by reason of one or more unforeseen emergencies as defined in 20-9-802, MCA, the Superintendent of Public Instruction shall reduce the direct state aid payments

proportionally for each aggregate hour less than the minimum required by applying the calculation in ~~(14)~~(a), divided by two.

(c) remains the same.

~~(15)~~ (16) School districts will be funded based on the current ANB or three-year ANB, whichever generates the greatest maximum general fund budget. For the purpose of determining the BASE funding program of a district, current ANB and three-year average ANB will be calculated using the following methods:

(a) To calculate current ANB:

(i) the enrollment reported by the school district on the October and February enrollment report forms to the Superintendent of Public Instruction, pursuant to 20-9-311, MCA, will be adjusted and averaged by budget unit as follows:

By budget unit: [(enrollment for first Monday in October + enrollment for first Monday in February ~~1~~) - (kindergarten enrollment for students receiving less than 180 hours of pupil instruction time per school year) - (one-half kindergarten enrollment for students enrolled in a half-time kindergarten program receiving180 hours or more of pupil instruction time per school year) ~~- (prekindergarten enrollment)~~ - (part-time enrollment for students in grades FTK through 12 receiving less than 180 hours of pupil instruction time per school year) - (0.75 times the part-time enrollment for students in grades FTK through 12 receiving 180 through 359 hours of pupil instruction time per school year) - (0.50 times the part-time enrollment for students in grades FTK through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times part-time enrollment for students in grades FTK through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (enrolled students reaching 19 years of age by September 10 of the school year) - (0.50 times students enrolled in MT youth challenge) + (early graduates)] divided by 2 to get the average of the two enrollment counts by budget unit;

(ii) multiply ~~(15)~~(a)(i) by the sum of PIR days plus PI days, divided by 180, rounded up to the next whole number, equals current ANB; and

(iii) add the additional approved enrollment, as determined in ARM ~~10.20.103~~ 10.20.104 and 10.20.104A, to the enrollment used to calculate the current ANB.

(b) To calculate three-year average ANB, the Superintendent of Public Instruction will do the following:

(i) total the current ANB by budget unit for the budget year and the two years preceding the year for which three-year average ANB could be used for funding, divide the sum by three, and round up to the nearest whole number; and

(ii) add the additional approved enrollment as determined in ARM 10.20.104A to the enrollment used to calculate three-year average ANB.

(c) To determine whether the current ANB or three-year average ANB will be used for budgeting and funding purposes, the Superintendent of Public Instruction will calculate the district's maximum general fund budget using the current ANB as determined in ~~(15)~~(a) for every budget unit of the district and also using the three-year average ANB as determined in ~~(15)~~(b) for every budget unit of the district. The ANB type that generates the highest maximum general fund budget will be used for budgeting and for determining the direct state aid funding for the district's general fund budget for the ensuing year.

(16) remains the same but is renumbered (17).

(a) If the enrollment reporting error is discovered and reported to the Superintendent of Public Instruction before the budget for FY 20XX is adopted and before the date by which the trustees must commence the final budget meeting required by 20-9-131, MCA, the Superintendent of Public Instruction will recalculate and recertify the district's current or three-year average ANB for the FY 20XX budget using the corrected enrollment figures in the ANB calculations.

(b) Except as provided in ~~(16)~~(c), if an enrollment reporting error is discovered and reported to the Superintendent of Public Instruction on or after the date by which the trustees must commence the FY 20XX final budget meeting required by 20-9-131, MCA, the Superintendent of Public Instruction will determine the direct state aid and guaranteed tax base aid payments the district would have received for FY 20XX if enrollment had been correctly reported and will make a payment adjustment in the current year. Funding will be adjusted, but ANB figures will not be changed for the current year or changed for use in future years' ANB calculations or budgets.

(c) If the Superintendent of Public Instruction determines the enrollment reporting error detected as described in ~~(16)~~(b) would materially affect the ANB of a future year, resulting either in significant financial hardship or significant overpayment of state funds to a district's general fund budget for a future year if not corrected, the superintendent may use the correct enrollment to certify ANB for the following year's budget. That is, the enrollment error will be corrected and will be used in ANB calculations affecting future years only if the financial impacts are significant.

AUTH: 20-9-102, 20-9-346, 20-9-369, MCA
IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to revise the calculation of ANB to include students mastering content in fewer hours than otherwise required, revise the date for the enrollment count in February (SB 175, 2013 Legislative Session), and to clarify terminology.

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB CALCULATION (1) School district trustees may apply to the Superintendent of Public Instruction for increased ANB for unusual elementary or high school enrollment increases that exceed ~~6%~~ the lesser of 4% or 40 students of the enrollment in the fiscal year prior to the year for which the increase is requested. Elementary district and high school district calculations are always separate. In the case of a K-12 district, make separate enrollment calculations for the elementary and high school levels of the K-12 district.

(2) remains the same.

(a) Estimate the district's anticipated enrollment for the next October count using information known to be accurate at the time the estimate is made. By budget unit: [(estimated enrollment for first Monday in October) - (estimated kindergarten enrollment for students receiving less than 180 hours of pupil instruction time per school year) - (one-half estimated kindergarten enrollment for students enrolled in a

half-time kindergarten program and receiving 180 hours or more of pupil instruction time per school year) ~~- (estimated prekindergarten enrollment)~~ - (estimated part-time enrollment for students in grades FTK through 12 receiving less than 180 hours of pupil instruction time per school year) - (0.75 times the part-time estimated enrollment for students in grades FTK through 12 receiving 180 through 359 hours of pupil instruction time per school year) - (0.50 times the estimated part-time enrollment for students in grades FTK through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times estimated part-time enrollment for students in grades FTK through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (estimated enrolled students reaching 19 years of age by September 10 of the school year) - (0.50 times estimated students enrolled in MT youth challenge) ~~+ early graduates~~]. This is anticipated enrollment (AE).

(b) Determine the adjusted and averaged enrollment counts for October and February of the current school year using the calculation in ARM 10.20.102(~~15~~ 16)(a)(i). The average of the October and February adjusted enrollment counts is current year enrollment (CYE).

(c) and (d) remain the same.

(e) If the anticipated increase in enrollment calculated in (c) exceeds 40 students or, if the anticipated increase in enrollment as a percentage of the current year enrollment calculated in ~~(2)~~(d) exceeds ~~6~~ 4%, the Superintendent of Public Instruction shall approve the district's use of the AEI as determined in (3) in place of the current ANB for purposes of determining general fund payments and budget limitations in accordance with 20-9-311, MCA, to establish the ensuing year's BASE funding program and entitlement calculations in accordance with 20-9-314(5), MCA.

(3) remains the same.

(a) Determine the increase based on a percentage of the current year enrollment:

(i) Determine AEI in excess of ~~6~~ 4% of CYE. AEI - (~~.06~~ .04 x CYE). Round to nearest hundredth (.xx).

~~(b)~~ (ii) Determine AEI for each budget unit by subtracting CYE by budget unit from AE by budget unit. AEI by budget unit = AE by budget unit - CYE by budget unit. If the district has only one budget unit, go to ~~(3)(d)~~ (a)(iv).

~~(c)~~ (iii) Prorate anticipated enrollment increase exceeding ~~6~~ 4% of CYE among the district's budget units by:

~~(i)~~ (A) calculating the ratio of AEI for each budget unit as calculated in ~~(3)(b)~~ (a)(i) to the total AEI for the district calculated in (2)(c); and

~~(ii)~~ (B) multiplying AEI in excess of ~~6~~ 4% of CYE (AEI - (~~.06~~ .04 x CYE)) by the ratio calculated in ~~(3)(c)(i)~~ (a)(iii)(A) for each budget unit within the district. Round to the nearest hundredth (.xx).

~~(d)~~ (iv) Add the CYE by budget unit and the AEI in excess of ~~6~~ 4% by budget unit as calculated in ~~(3)(c)~~ (a)(iii)(B).

(b) Determine the increase based on number of students:

(i) Determine AEI for each budget unit by subtracting CYE by budget unit from AE by budget unit.

(ii) Add the CYE by budget unit and the AEI by budget unit.

(c) The greater of (a)(iv) or (b)(ii) is the increased enrollment.

~~(e)~~ (d) Multiply the ~~sum~~ increased enrollment calculated in ~~(3)(d)~~(c) by the

total of PI days and PIR days approved for the current year and divide by 180 for each budget unit. Round the ANB up to the nearest whole number. This figure is used as current ANB for purposes of ARM 10.20.102~~(15)~~ (16) in determining general fund payments and budgeting limitations for the district.

(4) remains the same.

(a) ANB is recalculated in accordance with (2), using actual enrollment as of the ~~1st~~ first Monday in October in place of the anticipated enrollment.

(b) If the ANB recalculated in ~~(4)~~(a) based on the actual October enrollment equals or exceeds the ANB calculated in (3)~~(e)~~ (d), the anticipated unusual enrollment increase materialized and the district is entitled to the increased BASE funding and entitlements approved by the Superintendent of Public Instruction in (2)(e).

(c) If the ANB recalculated in ~~(4)~~(a) based on the actual October enrollment is less than the ANB calculated in (3)~~(e)~~ (d), ~~(2) will be used to recalculate current ANB using actual enrollment as of the next February count in place of the anticipated enrollment~~ ANB is recalculated in accordance with ARM 10.20.102(16)(a)(i), using actual enrollment as of the first Monday in February in place of the anticipated enrollment.

(d) If the ANB recalculated in ~~(4)~~(c) based on the actual February enrollment equals or exceeds the ANB calculated in (3)~~(e)~~ (d), the anticipated unusual enrollment increase materialized and the district is entitled to the increased BASE funding and entitlements approved by the Superintendent of Public Instruction in (2)(e).

(e) If the ANB recalculated in ~~(4)~~(c) based on the actual February enrollment is less than the ANB calculated in (3)~~(e)~~ (d), the anticipated unusual enrollment increase did not materialize and the Superintendent of Public Instruction makes the following adjustments:

(i) remains the same.

(ii) ~~direct~~ state aid ~~and guaranteed tax base subsidies~~ will be adjusted to reflect the amount which should be paid on the district's adjusted budget.

AUTH: 20-3-106, 20-9-102, MCA
IMP: 20-9-166, 20-9-311, 20-9-314, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the provisions of 20-9-314, MCA (SB 175, 2013 Legislative Session) by amending the threshold for determining eligibility for an increase in ANB due to an unusual enrollment increase. Also, preschool enrollment is not included in calculation of ANB.

10.20.105 UNANTICIPATED ENROLLMENT INCREASE (1) and (1)(a) remain the same.

(b) Determine the prior year enrollment. For purposes of this calculation, "prior year enrollment" (PYE) will mean the adjusted and averaged enrollment used for the current ANB or three-year average ANB, whichever was used as budgeted

ANB.

(c) Determine the "enrollment increase" (EI) by subtracting the prior year enrollment from the current year enrollment. EI = CYE - PYE.

(d) remains the same.

(e) If the enrollment increase calculated in (c) exceeds 40 students, or if the enrollment increase as a percentage of the prior year enrollment calculated in ~~(1)~~(d) exceeds ~~6~~ 4%, the Superintendent of Public Instruction will recalculate and adjust the current year's basic entitlement and total per-ANB entitlement in accordance with 20-9-314(5), MCA, using the recalculation of ANB in (2).

(2) remains the same.

(a) Determine the increase based on a percentage of the PYE:

(i) Determine EI in excess of ~~6~~ 4% of PYE. EI - (~~.06~~ .04 x PYE). Round the calculation to the nearest hundredth (.xx).

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

~~(c)~~ (iii) Prorate enrollment increase exceeding ~~6~~ 4% of PYE calculated in ~~(2)~~(a)(i) among the budget units by:

~~(i)~~ (A) calculating the ratio of EI for each budget unit as calculated in ~~(2)(b)~~ (a)(i) to the total EI for the district calculated in (1)(c). If the EI calculated for a budget unit in ~~(2)(b)~~(a)(i) is negative (enrollment loss), omit the budget unit from the proration and add the absolute value of the negative EI by budget unit to the EI determined in (1)(c); and

~~(ii)~~ (B) multiplying the EI in excess of ~~6~~ 4% of PYE calculated in ~~(2)~~(a) by the ratio calculated in ~~(2)(c)~~(a)(i) for each budget unit within the district. Round the calculation to the nearest hundredth (.xx).

~~(d)~~ (iv) Add the PYE by budget unit and the EI in excess of ~~6~~ 4% by budget unit as calculated in ~~(2)(c)(ii)~~(a)(iii)(B).

(b) Determine the increase based on number of students:

(i) Determine EI for each budget unit by subtracting PYE by budget unit from CYE by budget unit. EI by budget unit = CYE by budget unit - PYE by budget unit. If the EI calculated for a budget unit is negative (enrollment loss), omit the budget unit from the proration and add the absolute value of the negative EI by budget unit to the EI determined in (1)(c).

(ii) Add the PYE by budget unit and the EI by budget unit.

(c) The greater of (a)(iv) or (b)(ii) is the increased enrollment.

~~(e)~~ (d) Multiply the ~~sum~~ increased enrollment calculated in ~~(2)(d)~~(c) by the total of PI days and PIR days approved for the current year, and divide the total by 180.

~~(f)~~ (e) Round the result calculated in (2)~~(e)~~(d) up to the next whole number to determine the funding adjustment ANB.

(3) remains the same.

AUTH: 20-9-102, MCA
IMP: 20-9-313, 20-9-314, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the provisions of 20-9-314, MCA (SB 175, 2013 Legislative Session) by amending the

threshold for determining eligibility for an increase in ANB due to an unusual enrollment increase.

10.21.101H CALCULATION OF DEBT LIMITS (1) and (2) remain the same.

(a) For an elementary district,

Statewide mill value per elementary ANB x Elementary ANB x 1000 x ~~50~~ 100%;

(b) For a high school district,

Statewide mill value per high school ANB x High School ANB x 1000 x ~~50~~ 100%.

(3) and (4) remain the same.

(5) For a K-12 district, formed pursuant to 20-6-701, MCA, that is ineligible to receive guaranteed tax base aid under the provisions of 20-9-367, MCA, the maximum amount for which the district may become indebted is ~~the sum of the amounts computed separately for the elementary and high school programs~~ 200% of the taxable valuation of the property within the district.

~~(a) The maximum amount for which a K-12 district may become indebted for elementary school program purposes is limited to the amount calculated for the elementary program under (1) and (2).~~

~~(b) The maximum amount for which a K-12 district may become indebted for high school program purposes is limited to the amount calculated for the high school program under (1) and (2).~~

(6) For a K-12 district, in which both the elementary and the high school programs are eligible to receive guaranteed tax base aid under the provisions of 20-9-367, MCA, the maximum amount for which the district may become indebted is the sum of the amounts computed separately in (2)(a) and (2)(b).

(7) For a K-12 district, in which either the elementary or the high school program, but not both, is eligible to receive guaranteed tax base aid under the provisions of 20-9-367, MCA, the maximum amount for which the district may become indebted is the sum of 100% of the taxable value of the K-12 district plus 100% of the product of the applicable statewide mill value per-ANB multiplied by the eligible program's ANB multiplied by 1000.

(8) In addition to the requirements in 20-9-422, MCA, a K-12 district bond resolution authorizing the issuance of bonds must indicate the portion of the bond obligation which will be considered an obligation for the elementary program and the portion which will be considered an obligation for the high school program.

AUTH: 20-9-102, MCA
IMP: 20-9-367, 20-9-406, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-9-406, MCA (HB 373, 2015 Legislative Session) amending the debt limit for school districts and to clarify the calculation of the debt capacity for K-12 districts in order to reflect statutory intent and to be consistent with practice.

10.22.102 GENERAL FUND SPENDING LIMITS (1) through (2)(a) remain the same.

(i) the direct state aid associated with the basic entitlement;

(ii) the direct state aid associated with the per-ANB entitlement;

(iii) the quality educator payment;

~~(ii)~~ (iv) the at-risk student payment;

~~(iii)~~ (v) the Indian ~~E~~education for ~~A~~all payment deposited into the general fund; ~~and~~

~~(iv)~~ (vi) the American Indian achievement gap payment; or

(vii) the data-for-achievement payment.

(b) in the initial year of implementation of a full-time kindergarten program, an amount equal to (one-half the kindergarten enrollment in the current year) times (the sum of the maximum per-ANB rate for an elementary ANB and the Indian ~~E~~education for ~~A~~all payment for an ANB for the current year).

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

(ii) the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous ~~year's over-BASE levy amount~~ five years to support the general fund budget;

(iii) remains the same.

(iv) the prior year's excess reserves under 20-9-141, MCA, available to fund the over-BASE budget; ~~and~~

(v) the estimated tuition revenue available to fund the over-BASE budget~~.~~;

(vi) the amount of the reduction of flexible nonvoted property tax levy authority in the transportation fund, the bus depreciation fund, the tuition fund, and the adult education fund; and

(vii) the estimated oil and natural gas production taxes for school districts available to fund the over-BASE budget.

(b) through (4)(a)(i) remain the same.

(ii) the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous ~~year's over-BASE levy amount~~ five years to support the general fund budget;

(iii) remains the same.

(iv) the prior year's excess reserves under 20-9-141, MCA, that will be used to fund the over-BASE budget; ~~and~~

(v) the estimated tuition revenue available to fund the over-BASE budget~~.~~;

(vi) the amount of the reduction of flexible nonvoted property tax levy authority in the transportation fund, the bus depreciation fund, the tuition fund, and the adult education fund; and

(vii) the estimated oil and natural gas production taxes for school districts available to fund the over-BASE budget.

(b) remains the same.

(5) With respect to (3)(a)(vi) and (4)(a)(vi), the ongoing authority for any nonvoted increase in the over-BASE budget levy imposed must be decreased in future years to the extent that any increase in other nonvoted property tax levies is imposed.

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

AUTH: 20-9-102, MCA
IMP: 20-9-308, 20-9-315, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.22.102 to implement the new provisions of 20-9-308, MCA (SB 175, 2013 Legislative Session) amending the general fund spending limits.

10.22.104 UNRESERVED FUND BALANCE REAPPROPRIATED (1) Any unreserved general fund end-of-the-year balance must be reappropriated, up to an amount not exceeding 15% of a school district's maximum general fund budget, to be used for property tax reduction, in accordance with 20-9-308 and 20-9-141, MCA.

(2) through (4) remain the same.

(5) Any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state.

(6) Any amounts remitted to the state under (5) are not considered expenditures to be applied against budget authority.

AUTH: 20-9-102, MCA
IMP: 20-9-104, 20-9-105, 20-9-308, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-9-308, MCA (SB 329, 2011 Legislative Session) establishing a limit on the amount of fund balance that can be reappropriated with any excess being remitted to the state.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) through (1)(e) remain the same.

(f) Indian ~~E~~education for ~~A~~all payments deposited into the general fund;

(g) and (h) remain the same.

(i) data-for-achievement payment;

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

(2) through (4) remain the same.

AUTH: 20-9-102, MCA
IMP: 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, 20-9-308, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the new provisions of 20-9-308, MCA (SB 175, 2013 Legislative Session) amending the calculation for determining the BASE budget levy.

4. The Superintendent of Public Instruction proposes to repeal the following rule:

10.30.405 K-12 DISTRICT ISSUANCE OF BONDS

AUTH: 20-3-106, MCA
IMP: 20-9-406, MCA

Statement of reasonable necessity. The Superintendent of Public Instruction has determined it is reasonable and necessary to repeal this rule as the calculation is inaccurate and clarified in ARM 10.21.101H.

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: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., April 13, 2016.

6. Ann Gilkey, Chief Legal Counsel for the Superintendent of Public Instruction, has been designated to preside over and conduct this hearing.

7. The Office of Public Instruction 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 agency.

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, apply. Senator Zinke, sponsor of SB 329 (2011 Legislative Session) and Senator Jones, sponsor of SB 175 (2013 Legislative Session) were contacted on October 15, 2014. Senator Tom Facey, sponsor of SB 32 (2013 Legislative Session), Representative Kathy Kelker, sponsor of HB 31 (2015 Legislative Session), and Representative Scott Staffanson, sponsor of HB 373 (2015 Legislative Session) were contacted on January 15, 2016. All of the above sponsors were sent a copy of a preliminary draft of the proposed amendments and repeal on February 5, 2016.

10. With regard to the requirements of 2-4-111, MCA, the agency has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Madalyn Quinlan, Chief of Staff, for
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State February 22, 2016.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I; amendment of ARM 18.6.202, 18.6.203, 18.6.204, 18.6.205, 18.6.206, 18.6.211, 18.6.212, 18.6.213, 18.6.215, 18.6.221, 18.6.231, 18.6.232, 18.6.238, 18.6.239, 18.8.240, 18.6.241, 18.6.243, 18.6.246, 18.6.247, 18.6.251, 18.6.252, 18.6.262, 18.6.264; and repeal of ARM 18.6.244 and 18.6.245 pertaining to Outdoor Advertising Control	))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On April 1, 2016, at 10:00 a.m., the Department of Transportation will hold a public hearing in the Transportation Commission meeting room, room number 200 of the Montana Department of Transportation building, 2701 Prospect Ave., Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on March 25, 2016, to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail phurley@mt.gov.

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

NEW RULE I ELECTRONIC BILLBOARD STANDARDS (1) An electronic billboard (EBB) may be approved as an off-premise outdoor advertising sign if it is visible to the traveling public from a controlled route and is within an area zoned commercial or industrial within the city limits or urban area of an incorporated or unincorporated city or town as shown on the department's official city urban and unincorporated town maps.

(2) An EBB must meet all of the following conditions:

(a) EBB messages must have a minimum display (dwell) time of eight seconds and a maximum change (twirl) interval of one second;

(b) an EBB shall not exceed a brightness level of three tenths (0.3) footcandles over ambient light as measured by the distance to the EBB as follows:

EBB face area (square feet)	Distance of Measurement (feet from EBB)
300-672	250
200-299	150
150-199	135
100-149	110

(c) an EBB must use automatic dimming technology to adjust the brightness of the EBB relative to ambient light to avoid exceeding the brightness level of three tenths (0.3) footcandles;

(d) an EBB must not be placed with illumination that interferes with the effectiveness of or obscures an official traffic sign, device, or signal;

(e) an EBB must not cause beams or rays or light to be directed at the traveled way if the light is of unreasonable intensity or brilliance or is likely to be mistaken for a warning or danger signal or cause glare or impair the vision of any driver, or to interfere with the driver's operation of a motor vehicle;

(f) an EBB message must remain static and nonmoving. Paging, scrolling, or streaming messages are prohibited. The message must not use techniques of message display such as fading, rolling, window shading, exploding, dissolving, spinning, revolving, or shaking messages;

(g) an EBB must not include or be illuminated by flashing, intermittent, or moving lights, nor use jumping arrows or rapid chasing or flashing lamp borders, or lights which resemble or simulate any lights used to control traffic;

(h) an EBB must not be located within 1000 feet of the beginning or ending of the pavement widening, for each entrance or exit roadway, to the main-traveled way on interchanges, and within 500 feet of an intersection;

(i) an EBB must not be placed within 2000 feet of another permitted sign measured along the nearest edge of the pavement between points directly opposite the signs on the same side of the roadway;

(j) an EBB must only be constructed as a single face, back-to-back, or two-faced V-shaped structure. Only one face may be visible in each direction of the main-traveled way. Side-by-side or stacked EBBs are prohibited;

(k) an EBB must not be a portable sign which is used as permanent illuminated signage, as only a fixed sign is allowed;

(l) an EBB must not use wording that implies traffic control or a highway emergency;

(m) an EBB must not attempt or appear to attempt to direct the movement of traffic and must not interfere with, imitate, or resemble any official traffic sign, signal, or device;

(n) an EBB must contain a default mechanism which will stop the sign face in one position if a malfunction which causes the display to be in violation of this rule occurs, or within three hours when notified by the department; and

(o) an EBB must not cause interference with radio, television, or other utility electronic signal.

(3) An existing non-EBB may be modified or upgraded to EBB technology if the sign conforms with EBB criteria established in this rule relating to zoning, size, lighting, and spacing. Prior approval from the department is required to upgrade an existing sign to EBB technology, including a new sign application and a nonrefundable inspection fee.

(4) Nonconforming signs must not be modified or upgraded to EBB technology.

(5) All applications for EBB original or upgraded permits must be accompanied by an approval issued by a local or county government on a form provided by the department. Approval of an application and issuance of a permit do not alleviate an applicant for responsibility to comply with all applicable county or local regulations. Any violation of county or local regulations may result in revocation of the permit.

(6) All EBBs must undergo an inspection after installation to demonstrate the EBB's ability to comply with all requirements set forth in this rule.

(7) Violation of this rule may result in revocation of the permit.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-112, 75-15-113, MCA

REASON: The department proposes to adopt New Rule I establishing new minimum standards for permitting electronic billboards (EBBs) along controlled routes in Montana. Previously, EBBs were prohibited along controlled routes by department administrative rule. The department recognizes the increased use of LED technology in the outdoor advertising industry, and now proposes to allow the technology on permitted signs, with restrictions on location, spacing, brightness, message change time, etc. to better accommodate the use of this technology for outdoor advertising purposes.

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

18.6.202 DEFINITIONS (1) remains the same.

(a) the sign remains in the absence of a valid lease or written permission from the landowner;

(b) the sign ~~has been without a message for a period of at least six months~~ face is blank;

(c) the sign ~~contains obsolete advertising matter~~ is obsolete;

(d) remains the same.

(e) the sign ~~structure~~ has not been erected;

(f) the sign ~~structure~~ or sign face has been removed; or

(g) remains the same.

~~(2) "Advertising device" means any outdoor sign, display, device, figure painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from any place on the main traveled way of any interstate, national highway system, or federal aid primary highway system. This includes any device located outside or on the outside of any building which identifies or advertises any business, enterprise, organization or project, product, or service, including all parts such as frames and supporting structures located on any premises be means of painting on or attached bills, letters, numerals, pictorial matter, or electric or other devices including any airborne device~~

~~tethered to any building, structure, vehicle, or other anchor and an announcement, notice, directional matter, name, declaration, demonstration, display, mural, or insignia, whether permanent, temporary, or portable installation. The term includes the sign face(s) and the sign structure. Gravestones and dedication markers erected by governmental entities or nonprofit entities as tributes or memorials are not considered advertising devices. Advertising device is synonymous with sign.~~

(3) through (5) remain the same but are renumbered (2) through (4).

~~(6)~~(5) "Blank sign" means a sign structure that has no face or has faces without 100 percent advertising cover. ~~The term also includes signs containing notices the sign is for rent or lease.~~

(7) and (8) remain the same but are renumbered (6) and (7).

~~(9) "Commercial activity" is defined at 75-15-103, MCA, and has the additional meaning of income production property such as, but not limited to, office buildings, retail buildings, hotels, banks, restaurants, service outlets, and owner-occupied properties being put to income producing uses. The term does not include any activity that has been in business less than one year, or any property on which the only commercial activity is the erection or maintenance of an outdoor advertising structure.~~

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

~~(11)~~(9) "Commercial or industrial zone ~~or area~~" is defined at 75-15-103, MCA, and has the additional meaning of those ~~districts~~ areas established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. The zones are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

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

~~(13)~~(11) "Controlled route" means any route on the ~~national highway system, which includes the interstate system, and any route on the former federal-aid primary system in existence on June 1, 1991~~ federal-aid interstate, National Highway System (NHS), or primary system.

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

~~(15)~~(13) "Destroyed sign" means a sign that is no longer in existence due to factors other than vandalism or other criminal or tortious acts. ~~The term includes a sign which has been blown down by the wind and sustains damage in excess of 60 percent.~~

(16) through (20) remain the same but are renumbered (14) through (18).

~~(21) "Gore" means the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way on highway interchanges.~~

(22) through (24) remain the same but are renumbered (19) through (21).

~~(25) "Industrial Activity" is defined at 75-15-103, MCA, and has the additional meaning of land or improvements that an industrial business is currently using or can be adopted by the business for future industrial use; a combination of land, improvements, and machinery integrated into a functioning unit to assemble, process, and manufacture products from raw materials or fabricated parts; factories that render service, including but not limited to laundries, dry cleaners, storage warehouses, refineries; or areas on which an industrial business produces natural~~

~~resources. The term does not include any activity that has been in business less than one year, or any property on which the only industrial activity is the erection or maintenance of an outdoor advertising structure.~~

~~(26)~~(22) "Interchange" ~~means~~ is defined at 75-15-103, MCA, and has the additional meaning of a junction of two or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams, and a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

~~(27)~~(23) "Intersection" ~~means~~ is defined at 75-15-103, MCA, and has the additional meaning of a system of two or more interconnecting roadways without a grade separation providing for the exchange of traffic. Only a road, street, or highway which enters directly into the ~~main-traveled way of an interstate or primary highway~~ controlled route is regarded as intersecting. ~~An alley, undeveloped right-of-way other than an interstate or primary highway, a private road, or a driveway are not regarded as an intersecting street, road, or highway.~~

(28) remains the same but is renumbered (24).

~~(29)~~(25) "Mobile advertising device" or "car wrap" or "taxi display" means devices displayed on vehicles that may independently become part of traffic flow, or may be parked at specific locations, and which are capable of being transported over public roads and streets whether or not it is so transported. The term includes devices displayed on other portable or movable objects or animals.

(30) and (31) remain the same but are renumbered (26) and (27).

~~(32)~~(28) "Nonconforming sign" is defined in 75-15-111, MCA, and also has the meaning of an outdoor advertising ~~structure~~ sign which was lawfully erected but which does not comply with the provisions of state law or state administrative rules passed at a later date, or which fails to comply with state law or state administrative rules due to changed conditions. The term does not include illegally erected or maintained signs.

(33) through (41) remain the same but are renumbered (29) through (37).

(38) "Rural area" means any area not defined as an urban area.

~~(42)~~ (39) "Sign face" means the surface of the sign that carries the advertising message and is the portion of the sign ~~structure~~ visible from a single direction of travel and available for advertising. It includes border and trim, but excludes the base or apron, supports, sign posts, and other structural members. The total area of all sign faces may also be referred to as the "sign area." One sign structure may have more than one face.

~~(43)~~(40) "Sign structure" means ~~an advertising device~~ the portion of the sign that supports the sign face(s) including the sign ~~face~~ posts, base or apron, supports, and other structural members.

(44) through (48) remain the same but are renumbered (41) through (45).

(46) "Urban area" is defined in 75-15-103, MCA, and also has the meaning of areas within the boundaries shown on the department's official urban maps.

~~(49)~~(47) "V-type sign" means a sign structure that consists of multiple sign ~~facings~~ faces placed at angles to each other, oriented in different directions and not exceeding ten feet apart at ~~the~~ their nearest point ~~of each other~~.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to clarify definitions used throughout this subchapter. The proposed amendment to (1)(a) through (g) will simplify and consolidate the definition of "abandoned sign" to provide consistency in format and use of terms. Federal and state statutes do not allow abandoned signs to remain in a permitted location. The proposed amendment to (2) will delete the definition of "Advertising device," as this definition is not used elsewhere within the rules, and therefore does not require a definition. The proposed amendment to (6) will delete the sentence which formerly included signs with "for rent" or "for lease" messages as part of the definition of blank signs. Section 75-15-111(1)(b), MCA, already allows for signs which advertise the sale or lease of the property upon which they are located. The proposed amendment to (9) will delete the definition of "commercial activity," as the definition is already found in statute at 75-15-103, MCA, and administrative rules may not unnecessarily repeat statutory language. The proposed amendment to (11) will substitute "areas" for the word "districts," as the word "areas" more clearly matches the terminology used by zoning authorities. The proposed amendment to (13) clarifies the definition of "controlled route" to include National Highway System (NHS) routes. The proposed amendment to (15) will delete the portion of the definition which included signs blown down by the wind as part of the definition of "destroyed sign." The definition already includes signs no longer in existence due to any factor other than vandalism or criminal or tortious acts. The proposed amendment to (21) will delete the definition of "gore," as the definition in this rule conflicts with other MDT definitions of "gore of the interchange." Section 75-15-113(9), MCA, already addresses the statutory prohibition for placement of signs within 500 feet from the "beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way," so no additional definition of "gore" as pavement widening is necessary. The proposed amendment to (25) will delete the definition of "industrial activity," as that definition is already found in statute at 75-15-103, MCA. Administrative rules may not unnecessarily repeat statutory language. The proposed amendments to (26) and (27) will identify the statutory definition of the term and clarify the additional wording to be contained in administrative rule. The proposed amendment to (29) is necessary to expand the definition of "mobile advertising devices" to include other portable objects or animals as items upon which off-premise advertising must not be placed. The proposed amendment to (32) will change "structure" to "sign" for consistency with rule definition amendments being proposed. The proposed addition of (39) will add a definition for "rural area," as that term is used throughout the administrative rules and must be defined for clarity of use. The proposed amendments to (42) and (43) will clarify definitional language for consistency with other rule definitions and general use of the terms throughout the rules. The proposed amendment to add (46) will define "urban area," as that term is used throughout the administrative rules and must be defined for clarity of use. The proposed amendment to (47) will make grammatical changes to the definition for clarity and ease of use.

18.6.203 UNZONED COMMERCIAL ACTIVITY (1) remains the same.

(a) ~~the commercial permanent buildings or improvements comprising a business~~ the commercial activity and its associated buildings used to qualify an area must be located within 660 feet of the right-of-way of ~~an interstate or primary highway~~ a controlled route;

(b) ~~a~~ the commercial ~~business~~ activity may not be located inside a structure which is also used as a residence, ~~n~~or in a building intended for use by the resident such as a garage or other outbuilding. If a residence exists on the location, the ~~business~~ commercial activity must be located in a separate building from the residence, and must meet all requirements in this rule for utilities, ~~parking,~~ etc.;

(c) the commercial ~~activities~~ activity shall have been in business at least one year prior to being considered as qualifying the area as an unzoned commercial area;

(d) the ~~permanent buildings or improvements comprising a commercial business intended to serve the traveling public~~ commercial activity must be clearly visible to the traveling public on the controlled route, ~~and~~ be easily recognizable as a commercial activity, and have an on-premise sign, visible from the controlled route, which identifies the commercial activity;

(e) ~~a~~ the commercial ~~activity~~ activity's associated building must be connected to ~~one~~ two or more utilities; have a restroom; and ~~shall~~ be ~~occupied and~~ open to the public during regularly scheduled hours in excess of 20 hours per week, at least six months of a calendar year;

(f) the commercial activity must include a commercial building with a permanent foundation equipped with a permanent floor from material other than dirt, gravel, or sand;

~~(f) signs, displays, or other devices identifying the commercial business may be considered in the determination of visibility;~~

~~(g) seasonal (but not temporary or transient) commercial activities may be considered as a qualifying activity at the discretion of the department;~~

~~(h)~~(g) ~~a~~ the commercial activity ~~shall~~ must have ~~direct~~ vehicular access ~~from a public road~~ that is normal and customary for ingress and egress ~~by the public~~ to the commercial activity ~~as well as adequate parking to accommodate public access~~;

~~(i) a commercial activity shall include two or more customary facilities such as indoor restrooms, running water, functional electrical connections, and adequate heating and shall be equipped with a permanent flooring from material other than dirt, gravel, or sand;~~

~~(j)~~(h) ~~a~~ the commercial ~~business shall~~ activity must hold a current, valid business license issued by a local, county, or state government which authorizes the ~~business~~ the commercial activity to operate from that location. If no business license is required for the location, a government-issued authorization for the business operation which establishes the length of time for the business operation at the specific location may be substituted with department approval;

~~(k)~~(i) ~~any commercial building shall have a permanent foundation, built or modified for its current commercial use. Where~~ where a trailer, mobile home, or similar structure is used ~~as a business office~~ for the commercial activity's associated building, all wheels, ~~and~~ axles, and springs shall be removed. The ~~vehicle shall~~ mobile home or similar structure must be permanently secured on piers, pad, or foundation; and

(l) remains the same but is renumbered (j).

(2) A maximum of two signs ~~shall~~ may be permitted from a qualifying commercial activity~~. The sign(s) shall be located on the same side of the controlled highway as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway. If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.~~ and its associated building, regardless of the number of qualifying commercial activities conducting business from the same building.

(3) Signs must meet the following requirements:

(a) the sign(s) must be located on the same side of the controlled route as the qualifying activity;

(b) if the qualifying activity is separated from the controlled route by a frontage, access, or other type of road parallel to the controlled route, the sign(s) must be located on the same side of the parallel road as the qualifying activity and must not be located between the parallel road and the controlled route.

~~(3)~~(4) Unzoned commercial areas are not created when:

(a) and (b) remain the same.

(c) ~~activities are conducted in a building that is used~~ the building associated with the commercial activity is used solely to store trade equipment or ~~that~~ is not integral to the business operation where actual business transactions take place~~;~~

~~(d) spot-zoning or strip-zoning of an area for the displaying of outdoor advertising has occurred~~.

~~(4)~~(5) If the qualifying commercial ~~business~~ activity at the sign location ceases for a period of nine months, the sign will be deemed nonconforming, and must adhere to all outdoor advertising statutes and rules on repair ~~or replacement~~ of nonconforming signs found at ARM 18.6.251. If a qualifying commercial ~~business~~ activity again becomes operational at the sign location, the sign will revert to its former conforming status for the duration of the ~~business~~ commercial activity's operation and nine months thereafter.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify the criteria for unzoned commercial activities which may qualify a location for an off-premise outdoor advertising permit. The proposed amendments to (1) and (2) will address situations which may create confusion for permit applicants, including: requirement of utilities and restroom; identification signs visible from the controlled route; permanent foundation; requirement of a government-issued business license or alternative permit or registration which establishes at least a one-year length of business operation; limit of two permitted signs on any location, regardless of the number of separate businesses on the site. The proposed amendment to (3) will re-organize language on existing requirements for sign locations on the same side of the highway as the qualifying activity, including clarification of locations in the presence of frontage or parallel roads for ease of use by applicants and permit

holders. The proposed amendment to (4) will clarify language on use of buildings associated with the commercial activity. The proposed amendment to (5) will clarify language on the permitted sign's status if the qualifying commercial activity ceases to operate at the site.

18.6.204 ON-PREMISE SIGNS - QUALIFYING LOCATIONS (1) and (2) remain the same.

(a) Premises include the area occupied by the buildings and appurtenances associated with the activity such as parking lots, storage areas, processing areas, or areas for the physical uses that are ~~customarily incidental~~ customary to the activity, including open spaces landscaped, arranged and designed to be used in connection with the buildings or activities.

(b) through (6) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to clarify language in (2)(a) on use of on-premise areas such as buildings and landscaped areas when evaluating on-premise sign locations, to avoid confusion among permit applicants or holders.

18.6.205 OFF-PREMISE SIGNS - LOCATIONS - COMPLIANCE WITH STATUTES, RULES, ORDINANCES (1) through (3) remain the same.

(4) Off-premise signs visible from a controlled route must not be located ~~outside the~~ on government owned right-of-way~~, subject to the following setback:~~.

~~(a)~~(5) Off-premise signs located outside an incorporated area~~, no further than~~ must not be more than 660 feet from the outer edge of the right-of-way~~;~~.

~~(b)~~(6) ~~inside~~ Off-premise signs located within an incorporated area~~,~~ must be in compliance with the setback requirements established by local ordinance or other regulation.

(5) remains the same but is renumbered (7).

(8) Local transit authority bus shelters erected within the right-of-way on controlled routes, under an approved department encroachment permit, may display and maintain commercial advertisements, without obtaining an outdoor advertising permit, subject to the following requirements:

(a) commercial advertisements may only be placed on interior shelter panels with font size and message intended for viewing by shelter occupants, with only incidental visibility to the traveling public;

(b) commercial advertisements must not exceed 24 square feet on each shelter panel;

(c) commercial advertisements must not be placed on the roof of the shelter; and

(d) commercial advertisements must not be placed on the exterior panels of the shelter.

~~(6)~~(9) The provisions of ~~this section~~ these outdoor advertising rules shall not be deemed to supersede the rights and powers of counties and municipalities to

enact outdoor advertising or sign ordinances that are more restrictive than this rule.

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

AUTH: 75-15-121, MCA
IMP: 75-15-104, 75-15-111, MCA

REASON: The proposed amendments are necessary to standardize rule language for clarity and consistency with other administrative rules. The proposed amendment to (8) will address requests for commercial advertising on bus shelters which may be erected within the right-of-way on controlled routes. The proposed amendment will cross reference the department's encroachment permit process to ensure all standards for safety of encroachments within the right-of-way are met before advertising is considered within the bus shelter. The proposed amendment will also list the requirements necessary for commercial advertising within a bus shelter, to ensure the ads conform to a standard size, and are visible to the bus shelter occupants only, and not to the traveling public. The proposed amendments comply with Federal Highway Administration (FHWA) requirements for a state to request a waiver to allow limited bus shelter advertising within the right-of-way, which is generally prohibited.

18.6.206 UNZONED INDUSTRIAL ACTIVITY (1) remains the same.

(a) the industrial ~~permanent buildings, improvements, or industrial activities area~~ activity and associated office building used to qualify an area must be located within 660 feet of the right-of-way of ~~an interstate or primary highway~~ a controlled route;

(b) ~~an industrial business~~ the industrial activity may not be located inside a structure which is used for a residence, or in a building intended for use by the resident such as a garage or other outbuilding. If a residence exists on the location, the location shall not qualify for use as an unzoned industrial ~~activities~~ area;

(c) ~~any business conducting industrial activities shall~~ the industrial activity must have been in business at least one year prior to being considered as qualifying the area as an unzoned industrial area;

(d) ~~signs, displays, or other devices identifying any industrial business may be considered in the determination of visibility;~~ the industrial activity must be clearly visible to the traveling public on the controlled route, and be easily recognizable as an industrial activity, and have an on-premise sign, visible from the controlled route, which identifies the industrial activity;

(e) ~~seasonal (but not~~ temporary or transient~~)~~ industrial activities may not be considered as a qualifying activity ~~at the discretion of the department~~;

(f) an industrial ~~activities~~ activity's associated ~~area~~ areas may include readily identifiable areas for which the primary uses are the manufacturing, servicing, or storage of goods;

(g) an industrial activity shall hold a current, valid business license issued by a local, county, or state government which authorizes the industrial activity to operate from that location~~;~~. If no business license is required for the location, a government-issued authorization for the business operation which establishes the

length of time for the business operation at the specific location may be substituted with department approval;

(h) ~~any industrial building shall have~~ the industrial activity must have an associated building with a permanent foundation, built or modified for its current industrial use. Where a trailer, mobile home, manufactured home, or similar structure is used ~~as an industrial business office~~ for the associated building, all wheels, axles, and springs ~~shall~~ must be removed and the trailer, mobile home, or similar structure~~. The mobile structure shall~~ must be permanently secured on piers, pad, or foundation; and

(i) a self-propelled vehicle shall not qualify for use as ~~an industrial business or office~~ the industrial activity's associated building for the purpose of these rules.

(2) A maximum of two signs ~~shall~~ may be permitted from a qualifying industrial activity~~. The sign(s) shall be located on the same side of the controlled highway as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway. If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.~~ and its associated building, regardless of the number of separate qualifying industrial activities conducting business from the same building.

(3) Signs must meet the following requirements:

(a) the sign(s) must be located on the same side of the controlled route as the qualifying industrial activity; and

(b) if the qualifying activity is separated from the controlled route by a frontage, access, or other type of road parallel to the controlled route, the sign(s) must be located on the same side of the parallel road as the qualifying activity, and must not be located between the parallel road and the controlled route.

~~(3)~~(4) Unzoned industrial areas are not created when:

(a) an industrial activity is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority; or

(b) an industrial activity is engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising~~; or~~.

~~(c) spot-zoning or strip-zoning of an area for the display of outdoor advertising has occurred.~~

~~(4)~~(5) If the qualifying industrial activity at the sign location ceases for a period of nine months, the sign will be deemed nonconforming, and must adhere to all outdoor advertising statutes and rules on repair ~~or replacement~~ of nonconforming signs found at ARM 18.6.251. If a qualifying industrial activity again becomes operational at the sign location, the sign will revert to its former conforming status for the duration of the industrial activity and nine months thereafter.

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

AUTH: 75-15-121, MCA
IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify the establishment of unzoned industrial activities which may qualify a location for an off-premise outdoor

advertising permit. The proposed amendments to (1) and (2) will address situations which may create confusion for permit applicants, including: identification signs visible from the controlled route; requirement of a government-issued business license or authorization which establishes at least a one-year length of business operation; limit of two permitted signs on any location, regardless of the number of separate businesses on the site. The proposed amendment to (3) will reorganize language on existing requirements for sign locations on the same side of the highway as the qualifying activity, including clarification of locations in the presence of frontage or parallel roads for ease of use by applicants and permit holders. The proposed amendment to (4) will clarify language on situations when unzoned industrial areas are not created. The proposed amendment to (5) will clarify language on the permitted sign's status if the qualifying industrial activity ceases to operate at the site.

18.6.211 PERMITS (1) through (4) remain the same.

(5) Signs shall be assigned a permit number and given a permanent identification plate that must be attached to the structure. The permit plate must not be leased to any other party. Permit plates remain the property of the department and shall be returned to the department upon relinquishment or revocation of the permit or upon request of the department.

(6) and (7) remain the same.

(8) A new sign may not be erected without first applying for and receiving a permit. Failure to obtain a permit prior to sign erection may result in denial of a pending application.

(9) Ownership of a sign permit ~~may~~ must not be transferred without the express written consent of the permit holder(s) on a form provided by the department~~.~~, and submitted to the department at least 30 days prior to the transfer. Failure to timely provide the transfer form may result in voiding the transfer, or revocation of the permit. The current permit holder(s) must sign the form transferring the permit, and provide written permission and signature from the current landowner for the transfer. Permit holder or transferee may alternatively submit proof of a permanent property right (e.g., easement) for the sign location. Only off-premise commercial advertising sign permits may be transferred. Temporary, church and service club, directional, cultural, noncommercial, political, and official signs shall not be transferred, but may be terminated by permit holder request or department action.

(10) and (11) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment to (5) is necessary to clarify the prohibition on lease of a permit plate from a permit holder to any other party. The proposed amendment to (8) is necessary to clearly identify the penalties which may result from erection of a sign before a permit is issued by MDT. The proposed amendment to (9) is necessary to set a 30-day requirement for receipt of the required permit transfer form. The department has not been receiving transfer forms in a timely

manner, and thus must impose a deadline and penalty to ensure compliance with the transfer rule.

18.6.212 PERMIT APPLICATIONS - NEW SIGN SITES (1) through (3) remain the same.

(4) Applications for permits ~~shall~~ must be submitted on forms provided by the department and must contain a minimum of the following:

(a) remains the same.

(b) location of proposed sign including highway number, nearest milepost, GPS longitude and latitude for the edge of the sign structure nearest to the controlled route, side of highway, county, and distance and direction to nearest sign;

~~(c) acknowledgement of zoning, if any, by local authority;~~

~~(d) signature of appropriate local government authority;~~

~~(e)~~(c) description of structure including width of sign, height of sign, height of structure, type of sign (single-faced, double-faced, v-type, multi-faced), lighted (yes/no), and estimated cost of construction to include labor and material; and

~~(f) landowner consent;~~

~~(g)~~(d) property description or legal description~~;~~. ~~and~~

~~(h) a scale drawing with all details of the proposed sign structure, including accurate dimensions. All measurements must be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and must be along or parallel to the edge of the pavement of the highway.~~

(5) Applications for permits must be accompanied by the following:

(a) remains the same.

(b) a local zoning certification for outdoor advertising on a form provided by the department; ~~and~~

(c) a business license issued by a local, county, or state government authorizing the business to operate at the qualifying location, when the application is for a site located in an unzoned commercial or industrial area. If no business license is required for the location, a government-issued authorization for the business operation, which establishes the length of time for the business operation at that location, may be substituted with department approval;

(d) a scale drawing with all details of the proposed sign structure, including accurate dimensions and a current photograph of both the staked location and the qualifying activity. All measurements must be from the outer edges of the qualifying activity's associated building for the commercial or industrial activity, along or parallel to the edge of the pavement of the controlled route, but not from the property lines of the activity; and

(e) a landowner affidavit, on a form provided by the department.

(6) The applicant must clearly ~~mark~~ stake the physical place the sign is to be erected with the exact location of the proposed sign site to enable department personnel to perform the required site inspection.

(7) remains the same.

(8) Each application must be complete and accompanied by all required supplemental materials. The department reserves the right to reject ineligible,

incomplete, or otherwise improper applications. Rejected applications will be returned to the applicant for correction of identified deficiencies by the applicant.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment to (4) is necessary to add a GPS requirement for sign locations, to aid the department in tracking and inventory of permitted sign locations. The proposed amendments to (5) are necessary to inform permit applicants of application processes and forms including: insertion of a photograph requirement for use in evaluating permit applications; requirement of a local zoning certificate form; reiterating the business license requirement and exception language to be consistent with ARM 18.6.203 and 18.6 206; and requirement of an applicant landowner affidavit form. Existing rule language on local authority requirements and landowner consent has been reworded and moved into different subsections for clarity. The proposed amendment to (5) is also necessary to clarify for applicants the list of materials which must accompany an application, including a business license, or an exception to the business license as determined by MDT. The proposed amendment to (8) is necessary to impose a procedure for rejection and return of incomplete applications.

18.6.213 PERMIT ATTACHMENT (1) through (4) remain the same.

(5) If the department revokes a permit, the sign for which the permit was issued becomes an illegal sign and must be removed. The permit plate must be destroyed and disposed of properly.

(6) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to insert a requirement for destruction and disposal of a revoked permit, to clarify the process for permit holders.

18.6.215 FEES (1) Fees ~~shall~~ must be transmitted by check payable to the Montana Department of Transportation. The department assumes no responsibility for loss in transit of such remittances. Applicants not submitting proper fees will be notified by the department. ~~Fees~~ Inspection fees are nonrefundable.

(2) ~~Fees~~ Permit fees shall be calculated based on total square footage of sign face or total square footage of sign faces combined (aggregate) when more than one sign face is present on a single structure.

(3) The fees shall be as follows:

(a) ~~Inspection~~ inspection fee (must accompany the sign permit application) ~~$100.00~~ 150.00

(b) ~~Initial~~ initial permit fee ~~for sign size~~ based on aggregate size of all sign faces:

(i) through (iii) remain the same.

(iv) ~~aggregate of sign faces totals~~ over 672 sq. ft. $ 150.00

(c) ~~Renewal~~ renewal fee (3 year cycle) ~~for sign size~~ based on aggregate size of all sign faces:

(i) through (iii) remain the same.

(iv) ~~aggregate of sign faces totals~~ over 672 sq. ft. $ 225.00

(d) ~~Replacement~~ replacement permit plate $ 20.00

AUTH: 75-15-121, MCA
IMP: 75-15-122, MCA

REASON: The proposed amendment to (3)(a) will increase the inspection fee from $100.00 to $150.00. The fee increase is necessary to cover the department's increased costs of staff and travel time to travel to often-distant sign locations and complete the necessary inspection. The proposed fee increase will impact approximately 36 permit applicants, based on the 36 applications in 2014, resulting in a revenue increase of approximately $1800 annually. The proposed amendments to the remaining subsections are for clarification and consistency of language only and will not increase or decrease any other fee.

18.6.221 NEW SIGN ERECTION - CONSTRUCTION STANDARDS

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

(e) provide written and photo verification of the sign erection.

(2) remains the same.

(3) Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled ~~highway~~ route, the more stringent of application control requirements will apply.

(4) remains the same.

(5) Failure to abide by these rules may result in revocation of the permit.

AUTH: 75-15-121, MCA
IMP: 75-15-113, 75-15-122, MCA

REASON: The proposed amendments to (1)(e) and (3) are necessary to clarify rule language and make it consistent with other proposed rule amendments in this notice. The proposed amendment to (5) is necessary to notify applicants and permit holders of the penalty for failure to abide by this new sign erection rule, as violations of this rule have occurred in the past.

18.6.231 OFF-PREMISE SIGN STANDARDS (1) Standards for off-premise permitted signs are found at 75-15-113, MCA, and include the additional standards in this rule~~, unless otherwise controlled by standards for the specific type of sign (church and service clubs, directional, cultural, noncommercial, or official) as found in these rules~~.

(2) Off-premise permitted signs ~~on controlled routes~~ must comply with the following spacing requirements:

(a) signs adjacent to an interstate highway, ~~or~~ limited-access primary or National Highway System (NHS) highway must be a minimum of 500 feet apart on the same side of the roadway;

(b) signs adjacent to nonlimited access primary or NHS highways must be a minimum of 300 feet apart on the same side of the roadway;

~~(c) signs, whether or not visible to the main traveled way of the interstate system or other controlled route, must not be located within the limits of a grade separated interchange, including its entrance or exit roadways. The limits of an interchange shall include 500 feet beyond the beginning or ending of the gore, or pavement widening, for each entrance or exit roadway, along the controlled route and all interconnecting roadways;~~

~~(d)~~(c) signs, whether or not visible to the main traveled way of a controlled route, must not be located within 500 feet ~~of any~~ of an intersection~~, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic~~ in rural areas, or within 140 feet of an intersection~~, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic~~ in cities or towns, unless the sign is a bench with a maximum height of three feet at its highest point, or the sign is erected with the height above ground level (HAGL) of at least eight feet as measured at a right angle from the surface of the roadway at the centerline of the controlled route;

~~(e) signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:~~

~~(i) public parks;~~

~~(ii) public forests;~~

~~(iii) public playgrounds; or~~

~~(iv) scenic areas designated as such by the department or other state agency having and exercising this authority~~;

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

~~(g)~~(e) the minimum distance between signs shall be measured along the nearest edge of the pavement of the controlled route between points directly opposite the signs; and

~~(h)~~(f) multi-faced signs shall be considered as a single sign ~~or structure~~.

~~(i) side-by-side signs on individual structures are considered as two signs for both spacing and permit requirements.~~

~~(3) Off-premise permitted signs on controlled routes must comply with the following size requirements:~~

~~(a) signs, including the total number of sign faces facing the same direction, must not exceed 672 square feet in area, including border and trim, but excluding base or apron, supports, or other structural members;~~

~~(b) signs must not exceed 48 feet in length;~~

~~(c) signs must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face;~~

~~(d) signs within 500 feet of any intersection, intersecting roadway, junction, property driveways, approaching or merging traffic must be erected with the height above ground level (HAGL) of not less than 8 feet.~~

~~(4)~~(3) Off-premise permitted signs on controlled routes ~~which~~ must not have any of the following characteristics ~~shall not be erected~~, or the sign shall be subject to permit revocation and sign removal:

(a) remains the same.

(b) signs that are illegal, destroyed, abandoned, or discontinued ~~signs~~;

(c) through (f) remain the same.

(g) signs which prevent the driver of a vehicle from having a clear and unobstructed view of ~~at-grade intersections, junctions, property driveways, approaching or merging traffic,~~ an intersection, official traffic control signs, or other traffic control devices;

(h) through (n) remain the same.

~~(o) signs located in a scenic area or parkland area;~~

(p) remains the same but is renumbered (o).

AUTH: 75-15-121, MCA
IMP: 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are generally necessary to delete rule language which unnecessarily repeats statutory language. The proposed amendments to (2) are necessary to: clarify sign spacing requirements on controlled routes; delete repetitive language on sign proximity to pavement widening areas; clarify the prohibition on sign locations in close proximity to intersections and driveways and add a height above ground level requirement for safety purposes; delete repetitive language on proximity to public areas; delete repetitive language on sign size, as those restrictions are already contained in statute. The proposed amendments to (4) are necessary to clarify language on existing restrictions on sign characteristics to avoid confusion by permit holders or the public.

18.6.232 PROHIBITED SIGNS (1) ~~The following types of off-premise commercial signs, regardless of the message, are prohibited in controlled areas:~~

~~(a) commercial variable message signs (CVMS); and~~

~~(b) electronic billboards (EBB).~~ Commercial variable message signs are prohibited on controlled routes.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to distinguish between Electronic Billboards (EBB) and Commercial Variable Message Signs (CVMS) and to remove EBB from the prohibited signs rule, as EBB will now be allowed under the provisions and restrictions of New Rule I. CVMS is a different type of sign, as defined in ARM 18.6.202(10), which includes flashing, moving, or intermittent lights, thus must be prohibited as a violation of the Federal-State Agreement.

18.6.238 COMMUNITY WELCOME TO SIGNS (1) A community, county, or sovereign nation may erect welcome to signs within its territorial jurisdiction or zoning jurisdiction, as long as the community, county, or sovereign nation exercises

some form of governmental authority over the area upon which the sign is located (e.g., city limits). Community welcome to signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule. Welcome to signs must not be erected by other types of governmental entities including states or tourist area regions.

(2) through (5) remain the same.

(6) Welcome to signs may only be placed in qualifying locations which meet ~~all~~ the following requirements:

(a) remains the same.

(b) on private or other government-owned property adjacent to controlled routes, except for interstate routes, with permission of the landowner;

(c) and (d) remain the same.

~~(e) more than 500 feet from an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in rural areas, and more than 140 feet from an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in cities or towns;~~

~~(f) outside an intersection sight triangle;~~

~~(g) more than 500 feet from public parks, public forests, public playgrounds, or designated scenic areas which are adjacent to the controlled route, unless the sign is in an incorporated area;~~

(h) through (j) remain the same but are renumbered (e) through (g).

(7) through (14) remain the same.

AUTH: 61-8-203, 75-15-121, MCA
IMP: 61-8-203, 75-15-111, 75-15-113, MCA

REASON: The proposed amendment to (1) is necessary to clarify that welcome to signs must continue to meet all sign standards found in statute and rule (e.g., signs may not exceed 48 feet in length). The current wording has created some confusion among communities wishing to erect welcome to signs and remain in compliance with outdoor advertising statutes and rules. The proposed amendment to (6) is necessary to make the language on interstate placement and distances from intersections consistent with all rules and rule amendments currently being proposed.

18.6.239 MOBILE ADVERTISING DEVICES - SIGNS ON VEHICLES

(1) remains the same.

(2) Vehicles, trailers, or other portable objects displaying off-premise mobile advertising devices being used for outdoor advertising purposes must not be parked on public or private land visible to the traveling public from any place on a controlled route, whether the display is permanent or portable, regardless of the length of time the vehicle is parked in any one or more locations.

(3) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to include trailers and other portable objects within the prohibited type of mobile advertising devices, to clarify to the public when mobile devices may not display off-premise advertising.

18.6.240 TEMPORARY SIGNS (1) Temporary signs are considered on-premise signs and may be erected in all zoning districts along controlled routes without permits for the purposes described in this rule only. ~~Temporary signs must not:~~ Temporary signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule.

(2) Temporary signs must not:

(a) and (b) remain the same.

~~(c) be placed in the public right-of-way or on public property;~~

~~(d) be attached on fences, power poles, traffic signal poles or boxes, street lights, trees, rocks, or other natural features;~~

~~(e) obstruct the view of motor vehicle operators or create a traffic hazard;~~

~~(f) be located within 500 feet of an intersection at grade along a primary highway, or within 500 feet of an interchange or rest area on the interstate highway system as measured from the beginning of the pavement widening for the interchange;~~

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

~~(h) be erected within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;~~

~~(i)~~(d) be erected ~~on~~ along interstate highways.

~~(2)~~(3) Temporary signs must be removed within the time limits set forth for the sign category in this rule. The department shall notify the landowner~~, and where appropriate, the real estate agent listed on the sign,~~ and the sign owner of illegal signs which are not removed within ten days of the time limit expiration. The signs shall be removed by the department 24 hours after notification to the landowner ~~and agent~~ and sign owner.

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

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendments are necessary to clarify language on temporary signs, and insert a cross reference to the appropriate statute and administrative rule for restrictions on sign standards. The cross reference will eliminate the need to repeat the sign standards and restrictions within each rule addressing separate categories or types of signs.

18.6.241 CHURCH AND SERVICE CLUB SIGNS (1) A church, service club, or youth organization which conducts regular meetings may erect and maintain signs which give the name of the organization and the time and place at which

regular meetings are held. ~~subject to the following criteria:~~ Church and service club signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule.

(2) Church and service club signs must not:

(a) ~~Not~~ have more than a total of four signs ~~may be~~ erected by any one group, of which no more than three can face in the same direction of travel;

(b) ~~Signs may not~~ be more than five miles from where the meetings or functions are regularly held; and

(c) ~~The size of each new sign shall not~~ exceed eight square feet~~;~~.

~~(d) Signs must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face;~~

~~(e) Signs visible from controlled routes must not be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;~~

~~(f) Signs visible from interstate highways must not be located within 500 feet of the gore of an interchange;~~

~~(g) Public forests, public playgrounds, and designated scenic areas shall be considered to be a conforming area with respect to the erection of these signs;~~

~~(h) Church and service club signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231;~~

~~(i)~~(3) The activity advertised must be a regularly scheduled daily, weekly, monthly, or quarterly meeting, function, or gathering which members of the traveling public using the highway will be likely to want to find and attend~~;~~.

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

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

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to clarify language on church and service club signs, and insert a cross reference to the appropriate statute and administrative rule for restrictions on sign standards. The cross reference will eliminate the need to repeat the sign standards and restrictions within each rule addressing separate categories or types of signs.

18.6.243 DIRECTIONAL SIGNS (1) Directional signs pertaining to natural wonders, scenic and historical attractions, nonprofit historical and arts organizations, or ranching, grazing, or farming activities may be erected and maintained providing the signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. ~~Descriptive words or phrases, and pictorial or photographic representations of the activity or its surrounding areas are prohibited. To be eligible, privately owned attractions or activities must be~~

~~nationally or regionally known, and of interest to the traveling public.~~ Directional signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule.

(2) Directional signs must not:

(a) have more than one sign, pertaining to the same activity, facing the same direction of travel, erected along a single route approaching the activity;

(b) be located more than 75 air miles from the activity if adjacent to the interstate system;

(c) be located more than 50 air miles from the activity if adjacent to the primary system;

~~(2)~~(d) ~~Directional signs shall not exceed the following size limits:~~ exceed 32 square feet with a maximum height of 4 feet and length of 8 feet; and

(e) use descriptive words, phrases, pictorial or photographic representations of the activity or its surrounding areas.

~~(a) maximum area – 32 square feet;~~

~~(b) maximum height – 4 feet;~~

~~(c) maximum length – 8 feet.~~

~~(3) Directional signs shall meet the following spacing requirements:~~

~~(a) directional signs visible from controlled routes must not be located within 500 feet of an intersection in rural areas, or within 140 feet of an intersection in cities or towns;~~

~~(b) directional signs visible from interstate highways must not be located within 500 feet of the gore of an interchange;~~

~~(c) directional signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:~~

~~(i) public parks;~~

~~(ii) public forests;~~

~~(iii) public playgrounds; or~~

~~(iv) scenic areas designated as such by the department or other state agency having and exercising this authority;~~

~~(d) directional signs facing the same direction of travel shall be limited to signs spaced at least one mile apart;~~

~~(e) directional signs pertaining to the same activity, facing the same direction of travel, which are erected along a single route approaching the activity are limited to one sign;~~

~~(f) directional signs located adjacent to the interstate system shall be within 75 air miles of the activity;~~

~~(g) directional signs located adjacent to the primary system shall be within 50 air miles of the activity.~~

~~(4) Directional signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.~~

(3) Directional signs for different attractions or activities facing the same direction of travel shall be spaced more than one mile apart.

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

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify language on directional signs, and insert a cross reference to the appropriate statute and administrative rule for restrictions on sign standards. The cross reference will eliminate the need to repeat the sign standards and restrictions within each rule addressing separate categories or types of signs.

18.6.246 POLITICAL SIGNS (1) Signs promoting political candidates or issues shall be placed on private property only and cannot be placed without the permission of the property owner. Political signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule.

(2) Political signs ~~shall~~ must not:

(a) be placed on or allow any portion to intrude in the public right-of-way or on public property; and

(b) ~~be attached on public right-of-way fences;~~ be placed within 100 feet of any entrance to the building in which a polling place is located.

~~(c) obstruct the view of motor vehicle operators or create a traffic hazard;~~

~~(d) be placed within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic at grade along a primary highway, or within 500 feet of an interchange or rest area on the interstate highway system as measured from the beginning of the pavement widening for the interchange;~~

~~(e) attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal, or device;~~

~~(f) prevent the driver of a vehicle from having a clear and unobstructed view of at-grade intersections, approaches, official traffic control signs, other traffic control devices, or merging traffic;~~

~~(g) be placed within 100 feet of any entrance to the building in which a polling place is located;~~

~~(h) use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.~~

(3) Political signs will not be considered in determining the spacing required between conforming off-premises outdoor advertising signs.

(3) and (4) remain the same but are renumbered (4) and (5).

~~(5) It is the responsibility of the candidate or political committee to ensure all signs are in compliance with this rule.~~

(6) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-111, MCA

REASON: The proposed amendments are necessary to clarify language on political signs, and insert a cross reference to the appropriate statute and administrative rule

for restrictions on sign standards. The cross reference will eliminate the need to repeat the sign standards and restrictions within each rule addressing separate categories or types of signs. Other amendments will reorganize rule language for clarity and ease of use by the public.

18.6.247 OFFICIAL SIGNS (1) ~~Official signs must be erected outside the right-of-way and maintained by a public office or agency.~~ Official signs must be erected pursuant to direction or authorization contained in federal, state, or local law, such that the office must be directed by statute or must have the specific authority by statute to erect and maintain signs and notices. Official signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule.

(2) Official signs must not exceed 150 square feet.

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

~~(3) Official signs must be erected pursuant to direction or authorization contained in federal, state, or local law, such that the office must be directed by statute or must have the specific authority by statute to erect and maintain signs and notices.~~

(4) Official signs must be erected outside the right-of-way and maintained by a public office or agency.

~~(4)~~(5) ~~An official~~ Official signs ~~of a local government~~ will not be considered in determining the spacing required between conforming off-premise outdoor advertising signs ~~located off premises~~.

~~(5) The maximum area of an official sign shall not exceed 150 square feet.~~

~~(6) Signs must not exceed 30 feet in height as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face.~~

~~(7) Official signs visible from controlled routes must not be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in cities or towns.~~

~~(8) Official signs visible from interstate highways must not be located within 500 feet of the gore of an interchange.~~

~~(9) Official signs must not be located within 500 feet of any of the following that are adjacent to the controlled route unless the signs are in an incorporated area:~~

~~(a) public parks;~~

~~(b) public forests;~~

~~(c) public playgrounds; or~~

~~(d) scenic areas designated as such by the department or other state agency having and exercising this authority.~~

~~(10) Official signs shall meet all general restrictions on characteristics for off-premise signs found in ARM 18.6.231.~~

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

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendments are necessary to clarify language on official signs, and insert a cross reference to the appropriate statute and administrative rule for restrictions on sign standards. The cross reference will eliminate the need to repeat the sign standards and restrictions within each rule addressing separate categories or types of signs. Other amendments will reorganize rule language for clarity and ease of use by the public.

18.6.251 REPAIR OF NONCONFORMING SIGNS (1) through (2)(e) remain the same.

(3) At least 30 days prior to performing any repair or maintenance of a nonconforming sign, the sign owner must submit to the department a repair application detailing the following:

(a) all proposed repairs or maintenance to be performed, including a list of materials to be used and associated material costs; and

(b) a listing of all materials required to replace the sign new with current costs.

(4) The department will review all repair applications and notify the sign owner of approval or denial of the repair application within 30 days of receipt.

(5) After department approval, the sign owner may proceed with the repair or maintenance identified. All repair or maintenance work must be done within 90 days of approval. The sign owner must provide the department with written and photo verification of the repair or maintenance performed.

(6) If the department denies a repair application, the department will notify the sign owner of the reason for denial.

(3) through (7) remain the same but are renumbered (7) through (11).

~~(8)~~(12) The department shall notify a sign owner of a violation of this rule. ~~The department may allow a permittee who has increased the dimensions or has lighted a previously unlighted nonconforming sign 90 days to restore the sign as originally permitted. If the dimensions are increased or the sign is lighted a second time, the permit will be revoked by the department.~~ Failure to submit a repair application prior to repairing or maintaining a nonconforming sign may result in revocation of the permit and removal of the nonconforming sign at the sign owner's expense.

(9) and (10) remain the same but are renumbered (13) and (14).

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendment will add a requirement of application for maintenance or repair of nonconforming signs, so the department may review work to ensure compliance with the appropriate statutory requirements for maintenance and repair of nonconforming signs. The proposed amendments will create a new process to allow the department to oversee nonconforming sign maintenance and repair, and will lessen any confusion by permittees over existing processes for repair

or maintenance of nonconforming signs. The proposed amendment will also outline a penalty for failure to submit a repair application for nonconforming sign work.

18.6.252 UPGRADE OR RELOCATION OF CONFORMING SIGNS

(1) Upgrade or relocation of a conforming sign which results in a change from that shown on the last approved permit application will require a new application for upgrade of the existing permit. ~~but will not~~ Applicants will be charged ~~additional~~ a nonrefundable inspection fee~~s~~. Failure to obtain ~~a permit~~ upgrade or relocation approval prior to performing the upgrade or relocation may result in revocation of the permit. Changes requiring ~~a permit~~ upgrade or relocation approval include changes in:

(a) through (g) remain the same.

(2) Any application for relocation or upgrade must meet the standard of lawful ordinance, regulation, or resolution of county or local government and the upgrade ~~application~~ or relocation must be approved by the county or local government~~, and approved by the landowner,~~ before consideration by the department.

(3) The sign owner must obtain written permission from the landowner ~~or other person in lawful possession or control of the new proposed site to relocate a conforming permitted sign~~ or submit proof of a permanent property right (e.g., an easement) for the sign site. The proposed relocation site must meet all zoning requirements or qualify as an unzoned commercial or industrial area.

(4) remains the same.

(5) Approved upgrade or relocation work must be completed within 90 days of department approval. The sign owner must provide the department with written and photo verification of the upgrade or relocation work performed.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendment is necessary to clarify the process for upgrade or relocation of conforming signs. The amendments will not create additional requirements, but clarify existing language to avoid confusion by permit holders. The proposed amendment also imposes a deadline for completion of approved work. This deadline will allow the department to monitor compliance with statutes and rules on outdoor advertising.

18.6.262 SIGN STRUCTURES THAT ARE BLANK, ABANDONED, DILAPIDATED, DISCONTINUED, OR IN DISREPAIR (1) When the department determines a permitted sign ~~structure has been blank, abandoned, dilapidated, discontinued, or in disrepair~~ is an abandoned sign, the department shall notify the sign owner of the violation and require remedial action within ~~90~~ 60 days. If such action is not taken, the permit will be revoked and action for the removal of the sign will be taken as provided in 75-15-131, MCA. An extension of time to accomplish the work may be granted at the sole discretion of the department upon written request from the sign owner stating the reason(s) for the request.

(2) remains the same.

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, 75-15-121, 75-15-131, MCA

REASON: The proposed amendment is necessary to streamline the rule language on abandoned signs, for consistency with the new definition of abandoned signs in ARM 18.6.202. The term "abandoned sign" already includes all conditions listed in the existing rule language. The proposed amendment will also change the response time after notification to 60 days to be consistent with the statute.

18.6.264 DETERMINATION OF ILLEGAL OUTDOOR ADVERTISING--NOTICES--CORRECTIVE ACTION--ILLEGAL OUTDOOR ADVERTISING REMOVAL (1) The department may determine outdoor advertising is unlawful or illegal under 75-15-112, MCA, ~~and also~~ when a sign or sign structure is unsafe~~,~~ ~~insecure,~~ or a danger to the public, or has been constructed or is being maintained in violation of the provisions of the Outdoor Advertising Act or this chapter.

(2) If the department determines a permitted or ~~unpermitted~~ nonpermitted sign is in violation of statute or rule, it shall give written notice to the owner or occupant of the land on which the sign is located, and to the owner of the sign, if known. If the sign owner is not known, or has failed to respond to department notices, the department may post notice of the statute or rule violation determination in a conspicuous place on the structure.

(3) through (7) remain the same.

AUTH: 75-15-121, MCA
IMP: 75-15-131, 75-15-132, MCA

REASON: The proposed amendments are necessary to make minor grammatical changes to the rule for clarity, readability, and ease of use by the public and the department.

5. The department proposes to repeal the following rules:

18.6.244 CULTURAL SIGNS

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed repeal is necessary to eliminate the category of cultural signs as an outdoor advertising permitted sign. Cultural signs as a separate category is duplicative of the Directional Sign category; thus both separately named categories are not necessary. The description of cultural signs has been added to ARM 18.6.243, Directional Signs, to allow this type of sign to be erected when the requirements of the rule are met.

18.6.245 NONCOMMERCIAL SIGNS

AUTH: 75-15-121, MCA
IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed repeal is necessary to eliminate a separate rule addressing noncommerical signs, as distinguished from commercial signs. Federal and state statutes pertaining to highway beautification and outdoor advertising control do not attempt to or intend to address the content of outdoor advertising; thus it is improper to create a separate category regulating noncommercial speech on signs. All outdoor advertising structures are subject to the same federal and state statutes, regulations, and administrative rules.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., April 1, 2016.

7. Carol Grell Morris, Department of Transportation, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department. An Administrative Rules Notice Interested Person's List Request Form is located at the Department of Transportation's web site at the following address: http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

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

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will significantly and directly impact small businesses.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

/s/ Rick Griffith
Rick Griffith
Chair
Transportation Commission

Certified to the Secretary of State, February 22, 2016.

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

In the matter of the amendment of ARM 37.85.204, 37.85.206, 37.86.601, 37.86.606, 37.86.2002, 37.86.2102, 37.86.2902, 37.86.3103, and 37.86.3105, pertaining to Medicaid program treatment limits, cost-share requirements, and Medicaid coverage	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 24, 2016, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 17, 2016, 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:

37.85.204 ~~RECIPIENT~~ MEMBER REQUIREMENTS, COST SHARING

~~(1) Except as provided in (4) through (6) each recipient must pay to the provider a copayment of $100 per discharge for inpatient hospital services, not to exceed the cost of the services.~~

~~(2) Except as provided in (4) through (6) each recipient must pay to the provider a cost sharing payment for outpatient drugs not to exceed the cost of the service. The rate of cost sharing payment is a minimum of $1 per prescription up to a maximum of $5 per prescription based on 5% of the Medicaid allowed amount. The maximum total cost sharing payment per recipient for outpatient drugs shall not exceed $25 per month.~~

~~(3) Except as provided in (4) through (6) each recipient must pay to the provider a cost sharing payment not to exceed the cost of the service. For the following service providers, the rate of cost sharing is a minimum of $1 per visit up to~~

~~a maximum of the lesser of $5 per visit or 5% of the average Medicaid allowed amount for that provider type, rounded to the nearest dollar:~~

~~(a) outpatient hospital services;~~

~~(b) podiatry services;~~

~~(c) physical therapy services;~~

~~(d) speech therapy services;~~

~~(e) audiology services;~~

~~(f) hearing aid services;~~

~~(g) occupational therapy services;~~

~~(h) home health services;~~

~~(i) ambulatory surgical center services;~~

~~(j) public health clinic services;~~

~~(k) dental services;~~

~~(l) denturist services;~~

~~(m) durable medical equipment, orthotics, prosthetics, and medical supplies;~~

~~(n) optometric and optician services;~~

~~(o) physician services;~~

~~(p) mid-level practitioner services;~~

~~(q) federally qualified health center services;~~

~~(r) rural health clinic services;~~

~~(s) freestanding dialysis clinic services;~~

~~(t) licensed psychiatrist services;~~

~~(u) licensed psychologist services;~~

~~(v) licensed clinical social worker services;~~

~~(w) licensed professional counselor services;~~

~~(x) independent diagnostic testing facility services; and~~

~~(y) home infusion therapy services.~~

~~(4) For purposes of this rule, "Medicaid allowed amount" means the amount allowed in accordance with the reimbursement methodology for the particular service, before third party liability, incurment and other such payments are applied.~~

~~(5) The following individuals are exempt from cost sharing:~~

~~(a) individuals under 21 years of age;~~

~~(b) pregnant women; and~~

~~(c) institutionalized individuals for services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care facility or other medical institution if such individual is required to spend for the cost of care all but their personal needs allowance, as defined in ARM 37.82.1320.~~

~~(6) Cost sharing may not be charged for services provided for the following purposes:~~

~~(a) emergencies;~~

~~(b) family planning;~~

~~(c) hospice;~~

~~(d) personal assistance services;~~

~~(e) home dialysis attendant services;~~

~~(f) home and community based waiver services;~~

~~(g) nonemergency medical transportation services;~~

~~(h) eyeglasses purchased by the Medicaid program under a volume purchasing arrangement;~~

~~(i) early and periodic screening, diagnostic and treatment (EPSDT) services;~~

~~(j) independent laboratory and x-ray services;~~

~~(k) services for Medicare crossover claims where Medicaid is the secondary payor under ARM 37.85.406(18). If a service is not covered by Medicare but is covered by Medicaid, cost sharing will be applied; and~~

~~(l) services for third party liability (TPL) claims where Medicaid is the secondary payor under ARM 37.85.407. If a service is not covered by TPL but is covered by Medicaid, cost sharing will be applied.~~

(1) Except as provided in this rule each member must pay cost share to the provider of service as described below.

(2) The cost share applied to a service or item is not to exceed the cost of service.

(3) A member with income at or below 100% of the federal poverty level (FPL) is responsible for the following copayments:

(a) inpatient hospital - $75 per discharge;

(b) pharmacy-preferred brand drugs - $4;

(c) pharmacy-nonpreferred brand drugs, including specialty drugs - $8;

(d) outpatient hospital services - $4;

(e) podiatry services - $4;

(f) physical therapy services - $4;

(g) speech therapy services - $4;

(h) audiology services - $4;

(i) hearing aid services - $4;

(j) occupational therapy services - $4;

(k) home health services - $4;

(l) ambulatory surgical center services - $4;

(m) public health center services - $4;

(n) dental treatment services - $4;

(o) denturist services - $4;

(p) durable medical equipment - $4;

(q) optometric and optician services - $4;

(r) professional services - $4;

(s) federally qualified health center services - $4;

(t) rural health clinic services - $4;

(u) dialysis clinic services - $4;

(v) independent diagnostic testing facility services - $4;

(w) home infusion therapy services - $4;

(x) home dialysis attendant services - $4;

(y) personal assistance services - $4;

(z) mental health clinic services - $4;

(aa) chemical dependency services - $4; and

(ab) targeted case management services - $4.

(4) A member with income above 100 percent of the FPL, except as noted in (a) and (b) is responsible for cost share of 10% of the provider reimbursed amount. A member is responsible for cost share for outpatient pharmacy services as follows:

(a) preferred brand drugs - $4;

(b) nonpreferred brand drugs, including specialty drugs - $8.

(5) Members with the following statuses are exempt from cost sharing:

(a) persons under 21 years of age;

(b) pregnant women;

(c) American Indians/Alaska Natives who are eligible for, currently receiving, or have ever received an item or service furnished by:

(i) an Indian Health Service (IHS) provider;

(ii) a Tribal 638 provider;

(iii) an IHS Tribal or Urban Indian Health provider; or

(iv) through referral under contract health services.

(d) persons who are terminally ill receiving hospice services;

(e) persons who are receiving services under the Medicaid breast and cervical cancer treatment category;

(f) institutionalized persons who are inpatients in a skilled nursing facility, intermediate care facility, or other medical institution if the person is required to spend for the cost of care all but their personal needs allowance, as defined in ARM 37.82.1320.

(6) Cost sharing may not be charged to members for the following services:

(a) emergency services;

(b) family planning services;

(c) hospice services;

(d) home and community based waiver services;

(e) transportation services;

(f) eyeglasses purchased by the Medicaid program under a volume purchasing arrangement;

(g) early and periodic screening, diagnostic and treatment (EPSDT) services;

(h) provider preventable health care acquired conditions as provided for in 42 CFR 447.26(b);

(i) generic drugs;

(j) preventive services as approved by CMS through the Health and Economic Livelihood Plan (HELP) Medicaid 1115 waiver;

(k) services for Medicare crossover claims where Medicaid is the secondary payer under ARM 37.85.406(18). If a service is not covered by Medicare but is covered by Medicaid, cost sharing will be applied; and

(l) services for third party liability (TPL) claims where Medicaid is the secondary payor under ARM 37.85.407. If a service is not covered by the TPL but is covered by Medicaid, cost sharing will be applied.

(7) Cost share may not be charged to the member until the claim has been processed through the claims adjudication process and the provider has been notified of payment and amount owing.

(8) The total of Medicaid premiums and cost sharing incurred by a Medicaid household may not exceed an aggregate limit of five percent of the family's income applied quarterly. There may not be further cost sharing applied to the household members in a quarter once a household has met the quarterly aggregate cap.

(9) Providers may directly charge members only for the following services if the member signs an Advanced Beneficiary Notice for the specific service prior to the service being provided:

(a) noncovered services;

(b) experimental services;

(c) unproven services;

(d) services performed in an inappropriate setting;

(e) services that are not medically necessary; or

(f) investigational services.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.85.206 SERVICES PROVIDED (1) Except as otherwise provided in this rule, the following medical or remedial care and services ~~shall be~~ are available to all persons who are ~~certified~~ eligible for Medicaid benefits under this chapter ~~(~~including deceased persons, categorically related, who would have been eligible had death not prevented them from applying~~)~~. ~~However, only those medical or remedial care and services also covered by Medicare be available to a person who is certified eligible for Medicaid benefits as a qualified Medicare beneficiary under ARM 37.83.201 and 37.83.202.~~

(a) through (k) remain the same.

(l) personal care services in a ~~recipient's~~ member's home;

(m) through (q) remain the same.

(r) durable medical equipment, prosthetic devices, and medical supplies;

(s) through (af) remain the same.

(ag) institutions for mental diseases for persons age 65 and over; ~~and~~

(ah) payment of premiums, co-insurance, deductibles, and other cost sharing obligations under an individual or group health plan in accordance with the provisions of ARM 37.82.424; ~~and~~

(ai) diabetes and cardiovascular disease prevention services~~.~~;

(aj) habilitative services; and

(ak) rehabilitative services.

(2) Only those medical or remedial care and services also covered by Medicare are available to a person who is eligible for Medicaid benefits as a qualified Medicare beneficiary under ARM 37.83.201 and 37.83.202.

~~(2)~~ (3) ~~Individuals who will receive Medicaid benefits are:~~ State plan Medicaid benefits are available for members who are Medicaid-covered through the 00181 Medicaid 1115 waiver as approved by the Centers for Medicare and Medicaid Services (CMS).

(a) ~~qualified for~~ A person may receive coverage through the 00181 Medicaid 1115 Waiver if the person is 18 or older, has severe disabling mental illnesses (SDMI), would qualify for or be enrolled in the state-financed mental health services plan (MHSP) or the 00181 Medicaid 1115 Waiver but is otherwise ineligible for Medicaid benefits, and either:

(i) ~~family or family-transitional Medicaid services~~ the person's income is 0 to 138% of the federal poverty level and the person is eligible for or is enrolled in Medicare; or

(ii) ~~MHSP waiver services~~ the person's income is 139 to 150% of the federal poverty level whether Medicare eligible or not.

(b) ~~age 21 through 64;~~ A person determined categorically eligible for Medicaid as aged, blind, or disabled (ABD) in accordance with ARM 37.82.901 through 37.82.903 is not subject to the annual $1,125 dental treatment limit. The monies expended for treatment costs exceeding the limit are covered through the 00181 Medicaid 1115 Waiver.

~~(c) not pregnant; and~~

~~(d) not disabled (according to Social Security Administration (SSA) criteria).~~

~~(3) Basic Medicaid benefits are the services specified in (1)(a) through (1)(ah) of this rule except the following:~~

~~(a) eyeglasses and routine eye exams, whether provided by an optometrist, ophthalmologist or other provider;~~

~~(b) audiology and hearing aids;~~

~~(c) personal care services in the recipient's home;~~

~~(d) dental services; and~~

~~(e) durable medical equipment and supplies.~~

~~(4) With regard to persons identified in (2) who receive basic Medicaid benefits, the department will provide the noncovered services specified in (3)(a) through (3)(e):~~

~~(a) if the noncovered services are required as a condition of employment; or~~

~~(b) on an emergency basis. For purposes of this rule, an emergency is a situation which:~~

~~(i) arises suddenly or unexpectedly; and~~

~~(ii) is life-threatening or has very serious implications for the individual's health.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

37.86.601 THERAPY SERVICES, DEFINITIONS In ARM 37.86.601, 37.86.605, 37.86.606, and 37.86.610, ~~46.12.526, and 46.12.529,~~ the following definitions apply:

(1) and (2) remain the same.

(3) "Habilitative care" means services provided when a member requires help to maintain, learn, or improve skills and functioning for daily living, or to prevent deterioration. These services include: physical therapy, occupational therapy, speech-language pathology, and behavioral health professional treatment. Applied behavior analysis (ABA) for adults is excluded. Habilitative services are reimbursable if a licensed therapist is needed and the service must be provided by a licensed therapist. Services may be provided in a variety of inpatient and outpatient settings as prescribed by a physician or mid-level practitioner.

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

(9) "Rehabilitative care" means services provided when a member needs help to keep, get back, or improve skills and functioning for daily living that have been lost or impaired because a member was sick, hurt, or disabled. Rehabilitative services include: physical therapy, occupational therapy, speech-language pathology, and behavioral health professional treatment. Applied behavioral analysis (ABA) for adults is excluded. Rehabilitative services are reimbursable if a licensed therapist is needed and the service must be provided by a licensed therapist. Services may be provided in a variety of inpatient and outpatient settings as prescribed by a physician or mid-level practitioner.

(8) through (10) remain the same, but are renumbered (10) through (12).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, MCA

37.86.606 THERAPY SERVICES, SERVICE REQUIREMENTS AND RESTRICTIONS (1) and (2) remain the same.

(3) Therapy services may be provided to a ~~recipient~~ member only upon a current written or verbal order or referral by a physician or mid-level practitioner. All verbal orders or referrals must be followed up by a written order received by the provider within 30 days of the verbal order or referral.

(a) through (4) remain the same.

~~(5) Maintenance therapy services are not covered or reimbursable under the Montana Medicaid program.~~

~~(a) Establishment of a maintenance therapy plan by a licensed therapist is reimbursable. Establishment of a maintenance plan includes the initial evaluation of the recipient's needs, development of a plan that incorporates the treatment objectives of the prescribing physician or mid-level practitioner and that is appropriate for the recipient's capacity and tolerance, instruction of others in carrying out the plan and further evaluations by a licensed therapist as required.~~

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

~~(7) The following limits apply to therapy services:~~

~~(a) Occupational therapy services are limited to 40 hours per state fiscal year per recipient. Individuals age 21 or older are not eligible to receive additional hours over 40.~~

~~(b) Speech therapy services are limited to 40 hours of service per state fiscal year per recipient. Individuals age 21 or older are not eligible to receive additional hours over 40.~~

~~(i) One unit is equal to one visit code or four 15-minute increment codes as provided in the CPT.~~

~~(c) Physical therapy services are limited to 40 hours of service per state fiscal year per recipient. Individuals age 21 or older are not eligible to receive additional hours over 40.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2002 OPTOMETRIC SERVICES, REQUIREMENTS (1) and (2) remain the same.

(3) A Medicaid ~~recipient~~ member ~~age 21 and over~~ is limited to one eye examination for determination of refractive state per ~~730~~ 365-day period unless one of the following circumstances exist:

(a) following cataract surgery more than one examination during the ~~730~~ 365-day period is necessary; or

(b) remains the same.

~~(4) A Medicaid recipient under age 21 is limited to one eye examination for determination of refractive state per 365 day period unless one of the following circumstances exist:~~

~~(a) following cataract surgery, more than one examination during the 365 day period is necessary; or~~

~~(b) the provider determines by screening that a loss of one line acuity has occurred with present glasses.~~

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

37.86.2102 EYEGLASSES, SERVICES, REQUIREMENTS AND RESTRICTIONS (1) through (3) remain the same.

(4) A ~~recipient~~ member ~~under 21 years of age~~ is limited to one pair of eyeglasses per 365-day period ~~and each recipient 21 years of age or older is limited to one pair of eyeglasses every 730 day period~~ unless additional pairs are necessary due to any of the following circumstances:

(a) through (h) remain the same.

(i) the inability of the ~~recipient~~ member to wear bifocals because of a diagnosed medical condition.

~~(i)~~ (5) ~~When this is the case,~~ In the circumstances described in (4), the ~~recipient~~ member may be allowed two pairs of single vision eyeglasses every ~~730~~ 365-day period ~~if he is 21 years of age or over, or every 365 day period if he is under 21 years of age~~.

(5) and (6) remain the same, but are renumbered (6) and (7).

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

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (4) remain the same.

~~(5) Alcohol and drug detoxification services are limited to:~~

~~(a) detoxification services up to seven days, except that more than seven days may be covered if concurrently authorized by the department or the department's designated review organization and a hospital setting is required; or~~

~~(b) the department or the department's designated review organization determines that the client has a concomitant condition that must be treated in the inpatient hospital setting, and the alcohol and drug treatment is a necessary adjunct to the treatment of the concomitant condition.~~

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

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.3103 OUTPATIENT HOSPITAL SERVICES, CARDIAC REHABILITATION SERVICES (1) Cardiac rehabilitation services are limited to ~~a maximum of two 1-hour sessions per day for up to 36 sessions, limited to~~ the following cardiac events and diagnoses:

(a) through (g) remain the same.

AUTH: 53-2-201, 53-6-111, MCA
IMP: 53-2-201, 53-6-101, MCA

37.86.3105 OUTPATIENT HOSPITAL SERVICES, PULMONARY REHABILITATION SERVICES (1) Pulmonary rehabilitation services are limited to ~~a maximum of two 1-hour sessions per day for up to 36 sessions, for patients~~ members with moderate to severe COPD, ~~(~~defined as GOLD classification II, III, and IV~~)~~.

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-111, MCA
IMP: 53-2-201, 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend 37.85.204, 37.85.206, 37.86.601, 37.86.606, 37.86.2002, 37.86.2102, 37.86.2902, 37.86.3103, and 37.86.3105 regarding Medicaid Program treatment limits, cost share requirements, and Medicaid coverage. These changes are all necessary for purposes of implementing the newly established Alternative Benefits Plan for the health care services spectrum to be delivered by the Montana Medicaid program. The state has, as provided for by the federal Affordable Care Act and implementing federal regulations, developed and received federal approval from the Centers for Medicare and Medicaid (CMS) of an Alternative Benefits Plan that is to be effective in conjunction with the implementation by the state of the Affordable Care Act authorized Medicaid coverage expansion to adults approved by the federal Department of Health and Human Services through a new Health and Economic Livelihood Plan (HELP) Medicaid 1115 Waiver for the state.

The Alternative Benefits Plan health care services coverage adopted by the state must be applicable to the delivery of all Medicaid state plan services to Montana Medicaid members. Montana has had a Medicaid benefits plan specifically applicable to a limited adult population that previously was covered by Medicaid. That plan had coverage limitations for several health care services. With the adoption of an Alternative Benefits Plan the services for all Medicaid members must be brought into general conformity with the new plan. These proposed rule changes

are necessary for accomplishing the implementation of that conformity. In addition, an Alternative Benefits Plan must conform to the Essential Health Benefits Plan that has been approved by CMS for general application to insurance benefits in the state. Some current features of the state's Medicaid coverage are not in conformity with certain features of coverage as established in the state's Essential Health Benefits Plan and therefore those features, as currently established in departmental rule must be modified.

ARM 37.85.204

The department in administering the federally authorized program of Medicaid funded health care services for Montana must comply with the standards and limitations established in federal statute and regulations for the program. Federal law allows states, subject to definite restrictions and limits, to impose certain forms of cost sharing on persons who are in receipt of Medicaid funded health care services. The department has established through ARM 37.85.204 various copayment and cost-sharing requirements for persons eligible for the state administered Medicaid program and has further also provided certain categories of persons with exemptions from those cost sharing requirements.

In the course of preparing to implement the federally required Alternative Benefit Plan to be applied to the administration of the spectrum of health care services that would be covered by the department through the new HELP Medicaid 1115 Waiver coverage expansion, it was determined that the existing copayment and cost sharing requirements for Medicaid members in Montana would need to be modified to conform with current federal limitations and restrictions. The proposed changes to ARM 37.85.204 are necessary to accomplish the alignment with the federal requirements.

Several changes are proposed in ARM 37.85.204. Those changes include the following:

1. add language regarding what members must pay to the provider of service cost share as described in the rule not to exceed the cost of service;
2. cost share may not exceed 5% of the family's household income applied quarterly;
3. members with incomes above 100% of the federal poverty level will be responsible for cost share of 10% of the provider reimbursed amount, except for outpatient pharmacy services in which the member is responsible for preferred brand drugs $4 and nonpreferred brand drugs, including specialty drugs $8;
4. change the cost-sharing payment for preferred brand drugs to $4 from a minimum of $1 up to a maximum of $5 per prescription based on 5% of the Medicaid allowed amount;
5. impose a cost sharing amount for nonpreferred and specialty drugs of eight dollars ($8);
6. remove a limitation providing that the maximum total cost-sharing payment per member for outpatient drugs may not exceed $24 per month;

7. for members with an income at or below 100% of the federal poverty level change the cost-sharing payment for outpatient services to four $4 per visit from a minimum of $1 per visit or 5% of the average Medicaid allowed amount for that provider type, rounded to the nearest dollar;

8. for members with an income below 100% of the federal poverty level change the inpatient cost share to $75 per discharge from $100 per discharge;

9. add the following members to the groups of persons who are exempt from cost share:

(a) American Indians/Alaska Natives who are eligible for, currently receiving, or have ever received an item or service furnished by:

(i) an Indian Health Service (IHS) provider;

(ii) a Tribal 638 provider;

(iii) an IHS Tribal or Urban Indian Health provider; or

(iv) through referral under contract health services.

(b) terminally ill members receiving hospice services; and

(c) members in the Medicaid breast and cervical cancer treatment program;

10. add the following services that are exempt from cost sharing:

(a) provider preventable health-care conditions as defined in 42 CFR 447.26(b);

(b) generic drugs; and

(c) preventive services as approved by CMS through the new HELP Medicaid 1115 Waiver;

11. impose a cost sharing payment for the following services:

(a) home dialysis attendants;

(b) personal assistance;

(c) mental health clinics;

(d) chemical dependency services; and

(e) targeted case management;

12. add language regarding that cost share may not be charged to the member until the claim has been processed through the claims adjudication process and the provider has been notified of the payment and amount owing;

13. add language regarding that providers may only charge members for the following services if an Advanced Beneficiary Notice for the specific service is signed by the member prior to the service being provided:

(a) noncovered services;

(b) experimental services;

(c) unproven services;

(d) services performed in an inappropriate setting;

(e) services that are not medically necessary; or

(f) investigational services.

A set of proposed changes would remove the current exemption of personal assistance services and home dialysis attendant services from the application of cost sharing. In addition, another proposed change would be to broaden the limitation upon cost sharing from nonemergency medical transportation to all transportation.

Some of these proposed changes implement reductions in the cost share charges members will be obligated to pay. Some of the changes will result in members being obligated to pay a larger cost share amount. When the member will pay less to the provider, the department will make up the difference in payment to the provider so that a provider is not adversely impacted by these changes. When the member will pay more in cost share, the department will pay less. The provider is not adversely impacted because the member will be responsible for the cost share.

Another proposed change requires the provider to bill and collect cost share after the department reimburses rather than at the time of service. This change is needed to ensure that members are charged the right amount of cost share based on their unique circumstances such as less than or over 100% of the federal poverty level and whether they have exceeded the 5% household quarterly cap. These proposed changes will be implemented June 1, 2016.

Fiscal Impact

The proposed changes to ARM 37.85.204 will change the cost-share amounts that the member is responsible for, and therefore, will change the provider reimbursement amount from the department. Below is the estimated annual fiscal impact based on federal fiscal year.

Cost Share Impact - Federal Fiscal Year		
Funding Source	FY 2016 Difference	FY 2017 Difference
General Fund	($78,455)	($281,572)
Federal Match	($278,738)	($536,000)

ARM 37.85.206

Montana for a number of years has had a Medicaid 1115 Waiver granted by the Secretary of the federal Department of Health and Human Services that allowed the department to provide Medicaid funded health care coverage to certain persons who are not within required coverage groups for Medicaid. The Medicaid 1115 Waivers have been granted for states to develop differing services and populations for Medicaid coverage. The populations covered through Montana's long established 00181 Medicaid 1115 Waiver included adult parents with income below a certain percent of poverty whose children were Medicaid eligible and persons with severe disabling mental illness. The spectrum of health care services available to persons receiving coverage through this existing 00181 Medicaid 1115 Waiver was limited as compared to that afforded persons in other categories of Medicaid coverage. Many of the members previously served under this waiver are eligible for the HELP Act (Medicaid Expansion) with enhanced federal funding and CMS required they receive the Alternative Benefit Package. The remaining small number of clients left in the 00181 Medicaid 1115 Waiver will receive the same service coverage as the other Medicaid populations. Consequently, the prior health services coverage as

memorialized in ARM 37.85.206 which limited the receipt of certain services no longer applies and must be removed from the rule provisions.

With the recent approval of the new Health and Economic Livelihood Plan (HELP) Medicaid 1115 Waiver for Montana by which persons within the federally authorized adult expansion may now receive Medicaid funded health care services coverage, most of the adults in the existing 00181 Medicaid 1115 Waiver will qualify for coverage in the new 1115 Waiver. There will, however, be a subset of those adults whose income is above the income ceiling for the new HELP Medicaid 1115 Waiver's coverage or who are dually eligible for Medicare and Medicaid and therefore not eligible for the new 00181 Medicaid 1115 Waiver. Federal approval has been given to maintain the existing 00181 Medicaid 1115 Waiver so as to allow that subset of persons to continue to receive Medicaid coverage for their health care needs through that particular waiver authority.

Certain of the proposed rule changes for ARM 37.85.206 are necessary to provide for the reconfiguration in the coverage populations as between the existing 00181 and the new HELP Medicaid 1115 Waivers. The population of coverage for the continued existence of the 00181 Medicaid 1115 Waiver, as proposed by changes to the rule, will be limited to persons 18 and older who have severe disabling mental illness and who either: are Medicare eligible and have an income of 0 to 138% of poverty; or have an income of 139 to 150% of poverty whether Medicare eligible or not.

The department is proposing updates to this rule regarding the services for members who are enrolled through the existing 00181 Medicaid 1115 Waiver. Currently qualified members receive limited services that are different from the standard Medicaid benefit. The 00181 Medicaid 1115 Waiver has been updated with CMS to change the persons who are eligible through the waiver and the services that are received. Members will now receive standard Medicaid benefits. Consequently, the provisions of ARM 37.85.206, providing for the specifications of the health care services under the prior conditions of the 00181 Medicaid 1115 Waiver and addressing their application, are proposed for removal.

In addition, the department is proposing to exempt people categorically eligible for Medicaid as aged, blind, or disabled from the annual $1,125 dental treatment limit that was enacted January 1, 2016. These members have unique health care needs that are better served by lifting this cap. The additional benefits will be covered through the 00181 Medicaid 1115 Waiver.

Additionally, the department proposes to add text regarding the coverage of habilitation and rehabilitation.

Fiscal Impact

The updates to ARM 37.85.206 will increase the allowed benefits for members under the existing 00181 Medicaid 1115 Waiver and decrease the number of members

served through that waiver since many are now covered through the HELP Medicaid 1115 Waiver. The updates will also remove the previous deducted dental treatment limit for only those members who are categorically eligible for Medicaid as aged, blind, or disabled.

Below is the estimated annual fiscal impact based on federal fiscal year.

00181 Medicaid 1115 Waiver - Federal Fiscal Year		
Funding Source	FY 2016 Difference	FY 2017 Difference
General Fund	$1,149,124	$1,894,203
Federal Match	$2,156,756	$3,605,805

ARM 37.86.601

The department is proposing to add new definitions for habilitative care and rehabilitative care to ARM 37.86.601. The new proposed updates define the difference between habilitative and rehabilitative care and provide guidance on the types of service allowed and providers that may perform these services.

Since the implementation of an alternative benefit plan in accordance with federal criteria is integral to the implementation of the provision of health care coverage under the new HELP Medicaid 1115 Waiver and to the realignment of the existing health care coverage under the existing but amended 00181 Medicaid 1115 Waiver, the effective dates for those changes must coincide with the dates of implementation as authorized by CMS in the waiver approvals. The proposed changes to ARM 37.86.601, in accordance with federal direction, were to be effective on January 1, 2016, so as to coincide with the effective date for the implementation of the Medicaid expansion of coverage to include adults up to 138% of poverty and the resulting implementation of the federally approved Medicaid Alternative Benefit Plan for Montana. Since the federal approvals for the expansion of Medicaid member coverage in Montana provided for a January 1, 2016 effective date and necessitate the removal of these requirements, the proposed rule upon adoption of necessity will have a retroactive effective date of January 1, 2016. There will be no negative impact from this implementation since the affected population will be receiving a broader spectrum of benefits.

Fiscal Impact

There are no fiscal impacts related to the updates of ARM 37.86.601.

ARM 37.86.606

The department in administering the federally authorized program of Medicaid funded health care services for Montana must comply with the standards and limitations established in federal statute and regulations for the program. Federal law allows states, subject to definite restrictions and limits, to impose certain forms

of cost sharing on persons who are in receipt of Medicaid funded health care services. The department has established through ARM 37.86.606 certain limits on utilization of the various health care services therapies for persons eligible for the state administered Medicaid program. The proposed changes to ARM 37.86.606 would remove those limits.

In the course of preparing to implement the federally required Alternative Benefit Plan to be applied to the administration of the spectrum of health care services that would be covered by the department through the new HELP Medicaid 1115 Waiver coverage expansion, it was determined that the existing limits on therapy services for Medicaid members in Montana would need to be removed so as to conform with current federal requirements for alternative benefit plans. Additionally, the department proposes to remove the information regarding maintenance therapy from the rule. The proposed changes to ARM 37.86.606 are necessary to accomplish the alignment with the federal requirements.

Since the implementation of an alternative benefit plan in accordance with federal criteria is integral to the implementation of the provision of health care coverage under new HELP Medicaid 1115 Waiver and to the realignment of the existing health care coverage under the existing but amended 00181 Medicaid 1115 Waiver, the effective dates for those changes must coincide with the dates of implementation as authorized by CMS in the waiver approvals. The proposed changes removing the limits on therapies of ARM 37.86.606, in accordance with federal direction, were to be effective on January 1 of 2016, so as to coincide with the effective date for the implementation of the Medicaid expansion of coverage to include adults up to 138% of poverty and the resulting implementation of the federally approved Medicaid Alternative Benefit Plan for Montana. Since the federal approvals for the expansion of Medicaid member coverage in Montana provided for a January 1 of 2016 effective date and necessitate the removal of these requirements, the proposed rule upon adoption of necessity will have a retroactive effective date of January 1, 2016. There will be no negative impact from this implementation since the affected population will be receiving a broader spectrum of benefits.

Fiscal Impact

The proposed amendments to ARM 37.86.606 will remove the service limits on speech therapy, physical therapy, and occupational therapy, allowing a possible increase in utilization. Below is the estimated annual fiscal impact based on federal fiscal year.

Therapies - Federal Fiscal Year		
Funding Source	FY 2016 Difference	FY 2017 Difference
General Fund	$21,510	$28,416
Federal Match	$40,372	$54,093

ARM 37.86.2002 and 37.86.2102

The department is proposing to change the maximum service limits on eyeglasses and eye exams for determining refractive state. Currently for eyeglasses a person 21 years of age and older is limited to one pair of eyeglasses to include a frame and a set of lenses in a 730-day period. The department is proposing to change this to one pair of eyeglasses to include a frame and a set of lenses in a 365-day period. Currently a person 21 years of age and older is limited to one eye examination for determination of refractive state per 730 days. The department is proposing to change this to one eye examination for refractive state every 365 days.

In the course of preparing to implement the federally required Alternative Benefit Plan to be applied to the administration of the spectrum of health care services that would be covered by the department through the new HELP Medicaid 1115 Waiver coverage expansion, it was determined that the existing limits on optometric and eyeglass services for Medicaid members in Montana would need to be modified so as to conform with current federal requirements for alternative benefit plans. The proposed changes to ARM 37.86.2002 and 37.86.2102 are necessary to accomplish the alignment with the federal requirements.

Since the implementation of an alternative benefit plan in accordance with federal criteria is integral to the implementation of the provision of health care coverage under new HELP Medicaid 1115 Waiver and to the realignment of the existing health care coverage under the existing but amended 00181 Medicaid 1115 Waiver, the effective dates for those changes must coincide with the dates of implementation as authorized by CMS in the waiver approvals. The proposed changes modifying the limits on therapies of ARM 37.86.2002 and 37.86.2102, in accordance with federal direction, were to be effective on January 1 of 2016, so as to coincide with the effective date for the implementation of the Medicaid expansion of coverage to include adults up to 138% of poverty and the resulting implementation of the federally approved Medicaid Alternative Benefit Plan for Montana. Since the federal approvals for the expansion of Medicaid member coverage in Montana provided for a January 1 of 2016 effective date and necessitate the removal of these requirements, the proposed rule upon adoption of necessity will have an effective retroactive date to January 1, 2016. There will be no negative impact from this implementation since the affected population will be receiving less restrictive benefits.

Fiscal Impact

The updates to ARM 37.86.2002 and 37.86.2102 increase the frequency in which members may receive new eyeglass frames, lenses, and eye exams that allows a possible increase in utilization of these services. Below is the estimated annual fiscal impact based on federal fiscal year.

Eyeglasses/Eye Exams - Federal Fiscal Year		
Funding Source	FY 2016 Difference	FY 2017 Difference
General Fund	$257,875	$340,668
Federal Match	$483,998	$648,496

ARM 37.86.2902

The department is proposing to remove the prior authorization requirement on inpatient medical alcohol and drug detoxification services that last over seven days. Currently, the department requires that inpatient hospitals who perform detoxification services require a prior authorization if the member is admitted to the hospital for greater than seven days. The department examined its process of prior authorization for the past several years and found that it was not needed, as both the admissions and length of stays were appropriate. The department's method of payment for inpatient stays has a strong incentive for hospitals to self-monitor length of stays.

In addition, the department, in administering the federally authorized program of Medicaid funded health care services for Montana, must comply with the standards and limitations established in federal statute and regulations for the program. Federal law allows states, subject to definite restrictions and limits, to impose certain forms of cost sharing on persons who are in receipt of Medicaid funded health care services. The department has established through ARM 37.86.2902 certain limits on utilization of alcohol and drug detoxification for persons eligible for the state administered Medicaid program. The proposed changes to ARM 37.86.2902 would remove those limits.

In the course of preparing to implement the federally required Alternative Benefit Plan to be applied to the administration of the spectrum of health care services that would be covered by the department through the new HELP Medicaid 1115 Waiver coverage expansion, it was determined that the existing limits on alcohol and drug detoxification services for Medicaid members in Montana would need to be removed so as to conform with current federal requirements for alternative benefit plans. The proposed changes to ARM 37.86.2902 are necessary to accomplish the alignment with the federal requirements.

Since the implementation of an alternative benefit plan in accordance with federal criteria is integral to the implementation of the provision of health care coverage under new HELP Medicaid 1115 Waiver and to the realignment of the existing health care coverage under the existing but amended 00181 Medicaid 1115 Waiver, the effective dates for this change must coincide with the dates of implementation as authorized by CMS in the waiver approvals. The proposed changes removing the limits on alcohol and drug detoxification of ARM 37.86.2902, in accordance with federal direction, were to be effective on January 1, 2016, so as to coincide with the effective date for the implementation of the Medicaid expansion of coverage to include adults up to 138% of poverty and the resulting implementation of the

federally approved Medicaid Alternative Benefit Plan for Montana. Since the federal approvals for the expansion of Medicaid member coverage in Montana provided for a January 1, 2016 effective date and necessitate the removal of this requirement, the proposed rule change upon adoption of necessity will have a retroactive effective date to January 1, 2016. There will be no negative impact from this implementation since the affected population will be receiving a less restrictive benefit.

Fiscal Impact

There are no fiscal impacts related to the updates to ARM 37.86.2902.

ARM 37.86.3103 and 37.86.3105

The department is proposing to remove the maximum service limits on cardiac and pulmonary rehabilitation services. Currently, outpatient cardiac rehabilitation services are limited to a maximum of two one-hour sessions per day for up to 36 sessions and pulmonary rehabilitation services are limited to a maximum of two one-hour sessions per day for up to 36 sessions.

The department in administering the federally authorized program of Medicaid funded health care services for Montana must comply with the standards and limitations established in federal statute and regulations for the program. Federal law allows states, subject to definite restrictions and limits, to impose certain forms of cost sharing on persons who are in receipt of Medicaid funded health care services. The department has established through ARM 37.86.3103 and 37.86.3105 certain limits on cardiac and pulmonary rehabilitation services for persons eligible for the state administered Medicaid program. The proposed changes to ARM 37.86.3103 and 37.86.3105 would remove those limits.

In the course of preparing to implement the federally required Alternative Benefit Plan to be applied to the administration of the spectrum of health care services that would be covered by the department through the new HELP Medicaid 1115 Waiver coverage expansion, it was determined that the existing limits on cardiac and pulmonary rehabilitation services for Medicaid members in Montana would need to be removed so as to conform with current federal requirements for alternative benefit plans. The proposed changes to ARM 37.86.3103 and 37.86.3105 are necessary to accomplish the alignment with the federal requirements.

Since the implementation of an alternative benefit plan in accordance with federal criteria is integral to the implementation of the provision of health care coverage under new HELP Medicaid 1115 Waiver and to the realignment of the existing health care coverage under the existing but amended 00181 Medicaid 1115 Waiver, the effective dates for this change must coincide with the dates of implementation as authorized by CMS in the waiver approvals. The proposed changes removing the limits for cardiac and pulmonary rehabilitation services of ARM 37.86.3103 and 37.86.3105, in accordance with federal direction, were to be effective on January 1, 2016, so as to coincide with the effective date for the implementation of the Medicaid

expansion of coverage to include adults up to 138% of poverty and the resulting implementation of the federally approved Medicaid Alternative Benefit Plan for Montana. Since the federal approvals for the expansion of Medicaid member coverage in Montana provided for a January 1, 2016 effective date and necessitate the removal of this requirement, the proposed rule change upon adoption of necessity will have a retroactive date to January 1, 2016. There will be no negative impact from this implementation since the affected population will be receiving less restrictive benefits.

Fiscal Impact

The updates to ARM 37.86.3103 and 37.86.3105 remove the service limits for cardiac and pulmonary rehabilitation. This allows a possible increase in utilization of these services. Below is the estimated annual fiscal impact based on federal fiscal year.

Cardiac/Pulmonary Rehab - Federal Fiscal Year		
Funding Source	FY 2016 Difference	FY 2017 Difference
General Fund	$390	$515
Federal Match	$731	$980

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., April 1, 2016.

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, apply and have been fulfilled. The primary bill sponsor was notified by e-mail that the department was working on these rules on February 5, 2016. A draft copy was sent to the sponsor on February 13, 2016.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Small Business Impact

The changes in cost sharing for Medicaid members, as proposed, would not result in changes in the current business operations of small health-care providers. Medicaid members and the insureds of private insurers are already subject to cost share requirements that necessitate the implementation by health-care providers of operational policies and practices through which they may recover from the members and the insureds those cost-share amounts. Consequently, the proposed changes would not result in any changes in or additional features in the operations of health-care providers. The other proposed changes in the notice also are not anticipated to have an impact on small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA.

The following matrix presents the department's intended performance monitoring scheme.

Principal reason for the rule	Measurement	Data Collection Methods/Metrics	Period of Measurement
Provide coverage of health care services for low-income Montanans	HELP ACT enrollment	Track enrollment via eligibility determination system (CHIMES)	Quarterly

Provide greater value for the tax dollars spent on the Montana Medicaid program	Ratio of state and federal funds expended	Track expenditure by funding source via the state accounting system	Annually
Provide incentives that encourage Montanans to take greater responsibility for their personal health	Health Behavior Activities	Track the level of participant engagement in health behavior activities via the department's data systems	Quarterly

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

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

Certified to the Secretary of State February 22, 2016.

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

In the matter of the amendment of ARM 37.106.704 pertaining to ten additional inpatient beds granted by a waiver under the Patients and Providers Act of 2008 for critical access hospitals	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 24, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 the Department of Public Health and Human Services no later than 5:00 p.m. on March 11, 2016, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital ~~shall~~ must comply with the conditions of participation for critical access hospitals ~~as set forth in~~ under 42 CFR 485 Subpart F, updated through May 2005. The department adopts and incorporates by reference 42 CFR 485 Subpart F, updated through May 2005. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(2) A critical access hospital may maintain up to 25 inpatient beds that can be used interchangeably for acute care or swing-bed services. A critical access hospital granted a waiver under Section 123(i) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) may maintain an additional ten beds to be used only for skilled nursing facility or nursing facility level services. A critical access hospital may not add the additional beds granted under a waiver through capital expenditure for new construction.

(3) remains the same.

(4) A critical access hospital ~~shall~~ must provide emergency services meeting the emergency needs of patients ~~in accordance with~~ following acceptable standards of practice, including the following standards:

(a) Emergency services must be organized under the direction of a practitioner member of the medical staff. A practitioner is a physician, physician's assistant certified, or an advanced practice registered nurse.

(b) through (e) remain the same.

(i) an on-call practitioner must be immediately available by phone or radio for the registered nurse to contact, following completion of a nursing assessment, to determine whether the patient requires discharge, further examination, treatment or stabilization, and transfer to a facility capable of providing the appropriate level of care;

(ii) and (iii) remain the same.

(iv) the facility may not use a registered nurse to provide emergency services coverage for more than a 72-hour continuous period of time.

(5) remains the same.

(6) A facility aggrieved by a denial, suspension, or termination of licensure may request a fair hearing ~~in accordance with~~ under ARM 37.5.117.

AUTH: 50-5-233, MCA
IMP: 50-5-233, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.106.704 to allow critical access hospitals to take advantage of a waiver that may be granted under the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) which allows critical access hospitals to add ten additional inpatient beds.

The department is proposing to update grammar and legal terms to comply with the Office of Secretary of State's requirements and the department's general requirements for rule language.

Section 123 of the MIPPA, as amended by Section 3126 of the Affordable Care Act (ACA) of 2010, authorizes a "demonstration project" (project) on community health integration models in certain rural counties. The project's goal is to develop and test new models for the delivery of healthcare in order to better integrate the delivery of acute care, extended care, and other healthcare, as defined in Section 123. The project will improve access to care for Medicare and Medicaid beneficiaries residing in very sparsely populated areas. This "demonstration project" is commonly known as the Frontier Community Health Integration Project (FCHIP).

The Centers for Medicare and Medicaid Services (CMS) requested applications for participation in the project from eligible entities as defined in Section 123(d)(1)(B) of MIPPA. CMS interprets the eligible entity definition as meaning critical access hospitals (CAHs) that receive funding through the Rural Flexibility Program. The

statute limits the project to no more than four states; it further restricts eligibility to CAHs in states in which at least 65 percent of counties have population densities of six persons or fewer per square mile. Thus, the applications to participate in this project will be limited to CAHs in Alaska, Montana, Nevada, North Dakota, and Wyoming. CMS will select participants from no more than four of these states.

MIPPA authorizes waiver of such provisions of the Medicare and Medicaid programs as necessary to conduct the project. Conditions of Participation waivers, to be offered, include an increase in the bed limit for CAHs from 25 to 35 beds. The additional beds can only be used for skilled nursing facility (SNF) or nursing facility (NF) level services, in accordance with standard Medicare and Medicaid reimbursement principles. Capital expenditure for new construction will not be permitted. Only sites demonstrating occupancy greater than 80 percent will be eligible for this waiver. Also, this waiver will not be permitted for CAHs that currently operate a distinct-part skilled nursing facility.

Two Montana facilities have applied and are eligible for the bed-expansion waiver. They are McCone County Health Center in Circle and Roosevelt Medical Center in Culbertson. Roosevelt terminated their 40 bed Nursing Home license May of 2007, and McCone terminated their 30 bed Nursing Home license April 1, 2009. Currently, according to ARM 37.106.704(2), the bed limit for a CAH is 25 beds that can be used interchangeably for acute beds or swing-bed services. A rule amendment is needed to increase the bed limit from 25 to 35 and add language to limit the use of the ten additional beds to SNF or NF level services. Without this amendment, the Montana facilities will be unable to take advantage of this opportunity.

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., April 1, 2016.

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

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

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

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 22, 2016.

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

In the matter of the amendment of ARM 37.8.116 pertaining to increasing certain fees for certified copies of vital records	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 24, 2016, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 the Department of Public Health and Human Services no later than 5:00 p.m. on March 17, 2016, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) The fee for a certified copy (photocopy or computer-produced) of a birth certificate, ~~a death certificate,~~ a fetal death certificate, an acknowledgment of paternity, or a delayed birth registration is $12 for the first copy of a specific request and $5 for each additional copy of the same record requested at the same time as the first copy.

(2) The fee for a certified copy (photocopy or computer-produced) of a death certificate is $15 for the first copy of a specific request and $8 for each additional copy of the same record request, at the same time, as the first copy. $3.00 from each copy purchased from the department will be deposited into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.

(3) The fee for an informational copy of a death certificate is $13.00. $3.00 from each copy purchased from the department will be deposited into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.

~~(2)~~ (4) The department ~~shall~~ will charge a fee of $10 per name for a record search within any period of five years or less. If the record is not located, the fee will

not be refunded. If the request is for more than five years, an additional fee of $1 per year over the first five years will be charged.

(3) remains the same, but is renumbered (5).

~~(4)~~ (6) The fee to process a finalized adoption or a rescission of an adoption is $25. A certified copy of the new certificate will be provided for a fee of $12.

(5) and (6) remain the same, but are renumbered (7) and (8).

~~(7)~~ (9) The fee for amending or correcting a vital record after one year from the date of filing is $15. A certified copy of the amended record will be provided to the person requesting the amendment or correction for a fee of $12.

(8) through (10) remain the same, but are renumbered (10) through (12).

~~(11)~~ (13) The fee for a disinterment permit is $5. The local registrar ~~shall~~ will collect the fee, $2 of which must be remitted to the department.

(12) remains the same, but is renumbered (14).

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA
IMP: 42-2-218, 50-15-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.8.116 regarding increasing the fee for a certified copy of a death certificate. The following describes the purpose of the proposed rule amendments and necessity pertaining to proposed amendments to the rule.

ARM 37.8.116

This rule sets out fees for: obtaining copies of vital records certificates; processing changes and amendments to records, e.g., adoptions, corrections; file searches; and obtaining customized analyses or research data sets based on vital records. The proposed amendments to ARM 37.8.116(2) and (3) are the result of the passage of HB 223 during the 2015 Legislative Session. This bill statutorily requires the department to charge $15 for the initial certified copy of a death certificate, and $8 for subsequent certified copies. It also mandates that the department charge $13 for each informational copy of a death certificate. The reason for these changes is that the bill also directs the department to transfer $3 of each of those fees to the Department of Labor and Industry to provide revenue for the general operating expenses of the Board of Funeral Service, which had previously become insolvent.

The proposed amendments to ARM 37.8.116(6) and (9) increase fees for certificates of adoption and rescission of adoption, as well as for amendments or corrections to vital records. The fees for these services have not been revised or increased since 2002. Some of the activities involve substantial amounts of staff time, and the fees currently in effect do not cover the actual cost of these activities. Accordingly, taxpayers are presently subsidizing the cost of providing these services to the direct users of the services. The proposed fee increases will shift a greater proportion of the actual cost of the services to the individuals who directly use them.

The current fees of $25 for adoption and $15 for corrections include issuance of a certified copy of the adoption certificate or corrected certificate. The proposed rule changes retain the $25 and $15 respective processing fees, but now provide for a fee of $12 for certified copies of vital records reflecting those services. This proposed change will better reflect the cost of providing the services, and reduce the subsidy these activities receive from other OVS revenue.

Fiscal Impact

ARM 37.8.116(2) and (3)

FISCAL IMPACT	FY 2016 Difference	FY 2017 Difference	FY 2018 Difference	FY 2019 Difference
Expenditures:				
Personal Services (board cost)	$400	$0	$0	$0
Operating Expenses (board cost)	$1,075	$0	$0	$0
Operating Expenses (DPHHS)	$250	$0	$0	$0
Total Expenditures	$1,725	$0	$0	$0
Funding of Expenditures:				
State Special Revenue (02)	$1,725	$0	$0	$0
Total Funding of Expenditures	$1,725			
Revenues:				
State Special Revenue (02)	$186,656	$185,181	$185,181	$185,181
Total Revenues	$186,656	$185,181	$185,181	$185,181
Net Impact to Fund Balance (revenue minus funding of expenditures)				
State Special Revenue (02)	$184,931	$185,181	$185,181	$185,181

ARM 37.8.116(6)

The Office of Vital Statistics (OVS) processes approximately 900 adoptions per year.
900 x $12.00 = $10,800 additional revenue

ARM 37.8.116(9)

The OVS processes approximately 1,250 corrections per year.
1,250 x $12 = $15,000 additional revenue

Most citizens never have occasion to request adoption certificates or corrections to birth or death certificates. Those who need these services typically need only one

transaction. The increased costs are modest for the small number of individuals affected.

Total estimated additional annual revenue for OVS:	$35,700
Estimated number of persons affected:	2,150

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., April 1, 2016.

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, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on February 17, 2016.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies,

make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Nick Domitrovich
Nick Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 22, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.2.303 and 42.2.325 pertaining to meetings with department leadership, information access, and the department's acceptance of power of attorney requests	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 28, 2016, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, advise the department of the nature of the accommodation needed no later than 5 p.m. on March 14, 2016. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

<u>42.2.303 APPOINTMENTS WITH DIRECTOR, DEPUTY DIRECTOR, OR DIVISION ADMINISTRATORS</u> (1) Any individual or group of individuals may make appointments to meet with the director<u>, the deputy director,</u> or division administrators regarding any matter of concern to those individuals and under the responsibility of the department. Such appointments may be made by contacting the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805, telephone 444-6900, or toll-free outside of Helena (866) 859-2254.

AUTH: 15-1-201, 16-1-303, 16-10-104, 16-11-103, MCA
IMP: 2-3-101, 2-3-103, 2-3-111, 15-1-201, MCA

REASON: The department proposes amending ARM 42.2.303 as a matter of housekeeping to include the deputy director as a department representative that is available to meet with individuals or groups regarding matters of concern under the responsibility of the department. The update is proposed for both the rule content and the rule title.

42.2.325 ACCESS TO INFORMATION (1) The department files, other than those files required by law to be closed, are open to public inspection in accordance with established department policy. These files are located at various department offices in Montana. Copies of specific documents are available in accordance with department policy entitled, "Agency Documents - Access and Photocopying," 2.1.4, dated January ~~13~~ 3, 2013.

(2) All requests for confidential tax returns or tax return information submitted by someone other than the taxpayer or an authorized agent of the taxpayer must be made to the department in writing directed to:

Department of Revenue
~~Legal Services Disclosure~~ Director's Security Office
P.O. Box 7701
Helena, MT 59604-7701.

(3) A taxpayer may authorize a representative to obtain the taxpayer's confidential tax information by completing and submitting the department's Power of Attorney form, ~~form~~ Form POA. The downloadable form is located on the department's web site at revenue.mt.gov. ~~under "forms and resources" "downloadable forms."~~ The department will also accept a fully executed Federal Form 2848, Power of Attorney and Declaration of Representative ~~when section 3 of the Federal form entitled "tax matters" contains the type of tax, the form number with a reference to "Montana," and the tax years at issue~~.

(4) Except as provided in (5), when the department receives a written request for confidential tax return information from someone who is not statutorily authorized to receive it, the department's ~~Disclosure~~ Security Office will respond in writing ~~refusing~~ denying the request.

(5) and (6) remain the same.

AUTH: 2-4-201, 15-1-201, 15-7-306, 15-30-2620, 15-31-501, 16-1-303, 16-10-104, 16-11-103, MCA
IMP: Montana Constitution, Art. II, sections 8, 9, and 10, 2-3-101, 2-3-102, 2-3-103, 2-3-104, 2-3-105, 2-3-111, 2-3-112, 2-3-113, 2-3-114, 2-4-201, ~~2-6-102, 2-6-109, 2-6-110, 2-6-202~~ 2-6-1003, 2-6-1006, 2-6-1009, 2-6-1017, 15-1-106, 15-7-308, 15-7-310, 15-30-2618, 15-31-511, 15-38-109, 15-68-815, MCA

REASON: In order to comply with the Montana Uniform Power of Attorney Act, the department proposes amending ARM 42.2.325 to remove the requirement that federal power of attorney forms submitted to the department need to include a reference to Montana, the tax type, and the tax years at issue. Amending the rule will also expedite the department's processing time for the power of attorney requests it receives.

The department also proposes correcting the date on the policy referenced in (1), updating the name of the office that processes requests for information in (2) and (4), and removing all but the department's homepage web site address from (3) to prevent confusion should the specific location of the referenced document change as the web site evolves over time.

The department further proposes updating the implementing citations for the rule to correspond with updates made by the 2015 Legislature to Montana's public record laws, which included the repeal and replacement of numerous statutes in Title 2, chapter 6, MCA; and proposes adding another supporting statute for the rule, 15-7-308, MCA, which covers the confidentiality of Realty Transfer Certificates.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 11, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of this determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State February 22, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter the amendment of ARM 42.2.613, 42.2.614, 42.2.615, 42.2.616, 42.2.617, 42.2.618, 42.2.619, 42.2.620, and 42.2.621 pertaining to the uniform dispute review process and the department's office of dispute resolution	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2016, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, advise the department of the nature of the accommodation needed no later than 5 p.m. on March 25, 2016. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.2.613 DEFINITIONS The following definitions apply to rules found in this subchapter.

~~(1) "Alternative dispute resolution (ADR)" means the option of a voluntary, confidential, and cooperative means of resolving disputes. One objective is to reduce costs and risks inherent in adjudication or litigation for either the person or other entity and the department. Alternative dispute resolution can include mediation.~~

~~(2) "Centrally assessed appraisal report" means the report that notifies the customer of their market value for their centrally assessed property each year.~~

~~(3) "Centrally assessed assessment notice" means the final report sent to the customer and local department field office notifying them of the customer's market and taxable value by jurisdiction.~~

~~(4) "Customer" means any person or other entity subject, but not limited to a tax, license fee, royalty, or permit imposed by the state of Montana or a liability for payment of a debt collected by the department.~~

(1) "Bad debt matters" means disputes arising from a debt owed to an agency, other than the Department of Public Health and Human Services, that have

been transferred to the department for collections pursuant to 17-4-104, MCA.

(2) "Collection matters" means disputes arising from the department's collection of outstanding state taxes and any associated penalties and interest.

~~(5)~~(3) "Evidence" ~~means documents or testimony offered during the mediation process or at a hearing. Such evidence includes but is not limited to direct or circumstantial, oral or written testimony, or real or demonstrative exhibits~~ has the meaning given in 26-1-101, MCA.

(4) "Form APLS102F" is a document titled Notice of Referral to the Office of Dispute Resolution that is available at revenue.mt.gov for use by a person or other entity to appeal an informal review determination to the ODR.

(5) "Form CAB-8" is a document titled Request for Informal Review for Centrally Assessed Companies that is available at revenue.mt.gov for use by a centrally assessed company to appeal a first notice of tax assessment or classification.

(6) "Hearing" means a recorded, contested proceeding ~~with specified issues of fact or law to be heard~~ before a hearing examiner, acting as a finder of fact, ~~from which a decision is rendered~~ during which the parties may offer testimony under oath with an opportunity to question the witnesses, offer exhibits, make arguments, and provide evidence.

(7) "Hearing examiner" means, within the context of the department's ~~Office of Dispute Resolution, either a finder of fact or mediator. When serving as a finder of fact, the "hearing examiner" performs an adjudicatory function. A hearing presided over by the finder of fact involves a proceeding addressing specific issues of fact or of law to be tried. The respective parties have the right to offer testimony and evidence, from which the finder of fact renders a decision subject to appeal. When the Office of Dispute Resolution's "hearing examiner" functions as a mediator, the mediator shall interpose between the parties with the objective of assisting them to reconcile, adjust, or settle their dispute~~ ODR, the individual who:

(a) adjudicates or mediates a dispute between a person or other entity and the department after the dispute has proceeded beyond informal review; and

(b) has general authority to regulate the course of appeals.

(8) "Initial conference" means a conference conducted by the ~~Office of Dispute Resolution to review all matters pertaining to a dispute, including which course may best address a situation deemed appropriate by the parties~~ ODR to consider the issues raised by the parties and determine whether the proceedings will be informal or formal, the necessity of discovery, and a schedule that addresses the context and needs of the particular dispute.

(9) "Liquor ~~licensing~~ matters" means disputes ~~involving alcoholic beverages licenses administered by the department under authority~~ arising from the department's administration of the Montana Alcoholic Beverage Code~~,~~ (Title 16, chapters 1 through 4, and 6, MCA). ~~Such disputes may include, but are not limited to, contested violations, denial of applications, revocations, lapses, and protests to license applications. It is understood that the Montana Administrative Procedure Act is considered controlling as to such liquor licensing matters. In addition, it is noted that some disputes with regard to such licenses do not involve the department as a party, such as protest hearings between protestors and license applicants.~~

(10) "Mediation" means a process by which a mediator assists opposing

parties in ~~arriving~~ attempting to arrive at a mutually acceptable ~~settlement~~ resolution of a dispute. ~~In mediation, the mediator does not have authority to enter any decision on the merits of the issues in dispute or to impose, in any way, a settlement upon the parties. The parties control the identification of issues submitted and the type of resolution to be agreed upon. The mediator may conduct joint or separate meetings with the parties. Matters raised in mediation are privileged, private, and confidential. Mediation is voluntary. No person, other entity, or the department is required to participate in any given case except by voluntary agreement. The mediation process is informal. No record is made.~~

~~(a) The following items include matters that cannot be disclosed by either party with respect to settlement:~~

~~(i) views expressed or suggested by a party with respect to a possible settlement;~~

~~(ii) admissions made by any party;~~

~~(iii) statements made or views expressed by any party, witness, the mediator, or any other person privy to the process; or~~

~~(iv) the fact that another party did or did not indicate a willingness to accept a proposal for settlement.~~

~~(11) "Mutually agree to extend" means extending a deadline based upon mutual agreement of the parties.~~

~~(12)~~(11) "Notice of ~~Referral~~ referral to the ODR" ~~Office of Dispute Resolution Form APLS102F" is a form used by the department and customer to refer a disputed matter to the Office of Dispute Resolution. This form is available on the department's internet homepage as stated in (1)~~ means to file an appeal from an informal review determination with the ODR, by submitting:

(a) a completed Form APLS102F; or

(b) any other written objection.

~~(13)~~(12) "ODR" means the department's Office of Dispute Resolution ~~(ODR)" means the department's dispute resolution office. This office handles disputes that cannot be resolved at a lower level within the department~~ as established by 15-1-211, MCA.

~~(14) "Other entity" means all businesses, corporations, or similar enterprises.~~

~~(15)~~(13) "Party" means either ~~the customer~~ a person or other entity or the department.

~~(16)~~(14) "Request for ~~Informal Review Form APLS102F~~ informal review" ~~is a form used by the department and the customer to record changes, appeals and issues pertaining to a particular customer. This form is available on the department's internet homepage, http://www.mt.gov/revenue. It may be used by the customer to notify the department of a dispute concerning an amount shown on a property assessment Notice or Statement of Account (SOA) for those items described in (18)~~ means a request by a person or other entity for review of a tax assessment, adjustment, or other department determination, by submitting:

(a) a completed Form APLS101F;

(b) a completed Form CAB-8; or

(c) any other written request for review.

~~(17)~~(15) "Settlement" means a mutually agreed upon resolution of the disputed issues.

(16) "Tax matters" means disputes arising from the department's administration of state taxes.

~~(18) "Statement of Account (SOA)" means the first notice provided to the customer of an amount owed to the department or of a violation. It may include, but is not limited to, notice of refund reduction, tax debt, fine, or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance taxes, estate taxes, or liquor licensing matters.~~

~~(19) "Written objections" include objections submitted through electronic media or delivered by the U.S. Postal Service, or any other generally accepted delivery service. For matters before ODR, electronic media filings must be supplemented with a hard copy document.~~

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, 15-1-406, 15-23-102, 15-23-107, ~~15-30-257,~~ MCA

REASON: The department proposes amending ARM 42.2.613 to eliminate unnecessary language and be more concise. The department proposes striking terms sufficiently defined elsewhere in statute or rules and striking terms that are no longer found in the context of ARM Title 42, chapter 2, subchapter 6.

The department also proposes updating the remaining definitions for better clarity and proposes defining additional terms used in the subchapter including "bad debt matters," "collection matters," and "tax matters." The department further proposes defining three forms commonly used in the dispute resolution process and striking a repealed implementing statute.

42.2.614 PURPOSE (1) Section 15-1-211, MCA, ~~provides for the creation of an Office of Dispute Resolution (ODR)~~ requires a uniform dispute review procedure and the establishment of a dispute resolution office within the department ~~and requires a uniform dispute review process~~.

(2) A primary objective of the dispute resolution procedure is to make resolving a dispute ~~resolution as unintimidating and inexpensive~~ with the department as accessible as possible to parties appearing before the department.

(3) The department's dispute review procedure applies to all matters administered by the department except those exempted by 15-1-211, MCA, or other applicable law ~~exempts noncentrally assessed property, inheritance, estate taxes, liquor licensing, and the issue of whether an employer-employee relationship existed between the person or other entity subject to the requirements of Title 15, chapter 30, part 2, MCA, or whether the employment relationship was that of an independent contractor, from the dispute resolution process~~. Liquor matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to the department's dispute review procedure.

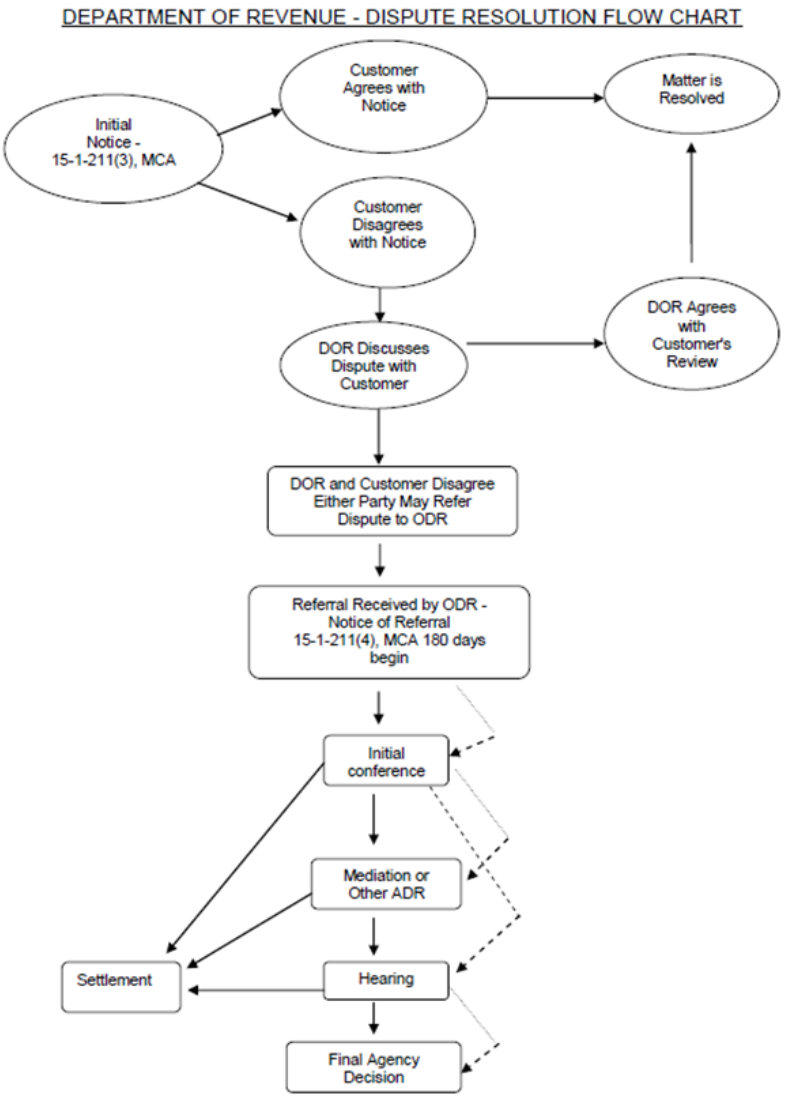
~~(2) As shown in the flow chart in (3), a~~

(4) The dispute resolution flowchart in (6) provides the dispute resolution procedure. A final agency decision must be issued within 180 days from the date the ~~APLS102F Form~~ notice of referral to the ODR is received ~~by the Office of Dispute Resolution~~ as provided for in 15-1-211, MCA, unless extended by mutual consent of the parties.

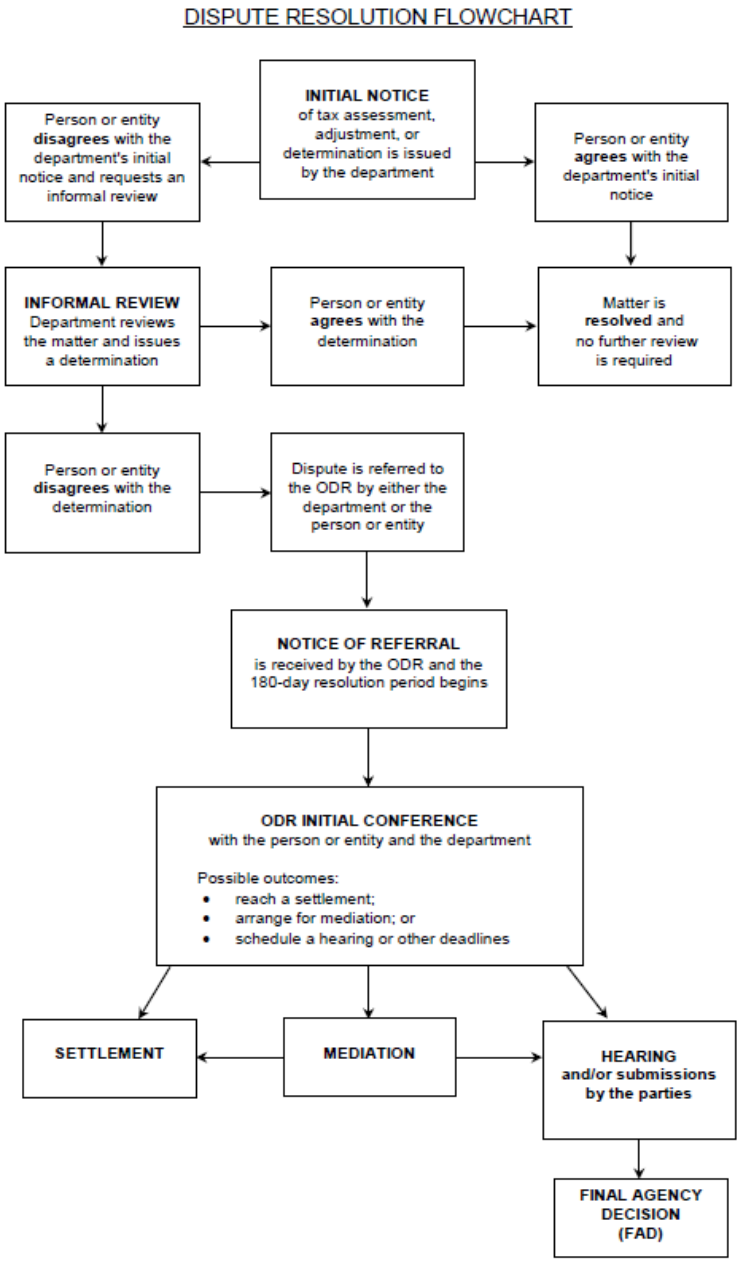
(5) Section 69-8-414, MCA, ~~specifically~~ requires the department to issue a final agency decision for uniform systems benefits ~~(USB)~~ matters within 60 days from the date the matter is submitted to ODR, rather than the 180 days provided for in 15-1-211, MCA.

~~(3)~~(6) The following ~~flow chart~~ flowchart shows how the ~~process~~ dispute resolution procedure will flow ~~beginning with~~ from the initial notice ~~provided to the customer~~ to the final agency decision:

This flowchart is being stricken:



This flowchart is being added:



AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, 69-8-414, MCA

REASON: The department proposes amending ARM 42.2.614 to eliminate unnecessary language to be more concise, and to restructure the rule for better clarity. The department also proposes adding language in newly numbered (3) to clarify that liquor matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to the department's dispute review procedure.

The department further proposes updating the dispute resolution flowchart in

newly numbered (6) for conformity with current department practices and to make the flowchart easier to follow.

42.2.615 REFERRAL REQUIREMENTS ~~(1) The notification requirement of a referral to the Office of Dispute Resolution by the department is covered in 15-1-211, MCA.~~

~~(2) Referrals by the customer to the Office of Dispute Resolution~~

(1) Notice of referral to the ODR shall be submitted in writing and shall indicate the issues in dispute.

~~(3)~~(2) The ~~Office of Dispute Resolution~~ ODR shall notify the appropriate division within the department that a referral has been received.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.615 to eliminate unnecessary language and be more concise. The language proposed to be stricken from (1) provides little more than a reference to 15-1-211, MCA, which is already referenced in the implementing section of the rule.

The department further proposes incorporating the defined acronym ODR into the rule language for consistency with the other rules in ARM Title 42, chapter 2.

42.2.616 ~~DISCRETION AS TO~~ FORMALITY OF PROCEDURES (1) The department recognizes that a wide array of parties ~~appears~~ appear before the ~~agency in connection~~ department with disputes to resolve. ~~They~~ These disputes range from large corporations employing professional tax counsel to individuals appearing on their own behalf ~~contesting comparatively minimal amounts of tax, violation penalties, etc~~. It is the intent of the ~~agency~~ department to accommodate all such disputes to the greatest extent possible in a manner that is deemed most appropriate for each situation. ~~In particular, the agency seeks to conduct proceedings that are as unintimidating as possible. Persons who are not represented in disputes before the department should not feel apprehensive or dissuaded by procedural complexities, legalistic terms, or bewildering formalities.~~

(2) The hearing examiner, in consultation with the parties, will evaluate the circumstances and complexity of each dispute being presented and determine the most appropriate level of formality and ~~procedures appropriate for each dispute~~ procedure to follow.

~~(2) In disputes where persons or other entities are not represented and are disputing smaller amounts of potential liability, it is understood that far less formal procedures may be used.~~

~~(3) In disputes where both parties are represented by counsel, applying rules of evidence and civil procedure as described or referred to in this chapter to provide structure to the process may be entirely warranted.~~

(3) To the extent the department's rules do not provide for or specify procedures, or where necessary to supplement the rules, the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, Montana Uniform District Court Rules, and Montana Rules of Evidence may be utilized to the extent

that they clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties, or privileges of parties.

(4) Liquor matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to this rule.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.616 to eliminate unnecessary language and be more concise. The department also proposes adding language in newly numbered (2) to address an issue that has historically caused some concern regarding scheduling and case delays. For example, in complex tax matters, additional procedural requirements often become necessary.

The proposed amendments and addition of the proposed language in new (3) is intended to provide a reference to the additional processes or procedures that may need to be used to best serve all parties involved when working to resolve a disputed matter.

The department also proposes adding new (4) to make it clear that liquor matters are handled pursuant to the Montana Administrative Procedure Act and are not subject to the provisions of this rule.

The department further proposes striking unnecessary words from the rule title.

42.2.617 INITIAL CONFERENCES (1) Following the ~~Office of Dispute Resolution's~~ ODR's receipt of a ~~person's or other entity's request for appeal in any dispute, a hearing examiner assigned to the case shall schedule~~ notice of referral to the ODR, an initial conference~~. The conference shall~~ will be scheduled as soon as ~~practicable~~ possible.

(2) Parties may participate at the initial conference either ~~in person~~ on their own behalf or through representatives, employees, or agents~~,~~ as long as a requisite notice of appearance has been ~~filed from~~ entered by an attorney or a ~~written authorization to represent a party~~ power of attorney form designating representation has been submitted ~~from any other representative~~ by the party of record.

~~(2)~~(3) Written notice of the initial conference shall be given at least 10 days prior to the date of the initial conference unless the parties waive notice. The initial conference may be conducted by telephone, in person, or by other means agreeable to the parties ~~with the taxpayer and/or their representative~~.

~~(3) Any issue may be settled at the initial conference, including referring the dispute to mediation if both parties agree. In the course of the conference, the hearing examiner may take any appropriate action to settle, compromise, or reduce a deficiency subject to approval by the director or the director's designee. If the dispute cannot be settled at the conference, the hearing examiner shall set a time and date for subsequent mediation or a hearing which is as mutually satisfactory as possible to all concerned.~~

(4) ~~Any discovery for the hearing may be discussed and the terms agreed upon at the initial conference~~ At the initial conference, the hearing examiner will discuss the options for proceeding with an appeal before the ODR. The options

generally entail proceeding to a decision based on a hearing, proceeding to a decision based on the record, and/or participating in mediation. The hearing examiner shall set a time and date for the mediation or hearing that is as mutually satisfactory as possible to all concerned.

(5) Once a hearing or mediation has been scheduled, the hearing examiner will coordinate with the parties to schedule other deadlines as needed, such as:

(a) discovery and exhibit exchanges;

(b) motion deadlines; and

(c) other documentation or briefing submission deadlines.

(6) If the parties and the hearing examiner agree, mediation may occur during the initial conference as set forth in ARM 42.2.618.

(7) A party may request a continuance of a scheduled matter. The party seeking the continuance shall indicate whether the request is opposed. If the request for continuance is contested, the requesting party shall provide the basis for the request.

~~(5)~~(8) ~~A~~ Except for centrally assessed property and industrial property, a party must exhaust ~~their~~ available administrative remedies~~, whether by mediation or a hearing decision,~~ prior to ~~further~~ appealing a matter from the ODR to the next level. The parties may jointly stipulate to ~~waiving a hearing~~ waive a written determination by the ODR.

~~(6)~~(9) ~~A record may not be kept of the initial conference. All such conference proceedings~~ Specific facts and substantive matters discussed during the initial conference are considered confidential ~~and privileged~~. Procedural matters discussed are not considered confidential. Any matters raised do not constitute admissions against interest of any party participating in the conference.

~~(7)~~(10) The hearing examiner ~~conducting the initial conference shall not be the one presiding over the formal hearing if mediation occurs~~ assigned to the matter shall preside over any hearing and issue the written determination adjudicating the matter.

~~(8)~~(11) Nothing in this rule may be construed as limiting a party's right to a hearing.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.617 to be more concise and to provide a better explanation of what takes place during the initial conference with the ODR.

The proposed amendments will add the distinction that while the procedural portion of an initial conference is not confidential, in some instances substantive subject matter may be raised during the initial conference and that portion of the conference would be considered confidential.

42.2.618 MEDIATION PROCEDURES (1) The resolution of any matter in connection with a dispute may be pursued through mediation with the agreement of all parties.

(2) Mediation may be requested and scheduled at the initial conference or at

any time during the proceeding at the agreement of both parties. ~~If both~~ Alternatively, if the parties and the hearing examiner agree, mediation may also occur during the initial conference with the understanding that if a resolution is not reached, the case shall be reassigned to a different hearing examiner.

~~(a)~~(3) The mediator may either be a hearing examiner from the ~~Office of Dispute Resolution,~~ ODR or a mediator from outside the department~~. The mediator~~ and shall be ~~chosen~~ selected with the consent of both parties.

~~(b)~~(4) If an outside mediator is selected, the cost of the mediator shall be paid for by the ~~"person" or "other entity" as defined in ARM 42.2.613~~ party requesting the outside mediator, unless the parties have agreed to some other cost-sharing provision.

(5) The mediator does not have authority to enter any decision on the merits of the issues in dispute or to impose a settlement upon the parties. The parties control the identification of the issues submitted and the type of resolution to be agreed upon.

~~(3)~~(6) ~~It will be understood that any person appearing on behalf of a~~ At the mediation, each party shall have the appropriate representative or access to the appropriate representative who has full settlement authority ~~for the party they are representing~~.

(7) Mediation sessions are confidential settlement negotiations. All written and oral communications, negotiations, and statements made in the course of the mediation are made without compromising any party's legal position, are not discoverable, and shall be inadmissible for any purpose at any legal proceeding.

~~(4)~~(8) If mediation ~~produces a settlement agreement the~~ resolves the dispute, a written agreement documenting the resolution shall be prepared by the parties ~~and if necessary,~~ with the assistance of the mediator, if necessary. ~~The settlement shall be signed by the parties and the mediator and it shall be filed with the director or director's designee for approval.~~ A written agreement signed by all parties to the agreement is not confidential and may be admissible as evidence, as set forth in 26-1-813, MCA.

~~(5)~~(9) If mediation does not resolve all issues in a dispute, the parties shall prepare a stipulation that identifies the issues resolved and those that still remain in dispute. For the issues remaining unresolved, ~~a hearing shall be scheduled~~ the matter may proceed before a different hearing examiner unless the parties have agreed to move the remaining issues to the next level of appeal.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.618 to improve the current language in the rule and to include more detail regarding the mediation process. The language proposed in new (5) explains that the mediator does not have decision-making or settlement authority, and the proposed language in new (7) covers the confidential aspect of mediation sessions.

42.2.619 HEARING PROCEDURES (1) Except as provided ~~herein~~ in this rule, hearings shall be conducted in Helena, Montana. Upon a showing of

compelling circumstances by either party, the hearing examiner may order a hearing to be conducted at a location elsewhere in Montana.

(2) The location for hearings pertaining to liquor ~~licensing~~ matters ~~are governed by ARM~~ is determined according to ARM 42.11.305 and 42.12.108, and is not subject to (1).

(3) Upon ~~request by either party~~ agreement of the parties, hearings may be ~~telephonic~~ conducted by telephone or video conference. ~~Such requests will be granted unless~~ If the hearing examiner determines that telephonic or video conference participation may unfairly prejudice the rights of any party, the hearing will be conducted in person. If, however, telephonic or video conference participation is ~~requested~~ approved, the hearing examiner will place the call at the designated time to ~~whatever telephone number is~~ the numbers provided by the ~~person or other entity~~ parties.

~~(4) Upon a showing of compelling circumstances by either party, the hearings officer may order a hearing to be conducted at a location other than Helena, Montana.~~

~~(5)~~(4) Notice of the time and place for a hearing shall be given to the parties concerned, or their representatives if legal authorization is on file, not less than 14 days prior to the day fixed for such proceedings.

(5) A party may request a continuance of a scheduled matter. The party seeking the continuance shall indicate whether the request is opposed. If the request for continuance is contested, the requesting party shall provide the basis for the request.

(6) A party may be represented by legal counsel at the hearing~~, and/or at every~~ at any stage of adjudication. Legal counsel must enter a notice of appearance with the department to represent a person or other entity before the hearing examiner. ~~However, failure~~

(7) Failure to obtain legal representation ~~cannot~~ may not be cited as grounds for complaint at a later stage in the adjudicative process or for relief on appeal from an adverse decision.

~~(a) Legal counsel must enter a notice of appearance.~~

~~(b) Any representative other than legal counsel must submit a written, signed statement authorizing the representative to act on the party's behalf.~~

(8) If a person or other entity chooses to be represented by someone other than legal counsel at the hearing or adjudication stage, the person or other entity must first submit a signed power of attorney form to the department authorizing the representative to act on the party's behalf.

~~(c)~~(9) ~~All~~ If a party is represented by legal counsel or another representative, all documents and information pertaining to the dispute will be directed to the ~~party's~~ representative. ~~They~~ The information may be transmitted by ~~facsimile number~~ fax, e-mail ~~address~~, or other electronic means, ~~if~~ provided such transmission ~~does not breach~~ meets the department's confidentiality requirements. Otherwise, documents will be mailed to ~~or served upon~~ the representative's address as shown in the original filing.

~~(7)~~(10) Hearing proceedings shall be conducted~~,~~ at all times~~,~~ with due regard for the confidentiality requirements imposed by ~~15-30-303, 15-31-511, MCA, and any other confidentiality requirements currently set forth in Title 15, MCA, or at any~~

~~future time~~ law.

~~(8)~~(11) Testimony at hearings shall be given under oath.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, 15-30-2618, 15-31-511, MCA

REASON: The department proposes amending ARM 42.2.619 to restructure the rule and include language providing more detail regarding the hearing process.

The proposed language in new (5) addresses continuance requests for scheduled matters, and new (8) explains the process for a person or other entity to be represented by someone other than legal counsel.

The department further proposes amending newly numbered (10) to strike the statute references regarding confidentiality and adding a reference to these statutes to the implementing section of the rule instead. One statute being stricken from this section, 15-30-303, MCA, was recodified as 15-30-2618, MCA, in 2009. Section 15-30-2618, MCA, is proposed to be added as an implementing citation to reflect this change.

42.2.620 INFORMATION OFFERED IN HEARINGS (1) The hearing examiner shall have the discretion to ~~impose~~ adopt and apply rules of civil procedure and/or rules of evidence as deemed necessary. ~~Imposition of any rules governing hearings shall be done by written order.~~

(2) Every party at a hearing shall have the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(3) At the discretion of the hearing examiner, or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to ~~pre-file~~ prefile the testimony.

~~(a)~~(4) ~~Pre-filed~~ Prefiled testimony may be placed in the record without being read into the record at a hearing if the opposing parties have had reasonable access to the testimony before it is presented.

~~(b)~~(5) If a party intends to question a witness on ~~pre-filed~~ prefiled testimony, that party must file a notice of intent to do so within a time frame agreed upon by the parties with consideration for affording the opposing party an opportunity to cross-examine.

~~(4)~~(6) The hearing examiner shall rule ~~and sign orders~~ on matters concerning the evidentiary and procedural conduct of the hearing.

~~(5)~~(7) Any party appearing at a hearing may submit a written statement addressing factual or legal issues, including ~~cites~~ citations of legal authority, if deemed necessary by the hearing examiner for a full and informed consideration of all matters.

(8) Liquor matters are conducted pursuant to the Montana Administrative Procedure Act and are not subject to this rule.

AUTH: 15-1-201, 15-1-211, MCA
IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.620 to remove

obsolete language, make grammatical corrections, and to restructure the rule for better clarity.

The department also proposes adding language in newly numbered (5) to make it clear that an opposing party is to be given consideration and the opportunity to cross-examine a witness presented by prefiled testimony.

The department further proposes adding new (8) to make it clear that liquor matters are conducted pursuant to the Montana Administrative Procedure Act and are not subject to this rule.

42.2.621 FINAL AGENCY DECISION AND APPEAL (1) ~~In accordance with the authority of the director as provided in 2-15-112, MCA, the director delegates the authority to issue Final Agency Decisions (FAD) to the Office of Dispute Resolution (ODR) for all matters except liquor license violations, revocations, and lapses~~ The director retains the authority to issue a final agency decision (FAD) on all matters except those identified in (2).

(2) The director delegates to the ODR the authority to issue a FAD on liquor licensing protests, bad debt matters, tax matters, and collection matters. The delegation to issue a FAD applies only to matters referred to the ODR ~~and not excepted in (1)~~.

(3) A ~~liquor~~ FAD ~~issued by the director or the hearing examiner~~ on liquor licensing protests, bad debt matters, tax matters, and collection matters may be appealed to the ~~appropriate~~ district court ~~for the state of Montana as provided in 16-4-411, MCA~~ by filing a petition for judicial review within 30 days after service of the FAD.

(4) A ~~tax~~ FAD ~~issued by the hearing examiner shall~~ on a tax matter or collection matter may be appealed to the ~~State Tax Appeal Board (STAB)~~ state tax appeal board as provided in 15-2-302, MCA, by filing an appeal within 30 days following receipt of the FAD.

~~(5) If a person or other entity receives an adverse agency decision in a tax dispute, they shall have 30 days to submit an appeal from such decision to the State Tax Appeal Board.~~

~~(6)~~(5) If no decision is rendered by the end of the 180-day period specified in 15-1-211, MCA, ~~and ARM 42.2.616,~~ the department shall ~~issue a determination to the taxpayer. The determination shall inform them that the 180-day term has run without a decision and~~ notify the parties that they are ~~therefore~~ entitled to carry their appeal forward by filing a complaint with the appropriate reviewing authority within 30 days after service of the notice. ~~The person or other entity shall then have 30 days to file a complaint with the appropriate reviewing authority.~~

AUTH: 15-1-201, 15-1-211, 15-1-217, 16-1-303, MCA
IMP: 2-4-621, 2-4-623, 2-4-631, 2-15-112, 2-15-1302, 15-1-211, 15-2-302, 16-1-302, 16-4-411, MCA

REASON: The department proposes amending ARM 42.2.621 to strike unnecessary language, make grammatical corrections, and add more detail regarding the final agency decision (FAD) process. The department also proposes restructuring the rule for better clarity.

As newly arranged, the rule is proposed to begin by setting forth in (1) that the director has the authority to issue a FAD on all matters except where the director has delegated that authority to the ODR in (2). Sections (3) and (4) set forth the appeal options for different matters, and newly numbered (5) sets forth what shall occur if the department fails to render a decision on a matter within the number of days specified in statute.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 19, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of this determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State February 22, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.22.1311 pertaining to industrial machinery and equipment trend factors	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 11, 2016, the Department of Revenue proposes to amend the above-stated rule.

2. The Department of Revenue 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, advise the department of the nature of the accommodation needed no later than 5 p.m. on March 21, 2016. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(2) Life expectancies for industrial machinery and equipment are shown in the trend table below.

~~2015~~ INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

Description	Trend Table	Life

(a) through (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-138, 15-8-111, MCA

REASON: The department proposes amending ARM 42.22.1311 to remove the calendar year from the title of the table in (2). Historically, the content of this table has remained intact from year-to-year which renders the calendar year reference unnecessary. By removing the calendar year reference from the title, this section of the rule will no longer need to be amended annually.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406)

444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov, and must be received no later than April 4, 2016.

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 Laurie Logan at the above address no later than 5 p.m., April 4, 2016.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons 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 706 persons based on 7068 total taxpayers paying class 8 property tax.

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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State February 22, 2016

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to implementation of the Sage Grouse Stewardship Act	))))	NOTICE OF ADOPTION

TO: All Concerned Persons:

1. On December 10, 2015, the Governor's Office published MAR Notice No. 14-3 pertaining to the notice of public hearings on the proposed adoption of the above-stated rules at page 2125 of the 2015 Montana Administrative Register, Issue Number 23.

2. The Governor's Office has adopted the above-stated rules as proposed: New Rules I (14.6.101) and II (14.6.102).

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

COMMENT 1:
The Governor's Office received many comments specific to the draft grant application itself although the application is not incorporated into the proposed rule.

RESPONSE 1:
The Governor's Office made the draft application available for public review at the same time as the proposed rule so that the public had the opportunity to review these related draft documents simultaneously. The Governor's Office explained during the public hearings that whereas the application itself was not incorporated into the actual rule proposal, public comment on the application was welcomed and would be considered prior to finalizing the application. The Governor's Office will consider public comments received specific to the application prior to finalizing it.

COMMENT 2:
Grant administration costs should be eligible for reimbursement under this grant program.

RESPONSE 2:
The Governor's Office acknowledges that successful grant recipients would incur costs to administer Sage Grouse Stewardship Fund grants. Montana Code Annotated § 76-22-110(4) states that "[g]rant funds may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to purposes of the grant." The final rule must be consistent with the statute.

COMMENT 3:
Protest of Executive Order No. 1[2]-2015.

RESPONSE 3:
The 2015 Montana Legislature authorized the Montana Sage Grouse Oversight Team to conduct rulemaking pertaining to the grant program established in the Montana Greater Sage-Grouse Stewardship Act (Act). Mont. Code Ann. § 76-22-104.

COMMENT 4:
Grants should be offered to private landowners next to U.S. Bureau of Land Management (BLM) lands to increase the indicators discussed in the BLM's Habitat Assessment Framework document, published in June, 2015. Apply the information in this document to assess what is needed on all land for sage grouse survival. The Oversight Team should also consider where leks are located and also use them as indicators.

RESPONSE 4:
The Act sets forth specific eligibility and evaluation criteria by which the Montana Sage Grouse Oversight Team would consider grant applications. The Act directs the Montana Sage Grouse Oversight Team to give greater priority to proposals that maximize the number of credits generated per dollars of grant funds awarded, and which are actually available for compensatory mitigation. Mont. Code Ann. §§ 76-22-104(1)(d), 76-22-109(4). The purpose of the grant program is to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations on private lands and public lands as needed, that lie within core areas, general habitat, or connectivity areas. Mont. Code Ann. §§ 76-22-102(2). The Montana Sage Grouse Oversight Team and the Program will be guided by the Stewardship Act and this final rule.

COMMENT 5:
The Montana Sage Grouse Oversight Team should consider using some funds to purchase land from willing sellers at market value, restore the habitat, place a conservation easement on the property and then sell the land to a conservation buyer, similar to the Duck's Unlimited Revolving Land Program.

RESPONSE 5:
The Act explicitly states that a project is ineligible if it seeks grant funding "for fee simple acquisition of private land." Mont. Code Ann. § 76-22-109(5)(a). (See Response 4).

COMMENT 6:
The grant program should be flexible, adaptive, and landowner friendly.

RESPONSE 6:
The Governor's Office agrees. Stewardship of private lands by Montana landowners has contributed greatly to sage grouse habitat conservation efforts. The purpose of

the Act and the grant program is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary incentive-based conservation measures on private lands and public lands as needed. Mont. Code Ann. § 76-22-102(2).

COMMENT 7:
Private landowners as individuals should be eligible to apply for funds from the grant program to continue to do the management they are already doing or to make improvements. Landowners should not be required to work with or involve an agency or organization to receive grant funds. The Oversight Team could serve as the agency or organization in partnership with the private landowner so that grant fund dollars could be distributed to private landowners.

RESPONSE 7:
The Act states "grants may be awarded only to organizations and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the oversight team." Mont. Code Ann. § 76-22-110(3). The Governor's Office acknowledges that private citizens are not directly eligible to receive funds from the Act's grant program and encourages landowners to consider other sources for funding or technical assistance to accomplish their goals. Otherwise, "agency" and "organization" are defined as broadly as possible, but does require that organizations are both registered and authorized to conduct business in the State of Montana by the Montana Secretary of State.

COMMENT 8:
Predation is the greatest threat to sage grouse.

RESPONSE 8:
The Act allows for an application for a depredation permit to be submitted to the U.S. Fish and Wildlife Service to control common ravens or black-billed magpies to reduce depredation on sage grouse populations, as necessary. A grant application for a project that would reduce unnatural perching platforms for raptors or unnatural safe havens for predators would be eligible for funding. Mont. Code Ann. § 76-22-110(1)(i), (j).

COMMENT 9:
A scoring matrix should be available to applicants and grant reviewers prior to submitting grant applications.

RESPONSE 9:
The Sage Grouse Habitat Conservation Program will endeavor to make a scoring matrix available at the time a grant cycle is announced and applications are made available to the public.

COMMENT 10:
The grant cycle should be quarterly.

RESPONSE 10:
The Governor's Office acknowledges that some potential applicants prefer a more frequent grant cycle than the twice yearly cycle anticipated for spring and fall, 2016. Under the proposed rule, the Montana Sage Grouse Oversight Team has the flexibility to publish grant application deadlines on the Department of Natural Resources and Conservation web site at its discretion. In the future, it may choose the more or less frequent grant cycles, so long as it provides adequate public notice and considers public comment.

COMMENT 11:
The definition of organization should be clarified so as to not limit eligibility unnecessarily. It's unclear whether individuals or sole proprietors who register an assumed business name with the Secretary of State's Office are considered an "organization" as that term is proposed to be defined.

RESPONSE 11:
The proposed definition of "organization" is intended to be broad. Individuals or sole proprietors are not an organization eligible for a grant award under the Act. (See Response 7). Accordingly, the proposed definition of "organization" excludes individuals and sole proprietors, even if such individuals register an assumed business name with the Secretary of State. An individual or sole proprietor is not an entity, nor is the registry of an assumed business name an authorization by the Secretary of State to conduct business in the state of Montana.

COMMENT 12:
Support conservation efforts by the State of Montana through the sage grouse program and particularly this grant program to maintain state management authority for the species.

RESPONSE 12:
The Governor's Office agrees on the importance of conservation efforts to maintain state authority to manage sage grouse and to implement a conservation strategy that precludes the need to list the species under the federal Endangered Species Act.

/s/ Andrew I. Huff
Andrew I. Huff
Rule Reviewer

/s/ Tim Baker
Tim Baker
Governor's Office
State of Montana

Certified to the Secretary of State February 22, 2016.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to authorization for probation and parole officers to carry firearms, firearms training requirements, and department procedures pertaining to firearms	))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On December 24, 2015, the Department of Corrections published MAR Notice No. 20-7-58 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 2211 of the 2015 Montana Administrative Register, Issue Number 24.

2. The department has adopted the above-stated rule as proposed: New Rule I (20.7.1302).

3. No comments or testimony were received.

/s/ Colleen E. Ambrose
Colleen E. Ambrose, Attorney
Rule Reviewer

/s/ Mike Batista
Mike Batista
Director
Department of Corrections

Certified to the Secretary of State February 22, 2016.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.6.712 pertaining to food safety and inspection service (meat, poultry)	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 22, 2016, the Department of Livestock published MAR Notice No. 32-16-271 regarding the proposed amendment of the above-stated rule at page 135 of the 2016 Montana Administrative Register, Issue Number 2.

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

3. No comments or testimony were received.

BY: */s/ Michael S. Honeycutt*
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: */s/ Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State February 22, 2016.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2015. This table includes those rules adopted during the period October 1, 2015, through December 31, 2015, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2015, this table, and the table of contents of this issue of the Register.

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 2015/2016 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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