ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 MONTANA LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 2.63.204, 2.63.611, and 2.63.1201 pertaining to general provisions, revocation or suspension of license, and prizes | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On October 31, 2016, the State Lottery Commission proposes to amend the above-stated rules.

2. The State Lottery Commission 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, please contact the State Lottery Commission no later than 5:00 p.m. on October 14, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, Montana Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

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

2.63.204 GENERAL PROVISIONS (1) The lottery shall provide scratch ~~ticket~~ and terminal-issued lottery games and promotional coupons to the public whenever the director, with the commission's concurrence ~~of the commission~~, finds it feasible and in the state's best interest ~~of the state~~.

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

(3) The director shall determine, with the commission's concurrence, the length of each ~~scratch~~ lottery game or promotional coupon. The starting date and closing date of each game or coupon ~~shall~~ must be publicly announced.

(4) through (4)(f) remain the same.

(5) Game and promotional coupon rules are subject to the commission's concurrence ~~of the commission~~.

(6) and (7) remain the same.

AUTH: 23-7-202, MCA
IMP: ~~23-7-101, 23-7-102, 23-7-103,~~ 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: When this rule was first written, the lottery did not offer terminal-issued games or promotional coupons. With

the advent and success of terminal-issued games and promotional coupons, these rule changes are proposed to clearly establish the standard to be used for marketing a Montana Lottery promotional coupon. Over the last five years, the Montana Lottery has marketed an increasing number of coupon offerings as a tool to enhance the number of new players and as a way to reward existing players. These couponing efforts also increase brand awareness and improve sales for a specific product when required. Lottery coupons as delivered for these purposes are very effective, and we are witnessing an increase in the expectation levels of our customers for more of these types of marketing methods. These coupon campaigns require measuring since their cash value must be accounted for and documented. These rule changes will provide legal authorization to the Montana Lottery to not only amass the required accounting reports, but to also develop reports to allow the lottery to evaluate the methods used for delivering coupons and which coupons work best for our market.

These rule changes also clarify that the commissioners must handle coupons in the same manner as other lottery product offerings. These changes reflect industry practices for the establishment of controls on promotional coupons; therefore, the inclusion of these changes is reasonable and necessary. In addition, the legislative auditor has expressed that more controls be in place to manage coupons.

Additional statutes implemented by this rule are being added to clarify the rule's effect. Minor amendments are included to improve language and readability. These proposed changes will not affect Montana business owners.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (1)(b) remain the same.

(c) endangered the security of the lottery; ~~or~~

(d) sold any ticket at a higher price than that set by ~~rule of the~~ commission rule~~.~~;

(e) intentionally or knowingly initiated or accepted an offer of compensation from another person to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation, or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize with the intent to defraud a creditor by means of fraud, deceit, or misrepresentation;

(f) intentionally preprinted multiple terminal-issued draw game or raffle tickets with the objective of gaining an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets; or

(g) intentionally amassed packs of scratch tickets to gain an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets.

(2) through (4) remain the same.

(5) In circumstances where the licensee owns or is a partner in multiple locations, the restriction, suspension, or termination of one location associated with the licensee is grounds for restriction, suspension, or termination of all locations.

AUTH: 23-7-202, MCA
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: This change to the rule is a proactive measure to ensure the public is treated with dignity and honesty when purchasing a lottery product from a retailer. From complaints received, we have ascertained that preprinting tickets brings into question the integrity of the Montana Lottery for allowing retailers to engage in this type of activity. Preprinting mass quantities of tickets by a licensed retailer also lends itself to theft if not controlled, and increased monetary burdens owed the Montana Lottery by the retailer if they find themselves holding tickets past a drawing. Changes also reflect the desire of the Montana Lottery's legislative oversight committee, which advocated that a Montana Lottery licensee should not be allowed to counsel a customer to engage or assist a customer in conduct that the licensee knows or reasonably should know is criminal or fraudulent. In addition, the Montana Lottery's rules must be in the public interest. As the Montana Lottery's agent, a licensee must conform to a higher standard of requirements when engaged in the sale of Montana Lottery game products. No financial impact to business owners in Montana will result from these changes.

2.63.1201 PRIZES (1) Winning tickets will be redeemed:

(a) by any retailer ~~up to an amount and in a manner determined by the commission~~ for tickets valued up to $600; or

(b) if the ticket value is greater than $600, by presenting the ticket and a claim form ~~provided by the director~~ to the lottery, either by mail or in person. Playslip and sales receipt may not be used to claim a prize.

(2) through (14) remain the same.

(15) A valid, unexpired photo identification is required to claim Montana lottery prizes. Acceptable types of identification include:

(a) driver license;

(b) government-issued identification card;

(c) military identification card;

(d) passport;

(e) permanent resident card;

(f) Department of Veterans Affairs medical benefits card; and

(g) tribal government-issued identification card.

AUTH: 23-7-202, MCA
IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The addition to (1) is necessary to clarify that only a lottery ticket is considered the bearer instrument acceptable to claim a lottery prize. Players have sometimes attempted to claim a prize using playslips or receipts as proof of winning, but only a ticket or ticket and claim form is accepted. In addition, since federal gambling law specifies the $600 limit on retailer-redeemed tickets, the commission finds it reasonable to specify this amount in rule.

The addition of (15) is reasonable and necessary to ensure a person's true identity when claiming a winning prize. We have reviewed procedures from other

lotteries as part of our consistent effort to improve business practices. Those reviews indicate the requirement to produce a photo ID is a common industry standard. This is partially due to the number of individuals in other states claiming to be someone they were not to avoid child support or other offsets of winnings. In Montana, we have two codified offsets (child support and unemployment insurance) now as opposed to none when the rule was originally written. The legislative auditors have also indicated we need to follow the best practices of other states regarding winner claims. To allow otherwise could compromise the integrity of the Montana Lottery. No financial impact to business owners in Montana will result from these changes.

4. Concerned persons may present their data, views, or arguments concerning the proposed actions to John Tarr, Security Director for the Montana Lottery, at 2525 North Montana Avenue, Helena, Montana 59601; telephone number (406) 444-5804; fax (406) 444-5830; or by e-mail to JTarr@mt.gov; and must be received no later than 5:00 p.m. on October 21, 2016.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to John Tarr at the above address no later than 5:00 p.m. on October 21, 2016.

6. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 95 persons based on the 950 licensed lottery retailers in the state.

7. The State Lottery Commission 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 address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding commission rulemaking actions. 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 commission.

8. An electronic copy of this proposal notice is available through the Department of Administration's web site at http://doa.mt.gov/administrativerules.mcpx. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a

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

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 commission has determined the proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Wilbur Rehmann
Wilbur Rehmann, Chair
Montana Lottery Commission

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

Certified to the Secretary of State September 12, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through XXXVII pertaining to Credit for Reinsurance, and the repeal of ARM 6.6.3801 through 6.6.3809 pertaining to Credit for Reinsurance, and ARM 6.6.3901 through 6.6.3907 pertaining to Letters of Credit Used in Reduction of Liability for Reinsurance Ceded | ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On October 19, 2016, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The CSI 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 CSI no later than 5:00 p.m., October 12, 2016, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

NEW RULE I METHODS OF ALLOWING CREDIT FOR REINSURANCE

(1) These rules implement the statutory provisions allowing for credit for reinsurance. Credit for reinsurance is allowed only where a method set out in statute has been followed, including the following methods:

(a) assuming insurer is licensed in Montana, as provided in 33-2-1216(2), MCA;

(b) assuming insurer is accredited in Montana, as provided in 33-2-1216(3), MCA;

(c) assuming insurer is domiciled, and licensed in, or entered through another state with standards regarding credit for reinsurance substantially similar to those of this state, as provided in 33-2-1216(4), MCA;

(d) assuming insurer maintains a trust fund, as provided in 33-2-1216(5), MCA;

(e) assuming insurer is certified by the commissioner, as provided in 33-2-1216(5)(e), MCA; or

(f) assuming insurer does not meet the requirements of 33-2-1216, MCA, but the commissioner approves reduction from liability in the amount of funds held by, or on behalf of, the ceding insurer pursuant to 33-2-1217, MCA.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1201, 33-2-1202, 33-2-1203, 33-2-1204, 33-2-1205, 33-2-1206, 33-2-1207, 33-2-1208, 33-2-1209, 33-2-1210, 33-2-1211, 33-2-1212, 33-2-1213, 33-2-1214, 33-2-1215, 33-2-1216, 33-2-1217, 33-2-1218, MCA

NEW RULE II DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator.

(2) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "Reinsurance agreement" or "reinsurance contract" means an agreement or contract between the assuming insurer and any other party for purposes of Title 33, chapter 2, part 12, MCA, and these rules. The original insured (ceding insurer) has no interest in a contract of reinsurance.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, MCA

NEW RULE III REINSURANCE TRANSACTIONS AFFECTED (1) All new and renewal reinsurance transactions entered into after October 1, 1993, shall conform to the requirements of 33-2-1201, 33-2-1202, 33-2-1203, 33-2-1204, 33-2-1205, 33-2-1206, 33-2-1207, 33-2-1208, 33-2-1209, 33-2-1210, 33-2-1211, 33-2-1212, 33-2-1213, 33-2-1214, 33-2-1215, 33-2-1216, 33-2-1217, 33-2-1218, and these rules if credit is to be given to the ceding insurer for such reinsurance.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1218, MCA

NEW RULE IV REQUIREMENTS FOR REINSURANCE CONTRACTS OR AGREEMENTS (1) Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance pursuant to 33-2-1216, or 33-2-1217, MCA, and these rules unless the reinsurance contract or agreement:

(a) includes a clause which requires that the reinsurance is payable directly to the liquidator or successor by the assuming insurer without consideration of the insolvency of the ceding insurer; and

(b) includes a provision whereby the assuming insurer has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, and has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon

whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE V FORMS (1) The following forms (and related instructions) are found on the web site of the Commissioner of Securities and Insurance, Office of the State Auditor:

(a) Form AR-1;
(b) Form CR-1;
(c) Form CR-F; and
(d) Form CR-S.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE VI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - PERIOD FOR PAYMENT OF TRUST FUNDS SUBJECT TO CLAIMS

(1) Contested claims under 33-2-1216(5)(c), MCA, shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE VII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - DEFINITION OF LIABILITIES (1) For the purposes of 33-2-1216(5)(b), MCA, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers, excluding liabilities that are otherwise secured by acceptable means.

(2) For business ceded by domestic insurers authorized to write accident and health or disability, and property and casualty insurance, the term "liabilities" shall include:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
(b) reserves for losses reported and outstanding;
(c) reserves for losses incurred but not reported;
(d) reserves for allocated loss expenses; and
(e) unearned premiums.

(3) For business ceded by domestic insurers authorized to write life, health or disability, and annuity insurance, the term "liabilities" shall include:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
(b) aggregate reserves for accident and health or disability policies;
(c) deposit funds and other liabilities without life or disability contingencies; and

(d) liabilities for policy and contract claims.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE VIII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - INSUFFICIENT TRUST FUNDS OR TRUST FUND GRANTOR DECLARED INSOLVENT OR PLACED INTO RECEIVERSHIP, REHABILITATION, LIQUIDATION, OR SIMILAR PROCEEDINGS (1) If the trust fund is inadequate because it contains an amount less than required by 33-2-1216, MCA, or by [New Rules I through XXXVII], or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled or other designated receiver all of the assets of the trust fund.

(2) Once so transferred, the trust fund assets shall be distributed by the commissioner described above pursuant to claims filed and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled. Assets of the trust fund unclaimed or disallowed by the commissioner shall be distributed in accordance with the trust agreement.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE IX ASSUMING INSURER THAT MAINTAINS A TRUST FUND - VALUATION OF TRUST ASSETS (1) Assets deposited in trusts established pursuant to 33-2-1216(5), MCA, shall be valued according to their current fair market value and shall consist only of:

(a) cash in U.S. dollars;

(b) certificates of deposit issued by a U.S. financial institution; and

(c) investments of the type specified in [New Rules XI through XVII].

(2) No more than 20% of the total of the investments in the trust may be foreign investments, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE X ASSUMING INSURER THAT MAINTAINS A TRUST FUND - RESTRICTION ON PERCENTAGE OF TRUST INVESTMENT SHARED BY

GRANTOR OR BENEFICIARY (1) For purposes of 33-2-1216(5), MCA, there can be no more than five percent of the total investments of the trust that involve investments in, or issued by, an entity controlling, controlled by, or under common control of either the grantor or beneficiary of the trust.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE GOVERNMENT OBLIGATIONS (1) For purposes of 33-2-1216(5), MCA, government obligations are allowable if they are not in default as to principal or interest, are valid and legally authorized, and are issued, assumed, or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession, or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit allowed in this rule, if the obligations shall be payable, as to both principal and interest, from taxes or adequate specifically ordered revenues provided for making these payments; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE NONGOVERNMENT OBLIGATIONS (1) For purposes of 33-2-1216(5), MCA, nongovernment obligations are allowable if they are:

(a) issued in the United States;

(b) dollar-denominated and issued in a non-United States market by a solvent United State institution (other than an insurance company); or

(c) assumed or guaranteed by a solvent United States institution (other than an insurance company).

(2) The obligations shall not be in default as to principal or interest.

(3) The obligations shall be:

(a) rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) designated as class one or class two by the Securities Valuation Office of the NAIC.

(4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under (3)(a) and (c), but shall not exceed two percent of the assets of the trust.

(5) Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency shall be rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XIII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ADDITIONAL RESTRICTIONS ON GOVERNMENT OBLIGATIONS AND NONGOVERNMENT OBLIGATIONS (1) The following apply to allowable government and nongovernment obligations used to fulfill the requirements of 33-2-1216, MCA, trust fund investments:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;

(b) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust; and

(c) The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust.

(2) As used in this rule, "mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(a) represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the

manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703.

(b) is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of this part of this rule.

(3) As used in this rule, when used in connection with a manufactured home, "promissory note" shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XIV ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE EQUITY INTERESTS (1) Investments in common shares or partnership interests of a solvent U.S. institution are permissible for purposes of 33-2-1216(5), MCA, if the equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development are permissible for purposes of 33-2-1216(5), MCA, if:

(a) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(b) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(3) An investment in, or loan upon, any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests, then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XV ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE OBLIGATIONS ISSUED, ASSUMED, OR GUARANTEED BY MULTINATIONAL DEVELOPMENT BANK (1) For purposes of 33-2-1216(5), MCA,

obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC are allowable.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XVI ASSUMING INSURER THAT MAINTAINS A TRUST FUND - ALLOWABLE INVESTMENT COMPANIES (1) For purposes of 33-2-1216(5), MCA, securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. section 80a, are permissible investments if the investment company:

(a) invests at least 90% of its assets in the types of securities that qualify as an investment under [New Rules XI through XIII], or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set out in [New Rules XI through XIII]; or

(b) invests at least 90% of its assets in the types of equity interests that qualify as an investment under [New Rule XIV].

(2) Investments made by a trust in investment companies under this rule shall not exceed the following limitations:

(a) an investment shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(b) investments shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to this rule.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XVII ASSUMING INSURER THAT MAINTAINS A TRUST FUND - LETTERS OF CREDIT (1) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(2) The term of the letter of credit must be at least one year. The letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

(3) The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct, for which the trustee is liable. Such liability must be stated in the trust agreement.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, MCA

NEW RULE XVIII CERTIFICATION OF ASSUMING INSURERS - ELIGIBILITY FOR CERTIFICATION (1) To be eligible for certification by the department, the assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to the following:

(a) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions;

(b) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria in this rule; and

(c) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to assuming insurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose assuming insurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all assuming insurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

(i) the framework under which the assuming insurer is regulated;

(ii) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

(iii) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

(iv) the form and substance of financial reports required to be filed or made publicly available by assuming insurers in the domiciliary jurisdiction and the accounting principles used;

(v) the domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular;

(vi) the history of performance by assuming insurers in the domiciliary jurisdiction;

(vii) any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

(viii) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and

(ix) any other matters deemed relevant by the commissioner.

(d) If, upon conducting an evaluation under this rule with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) To be eligible for certification, the assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with [New Rule XXVII]. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000, and a central fund containing a balance of at least $250,000,000.

(3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(a) Standard & Poor's;

(b) Moody's Investors Service;

(c) Fitch Ratings;

(d) A.M. Best Company; or

(e) any other nationally recognized statistical rating organization.

(4) The assuming insurer must comply with any other requirements reasonably imposed by the commissioner.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XIX CERTIFICATION OF ASSUMING INSURERS - INITIAL CERTIFICATION PROCEDURE (1) The assuming insurer must submit an Application for Credit for Reinsurance and a properly executed Form CR-1. The forms and directions are found on the web site maintained by the commissioner.

(2) The commissioner shall post notice on the department web site promptly upon receipt of any application for credit for reinsurance involving certification pursuant to 33-2-1216(5)(e), MCA. The web site must include instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least 30 days after posting the notice required by this paragraph.

(3) Upon the initial certification, the assuming insurer shall submit audited financial statements for the last three years filed with the assuming insurer's supervisor.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XX CERTIFICATION OF ASSUMING INSURERS - FILING REQUIREMENTS (1) The assuming insurer must fulfill filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis.

(2) All information submitted by assuming insurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under 33-2-406, MCA, and shall be withheld from public disclosure.

(3) The assuming insurer must provide to the commissioner the following:

(a) notification within 10 days of any regulatory actions taken against the assuming insurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(b) annually, Form CR-F or CR-S, as applicable. The forms are found on the web site maintained by the commissioner;

(c) annually, reports of an independent auditor on the financial statements of the assuming insurer, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinions (as filed with the assuming insurer's supervisor);

(d) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(e) a certification from the assuming insurer's domestic regulator that the assuming insurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(f) any other information that the commissioner may require.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXI CERTIFICATION OF ASSUMING INSURERS - RECOGNITION OF CERTIFICATION ISSUED BY AN NAIC-ACCREDITED JURISDICTION (1) An assuming insurer that has submitted a properly executed Form CR-1 and such additional information as the commissioner requires, may request that the commissioner consider the assuming insurer's certification in an NAIC-accredited jurisdiction.

(2) In the event that the commissioner certifies the assuming insurer based on the certification in an NAIC-accredited jurisdiction (hereinafter the other jurisdiction), the following apply:

(a) the certified reinsurer shall notify the commissioner of any change in its certification status or rating in the other jurisdiction within 10 days after receiving notice of the change;

(b) any change in the certified reinsurer's certification status in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction;

(c) the commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer; and

(d) unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with [New Rule XXIII(1) and (2)], the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXII CERTIFICATION OF ASSUMING INSURERS - NOTICE OF CERTIFICATION (1) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. The written notice shall include the rating assigned the certified reinsurer pursuant to this rule. The commissioner shall publish a list of all certified reinsurers and their ratings.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXIII CERTIFIED ASSUMING INSURERS - CHANGE IN CERTIFICATION (1) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements as stated in 33-2-1216, MCA, and these rules, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(2) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security to continue to take credit for reinsurance. The commissioner may allow additional credit equal to the ceding insurer's pro rata share of trust funds meeting the standards of 33-2-1216, 33-2-1217, MCA, and these rules, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(3) When an assuming insured has been certified by the commissioner pursuant to 33-2-1216(5)(e), MCA, (based on certification in a qualified jurisdiction and NAIC certification) and the certification in the NAIC-accredited jurisdiction (hereinafter the other jurisdiction) changes, the provisions of [New Rule XXVII] apply.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXIV CERTIFICATION OF ASSUMING INSURERS - MANDATORY FUNDING CLAUSE IN REINSURANCE CONTRACTS OR AGREEMENTS (1) Insurance contracts entered into or renewed under the commissioner's authority to certify an assuming reinsurer shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXV CERTIFIED REINSURERS - EFFECTIVE DATE OF CREDIT (1) The credit allowed to a certified reinsurer pursuant to 33-2-1216, MCA, and this rule shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Reinsurance contracts entered into prior to the effective date of the certification of the assuming insurer can be applied prospectively to the effective date of the certification of the assuming insurer only with respect to losses incurred and reserves reported from and after the effective date of an amendment to the prior contract or the effective date of a new contract.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXVI CERTIFIED REINSURERS - SECURITY RATING FOR CREDIT (1) The credit allowed to a certified assuming insurer pursuant to 33-2-1216, MCA, shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with 33-2-1216, MCA, and this rule. The minimum amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a)

| Ratings | Security Required |
|---|---|
| Secure – 1 | 0% |
| Secure – 2 | 10% |
| Secure – 3 | 20% |
| Secure – 4 | 50% |
| Secure – 5 | 75% |
| Vulnerable – 6 | 100% |

(b) the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the commissioner finds that:

(i) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000 for each cedent; or

(ii) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.

(c) the commissioner has the authority to revise and change the security rating of a certified reinsurer at any time pursuant to this rule. If the rating is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer;

(d) the certified reinsurer shall post 100% of the security for the benefit of the ceding insurer or its estate upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer; and

(e) to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables recognized by the commissioner for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. The deferral period applies only to the following lines of business, as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence:

(i) Line 1: Fire;

(ii) Line 2: Allied Lines;

(iii) Line 3: Farmowners multiple peril;

(iv) Line 4: Homeowners multiple peril;

(v) Line 5: Commercial multiple peril;

(vi) Line 9: Inland Marine;

(vii) Line 12: Earthquake; and

(viii) Line 21: Auto physical damage.

(2) In the event that the commissioner certifies the assuming insurer based on the certification in an NAIC-accredited jurisdiction (hereinafter the other jurisdiction), the following apply:

(a) the certified assuming insurer shall notify the commissioner of any change in its rating in the other jurisdiction within 10 days after receiving notice of the change; and

(b) the commissioner may withdraw recognition of, change, or revoke the rating of the certified assuming insurer at any time and assign a new rating pursuant to this rule.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXVII CERTIFIED ASSUMING INSURERS - LEGAL ENTITY SECURITY RATING (1) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(a) the certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

| Ratings | Best | S&P | Moody's | Fitch |
|---|---|---|---|---|
| Secure – 1 | A++ | AAA | Aaa | AAA |
| Secure – 2 | A+ | AA+, AA, AA- | Aa1, Aa2, Aa3 | AA+, AA, AA- |
| Secure – 3 | A | A+, A | A1, A2 | A+, A |
| Secure – 4 | A- | A- | A3 | A- |
| Secure – 5 | B++, B+ | BBB+, BBB, BBB- | Baa1, Baa2, Baa3 | BBB+, BBB, BBB- |
| Vulnerable – 6 | B, B-, C++, C+, C, C-, D, E, F | BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R | Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C | BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD |

(b) the business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) for certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health or disability reinsurers);

(d) for certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and

health or disability reinsurers). The forms are found on the web site maintained by the commissioner;

(e) the reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) regulatory actions against the certified reinsurer;

(g) reports of an independent auditor on the financial statements of the assuming insurer, audited financial statement, regulatory filings, and actuarial opinions (as filed with the assuming insurer's supervisor);

(h) for certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

(i) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(j) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(k) any other information deemed relevant by the commissioner.

(2) The commissioner has the authority to revise and change the legal rating of a certified assuming insurer at any time pursuant to this rule.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, MCA

NEW RULE XXVIII ASSUMING INSURER - DEFINITION OF OBLIGATIONS

(1) "Obligations," as used in [New Rules XXIX through XXXVII], means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXIX ASSUMING INSURER - VALUATION OF ASSETS

(1) Either the reinsurance agreement or the trust agreement relevant to 33-2-1217, MCA, must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by Title 33, MCA, or any combination thereof, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health or disability risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXX ASSUMING INSURER - FINANCIAL REPORTING (1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account must be equal to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXI ASSUMING INSURER - TRUST AGREEMENT CONDITIONS - MANDATORY (1) The trust agreement required by 33-2-1217(2), MCA, shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in 33-2-1217, MCA, and include all of the following conditions:

(a) the trust agreement shall create a trust account into which assets shall be deposited;

(b) all assets in the trust account shall be held by the trustee at the trustee's office in the United States;

(c) the trust agreement shall provide that:

(i) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) no other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets; and

(iii) it is not subject to any conditions or qualifications outside the trust agreement; and it shall not contain references to any other agreements to documents except as provided for under (j).

(d) the trust agreement shall be established for the sole benefit of the beneficiary;

(e) the trust agreement shall require the trustee to:

(i) receive assets and hold all assets in a safe place;

(ii) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(iii) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(iv) notify the grantor and the beneficiary within 10 days of any deposits to or withdrawals from the trust account;

(v) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(vi) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of, but with notice to, the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(f) the trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary;

(g) the trust agreement shall be made subject to and governed by the laws of the state in which the trust is established;

(h) the trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;

(i) the trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct; and

(j) either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. bank and payable in U.S. dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health or disability risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA.

NEW RULE XXXII ASSUMING INSURER - RISKS OTHER THAN LIFE, ANNUITIES, ACCIDENT AND HEALTH OR DISABILITY - TRUST AGREEMENT PROVISIONS - PERMISSIVE (1) When a trust agreement is established in conjunction with a reinsurance agreement pursuant to 33-2-1217, MCA, covering risks other than life, annuities, and accident and health or disability, the trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) when the ceding insurer has received notification of termination of the trust account and when the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution as defined in 33-2-1217, MCA, apart from its general assets, in trust for such uses and purposes specified in (a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXIII ASSUMING INSURER - RISKS ASSOCIATED WITH LIFE, ANNUITIES, ACCIDENT AND HEALTH OR DISABILITY - TRUST AGREEMENT PROVISIONS - PERMISSIVE (1) When a trust agreement is established in conjunction with a reinsurance agreement pursuant to 33-2-1217, MCA, covering risks associated with life, annuities, and accident and health or disability, notwithstanding any other conditions in this regulation, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in (a) and (b) as may remain executory after withdrawal and for any period after the termination date.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXIV ASSUMING INSURER - TRUST AGREEMENT PROVISIONS - PERMISSIVE (1) The trust agreement pursuant to 33-2-1217, MCA, may include any or all of the following conditions:

(a) the trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee;

(b) the grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name;

(c) the trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current market value to the assets withdrawn and that are consistent with the restrictions of this rule;

(d) the trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such

transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets; and

(e) the trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary must, with written approval by the beneficiary, be delivered over to the grantor.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXV REINSURANCE AGREEMENT PROVISIONS RELATING TO 1217 TRUST AGREEMENTS - PERMISSIVE (1) Reinsurance agreements entered into in conjunction with trust agreements pursuant to 33-2-1217, MCA, may include the following:

(a) a requirement that the assuming insurer enter into a trust agreement and establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(b) a requirement that the assuming insurer, prior to depositing assets with the trustee, execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may, whenever necessary, negotiate these assets without consent or signature from the assuming insurer or any other entity;

(c) a requirement that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(d) a requirement that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) to pay or reimburse the ceding insurer any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(iv) to pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement may provide for amounts due, reasonable interest, and awards by an arbitration panel or court of competent jurisdiction.

(3) The reinsurance agreement may also contain provisions that give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(a) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn, so as to maintain at all times the deposit in the required amount; or

(b) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXVI TERMS AND CONDITIONS OF LETTERS OF CREDIT

(1) Applicable standards of acceptability for issuers of letters of credit under 33-2-1217, MCA, include the following:

(a) the letter of credit must contain an issue date and date of expiration and must stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented;

(b) the letter of credit must indicate that it is not subject to any condition or qualifications outside of the letter of credit; and

(c) the letter of credit itself must not contain reference to any other agreements, documents, or entities.

(2) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit must be at least one year. The letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

(5) The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and whether all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (publication 400), then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

(7) The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to 33-2-1217, MCA.

(8) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in (7), then the following additional requirements must be met:

(a) the issuing qualified U.S. financial institution shall formally designate the confirming qualified U.S. financial institution as its agent for the receipt and payment of the drafts; and

(b) the letter of credit must require notice of the expiration or nonrenewal date to the trustee no less than 30 days prior to the expiration or nonrenewal date.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

NEW RULE XXXVII REINSURANCE AGREEMENT PROVISIONS RELATING TO 1217 LETTERS OF CREDIT (1) The reinsurance agreement entered into in conjunction with trust agreements pursuant to 33-2-1217, MCA, may include the following:

(a) a requirement that the assuming insurer provide letters of credit to the ceding insurer and specify what they are to cover; and

(b) a requirement that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer may be drawn upon at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers;

(iii) to pay or reimburse the ceding insurer any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(iv) when the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its

general assets, in trust for such uses and purposes specified in this rule as may remain after withdrawal and for any period after the termination date.

(2) The reinsurance agreement may provide for amounts due, reasonable interest, and awards by an arbitration panel or court of competent jurisdiction.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, MCA

4. The commissioner proposes to repeal the following rules:

6.6.3801 DEFINITIONS on page 6-1001 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3802 TRUST AGREEMENT CONDITIONS on page 6-1001 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3803 CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS on page 6-1004 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3804 RESTRICTIONS ON AMENDMENT OF TRUST AGREEMENTS on page 6-1006 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3805 FINANCIAL REPORTING on page 6-1006 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3806 EFFECT OF FAILURE TO IDENTIFY BENEFICIARY on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3807 EFFECT OF LOSS OF ACCREDITATION BY ASSUMING REINSURER on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3808 SURPLUS DETERMINATION OF A GROUP OF INCORPORATED INSURERS UNDER COMMON ADMINISTRATION on page 6-1007 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3809 THE PERIOD OF PAYMENT OF TRUST FUNDS SUBJECT TO CLAIMS on page 6-1008 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3901 DEFINITIONS on page 6-1021 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3902 TERMS AND CONDITIONS OF LETTER OF CREDIT on page 6-1021 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, 33-2-1517, MCA

6.6.3903 LIMITS ON USE OF LETTER OF CREDIT TO REDUCE LIABILITY on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1217, 33-2-1517, MCA

6.6.3904 OTHER SECURITY FOR PAYMENT OF OBLIGATIONS UNDER CONTRACT on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

6.6.3905 REINSURANCE CONTRACTS AS SECURITY on page 6-1023 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-1216, 33-2-1217, 33-2-1517, MCA

6.6.3906 CONTRACTS AFFECTED on page 6-1024 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, 33-2-1517, MCA

6.6.3907 FORM FOR SUBMITTING TO STATE AUTHORITY AND JURISDICTION on page 6-1024 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1517, MCA

5. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Chapter 370, passed by the 64th Montana Legislature (effective April 30, 2015), amended 33-2-1216 and 33-2-1217, MCA, regarding credit for reinsurance, a practice regularly used in the insurance industry.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2015 were based on the NAIC model law regarding credit for reinsurance. These rules are derived from the NAIC Credit for Reinsurance Model Regulation (#786). They ensure uniformity with other states and are necessary to meet the NAIC accreditation standards.

The new rules and restatement of previous rules regarding credit for reinsurance are necessary to implement the statutory changes in 2015 and conform with the NAIC model regulations. Those changes, in turn, required reorganization of the subchapter. The new rule at the beginning of the subchapter explains the statutory methods by which credit for reinsurance can be allowed. The rules thereafter are organized according to that list of methods.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Barb Harris, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or bharris@mt.gov, and must be received no later than 5:00 p.m., October 26, 2016.

7. Barb Harris, Attorney, has been designated to preside over and conduct this hearing.

8. The CSI maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies 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 Darla Sautter using the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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

10. Pursuant to 2-4-302, MCA, the bill sponsor notification does not apply.

11. The proposed adoption and repeal of the above-stated rules do not significantly and directly impact small businesses; therefore, the requirements of 2-4-111, MCA, do not apply.

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| /s/ Michael A. Kakuk | /s/ Jesse Laslovich |
| Michael A. Kakuk | Jesse Laslovich |
| Rule Reviewer | Chief Legal Counsel |

Certified to the Secretary of State September 12, 2016.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I pertaining to inmate worker savings subaccount | ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On October 13, 2016, at 10:30 a.m., the Department of Corrections will hold a public hearing in the Small Meeting Room of the Lewis and Clark Library, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on October 7, 2016, to advise us of the nature of the accommodation that you need. Please contact Winnie Strainer, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-0439; fax (406) 444-4551; or e-mail WStrainer@mt.gov.

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

NEW RULE I INMATE WORKER SAVINGS SUBACCOUNT (1) Inmates incarcerated in a state prison shall be subject to a minimum 20% savings deduction from their monthly earnings, which will be held in trust for each inmate and accounted for in savings subaccounts on the department trust accounting system.

(2) The savings deduction will be applied to an inmate's monthly earnings after accounting for all mandatory obligations. If taking a monthly savings deduction will render the inmate indigent as defined in department policy, no savings will be deducted for that month.

(3) For purposes of this rule, "monthly earnings":

(a) include funds received from the department for education, treatment, or work assignments;

(b) exclude funds received from outside sources including family and proceeds from hobby sales.

(4) Funds transferred to savings subaccounts will not be subject to additional deductions for child support or other obligations under 53-1-107(2), MCA.

(5) An inmate serving a life sentence without the possibility of parole may request the department to return funds deducted from the inmate's earnings and set aside in the savings subaccount.

(6) Funds in the savings subaccount may be used prior to release to pay re-entry expenses. All re-entry expenses to be paid prior to an inmate's release must be requested by the inmate in writing and approved by a designated department employee.

(7) Upon release from custody, the department shall return the balance of an inmate's savings subaccount to the inmate.

AUTH: 53-1-107, MCA
IMP: 53-1-107, MCA

REASON: Section 53-1-107, MCA, was amended in 2015 by S.B. 101 which mandated that an amount not to exceed 25% of an inmate worker's monthly earnings, net of applicable statutory deductions, be set aside in a savings subaccount for the inmate in the department's trust accounting system. The purpose of the funds deposited in the inmate worker savings subaccount is to assist the inmate to meet re-entry expenses when released from department custody, i.e., from a state prison as defined in 53-1-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v), MCA.

Inmate worker savings are not accessible to the inmate while in custody. S.B. 101 requires the department to adopt rules implementing the mandatory savings program. This rule is necessary to comply with that requirement.

While incarcerated in the state's prison facilities, inmates have paid work assignments, or they are paid while completing an education or treatment program. The work assignments for which an inmate may be eligible depend in large part on the inmate's security classification because the classification affects an inmate's freedom of movement within the facility. In the past, some inmates did not accumulate any savings and upon release from custody had little more than the gate money (not to exceed $100) provided them under 53-30-111, MCA.

Section (1) of the rule sets the percentage of the monthly inmate worker savings deduction at 20%. That percentage was chosen because the department believes it will allow sufficient savings to accumulate as to provide a meaningful resource upon the inmate's release but the percentage is not so great that, as a general rule, it would cause the inmate to drop to "indigent" status (as defined by department policy #4.1.4) while in custody. Indigent status triggers an obligation on the part of the department to pay for certain items for the indigent inmate (e.g., personal hygiene items, certain legal supplies) that non-indigent inmates must purchase at the facility's canteen with their own funds. Inmate indigency in secure facilities is contrary to the interests of the department. For that reason, the rule clarifies that if the mandatory savings deduction would render the inmate indigent the department will not deduct any savings during that month. The department determined that approach was preferable to deducting some lesser percentage that would not render the inmate indigent because the chosen approach creates a better record for verifying compliance with statutes and rules and helps to keep the inmate from perpetually being on the verge of indigency which would be inconsistent with the purpose of S.B. 101.

Section (2) is necessary to establish the relationship between and the respective priority of the deductions from inmates' funds under 53-1-107(2) and the inmate workers' savings deductions under 53-1-107(4), MCA. The department chose to limit the funds subject to the savings deduction to funds payable by the department for purposes of uniformity and timeliness of processing.

Section (3) is necessary to clarify what the term "monthly earnings" includes and excludes. The department deems the funds received by inmates from family members to be personal gifts that should not be subject to the mandatory savings deduction. It is the department's reasonable belief that family members expect their

gifts to be available to the inmate recipients to use as they see fit. The inmate recipient of money from family members always has the option to voluntarily add gift monies to their savings subaccount under existing DOC policies. The department has also excluded hobby sale proceeds from the scope of "monthly earnings" for savings purposes because financial transactions involving hobby sales are governed by MCE Procedure #5.5.4. That procedure addresses issues that are unique to hobby sale proceeds. Hobby items made by inmates are regularly sold through retail stores outside the department's facilities. The department deems it to be in inmates' and the state's best interests not to interfere with or change hobby sale procedures involving retail businesses that sell inmates' hobby items to the public. Inmates are only allowed to receive money in department institutions from approved sources and that limitation necessitates a special procedure applicable to hobby sales made through retail outlets. Based on the foregoing, hobby sale proceeds are excluded from the applicability of the inmate worker savings deduction.

The inmate worker savings deduction mandated by 53-1-107(4), MCA, applies to the monthly earnings of inmate workers and inmate industry workers.

Section (4) is necessary in order to clarify that after the 53-1-107(2) and (4), MCA, deductions from inmates' trust accounts are made each month, no further deductions for the purposes in 53-1-107(2), MCA, may be made from the inmate savings subaccount balance in the same month. To do so would be inconsistent with department policies setting maximum deductions under 53-1-107(2), MCA. Maximums are set to ensure that inmates are not rendered indigent while in custody thereby triggering additional financial obligations on the part of the department.

Section (5) is necessary because an inmate serving a life sentence without the possibility of parole will not be released and therefore will not have re-entry expenses that need to be met using earnings in the inmate's savings subaccount created for that purpose. Currently the department's electronic financial accounting system cannot exempt any individual inmate's earnings from the mandatory savings deductions required under 53-1-107(4), MCA. The expense of IT services that would be needed to create an exemption from the operation of 53-1-107(4), MCA, would not be cost effective. There are relatively few inmates serving life sentences without the possibility of parole. For that reason, the department determined that the easiest way to exempt such inmates from the savings deduction would be for them to request return of the funds after they are deducted (i.e., request transfer of the funds from savings subaccount to the inmate's trust account where it is accessible to the inmate). Alternatively, the inmate may voluntarily leave the funds in the savings subaccount for eventual disbursement to the inmates' heirs or devisees. The intent of the department is that upon request by the inmate serving a life sentence without the possibility of parole, the earnings deducted under 53-1-107(4) will be promptly returned to the inmate's regular trust account without the necessity for any departmental review, exercise of discretion, or approval process.

Section (6) is necessary because the enabling statute, 53-1-107(4), MCA, authorizes the department, upon the inmate's release, to dispense money from the savings subaccount to the inmate's landlord or other approved recipients including service providers. The department believes that contemporaneously with the inmate's release, it has no further authority to dispense funds from the inmate's savings subaccount to anyone other than the former inmate. This rule is necessary

to clarify that in some instances, funds will (at the inmate's request) be dispensed by the department prior to the inmate's release from custody to, for example, a landlord to hold an apartment pending the inmate's release or to a service provider to ensure availability of services upon release.

Section (7) is necessary to require that the balance in the inmate savings subaccount, less any outstanding checks dispensed as provided in (6), must be dispensed directly to the inmate upon the inmate's release.

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: Michele Morgenroth, Department of Corrections, P.O. 201301, Helena, Montana, 59620-1301; telephone (406) 444-2828; fax (406) 444-4920; or e-mail mmorgenroth@mt.gov, and must be received no later than 5:00 p.m., October 21, 2016.

5. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on July 14, 2015.

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

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| /s/ Colleen E. Ambrose | /s/ Mike Batista |
| Attorney | Director |
| Rule Reviewer | Department of Corrections |

Certified to the Secretary of State September 12, 2016.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I pertaining to inmate trust accounts | ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On October 13, 2016, at 10:00 a.m., the Department of Corrections will hold a public hearing in the Small Meeting Room of the Lewis and Clark Library, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on October 7, 2016, to advise us of the nature of the accommodation that you need. Please contact Winnie Strainer, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-0439; fax (406) 444-4551; or e-mail WStrainer@mt.gov.

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

NEW RULE I INMATE TRUST ACCOUNTS (1) The Department of Corrections has an inmate trust account system in which it has established non-interest bearing accounts for inmates.

(2) The department will account for all inmate funds in compliance with generally accepted accounting principles and discourage theft and the inappropriate use of cash that may present safety and security concerns within facilities.

(3) All money in the inmate's possession at intake, received while in state prison from approved correspondents, or earned from an inmate work assignment or hobby sales will be deposited in the inmate's trust account.

(4) The accounting unit will make deductions from money received for obligations under 53-1-107(2), MCA, prior to depositing the money in the inmate's trust account.

(5) When an inmate is released from a facility, the balance of the inmate's trust account will be returned to the inmate.

AUTH: 53-1-107, MCA
IMP: 53-1-107, MCA

REASON: This rule is necessary in order to acknowledge the department's prison inmate trust account system that has long been in place pursuant to a written department policy 1.2.6 Offender Financial Transactions and to acknowledge the department's established procedures for applying funds held in an inmate's trust account to meet the inmate’s obligations under 53-1-107(2), MCA. Section 53-1-107(2), MCA, authorizes the inmate trust accounts and the practices and procedures

described, "consistent with administrative rules adopted by the department." Adoption of the administrative rule is necessary in order to be in compliance with 53-1-107(2), MCA.

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: Michele Morgenroth, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-2828; fax (406) 444-4920; or e-mail mmorgenroth@mt.gov, and must be received no later than 5:00 p.m., October 21, 2016.

5. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 15, 2016.

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

/s/ Colleen E. Ambrose
Attorney
Rule Reviewer

/s/ Mike Batista
Director
Department of Corrections

Certified to the Secretary of State September 12, 2016.

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

| | | |
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| In the matter of the amendment of ARM 24.11.204, 24.11.207, 24.11.441, 24.11.443, 24.11.450A, 24.11.452A, 24.11.453A, 24.11.454A, 24.11.459, 24.11.463, 24.11.469, 24.11.471, 24.11.475, 24.11.476, 24.11.2204, and 24.11.2511 and the adoption of New Rule I pertaining to the unemployment insurance program | ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION |

TO: All Concerned Persons

1. On October 14, 2016, at 10:00 am, the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the DPHHS Building at 111 North Sanders Street, Helena, Montana, 59601, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry 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 Labor and Industry no later than 5:00 p.m. on October 11, 2016, to advise us of the nature of the accommodation that you need. Please contact Rachel Bawden, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; telephone (406) 444-2582; fax (406) 444-2993; TDD (406) 444-5549; or e-mail rbawden@mt.gov.

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

24.11.204 DEFINITIONS ~~The terms used by the department are, in great part,~~ In addition to the terms defined in 39-51-201 through 39-51-205, and 39-51-1121, MCA~~. In addition to these statutory definitions~~, the following definitions apply to this chapter, unless context or ~~the~~ a particular rule provides otherwise:

(1) through (24) remain the same.

(25) "Job attached" means a claimant is able and available for full time work and is either:

(a) not employed but has a definite or approximate date of hire or recall to insured work at 30 or more hours per week; or

(b) employed in insured work on a part-time basis, but has a reasonable expectation that the work will become full-time.

(25) through (47) remain the same, but are renumbered (26) through (48).

(49) "Termination pay" means a payment from an employer to a claimant as the result of discharge or permanent layoff.

(a) Examples of termination pay include:

(i) severance pay;

(ii) separation pay;

(iii) wages in lieu of notice;

(iv) continuation of wages for a designated period of time following cessation of work or other similar payment; and

(v) payments made under an incentive, worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.

(b) Termination pay may include payment for accrued unused vacation, sick leave, or any other leave paid at or after termination from work.

(48) and (49) remain the same, but are renumbered (50) and (51).

(52) "Union attached" means a claimant is:

(a) able and available for work;

(b) a member in good standing of a labor union that operates an exclusive hiring hall; and

(c) on the out-of-work list at the hiring hall.

(50) through (60) remain the same, but are renumbered (53) through (63).

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, ch. 51, parts 21 through 25, MCA, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.204 to consolidate the definitions used in the rules into the existing definitions rules, while the rules are otherwise being amended, in order to streamline the substantive unemployment insurance rules.

24.11.207 INTERESTED PARTY (1) and (2) remain the same.

(3) Except as provided by 39-51-605, MCA, and ARM 24.11.208, an employer who paid wages to the claimant during the base period is an interested party to proceedings that adjudicate the claimant's separation from employment with that employer. ~~Proceedings that adjudicate the claimant's separation from employment during the base period of a claim determine whether any portion of benefits paid to a claimant are chargeable to the base period employer's account pursuant to 39-51-1125, 39-51-1212, or 39-51-1214, MCA.~~ An employer is not an interested party to proceedings that adjudicate nonseparation issues related to a claim.

(4) and (5) remain the same.

(6) Only an interested party to an unemployment insurance proceeding has standing to request a redetermination, hearing, or appeal to the Unemployment Insurance Appeals Board ~~of Labor Appeals~~.

(7) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-605, Title 39, chapter 51, parts 11 and 12, 21 through 24, and 32, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.207 to simplify and clarify when a base period employer is included as an interested party to a claim, in response to apparent confusion among employers regarding interested party status. There is also reasonable necessity to amend the rule to reflect the new name of the appeals board when the rule is otherwise being amended.

24.11.441 CLAIMS FOR BENEFITS (1) To request a determination of a claimant's eligibility for benefits, the claimant must file an initial claim by ~~accessing the department's internet claims application~~ using the UI4U web portal at http://ui4u.mt.gov, or calling the ~~appropriate~~ claims processing center to request filing assistance. The claimant shall provide ~~and providing~~ such information as the department may require for the proper administration of the claim. The information required from the claimant includes, but is not limited to:

(a) through (6) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 39-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 39-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.441 to have the rule conform with the "UI4U" nomenclature used by the Unemployment Insurance Division in materials now being provided to workers, and as featured on the state's web site. In addition, there is reasonable necessity to make minor wording changes to improve the clarity of the rule.

24.11.443 WEEKLY PAYMENT REQUESTS (1) After establishing a valid claim for benefits, a claimant must file timely weekly payment requests using the ~~department's Internet claim system application~~ UI4U web portal, unless the ~~department determines that a~~ claimant is unable to ~~use the Internet filing method~~ file online. In those instances, the department shall allow the claimant to file weekly payment requests by mail, e-mail, or facsimile using paper forms provided by the department. ~~Claimants~~ A claimant may elect to file payment requests each week or to file two payment requests every ~~two weeks~~ other week.

(2) ~~A claimant must file weekly~~ Weekly payment requests ~~only~~ are timely if filed after the week ~~has passed for which the claimant seeks benefits or waiting week credit~~ claimed, and before midnight of the Saturday seven calendar days later. ~~The time frame for filing weekly payment requests begins on the Sunday following the last week for which payment or waiting week credit is requested and runs through the following seven calendar days.~~

(3) remains the same.

(4) When filing weekly payment requests using the ~~Internet claim system~~ UI4U web portal, a claimant must enter the claimant's social security number, birth date, and personal identification number to access the system. The ~~claimant's~~ personal identification number ~~is~~ must be established by the claimant ~~and unknown to the department~~ at the time of filing. ~~Claimants are required to keep their personal identification numbers confidential.~~ The claimant must maintain the confidentiality of the claimant's personal identity number in order to protect the integrity of the claim. ~~A~~ The department considers a claimant's personal identification number ~~is considered by the department~~ to be the equivalent of the claimant's signature for the purpose of certifying that the claimant's responses to ~~the~~ department questions are true and accurate to the best of the claimant's knowledge.

(5) A claimant must report all hours ~~of insured work~~ worked or for which the claimant was paid and gross wages ~~for insured work~~ earned for each week ~~claimed~~ for which payment is requested. For the purposes of this section, hours and gross wage reporting only applies to insured work. ~~The wages must be reported for the week in which they were earned rather than for the week in which they were paid, except for the following:~~

~~(a) Payments made for termination of employment in insured work must be reported for the week in which the separation from insured work occurred. Termination payments are generally known as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.~~

(a) Hours worked must be reported for the week that the claimant performed work for an employer or time was credited in lieu of work performed by the claimant, such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory.

(b) Gross wages earned must be reported for the week in which the claimant worked or was credited for working in lieu of work (including holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory. Other types of payments from an employer must be reported as follows:

(i) Termination pay must be reported as wages for the week in which termination occurred.

~~(b)~~(ii) ~~Payments for bonuses, awards, incentives, rewards,~~ A bonus, award, incentive, reward, or profit sharing, whether in cash or in the form of securities, must be reported as wages for the week in which the payment was ~~received~~ issued.

~~(c) Holiday pay and the hours paid must be reported as wages and hours worked for the week in which the holiday occurred.~~

~~(d) Payments for accrued vacation, sick leave, or other leave paid at or after termination from work must be reported for the week in which the termination occurred.~~

~~(e)~~(iii) ~~Payments for accrued~~ Accrued unused vacation, sick leave, or other leave ~~when~~ without a termination from work ~~has not occurred~~, commonly referred to

as a "cash-out" of accrued leave, must be reported ~~by the claimant~~ as wages for the week in which the payment was ~~received~~ issued. ~~These payments are sometimes known as a "cash-out" of accrued leave.~~

~~(f) Payments for the use of vacation, sick leave, or other leave paid during the course of employment in insured work, including periods of temporary layoff, for time off from work, whether voluntary or mandated, must be reported for the week during which the time off from work occurred.~~

~~(g)~~(iv) ~~Royalties, residual payments, and commissions~~ When a claimant receives a royalty or residual payment, or payment for a commission, the payment must be reported as earnings for the week in which the payment was ~~received~~ issued. ~~The hours must be reported for the week in which the work was performed.~~

(6) A claimant must file timely weekly payment requests during the pendency of a monetary determination, a non-monetary determination, or an appeal~~, in order to request~~ to receive benefits or waiting period credit for ~~that~~ the intervening week or weeks.

(7) and (8) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, Title 39, ch. 51, parts 21 through 23, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.443 to have the rule conform with the "UI4U" nomenclature used by the Unemployment Insurance Division in materials now being provided to workers, and as featured on the state's web site. In addition, there is reasonable necessity to make minor wording changes to improve the clarity of the rule. The rule is intended to reduce confusion among claimants to more clearly distinguish between reporting "hours worked" and reporting "gross wages earned."

24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS (1) through (10) remain the same.

(11) An appeal of a redetermination may be filed by an interested party by submitting a request for a hearing to the ~~department~~ Office of Administrative Hearings by ~~telephone,~~ fax, mail, or internet within ten days of the department mailing of the redetermination. The department shall notify the interested parties in writing of the appeal to the Office of Administrative Hearings.

(12) An appeal of the decision of the Office of Administrative Hearings may be filed by an interested party by submitting a request for the appeal to the department by ~~telephone,~~ fax, mail, or internet within ten days of the department mailing of the hearing officer's decision. The department shall notify the interested parties in writing of the appeal to the Unemployment Insurance Appeals Board ~~of Labor Appeals~~.

(13) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.450A in order to clarify and reflect the correct name of the hearings office to which appeals are directed, and to reflect the recent change of name of the appeals board. In addition, there is reasonable necessity to remove the telephone option in order to avoid disputes where a party asserts (but cannot document) that a formal hearing or appeal was timely requested.

24.11.452A ELIGIBILITY FOR BENEFITS (1) The department shall use the following criteria to determine whether a claimant is able, available, and actively seeking full-time or part-time work~~:~~

~~(a) when the majority of claimant's work weeks in the base period of the claim were full-time work, claimant must be able, available, and actively seeking suitable full-time work to be eligible for benefits, pursuant to 39-51-2104, MCA; or~~

~~(b) when the majority of claimant's work weeks in the base period of the claim were part-time work, the department may authorize claimant to be eligible for benefits, pursuant to 39-51-2115, MCA. To remain eligible, claimant must be able, available, and actively seeking suitable part-time work for at least the number of hours per week authorized by the department~~.

(2) ~~The department shall determine a claimant to be able to work when the~~ A claimant is ~~reasonably fitted by experience, education, or training to~~ able to work when the claimant can perform a substantial amount of suitable work in the claimant's labor market area. For the purposes of this rule, a "substantial amount" of suitable work means full-time work, ~~except when the department authorizes a claimant to part-time work in the following circumstances~~ unless:

(a) ~~the department authorized claimant for part-time work~~ the majority of the claimant's work weeks in the claim base period were part-time, in which case an amount less than full-time is authorized by the department pursuant to 39-51-2115, MCA;

(b) the claimant has ~~a physical or mental disability and claimant has~~ submitted to the department an ~~individualized determination~~ of assessment of a physical or mental disability from a licensed and practicing health care provider, certified and signed by the provider, of appropriate, less than full-time work hours~~, as certified and signed by a health care provider. A claimant with a certified disability may seek a reasonable modification to this rule~~ for the claimant; or

(c) the department ~~determines that~~ has determined that part-time work is the only suitable work ~~for the claimant~~ in the claimant's labor market area ~~is part-time work~~.

(3) remains the same.

(4) The department shall determine a claimant to be actively seeking work when the claimant is~~:~~

~~(a)~~ making an active, good faith effort to secure insured work during each week for which the claimant requests payment of benefits or waiting week credit~~, unless the claimant is exempt from this requirement pursuant to ARM 24.11.453A;~~

~~(b) "union attached," meaning that the claimant is a member in good standing and on the out-of-work list of a labor union that operates an exclusive hiring hall; or~~

~~(c) "job attached," meaning that the claimant is able and available for full-time work and:~~

~~(i) claimant is not employed but has a definite or approximate date of hire or recall to insured work at 30 or more hours per week; or~~

~~(ii) claimant is employed in insured work on a less than full-time basis, but has a reasonable expectation that the work will become full-time~~.

(5) The department shall determine a claimant to be ineligible for benefits when, without good cause, the claimant:

(a) fails to participate in a scheduled job interview;

(b) fails to provide information requested by the department ~~for the proper administration of the claim~~ within eight days of the date of a mailed, faxed, ~~or~~ telephoned, or electronic request;

(c) ~~fails to provide the department with updated contact information within three days of a change to claimant's mailing address. Claimants are urged to also provide the department with updated telephone number(s), e-mail address and, if applicable, fax number. The department shall reinstate a claimant's eligibility for benefits upon department receipt of the updated mailing address; or~~

~~(d)~~ withdraws ~~temporarily or permanently from the labor market. Withdrawal~~ from the labor market ~~includes but is not limited to~~, temporarily or permanently, because of, among other reasons:

(i) a self-imposed limitation, such as an unrealistic wage or hour restriction or refusal to travel, that curtails claimant's ability to seek or accept suitable work;

(ii) a temporarily disabling health condition that prevents claimant from being able to perform suitable work;

(iii) an employer-approved leave of absence~~, per ARM 24.11.490~~; or

(iv) ~~claimant's residence in or travel to~~ the claimant is residing in, or is traveling to or in a foreign country, which ~~is defined as~~, for the purposes of this rule, means any country other than the United States of America, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada; or

(v) failure by claimant to actively seek or accept suitable work due to family care-giving obligations, vacation, incarceration, lack of transportation, or any other reason.

(6) The department may determine a claimant to be ineligible for benefits when, without good cause, the claimant failed to provide the department with updated contact information within three days of a change to the claimant's mailing address. Upon receipt of the updated mailing address, the claimant's eligibility must be reinstated by the department.

(6) remains the same, but is renumbered (7).

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.452A in order to simplify the rule and improve its clarity. Two definitions in the rule are being deleted and placed in the "definitions" rule, ARM 24.11.204. There also is reasonable necessity to clarify that a claimant must timely provide updated contact

information or the claimant will become ineligible for benefits, but that the ineligibility will be removed as soon as the department gets the updated information.

24.11.453A WORK SEARCH CONTACTS (1) The department shall determine a claimant is making an active, good faith effort to secure insured work when the ~~claimant documents at least one valid work search contact made during the week for which~~ claimant ~~requests the~~ reports at least one valid work search during the week for which payment of benefits or waiting week credit is requested.

(2) A valid work search contact requires a claimant to:

(a) through (d) remain the same.

(e) make a work search contact with a different employer, or if for the same employer, for a different position, for each consecutive week.

~~(2) Seeking self-employment or work as an independent contractor does not constitute a valid work search for unemployment insurance purposes.~~

(3) A valid work search does not include:

(a) seeking self-employment;

(b) working as an independent contractor;

(c) inquiring about work at a temporary agency; or

(d) reporting part-time work.

~~(3)~~(4) The claimant ~~must maintain a separate log of valid work search contacts and accurately~~ shall report at least one work search contact to the department in the designated section of the claimant's weekly payment request form, whether filing online, by mail, e-mail, or facsimile~~, or using the Internet claim system~~. Failure to provide a ~~verifiable~~ valid work search contact for a week or failure to answer fully all questions related to a work search contact may result in the denial of benefits.

~~(4) Claimants must retain separate documentation of all work search contacts for three calendar years following claimants' benefit year.~~

(5) ~~Documentation of~~ The claimant shall retain all work search ~~contacts consists of the following information~~ contact information necessary for verification by the department. The department may request the following work search contact information for the claimant's benefit year:

(a) through (h) remain the same.

(6) The department may exempt a claimant from the requirement to complete work search contacts and ~~maintain a~~ retain work search ~~log~~ documentation when the claimant is:

(a) job attached;

(b) union attached; or

~~(a)~~(c) engaged in state-approved training, pursuant to ARM 24.11.475 or 24.11.476~~;~~

~~(b) "union attached" as defined in ARM 24.11.452A; or~~

~~(c) "job attached" as defined in ARM 24.11.452A~~.

(7) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.453A in order to simplify the rule and improve its clarity, and eliminate cross-references that will no longer be correct. There is reasonable necessity to clarify that certain activities do not qualify as valid work searches, so that claimants know what activities are valid.

24.11.454A LEAVING OR DISCHARGE FROM WORK (1) and (2) remain the same.

(3) Following a worker's notice of intent to leave work, the department shall impute the reason for the separation in the following manner~~:~~.

(a) ~~when~~ If a worker's notice of intent to leave work is valid, the department shall consider the worker to have left work voluntarily~~, even if the employer terminates the worker prior to the worker's intended last day~~ as of the date identified by the valid notice~~;~~.

(i) If the employer requires the worker to leave work prior to the worker's intended last day, the worker may qualify for benefits of limited duration, not to exceed four weeks.

(ii) The benefits of limited duration terminate on the date identified in the worker's valid notice, unless the worker shows good cause for leaving work, pursuant to 39-51-2302, MCA.

(iii) Benefits of limited duration occurring at the beginning of a claim will be charged against an employer's account if the employer is a base period employer.

(iv) Benefits of limited duration will not be granted if the employer ended the employment relationship prior to the worker's intended last day due to misconduct committed by the worker after notice was given.

(b) ~~when~~ If a worker attempts to retract a valid notice of intent to leave work and the employer does not accept the retraction, the department shall consider the worker to have voluntarily left work~~; or~~.

(c) ~~when~~ If a worker's notice of intent to leave work was not valid, the department shall consider the worker to have been discharged by the employer.

(4) and (5) remain the same.

(6) ~~The department shall impute the reason for separation from work of limited duration in the following manner:~~

~~(a) when~~ When a worker agrees to accept employment of limited duration as specified by the employer or by a written employment contract, the department shall consider the worker to have been laid off due to a lack of work at the end of the duration agreed upon and the last day worked~~; or~~.

~~(b)~~(7) ~~when~~ When an employer agrees to employ a worker for a limited duration as specified by the worker or by a written employment contract, the department shall consider the worker to have voluntarily left work only when the worker has refused an offer by the employer to continue the same work beyond the limited duration. In the absence of a valid offer by the employer to continue the same work, the department shall consider the worker to have been laid off due to a lack of work on the last day worked.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.454A in order to clarify and simplify the rule as part of the overall changes being proposed in these rules. The present language of the rule appears to be confusing to claimants and employers, based on the frequency of issues raised during the claims process. In addition, there is reasonable necessity to amend the rule with respect to benefits of limited duration, in order to avoid an overpayment of benefits attributable to a period of unemployment not due to the worker's fault.

24.11.459 ADMINISTRATIVE PENALTY (1) When the department obtains information that leads the department to believe that a claimant, or the claimant's agent, made a false statement or representation, or failed to disclose a material fact in order to obtain or increase benefits, the department shall: ~~conducts an investigation and sends the claimant a notice detailing the information obtained during the investigation. The notice provides the claimant ten days in which to respond to the information. If, after the claimant's response is received or the allotted time for response, including any extension of time granted by the department for good cause, has expired, the department determines that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, irrespective of whether or not benefits were obtained or increased as the result of the false statement or representation or failure to disclose a material fact, the claimant is sent written notification of that determination and of the number of weeks of disqualification, if any, imposed pursuant to 39-51-3201(1)(a), MCA. The claimant may appeal the determination either as to the finding that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits or as to the number of weeks of disqualification imposed, or both.~~

(a) conduct an investigation;

(b) provide notice to the claimant regarding the information obtained during the investigation;

(c) provide the claimant eight days' time to respond to the information;

(d) issue a determination whether or not benefits were obtained or increased as the result of the false statement or representation, or failure to disclose a material fact;

(e) send written notification of that determination and of the number of weeks of disqualification, if any, imposed pursuant to 39-51-3201, MCA; and

(f) provide appeal rights. The claimant may appeal the determination as to:

(i) the finding that the claimant made a false statement or representation, or failed to disclose a material fact;

(ii) the number of weeks of disqualification imposed; or

(iii) both.

(2) The department shall apply the following when analyzing whether a false statement or misrepresentation was made:

~~(2)~~(a) A claimant will be determined to have made a false statement or representation knowing it to be false in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant, or the claimant's agent, personally made the statement or representation in question;

(ii) the claimant, or the claimant's agent, knew or should have known that the statement or representation was false; and

(iii) the statement or representation was made in connection with the claimant's claim for benefits and was material to a determination of the claimant's benefit entitlement.

(b) remains the same.

(3) The department shall apply the following when analyzing whether there was a failure to disclose a material fact:

~~(3)~~(a) A claimant will be determined to have knowingly failed to disclose a material fact in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant, or the claimant's agent, had knowledge of or should have had knowledge of the fact in question;

(ii) the fact in question was material to a determination of the claimant's benefit entitlement;

(iii) the claimant, or the claimant's agent, failed to disclose the fact in question; and

(iv) the claimant, or the claimant's agent, knew or should have known that the fact in question was required to be disclosed to the department for the proper administration of the claim.

(b) through (5) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.459 in order to improve clarity by earmarking (1) of the rule, and to place claimants on clear notice that acts of the claimant's agent are attributable to the claimant, as part of the department's efforts to minimize improper benefit payments and reduce the number of overpayments made.

24.11.463 LIE DETECTOR TESTS--DRUG AND ALCOHOL TESTING

(1) and (2) remain the same.

(3) For the purposes of the Workforce Drug and Alcohol Testing Act, an unemployment insurance benefits hearing is a legal action in which the results of a drug or alcohol test may be introduced, provided that the results and testimony about the results are protected from public disclosure.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.463 to clarify, in response to several recent claims, that unemployment insurance benefits hearings are legal proceedings in which workplace drug and alcohol test results may be discussed in the context of disputed claims, so long as those references are protected from public disclosure. The rule change is necessary to address legal questions that have recently been raised in the context of

unemployment insurance benefit claims, where the results of drug or alcohol testing are germane to the issue of separation for work.

24.11.469 DOMESTIC VIOLENCE ~~DISQUALIFICATION~~ INELIGIBILITY -- REQUALIFICATION (1) A claimant ~~who is determined to be~~ held ineligible for benefits under 39-51-2111, MCA, may requalify for benefits by ~~reason of remaining in, or returning to, an~~ immediately leaving the abusive situation~~, will be disqualified under 39-51-2302, MCA~~.

(2) ~~A claimant may re-qualify for benefits under 39-51-2302(3), MCA, by immediately and permanently leaving the abusive situation.~~ The department may accept information from the claimant or other agencies, such as law enforcement or domestic violence shelters, documenting that the claimant has left the abusive situation. Documentation may include any of the following:

(a) through (d) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2111, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.469 in order to simplify the text of the rule, while similar rules are otherwise being amended.

24.11.471 REEMPLOYMENT ELIGIBILITY ~~REVIEW PROGRAM~~ PROGRAMS

(1) ~~A program has been established by the department to review a claimant's eligibility to receive benefits and to evaluate the claimant's need for reemployment services. The purpose of the program is to review the work search contacts made by the claimant and to help the claimant become reemployed.~~ The department has established reemployment assistance programs to help individuals return to work. The programs review a claimant's eligibility and provide reemployment services. Any claimant may be selected to participate in ~~the program~~ one of these programs. Upon selection, the department will send a claimant written notice to report for an appointment at a designated job service office.

(2) ~~A claimant who is selected to participate in the program receives a written notice to report for an interview at the designated job service office. Failure to~~ A claimant may be denied benefits if the claimant fails to:

(a) report to the job service office at the scheduled time~~,~~;

(b) ~~failure to~~ notify the office and reschedule the interview~~,~~; or

(c) ~~failure to provide documentation of work search contacts, as required by ARM 24.11.453A, may result in denial of benefits~~ comply with appointment requirements.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.471 in order to better explain how reemployment services are available to

claimants, and to clarify that a claimant must appear at reemployment services appointments in order to maintain benefit eligibility.

24.11.475 APPROVAL OF TRAINING BY THE DEPARTMENT

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

(d) job training programs authorized under the Workforce ~~Investment Act of 1998~~ Innovation and Opportunity Act;

(e) through (7) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, 39-51-2307, 39-51-2401, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.475 to update the reference that identified certain federal legislation that provides job training programs.

24.11.476 ADDITIONAL TRAINING BENEFITS (1) through (3) remain the same.

(4) To qualify for additional training benefits, claimant must be enrolled in a state-approved training program prior to the end of the benefit year ~~established by the claimant's valid unemployment claim, as defined in ARM 24.11.440~~, as defined in 39-51-203, MCA. After the department approves claimant's additional training application, claimant may be considered "in training" for up to 30 days before the start of actual training.

(5) through (8) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.476 to replace a reference to an obsolete rule with the current statutory citation.

24.11.2204 RATES FOR NEW EMPLOYERS ~~(1) The rates in this rule are applicable beginning January 1, 2003.~~

(2) through (6) remain the same, but are renumbered (1) through (5).

AUTH: 39-8-201, 39-51-302, MCA
IMP: 39-8-207, 39-51-1101, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.2204 to remove an obsolete effective date at the same time other related rules are being amended.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

(1) Payments made by an employer ~~to an employee~~ to reimburse ~~the~~ an employee for ordinary and necessary business expenses incurred during the course

and scope of employment are not wages if ~~all of the following are met~~ the reimbursement amount:

(a) ~~the amount of each employee's reimbursement~~ is entered separately in the employer's records;

(b) ~~the employer has documentation that the employee incurred the expenses in conducting business for the employer;~~

~~(c) the reimbursement~~ is not deducted from or based on a percentage of the employee's wage; and

~~(d)~~(c) ~~the reimbursement~~ does not replace the customary wage for the occupation~~; and~~.

~~(e)~~(2) ~~the reimbursement may~~ Reimbursement must be based on ~~any of the following that apply~~:

~~(i)~~(a) actual expenses for lodging, goods, or services incurred by the employee and supported by receipts;

~~(ii)~~(b) a flat rate for meals ~~and lodging, no greater than the amount allowed to employees of the state of Montana under 2-18-501, MCA,~~ not exceeding the per diem allowed by the United States Internal Revenue Service for the year, unless, through documentation, the employer can substantiate a higher rate;

~~(iii) for drivers employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in (1)(e)(i) or (ii) for each calendar day the driver is on travel status;~~

~~(iv) for drivers employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in (1)(e)(i) or (ii), or by a flat rate not to exceed the average of in-state and out-of state meal allowances plus nonreceipted lodging under 2-18-501, MCA, for each calendar day the driver is on travel status;~~ or

~~(v)~~(c) ~~for~~ when an employee-furnished vehicle is used, a mileage~~, at a~~ rate no greater than that allowed by the United States Internal Revenue Service for that year~~, provided that the individual actually furnishes the vehicle~~.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.2511 in order to simplify the wording of the rule, and to bring the rule more closely into alignment with federal tax rules, in order to improve the ease of correctly reporting wages for unemployment insurance contributions (taxes).

4. The department proposes to adopt the following new rule:

NEW RULE I OFFER IN COMPROMISE (1) When a claimant offers to compromise an overpayment debt by making a lump-sum payment of over 50% of the amount due, the department will accept or reject the offer based on the circumstances or reason for the overpayment, the overpayment balance, and how long it would take to recover the debt with just monthly payments.

(2) The department's determination to accept or reject an offer in compromise is final and not subject to further review or appeal. This does not preclude a claimant

from presenting, or the department considering, another offer in compromise that is substantially different from a prior rejected offer.

(3) Upon acceptance of an offer in compromise, the department will suspend collection efforts on the overpayment and send the claimant an agreement outlining the terms of the compromise and the statutory condition upon which forgiveness of the remainder of the overpayment debt is dependent. The claimant must sign the agreement and return it to the department within 10 days.

(4) The claimant must make the lump-sum payment to the department in full, either by money order or cashier's check, within 60 days of signing the agreement. The department may extend this period for up to 30 days for good cause. If the lump-sum payment is not received by the due date, the compromise agreement is null and void and the department will resume its collection efforts immediately.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule I in order to implement recent amendments to 39-51-3206, MCA, added by Chap. 81, Laws of 2015 (SB 85). The proposed rule outlines the department's process and terms for entering into a compromise lump-sum payment agreement with a claimant who owes on a benefit overpayment.

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: Rachel Bawden, Program Analyst Supervisor, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; fax (406) 444-2993; or e-mail rbawden@mt.gov, and must be received no later than 5:00 p.m., October 24, 2016.

6. The department's Office of Administrative Hearings 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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the

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

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply to the proposed amendments. The bill sponsor contact requirements of 2-4-302, MCA, do apply to New Rule I, and have been complied with. Senator Ed Buttrey was contacted via e-mail on August 10, 2016.

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

11. The department proposes to make the amendments and new rule effective November 11, 2016. The department reserves the right to make some or all the changes effective on a different date, or not to adopt some or any of the proposed amendments or new rule.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State September 12, 2016

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 32.2.401 department of livestock animal health division fees and 32.4.602 exportation of alternative livestock | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT<br><br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On October 23, 2016, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m., October 15, 2016, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

32.2.401 DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION FEES (1) through (4)(i) remain the same.

| | |
|---|---|
| (j) Trichomoniasis tags (5) | ~~6.45~~ 8.35 |
| (k) Trichomoniasis tags (10) | ~~12.90~~ 16.70 |
| (l) Trichomoniasis tags (25) | ~~32.25~~ 41.75 |

AUTH: 81-2-102, MCA
IMP: 81-1-102, 81-2-502, 81-2-704, MCA

REASON: When the department placed the 2016/2017 trich tag order, the manufacturer informed us that the price of the tags had increased from $1.03 to $1.41 per tag. This increase is $.38 per tag. The department proposes to amend ARM 32.2.401 to ensure fees are commensurate with the costs as required by 81-1-102(2), MCA.

32.4.602 EXPORTATION OF ALTERNATIVE LIVESTOCK (1) Any alternative livestock exported must be tagged and marked in compliance with ~~81-3-102(2) and 87-4-414, MCA~~ ARM 32.4.201.

(2) The animal must meet the inspection requirements for change of ownership and movement of ~~game farm animals~~ alternative livestock prior to movement from the alternative livestock farm in accordance to ARM 32.4.301.

(3) The shipment must be accompanied by a certificate of inspection and valid bill of sale for animals that have changed ownership.

AUTH: 87-4-422, MCA
IMP: 81-3-102, 87-4-414, 87-4-422, MCA

REASON: Other alternative livestock rules have been amended to remove the term "game farm animals" replacing that phrase with "alternative livestock." ARM 32.4.602(2) was apparently overlooked and the department is proposing to amend the section accordingly.

In (3), the department is proposing to insert the word "must" as to be grammatically correct.

Implementation citations are being added to accurately reflect all statutes implemented through the rule.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., October 21, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. October 21, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 based upon 32 licensed alternative livestock facilities and 68 licensed veterinarians in the state of Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, 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 rules will not significantly and directly impact small businesses.

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, September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.95.162, 37.95.622, and 37.95.703 pertaining to annual training requirements for child care facilities | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On October 13, 2016, at 2:30 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 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 October 5, 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:

37.95.162 DAY CARE FACILITIES: ~~REQUIRED ANNUAL~~ TRAINING

(1) ~~The provider and all care-givers at any day care facility must each verify that they have successfully completed a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date.~~ Each provider must have a process in place to ensure:

(a) each facility caregiver and provider, with the exception of volunteers and caregivers that provide less than 160 hours of care per year, completes 16 hours of continuing education and training annually;

(b) each facility caregiver and provider, with the exception of volunteers, completes a 16 hour orientation training described in (2) within 90 days of their hire date:

(i) the orientation training described in (2) may count toward the caregiver's and provider's first year of continuing education and training; and

(ii) facility caregivers and providers approved prior to the effective date of this rule must participate in the orientation training areas listed in (2) within 90 days of the effective date of this rule.

(c) each child care center director attends at least 20 hours of continuing education and training annually.

(2) The orientation training must include the following subject areas:

(a) prevention and control of infectious diseases;

(b) prevention of sudden infant death syndrome and use of safe sleep practices;

(c) administration of medication, consistent with standards for parental consent;

(d) prevention and response to emergencies due to food and allergic reactions;

(e) building and physical premises safety;

(f) prevention of shaken baby syndrome and abusive head trauma;

(g) emergency preparedness and response planning for emergencies;

(h) handling and storage of hazardous materials, such as cleaning materials, flammable liquids, detergents, aerosol cans, and pesticides;

(i) appropriate disposal of toxic (bio-contaminants) materials including effects such as blood, bodily fluids, chemicals, garbage, and other infectious materials;

(j) transportation; and

(k) reporting of abuse and neglect to proper state authorities.

(3) The provider and all caregivers must hold current course completion cards in CPR for infant, child and adult CPR, infant choking response, and standard first aid. Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.

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

~~(4) With the exception of volunteers, any person who provides care to children in a day care facility for at least 160 hours a year is required to successfully complete eight hours of approved education or training annually.~~

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.622 DAY CARE CENTERS: STAFFING QUALIFICATIONS

(1) and (2) remain the same.

~~(3) A center director must obtain 15 hours of approved education or training on an annual basis.~~

~~(4)~~ (3) A primary ~~care-giver~~ caregiver must:

(a) through (c) remain the same.

~~(d) receive a minimum of at least eight hours of documented continuing education annually as provided in ARM 37.95.162; and~~

~~(e)~~ (d) have the following training and experience:

(i) remains the same.

(ii) child development associate credential; ~~or~~

(iii) a bachelor of arts or an associate degree in education or a related field; or

(iv) level 2 of the Early Childhood Project Career Path.

~~(f) hold a current course completion card in infant, child and adult CPR and infant choking response; and~~

~~(g) be currently certified in standard first aid.~~

~~(5) Course completion as indicated in (4)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

~~(6)~~ (4) An aide must be directly supervised by a primary ~~care-giver~~ caregiver and ~~shall~~ must be at least 16 years of age and must:

(a) have sufficient language skills to communicate with children and adults; ~~and~~

(b) and (c) remain the same.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) ~~The~~ Each provider and ~~all persons responsible for children~~ caregiver in the day care home must:

(a) remains the same.

(b) ~~demonstrate they are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;~~ complete appropriate department documentation demonstrating they:

(i) are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;

~~(c)~~ (ii) ~~be~~ are free of communicable disease; and

~~(d)~~ (iii) have met the immunization requirements of ARM 37.95.140~~; and~~

~~(e) demonstrate they are of good moral character~~.

(2) The provider and all staff, including ~~care-givers~~ caregivers, ~~aides,~~ volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. The director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the ~~care-giver~~ caregiver providing care.

(3) The provider, or an approved ~~care-giver~~ caregiver designated by the provider, ~~shall~~ must be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities at all times of program operation.

~~(4) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 days of certification. This orientation must include the following areas:~~

~~(a) health;~~

~~(b) safety;~~

~~(c) child development/well being;~~
~~(d) discipline/guidance;~~
~~(e) nutrition/food safety; or~~
~~(f) business aspects of a child care business.~~
~~(5) Orientation training does not count toward the required eight hours of approved education or training education as specified in (6).~~
~~(6) The provider and all care-givers must annually verify that they have met the training requirements set out in ARM 37.95.162.~~
~~(7) The provider must hold current course completion cards in CPR for infant, child, and adult CPR; infant choking response; and standard first aid. Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.95.162, 37.95.622 and 37.95.703. Pursuant to the Child Care and Development Block Grant Act of 2014 (CCDBG), Public Law No: 113-186 (11/19/2014), the U.S. Office of Child Care has directed states to implement new training requirements aimed at improving child care health and safety and the quality of care children receive. These new training requirements must be in place for all providers and caregivers by September 30, 2016. Failure to meet this timeline will result in states being placed in a corrective action status.

The specific focus of the new requirements is identifying areas of preservice training for new providers and caregivers, and increasing training for child care providers, their child caregivers and staff must receive from the current training requirements, which have not been updated since 2006. Continuing education and training is an important aspect of child care. Providers and their child caregivers require adequate training in the multifaceted responsibilities, skills, functions, and tasks they perform. Those who are better trained are better able to prevent, recognize, and correct health and safety problems. Meeting these interests and fulfilling the new CCDBG mandates have generated the need for the department to initiate the following changes in training requirements for providers and their caregivers.

ARM 37.95.162

The department proposes to strike the language from (1) and replace it with new language.

The CCDBG requires that states have provisions in place by September 30, 2016, ensuring that providers, caregivers, and teachers receive training hours in ten key areas focused on child development, health, and safety. The new (1) sets forth the department's proposal to fulfill this requirement. The department proposes that,

commensurate with their responsibility for the daily operation of child care centers, the training directors receive increases from 8 to 20 hours. The department proposes that the training existing caregivers undertake and complete increases from 12 to 16 hours per year, and that they complete training in the areas listed under (2) related to orientation training, which the department deems to be key to ensuring that child care helps children remain healthy and safe. The department also proposes in (1)(b) that new providers and caregivers receive and complete 16 hours of orientation focused on 10 key areas of ensuring related to the health and safety of children.

Current department rule does not require caregivers listed as aides to complete CPR and first aid training. The CCDBG, however, requires that all staff and caregivers be certified in CPR and first aid. To fulfill this CCDBG directive, the department proposes moving CPR and first aid requirements now found in ARM 37.95.622(4)(f) and ARM 37.95.703(7) to (3) of this rule.

The department proposes renumbering (2) as (4) and (3) as (5) for purposes of numerical ordering.

ARM 37.95.622

The department proposes moving the requirement for director training from current (3) to new ARM 37.95.162(1)(c).

The department proposes renumbering current (4) as (3) for numerical ordering, and within (3), adding another category of "level 2 of the Early Childhood Project Career Path," which may satisfy the "training and experience" requirement for a primary caregiver, to allow for flexibility in hiring while still preserving the substance of the qualifications. The language in current (4)(d) regarding the minimal number of required hours of annual continuing education is being moved to new ARM 37.95.162(1) with modifications described previously regarding that rule.

The department proposes moving the language of current (5) to ARM 37.95.162.

The department proposes renumbering current (6) as (4) for numerical ordering.

ARM 37.95.703

The department proposes revising (1), (2), and (3) for grammatical correctness.

The department proposes striking current (4) and (5) as the department is including updated orientation requirements under new ARM 37.95.162(1)(b)(i) and (2).

The department proposes striking current (6) as it is duplicative of language under new ARM 37.95.162(1).

The department proposes striking current (7) as its language is being moved to new ARM 37.95.162(3).

Fiscal Impact

The cost of the actual rulemaking process is not prohibitive; it is a departmental expense and one that is absorbed within the division budget. Child care providers will see the impact, however, as they implement the rule.

This rule amendment increases the number of annual training hours for child care providers from 8 to 16 for caregivers and providers and from 16 hours to 20 hours for center directors. Additionally, all new providers will have to participate in a 16 hour New Provider Orientation within the first 90 days of their start date.

The department has initial funding through the CCDBG and other state funds to offer many of the training courses for free. However, under state employment laws there may be job-related expenses that will result from the normal course of doing business for employers and the owners of facilities.

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., October 21, 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 rules 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/ Francis X. Clinch
Francis X. Clinch, Chief Counsel
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.86.2102 and 37.86.2105 pertaining to Medicaid eyeglass reimbursement | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On October 13, 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 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 October 5, 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:

37.86.2102 EYEGLASSES, SERVICES, REQUIREMENTS AND RESTRICTIONS (1) through (5) remain the same.

(6) A ~~recipient~~ member may obtain replacement lenses only 365 days after the existing eyeglasses were dispensed if the lenses are unusable.

(7) The following lens features are not covered:

(a) photochromatic or transition lenses;

(b) progressive lenses;

(c) ultraviolet coating;

(d) scratch resistant coating;

(e) anti-reflective coating;

(f) polycarbonate lenses except for monocular members; and

(g) tinted lenses except for rose 1 or rose 2.

(7) remains the same, but is renumbered (8).

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

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) and (2) remain the same.

(3) The department adopts and incorporates by reference the department's Eyeglasses Fee Schedule effective ~~July 2010~~ December 2016. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at ~~http://medicaidprovider.hhs.mt.gov~~ http://medicaidprovider.mt.gov. A copy of the department's fee schedule may also be obtained from Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.86.2102 and 37.86.2105. These proposed amendments are necessary because they are associated with the competitive, volume purchase contract which sets the new eyewear rates, and to solidify in rule, the noncovered items that have been included in the Optometric and Eyeglass Services Provider Manual only.

ARM 37.86.2102

The department is proposing to amend ARM 37.86.2102 to include the noncovered services that have been listed in the Optometric and Eyeglass Services Provider Manual. The eyeglass benefit is to provide the best possible vision to Medicaid members. The noncovered items have been determined not medically necessary and are considered add-on items. Members may purchase add-ons through a private pay arrangement with their provider.

ARM 37.86.2105

Montana Medicaid offers eyeglass frames and lenses prescribed by a licensed optometrist or ophthalmologist through a single, volume purchase contractor. This current contract expires on November 30, 2016 and is under the competitive bid process. Because of the resulting new contract, the department is proposing to update the fee schedule date in ARM 37.86.2105 to compensate for this change. This updated effective date reflects the correct date of the associated volume purchase contract and fees.

The word "recipient" is being updated to the current term "member" used by the Centers for Medicare and Medicaid Services (CMS) and the department.

The department made a correction in (3) to the web site address for The Montana Medicaid provider web page.

Fiscal Impact

State fiscal year (SFY) 2015 had expenditures of $557,705 for eyeglasses. The fiscal impact is not known at this time and will be available upon contract award resulting from the competitive bid process.

The rulemaking will affect 148 optometric providers and 180,683 Medicaid members.

5. The department intends to adopt these rule amendments effective December 1, 2016.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 21, 2016.

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

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

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

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

11. 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.

12. 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/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.9.110, 42.9.111, and 42.9.203 pertaining to pass-through entity audit adjustments and the computation of composite tax, and ARM 42.15.219 and 42.15.526 pertaining to pension and annuity income exclusions and small business liability funds | ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On October 13, 2016, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor East 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, contact the department no later than 5 p.m. on October 3, 2016, to advise us of the nature of the accommodation you need. Please 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:

42.9.110 PASS-THROUGH ENTITIES – AUDIT ADJUSTMENTS

(1) through (3) remain the same.

(4) If the audit adjustments resulting from an audit or other review of a pass-through entity's information return affect Montana tax returns that partners, shareholders, and other owners have not filed, the department may request that the owners file tax returns. If an owner does not file a tax return, the department may estimate the owner's tax liability in accordance with ~~15-30-2512~~ 15-30-2605, MCA. The department will not report the details of the owner's estimated tax liabilities to the pass-through entity.

(5) through (7)(a) remain the same.

(b) estimate the indirect owner's tax liability in accordance with ~~15-30-2512~~ 15-30-2605, MCA. If the department estimates an indirect owner's tax liability, the department will notify the indirect owner of the estimated tax liability. The department will not report the details of the pass-through entity's audit adjustments that passed through to the indirect owner. If the indirect owner wants the details of

the audit adjustments that affected its return, the indirect owner will need to contact the pass-through entity that it owns an interest in for that information.

AUTH: 15-1-201, 15-30-3312, MCA
IMP: ~~15-30-2512,~~ 15-30-2605, 15-30-2618, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-511, 35-1-1107, 35-8-405, 35-10-103, 35-10-402, 35-12-508, MCA

REASON: The department proposes amending ARM 42.9.110 to correctly reference the relevant section of statute in the language and to remove an incorrect reference from the implementing section of the rule. The previous reference to 15-30-2512, MCA, refers to estimated taxes paid by the taxpayer but more properly needs to refer to the department's authority to estimate tax in 15-30-2605, MCA.

42.9.111 PASS-THROUGH ENTITIES – STATUTE OF LIMITATIONS FOR AUDIT ADJUSTMENTS (1) remains the same.

(2) If a revision to a pass-through entity's information return changes the owners' distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit, the department will review the owners' tax returns and determine if additional tax is due. If additional tax is due, the department may assess tax, penalties, and interest as follows:

(a) if the additional tax, penalties, and interest are due on a return filed by an individual, trust, or estate, it may be assessed within:

(i) five years of when the return was filed, if it pertains to a tax period beginning before January 1, 2015; or

(ii) three years after the return was filed if it pertains to a tax period beginning after December 31, 2014; or

(b) remains the same.

(3) If a revision to a pass-through entity's composite return changes the amount of tax, penalties, and interest due on a composite return filed by the pass-through entity, the tax, penalties, and interest may be assessed within:

(a) five years of when the composite return was filed ~~regardless of whether the participants are individuals, foreign C corporations, or pass-through entities~~ if it pertains to a tax period beginning before January 1, 2015; or

(b) three years after the return was filed if it pertains to a tax period beginning after December 31, 2014.

(4) through (6) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-30-2605, 15-30-2606, 15-30-2607, 15-30-3302, 15-30-3312, 15-31-509, MCA

REASON: The department proposes amending ARM 42.9.111 to implement House Bill 379, L. 2015, which, in part, reduced the statute of limitations of pass-through entities from five years to three years. As proposed to be amended, the rule covers periods with the previous statute of limitation and periods with the new statute of limitation. To keep it clear for taxpayers, the previous five-year statute of limitation must be kept in rule for any amended returns and audits involving periods

not covered by the current three-year limitation.

42.9.203 COMPUTATION OF COMPOSITE TAX (1) remains the same.

(2) ~~The composite return liability of each eligible consenting participant is calculated as follows:~~ A participant's composite tax liability is assessed on the participant's share of the entity's federal income, adjusted according to 15-30-3312, MCA, and multiplied by the composite tax ratio. To determine a participant's composite tax liability, the entity must use the five-step calculation in (3).

(3) The composite return liability of each eligible consenting participant is calculated as follows:

(a) compute the entity's composite tax ratio, used to determine the Montana portion of the tax, by:

(i) calculating the entity's federal income ~~from all sources as determined for federal income tax purposes~~;

(ii) and (iii) remain the same.

(b) compute each participant's share of federal income by multiplying the entity's federal income by the ratio of the participant's distributive share of Montana source income over the entity's total Montana source income;

~~(b)~~(c) subtract the allowable standard deduction for a single individual and one exemption allowance from each participant's share of ~~the entity's~~ federal taxable income ~~as determined for~~ to obtain each participant's adjusted share of federal income; ~~tax purposes. Determine the tax that would be imposed on the result using~~

(d) apply the rates specified in 15-31-121, MCA, for C corporations and the rates specified in 15-30-2103, MCA, for all other eligible participants on each participant's adjusted share of federal income to obtain the amount of tentative tax used to determine the Montana composite tax; and

~~(c)~~(e) compute each participant's Montana composite tax liability by ~~multiply the amount~~ multiplying the tentative tax on the participant's share of federal income determined in ~~(b)~~(d) by the composite tax ratio computed in (a).

(4) Examples of the computations in (3) are as follows:

~~(i)~~(a) Example 1a. ~~composite~~ Composite tax ratio: Assume a partnership's federal income from all sources (as reported on Form PR-1, line 15) is $60,000 and the partnership's Montana source income (as reported on Form PR-1, line 21) is $20,000. The composite tax ratio is $20,000/$60,000 = ~~33.3333~~ 33.333333%.

~~(ii)~~(b) Example 1b. ~~composite tax liability~~ Participant's share of federal income: Assume that the partnership in Example 1a. has one electing eligible participant in the composite tax return, an individual. To determine the electing ~~partner's~~ partnership's share of federal taxable income, multiply the ~~partner's ownership percentage (as reported on the Montana Schedule III) by~~ entity's federal income ~~from all sources~~ (as reported on Form PR-1, line 15) by the ratio of the participant's distributive share of Montana source income (Form PR-1, Schedule III, column D) over the entity's Montana source income (Form PR-1, line 21). Assume the participant's share of Montana source income is $10,000.

| | |
|---|---|
| ~~Electing partner's ownership percentage~~ | ~~50%~~ |
| ~~Partnership's federal income from all sources~~ | ~~$60,000~~ |
| ~~Electing partner's distributive share of federal income from all sources~~ | ~~$30,000~~ |

| | |
|---|---|
| Participant's share of Montana source income (Form PR-1, line 21) | $10,000 |
| Divide by total Montana source income over the entity's Montana source income | ÷ $20,000 |
| Ratio of participant's share of Montana source income over the entity's Montana source income | 50% |
| Multiply by the partnership's federal income from all sources (Form PR-1, line 15) | x $60,000 |
| Participant's share of federal income | $30,000 |

(c) Example 1c. Participant's share of adjusted federal income: Reduce the electing partner's distributive share of federal income from all sources by the allowable standard deduction for a single individual and one exemption allowance.

| | |
|---|---|
| ~~Electing partner's distributive share of federal income from all sources~~ | ~~$30,000~~ |
| ~~Standard deduction~~ | ~~($4,110)~~ |
| ~~Exemption allowance~~ | ~~($2,190)~~ |
| | ~~$23,700~~ |

| | |
|---|---|
| Electing partner's distributive share of federal income | $30,000 |
| Standard deduction | ($ 4,460) |
| Exemption allowance | ($ 2,380) |
| Participant's share of adjusted federal taxable income | $23,160 |

(d) Example 1d. Participant's tentative tax: Using the tax rates ~~as set forth~~ in 15-30-2103, MCA, assume the tax is ~~$1,123~~ $1,043.

(e) Example 1e. Participant's Montana composite tax liability: Multiply the resulting tentative tax by the composite tax ratio determined in Example 1a.

| | |
|---|---|
| ~~Tax on the distributive share of federal income~~ | ~~$1,123~~ |
| ~~Composite tax ratio (from Example 1.a.)~~ | ~~33.3333%~~ |
| ~~Total composite tax~~ | ~~$374~~ |

| | |
|---|---|
| Tax on the distributive share of federal income | $1,043 |
| Composite tax ratio (from Example 1a.) | x 33.333333% |

| | |
|---|---|
| Total Montana composite tax liability | $348 |

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

(6) Separately stated deductions subjected to election or limitation on the participant's federal income tax return cannot be subtracted from the participant's share of the federal income for the purpose of calculating composite tax.

~~(4)~~(7) When shareholders and partners elect to be included in the composite return, the entity must apply their share of mineral royalty tax withheld ~~for~~ on mineral rights ~~owned by~~ paid to the entity, and their share of pass-through withholding paid on behalf of the entity, to the composite tax liability.

(5) remains the same, but is renumbered (8).

(9) For the purposes of this rule, "federal income" means an entity's income from all sources as determined for federal income tax purposes.

AUTH: 15-1-201, 15-30-2620, 15-30-3312, MCA
IMP: 15-30-2103, 15-30-2512, 15-30-3302, 15-30-3312, 15-31-121, MCA

REASON: The department proposes amending ARM 42.9.203 to reflect the modification in the steps that need to be taken when calculating the composite tax on the Montana pass-through returns. This modification does not change the composite tax and matches the calculation done on the pass-through returns. It is driven by practical concerns about availability of data and takes into account the possible discrepancies between allocations of share of federal income and allocation of Montana source income.

As proposed to be amended, the rule continues to provide a step-by-step approach for computing the composite tax, but the steps have been expanded to remove any uncertainty about the calculation and to serve as a better guide for taxpayers. The examples in the rule are also proposed to be restructured and updated to reflect current amounts included in House Bill 359, L. 2015, which revised laws related to inflation indexing of income taxes.

The department further proposes adding a definition of "federal income" for use in this rule to simplify the terminology used when referring to such income. Frequently using the complete phrase "income from all sources as determined for federal income tax purposes" throughout the rule would otherwise make it unnecessarily lengthy and cumbersome.

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION (1) For tax years beginning ~~before~~ January 1, ~~2010~~ 2016, the pension and annuity exclusion is limited to the lesser of the pension and annuity income received or ~~$3,600~~ $4,070 for a single person or married couple where only one person receives pension or annuity income.

(a) The exclusion ~~in (1)~~ is reduced $2 for every $1 over federal adjusted gross income of ~~$30,000~~ $33,910.

(b) ~~For tax years beginning after December 31, 2009, by~~ By November 1 of each year, the department will multiply the exclusion amount ~~in (1)~~ and the federal adjusted gross income amount in ~~(1)~~(a) by the inflation figure for the taxable year as prescribed in ~~section~~ 15-30-2110(14), MCA.

(2) remains the same.

(3) When married taxpayers file separately, each spouse's exclusion and phase-out are computed independently and a spouse's exclusion begins to be phased out only when his or her federal adjusted gross income exceeds the amount allowed in (1)(a). Examples for tax years beginning ~~before~~ on or after January 1, ~~2010~~ 2016, are:

(a) Jane, a single taxpayer, has federal adjusted gross income of ~~$20,000~~ $30,000 which is made up of $5,000 of pension income and ~~$15,000~~ $25,000 of other income. Her pension and annuity exclusion for Montana purposes is ~~$3,600~~ $4,070.

(b) Frank and Edith, a married couple, file a joint income tax return and both receive pension and annuity income. Frank's taxable pension included in federal adjusted gross income is ~~$5,600~~ $10,000. Edith's taxable pension included in federal adjusted gross income is $2,000. Their combined federal adjusted gross income is ~~$25,000~~ $30,000. Their Montana pension and annuity exclusion is ~~$5,600~~ $6,070 (the maximum ~~$3,600~~ $4,070 for Frank and the full taxable amount of pension Edith received is $2,000 ~~for Edith~~). Even though their combined federal adjusted gross income is below ~~$30,000~~ $33,910, Edith is not entitled to a ~~$3,600~~ $4,070 pension exclusion as the exclusion is limited to her taxable pension of $2,000.

(c) John, a single taxpayer, has federal adjusted gross income of ~~$31,000~~ $35,000. This consists of ~~$7,000~~ $17,000 of taxable pension income and ~~$24,000~~ $18,000 of other income. John's Montana pension exclusion is ~~$1,600~~ $1,890. (~~$3,600~~ $4,070 - ((~~$31,000 - $30,000~~ $35,000 - $33,910) x 2)).

(d) John and Barbara, a married couple, file a joint income tax return and both report federal taxable pension income. John's federal taxable pension is $5,600 and Barbara's federal taxable pension income is $3,000. Their combined federal adjusted gross income is ~~$33,000~~ $37,500. Their combined Montana pension and annuity exclusion is ~~$600~~ $960. (~~$6,600~~ $8,140 - ((~~$33,000 - $30,000~~ $37,500 - $33,910) x 2)).

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

REASON: The department proposes amending ARM 42.15.219 to update thresholds of pension and annuity exclusion in the rule to correspond with the modifications that occurred with the enactment of House Bill 359, L. 2015, which revised laws related to inflation indexing of income taxes.

The department also proposes updating the examples in the rule to reflect the changes in threshold that will be used going forward. The department further proposes modifying the initial figures in the situations set forth in the examples in order to provide examples that fit every situation.

42.15.526 SMALL BUSINESS LIABILITY FUNDS (1) through (3) remain the same.

(4) Upon termination of the independent liability fund the trustee shall file with the department a copy of the ~~Federal~~ federal Form 1099. The returns must provide the amount of any distribution, to whom the distribution was made, and the calendar year of the distribution for any distribution made from the principal or income of the

fund.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2118, 15-30-2141, 15-31-117, 15-31-118, MCA

REASON: The department proposes amending ARM 42.15.526(4) as a matter of housekeeping to make a grammatical correction. The word federal is an adjective and therefore should not be capitalized in this situation.

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 October 27, 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, apply and have been fulfilled. The primary sponsor of House Bill 359, Representative Ed Lieser, was contacted by letter on June 28, 2016 and subsequently contacted by letter on August 25, 2016; and the primary sponsor of House Bill 379, Representative Greg Hertz, was contacted by letter on May 6, 2016 and subsequently contacted by letter on August 25, 2016.

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 the department's

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 September 12, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through III, the amendment of ARM 42.2.304, 42.2.503, 42.2.504, 42.2.505, 42.2.510, 42.2.511, 42.3.102, 42.3.103, 42.3.115, 42.14.204, 42.15.315, 42.15.316, 42.30.103, and 42.30.107, the transfer and amendment of ARM 42.3.105 and 42.3.107, and the repeal of ARM 42.2.306, 42.15.320, and 42.23.605 pertaining to the application of penalties and interest and reasonable cause; and also pertaining to the timeframe for appealing notices of assessment | ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, TRANSFER AND AMENDMENT, AND REPEAL |

TO: All Concerned Persons

1. On October 13, 2016, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, transfer and amendment, and repeal 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, contact the department no later than 5 p.m. on October 3, 2016, to advise us of the nature of the accommodation you need. Please 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 adopted provide as follows:

NEW RULE I ADJUSTMENTS TO PENALTY AND INTEREST (1) Late pay penalties will be adjusted based on the corrected amount of tax due that results from an amended return, adjustment from an audit, or correction to the original return.

(2) The department will adjust interest based on the corrected amount of tax due that results from an amended return, adjustment from an audit, or correction to the original return, unless a decrease in tax due arises from a net operating loss or a tax credit.

(3) When there is a change to the tax liability that results from an amended return, adjustment from an audit, or correction to the original return, no change will be

made to the underpayment interest penalty as calculated on the original return.

(4) The taxpayer may appeal a penalty assessment under the provisions of ARM 42.2.510 and ARM 42.2.613 through 42.2.621.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-1-216, 15-1-222, 15-30-2602, 15-30-2604, 15-30-2605, 15-31-502, 15-31-503, 15-31-510, MCA

REASON: The department proposes adopting New Rule I to provide a single rule, as opposed to the current multiple rules, to explain the department's process for applying penalties and interest to an assessment of tax. While the process is uniform for all taxes that the department administers, rules on the subject matter currently exist in multiple chapters of ARM Title 42. The language in this proposed new rule is comprised of relevant information from two rules the department is proposing to repeal in this same notice, ARM 42.15.320 and 42.23.605. The department's intent is to better organize the subject matter together in a single rule and then place the new rule in ARM Title 42, chapter 2, in the same location as the department's other penalty and interest related rules.

NEW RULE II SUBSTANTIAL UNDERSTATEMENT PENALTY (1) A taxpayer who substantially understates tax due is subject to a substantial understatement of tax penalty in an amount equal to 20 percent of the understatement.

(2) For individuals, estates, and trusts, the penalty does not apply to understatements of tax that are less than or equal to $3,000. For understatements larger than $3,000, the penalty applies when the understatement exceeds the greater of:

(a) 10 percent of the tax the taxpayer is required to show on the return; or

(b) $3,000.

(3) Examples of how the substantial underpayment penalty is calculated for individual, estate, and trust taxpayers are as follows:

(a) A taxpayer reports $2,000 of tax on their original return; however, the taxpayer was required to report $6,000. The taxpayer understated their tax by $4,000. To determine whether the taxpayer's understatement was substantial, the understatement has to exceed the greater of $3,000, or 10 percent of the tax required to be paid. Because the understated amount of $4,000 exceeds both $3,000 and 10 percent of the required tax to be paid ($6,000 x 10 percent is $600) the substantial understatement penalty applies. The taxpayer would be assessed a penalty of $800 (20 percent of $4,000).

(b) A taxpayer reports $3,500 of tax on their original return, however, the taxpayer was required to report $6,000 of tax. The taxpayer understated their tax by $2,500. The understatement does not exceed $3,000. As a result, the taxpayer is not subject to the penalty.

(4) For taxpayers, other than individuals, estates, and trusts, the penalty does not apply to understatements that are less than or equal to $10,000. For understatements greater than $10,000, the penalty applies when the understatement of tax exceeds the lesser of:

(a) 10 percent of the tax required to be shown on the return; or

(b) $500,000.

(5) Examples of how the substantial underpayment penalty is calculated for taxpayers other than individuals are as follows:

(a) A corporate taxpayer reports $5,500,000 of tax on their original return; however, the taxpayer was required to report $6,250,000 of tax. The taxpayer understated its tax by $750,000. Because $500,000 is less than 10 percent of the tax required to be shown on the return ($625,000), $500,000 is used to determine whether the taxpayer substantially understated its tax. Here, the taxpayer substantially understated its tax ($750,000 is greater than $500,000) and is assessed a $150,000 penalty ($750,000 x 20 percent).

(b) A corporate taxpayer reports $750,000 of tax on their original return; however, the taxpayer was required to report $1,000,000 of tax. The taxpayer understated its tax by $250,000. Because $100,000 (10 percent of the tax required to be shown on the return) is less than $500,000, $100,000 is used to determine whether the taxpayer substantially understated its tax. Here, the taxpayer substantially understated its tax ($250,000 is greater than $100,000) and is assessed a $50,000 penalty ($250,000 x 20 percent).

(c) A corporate taxpayer reports $901,000 of tax on their original return; however, the taxpayer was required to report $1,000,000 of tax. The taxpayer understated its tax by $99,000. Because $100,000 (10 percent of the tax required to be shown on the return) is less than $500,000, $100,000 is used to determine whether the taxpayer substantially understated its tax. The taxpayer did not substantially understate its tax because its understatement is less than $100,000. The taxpayer is not subject to the penalty.

(d) A corporate taxpayer reports $991,000 of tax on their original return; however, the taxpayer was required to report $1,000,000 of tax. The taxpayer understated its tax by $9,000. Since the understatement does not exceed $10,000, the taxpayer is not subject to the penalty.

(6) The burden of proof is on the taxpayer to establish the existence of substantial authority or a reasonable basis for the tax treatment of an item taken on the return.

(7) For the purposes of determining a reduced penalty, the penalty is first calculated based on the understatement as a whole. Reductions are separately calculated by item and then subtracted from the penalty. For example:

| | | |
|---|---|---|
| Understatement subject to penalty | $ | 11,000 |
| Substantial understatement penalty before reduction | $ | 2,200 |
| Penalty reduction | $ | (500) |
| Total substantial understatement penalty | $ | 1,700 |

(8) For the purposes of this rule, the following definitions apply:

(a) "Adequate disclosure" means a clear and comprehensive disclosure through statements, footnotes and/or supplemental schedules, which provides a comprehensive and clear description of the taxpayer's position.

(b) "Reasonable basis" means a well-reasoned construction of applicable statutory provisions and/or rules that provide substantial authority applied in good

faith to support the taxpayer's position.

(c) "Substantial authority" means an objective standard that is more stringent than the reasonable basis standard, where the weight of the authorities' supporting treatment is substantial in relation to the weight of the authorities' supporting contrary treatment.

AUTH: 15-1-2620, 15-31-501, MCA
IMP: 15-1-216, MCA

REASON: The department proposes adopting New Rule II to implement House Bill (HB) 379, L. 2015, which established a penalty on taxpayers who substantially understate tax due on an original or amended tax return. As proposed, the rule explains how the penalty applies and provides examples for when and how the penalty is calculated, and an example of how the relief provision shall be applied.

The department also proposes definitions for terms referenced in the statute and used in the proposed new rule. The definitions are the department's proposed definitions, but are based on the federal definitions for the same terms as provided in Treasury Regulations Section 1.6662-3 and 1.6662-4. Because the federal definitions are so expansive, the department extracted the principal concepts within each definition to arrive at the definitions proposed in this notice for state purposes.

NEW RULE III LATE FILING PENALTY (1) Applicable late filing penalties are calculated at 5 percent of the net tax due for each month during which there is a failure to file the return or report. Late filing penalties shall:

(a) not exceed an amount up to 25 percent of the net tax due; and

(b) not be less than $50.

(2) Net tax due includes the amount of any credit against the tax that may be claimed on the return or report and any payments received by the due date of the return or report, including extensions.

(3) If the due date of the return or report is a date other than the last day of a calendar month, the late filing penalty is assessed each month or fraction thereof for which there is a failure to file a tax return or report. For example:

(a) A taxpayer files a tax return on June 20 that was due on April 15 of the same year. When filing the return, the taxpayer pays the tax due of $1,500. The late filing penalty assessed is $225 ($1,500 x 5 percent x 3 months).

(b) A taxpayer files a tax return on June 20 that was due on April 15 of the same year. When filing the return, the taxpayer pays the tax due of $300. The late filing penalty assessed is $50 because the calculated penalty does not exceed the $50 minimum ($300 x 5 percent x 3 months = $45).

(c) A taxpayer files a tax return due on June 20 that was due on April 15 of the same year. The taxpayer, however, paid the tax due of $1,500 on April 15. The late filing penalty assessed is the minimum $50.

(4) If the due date of the return or report, including extensions, is the last day of a calendar month, the late filing penalty is assessed each succeeding month or fraction thereof for which there is a failure to file a tax return or report. For example:

(a) A taxpayer files a tax return on April 10 that was due on March 31 of the same year. When filing the return, the taxpayer pays the tax due of $1,500. The

late filing penalty assessed is $75 ($1,500 x 5 percent x 1 month).

(b) A taxpayer files a tax return on April 10 that was due on March 31 of the same year. The taxpayer, however, paid the tax due of $1,500 on March 31. The late filing penalty assessed is the minimum $50.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-1-216, MCA

REASON: The department proposes adopting New Rule III to implement House Bill (HB) 379, L. 2015, which revised the calculation of late filing penalties on delinquent tax returns.

As proposed, the new rule provides the parameters for the late filing penalties and when they are applied, and provides examples for when and how the penalty is calculated. Section (3) provides an example of how the penalty is calculated when the due date of a return is mid-month, because this proposed rule can apply to any tax type with returns or reports due mid-month, with or without an extension.

Section (4) further explains how the penalty is calculated when the due date is the last date of the month. For both sections, the department has provided multiple scenarios to also illustrate how the percent of tax versus minimum penalty applies.

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

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) through (35) remain the same.

(36) "Notice of Assessment (NOA)" means the first notice provided to the taxpayer of an amount owed to the department or of a violation. It may include, but is not limited to, a notice of refund reduction, net operating loss adjustment, 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.

(36) through (48) remain the same, but are renumbered (37) through (49).

~~(49)~~(50) "Reasonable cause" means the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return, pay the tax within the prescribed time, or object to a department action as provided for in ARM 42.2.510. Examples of what does or does not constitute reasonable cause may be found in ~~ARM 42.3.105~~ ARM 42.2.506.

(50) through (57) remain the same, but are renumbered (51) through (58).

~~(58)~~(59) "Statement of Account (SOA)" means ~~the first~~ a notice provided to the taxpayer ~~of an amount~~ summarizing amounts owed to the department ~~or of a violation. It may include, but is not limited to, a notice of refund reduction, net operating loss adjustment, 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~~.

(59) through (62) remain the same, but are renumbered (60) through (63).

AUTH: 15-1-201, 15-30-2620, 15-31-501, 16-1-303, 16-10-104, 16-11-103, MCA

IMP: 1-1-215, 15-1-102, 15-1-206, 15-1-601, 15-30-2101, 15-30-2104, 15-30-2111, 15-30-2602, 15-30-3301, 15-30-3302, 15-30-3311, 15-30-3312, 15-30-3313, 15-30-3321, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.2.304 to add a definition for the term "Notice of Assessment (NOA)," and to change the definition for the term "Statement of Account (SOA)," to reflect terminology use changes that have occurred in the department.

Going forward the NOA, rather than the SOA, will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. Therefore, the term NOA is proposed to be defined with the same definition previously assigned to the SOA.

The SOA, on the other hand, will serve as a statement to show the cumulative amount due if the assessment on the NOA is not paid within 30 days. Therefore, the definition for the term SOA is proposed to be revised to reflect its title and more appropriate use as a summary statement of an account's status.

The updated notice names are intended to make it easier for taxpayers to distinguish between an initial notice or bill, and a cumulative notice or statement of their outstanding account balance.

The department also proposes revising the definition of "reasonable cause" to update a rule number reference that will change with the transfer of ARM 42.3.105 to ARM 42.2.506 in this same notice.

42.2.503 JEOPARDY ASSESSMENT AND EMERGENCY EXECUTION

(1) and (1)(a) remain the same.

(b) of the amount of deficiency, penalty, and accrued interest (the ~~statement of account~~ Notice of Assessment (NOA));

(c) and (d) remain the same.

(e) that if the taxpayer does not file a written objection to the amount of the ~~statement of account~~ NOA or a Request for Informal Review Form (APLS101F) with the department within 30 days of the date of the notice, the assessment becomes final and may not be appealed to the ~~State Tax Appeal Board~~ state tax appeal board; and

(f) remains the same.

(2) If the department finds the collection of a deficiency, for which ~~a Notice of Deficiency~~ an NOA has been mailed, will be jeopardized by delay and the time for filing a written objection to the amount of the ~~Statement of Account~~ NOA or a Request for Informal Review form (APLS101F) with the department as provided in ARM 42.2.510 has not yet expired, the deficiency, penalty, and accrued interest become immediately due and payable on the date the department mails the taxpayer a written notice:

(a) through (4) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-36-322, 15-39-114, MCA
IMP: 15-30-2504, 15-30-2631, 15-31-522, 15-31-525, 15-31-531, 15-36-319, 15-37-107, 15-38-107, 15-38-108, 15-39-106, MCA

REASON: The department proposes amending ARM 42.2.503 to change references to the "Notice of Deficiency" and "Statement of Account (SOA)" to "Notice of Assessment," or "NOA," to correspond with the current use of these terms by the department. The department is changing the way it notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period and the SOA, will now serve as a summary of the amount due from a taxpayer for all tax periods.

42.2.504 OTHER PENALTIES - LATE PAY, FAILURE TO FILE, FRAUDULENT AND FRIVOLOUS (1) Applicable ~~late filing penalties and~~ late pay penalties must be calculated as set forth in 15-1-216, MCA.

(2) remains the same.

(3) A taxpayer who files, renders, or signs a false or fraudulent return or statement, or who supplies the department with false or fraudulent information, is subject to the additional ~~civil and criminal~~ penalties described in ~~15-30-2641~~ 15-1-216, MCA.

(4) A person who files a frivolous return or report under Title 15, MCA, is subject to the additional penalties described in 15-1-216, MCA. Frivolous positions, as defined in 26 U.S.C. 6702, that may apply to provisions of Title 15, MCA, can be found on the department's web site at revenue.mt.gov/frivolouspositions.

AUTH: 15-30-2620, MCA
IMP: 15-1-216, ~~15-30-2641,~~ 15-30-2642, MCA

REASON: The department proposes amending ARM 42.2.504 to implement House Bill (HB) 379, L. 2015, which revised how late filing and late payment penalties are calculated, revised the failure to file penalty, and added penalties for the filing of fraudulent or frivolous returns or reports.

The department proposes striking the term "late filing penalties" from (1), because late filing penalties are now going to be provided for separately and with greater detail in proposed New Rule III.

The department also proposes striking 15-30-2641, MCA, from the language in (3) and replacing it with 15-1-216, MCA, because it more completely captures the relevant changes enacted by HB 379. Section 15-30-2641, MCA, is also proposed to be stricken from the implementing section of the rule for the same reason. The term "civil and criminal" is also proposed to be stricken from (3) because the term is not described in 15-1-216, MCA, as it was in 15-30-2641, MCA.

The department further proposes adding new (4) to provide the location for federal information on how these penalties are calculated and what constitutes a frivolous position, as a helpful resource. The department intends to maintain a link to the most current IRS notice outlining frivolous positions on its web site at all times for convenient access by taxpayers.

The department also proposes expanding the rule title to include more specific detail about the types of penalties covered in the rule.

42.2.505 INTEREST ON UNPAID TAX (1) ~~Interest on unpaid tax must be calculated as set forth in 15-1-216, MCA~~ Unless otherwise provided by law, for all taxes, fees, and other assessments imposed under Titles 15 and 16, MCA, and administered by the department, interest attaches as outlined in 15-1-216, MCA.

(2) Exclusions to this rule are provided in 15-1-216, MCA.

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

(4) Interest on all outstanding taxes shall accrue at the rate in effect, as provided in 15-1-216, MCA, during each calendar year, regardless of when the tax was originally due or when the tax was assessed. The rate does not affect any interest accrued prior to the current tax year.

(5) For purposes of determining interest on the underpayment of estimates provided in 15-30-2512, MCA, the rate in effect on the original due date of the tax return shall be used. For example, a return for the 2015 tax year is due April 15, 2016, so the rate that became effective January 1, 2016, shall be used to compute interest on the underpayment of estimates.

AUTH: 15-1-201, 15-1-216, 15-30-2620, 15-31-501, 16-10-104, 16-11-103, MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 15-30-2512, 15-30-2602, 15-31-502, 15-31-503, 15-31-510, 16-1-409, 16-1-411, 16-11-143, MCA

REASON: The department proposes amending ARM 42.2.505 for two reasons.

First, the department has determined the language in another rule, ARM 42.2.306, to be somewhat duplicative with this rule and therefore proposes repealing and placing the relevant language from ARM 42.2.306 into (1), newly numbered (2), and new (4) and (5) of this rule instead, to combine the content of the two rules together in a single location. As a result of the combination of the two rules, the statutes referenced in the authoritative and implementing sections of ARM 42.2.306 are also proposed to be added to the relevant sections in this rule.

Second, the department proposes amending ARM 42.2.505 to implement House Bill (HB) 379, L. 2015, which revised how interest is calculated on outstanding tax balances. While a portion of the language in proposed new (4) was taken from ARM 42.2.306, the previous version of the language in that rule needed to be updated to reflect the changes enacted by HB 379. Specifically, interest was previously based on 8 percent or the federal interest rate established for the fourth quarter of the preceding tax year, whichever was less. However, HB 379 now provides that the interest rate be based on the federal interest rate established for the third quarter of the preceding tax year without limitation.

42.2.510 REVIEW OF ~~STATEMENT OF ACCOUNT (SOA) NOTICES~~ NOTICE OF ASSESSMENT (NOA) (1) This rule applies to all department actions where a ~~Statement of Account (SOA)~~ Notice of Assessment (NOA) or deficiency assessment, as those terms are defined in ARM 42.2.304, is issued. ~~A statement of~~

~~account~~ An NOA does not include centrally assessed appraisal reports and centrally assessed assessment notices which are covered by ARM 42.2.511.

(2) The department will provide notification ~~to the taxpayer~~ by mailing the ~~SOA~~ NOA to the taxpayer as prescribed in 15-1-211, MCA. Information provided on the ~~SOA~~ NOA shall advise the taxpayer of the requirement to file a Request for Informal Review ~~Form~~ (Form APLS101F) or a written objection to the ~~SOA~~ NOA with the department within 30 days from the date of the ~~SOA~~ NOA; and that failure to file a written objection within the 30 days shall be deemed an admission that ~~the taxpayer agrees~~ the debt stated in the ~~SOA~~ NOA is due and owing.

(a) If the taxpayer agrees with the ~~SOA~~ NOA, the matter is resolved upon compliance with, or acceptance of, the terms set forth in the ~~SOA~~ NOA.

(b) If the taxpayer does not pay or respond to the ~~SOA~~ NOA as required in (2), a letter will be sent to the taxpayer requesting payment within 30 days of the date of the letter or a Warrant for Distraint may be issued pursuant to 15-1-702, MCA.

(c) If payment ~~to the bill~~ is received, the matter is resolved.

(d) If payment ~~to the bill~~ is not received, the matter is forwarded to the department's ~~Accounts Receivable and~~ Collections Bureau ~~(ARC) process~~ for handling.

(3) The taxpayer must submit~~,~~ to the department~~,~~ an objection to the ~~SOA~~ NOA within 30 days of the date on the ~~SOA~~ NOA. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 30 days of the date of the ~~SOA~~ NOA. If it is sent by ~~electronic mail~~ e-mail, it must be sent within 30 days of the date of the ~~SOA~~ NOA. Failure to respond within the 30 days shall be deemed an admission that ~~the taxpayer concurs that they owe~~ the debt stated in the ~~SOA~~ NOA is due and owing.

(a) Objections may be submitted using ~~the~~ Form APLS101F or by a detailed letter stating the issues and amount of tax disputed.

(b) Electronic objections will be accepted. The e-mail address~~, soaobjections@mt.gov~~ is provided ~~on the SOA~~ in the appeal rights section of the ~~SOA~~ NOA.

(4) ~~A mutual~~ An extension to deadlines in this rule may be granted if both parties agree.

(5) The department shall review the objection and determine whether the department agrees or disagrees with the taxpayer's objections. The department shall mail written notice to the taxpayer advising the taxpayer of the department's determination within 30 days after receipt of the objection.

(a) If the department concurs with the taxpayer, the matter is resolved by withdrawing or revising the ~~SOA~~ NOA.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement in a Notice of Determination, notify the taxpayer of the dispute resolution procedures, and provide a copy of the Notice of Referral to the Office of Dispute Resolution ~~Form~~ (Form APLS102F). The department shall also notify the taxpayer that the taxpayer must submit ~~an~~ Form APLS102F or ~~detailed letter~~ any other written objection to the department within ~~15~~ 30 days of the date on the Notice of Determination from the department, and that the taxpayer will forfeit the right to a

hearing if the taxpayer fails to submit ~~the~~ Form APLS102F or ~~detailed letter~~ any other written objection within the ~~15-day~~ 30-day period.

(6) ~~Appeals shall be submitted to~~ If the taxpayer disagrees with the department's determination, the taxpayer must submit Form APLS102F or any other written objection within 30 days of the date on the Notice of Determination to request a hearing before the Office of Dispute Resolution (ODR). ~~if the taxpayer decides to appeal the department decision, as required in 15-1-211, MCA. This may be done by completing the APLS102F, or by providing a detailed letter and submitting either document to the department within 15 days of the date of the Notice of Determination from the department.~~ Appeals should be ~~sent~~ mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box ~~7701~~ 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 30 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within 30 days of the date of the department's Notice of Determination.

(a) Failure by the taxpayer to file an appeal ~~by the taxpayer~~ within ~~15~~ 30 days of the date of the department's Notice of Determination ~~by the department~~ shall be deemed an admission that ~~the taxpayer concurs that~~ the debt stated in the ~~SOA~~ NOA is due and owing.

(b) remains the same.

(c) If the taxpayer does not pay the bill, the matter will be referred to ~~ARC for collection~~ the department's Collections Bureau.

(7) Once the matter is submitted to the ~~Office of Dispute Resolution (~~ODR~~)~~, ARM 42.2.613 through 42.2.621 apply. The department has 180 calendar days from the referral date to resolve the matter.

(8) and (9) remain the same.

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, 15-36-322, 15-39-114, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-30-2602, 15-31-503, 15-35-112, 15-36-313, 15-36-314, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-39-104, MCA

REASON: The department proposes amending ARM 42.2.510 to change references to the Statement of Account (SOA) to Notice of Assessment (NOA) to correspond with the change to the way the department now notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. The SOA will now serve as a summary of the amount due from a taxpayer for all tax periods.

The department also proposes striking the soaobjections@mt.gov e-mail address from the rule because it is inconsistently titled with the change of the name of the department's first notice to the taxpayer. Additionally, the department proposes striking the e-mail address from the rule to avoid confusion as the department transitions from the old SOA to the new NOA.

The department proposes amending (5)(b) and (6) to extend the appeal deadline to the Office of Dispute Resolution (ODR) from 15 days to 30 days. The department proposes this amendment to align the appeal deadline to the ODR with

the 30-day deadline for objecting to an NOA from the department. By allowing taxpayers 30 days to file an appeal with the ODR, the dispute resolution process is more consistent and less likely to confuse taxpayers. The appeal deadline for centrally assessed companies, provided in ARM 42.2.511, will remain unchanged at 15 days to provide for short certification periods.

The department also proposes amending (6) to change the address for the ODR to its current P.O. box number and amending (6)(c) to change the name of the "Accounts Receivable and Collections" to its current name "Collections Bureau."

The department further proposes changing the name of the rule title to correspond with the amendments in the rule content.

42.2.511 REVIEW OF CENTRALLY ASSESSED PROPERTY APPRAISALS

(1) remains the same.

(2) Appraisal reports will be mailed to the taxpayer as provided in ARM 42.22.115. The appraisal report shall advise the taxpayer of the requirement to file a Request for Informal Review ~~Form~~ (Form CAB-8) or a written objection to the appraisal report within 15 days of the date of the appraisal report; and that failure to file a written objection within the 15 days shall be deemed an admission that ~~the taxpayer agrees~~ the appraisal is correct and final. If the taxpayer agrees with the appraisal, no response is required and the department will advise the local department field office and the taxpayer by issuing an assessment notice on or before July 1 of the year of assessment that the appraisal is final.

(3) Objections to an appraisal report shall be sent to the department within 15 days of the date on the appraisal report. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within 15 days of the date of the appraisal report. If it is sent by ~~electronic mail~~ e-mail, it must be sent within 15 days of the date of the appraisal report. Failure to respond within the 15 days shall be deemed an admission that the taxpayer concurs with the appraisal as stated in the appraisal report.

(a) Electronic objections will be accepted. The e-mail address~~, soaobjections@mt.gov,~~ is provided ~~on~~ in the appeal rights section of the appraisal report ~~in the appeal rights section~~.

(4) ~~Mutual extensions~~ Extensions may be granted if both parties agree. The parties may extend the time periods in this rule after the initial objection has been filed by completing an extension form or by detailed letter.

(5) and (5)(a) remain the same.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement by issuing a Notice of Determination and revised appraisal report, if applicable, notifying the taxpayer of the dispute resolution procedures and providing a copy of the Notice of Referral to the Office of Dispute Resolution for Centrally Assessed Companies ~~(APLS102F)~~ (Form CAB-9). The department shall also notify the taxpayer that the taxpayer must submit ~~the APLS102F~~ Form CAB-9 or ~~a detailed letter~~ any other written objection to the department within 15 days of the date on the ~~revised appraisal report~~ Notice of Determination, and that the taxpayer will forfeit the right to a hearing if the taxpayer fails to submit ~~the APLS102F~~ Form CAB-9 or ~~detailed letter~~ any other written objection within the 15-day period. Appeals should be ~~sent~~ mailed to the Department of Revenue, Office of Dispute

Resolution, P.O. Box ~~7701~~ 5805, Helena, Montana 59604, or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or any other generally accepted delivery service, the objection must be postmarked within 15 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within 15 days of the department's Notice of Determination. Failure to object within the 15 days shall be deemed an admission that the taxpayer concurs with the department's Notice of Determination.

(6) If the taxpayer decides to appeal the department's decision, the taxpayer shall:

(a) submit to the department Form CAB-9 or any other written objection within 15 days of the date ~~of~~ on the ~~revised appraisal report~~ Notice of Determination ~~forward the matter~~ to request a hearing before the Office of Dispute Resolution (ODR)~~, as required in 15-1-211, MCA, by completing the Form APLS102F, or by providing a detailed letter and submitting either document to the department~~; or

(b) upon mutual agreement of the parties, file an appeal with the ~~State Tax Appeal Board~~ state tax appeal board.

(7) If the matter is submitted to the ODR, ARM 42.2.613 through 42.2.621 apply. The department has 180 calendar days from the referral date to resolve the matter.

(8) remains the same.

(9) If the department fails to comply with the deadlines in this rule, the taxpayer may immediately refer the matter to the ODR.

AUTH: 15-1-201, 15-1-211, 15-23-108, MCA
IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, MCA

REASON: The department proposes amending ARM 42.2.511 to remove references to Form APLS102F and to add references to the new Form CAB-9. Proposed amendments to ARM 42.2.510, in this same notice, change the appeal deadline to the Office of Dispute Resolution from 15 days to 30 days, while this rule, which is specific to centrally assessed property, maintains the 15-day appeal deadline in centrally assessed company cases to provide for short certification periods. The proposed change to 30 days in ARM 42.2.510 means that Form APLS102F can no longer be used for centrally assessed company appeals. Therefore, the department has developed a new appeal form, titled Form CAB-9, specifically for use by centrally assessed companies that remain subject to the existing 15-day appeal deadline.

The department also proposes amending (5) and (6) to remove references to "revised appraisal report" and to add references to "Notice of Determination" to better reflect the department's current business practice.

The department further proposes amending (5)(b) to change the address for the Office of Dispute Resolution to its current P.O. box number.

42.3.102 PURPOSE AND APPLICATION (1) remains the same.

(2) The purpose of a penalty is to secure the proper and timely filing of a tax return or statement and the prompt payment of the tax by penalizing the delinquent

taxpayer. The purpose of interest on a tax is, in part, to compensate the state of Montana for the ~~cost of money~~ loss of interest incurred by the state while the tax is delinquent.

(3) and (4) remain the same.

(5) These rules apply only to penalty and interest on a tax which are due because the taxpayer failed to file a tax return or statement or failed to pay any tax on time, including tax assessed as a result of a deficiency assessment.

(6) These rules do not apply to any penalty or interest on a tax, due to any other failure to comply with the tax laws or rules. Specifically, these rules do not apply to penalty and interest on a tax ~~assessed as a result of a deficiency assessment or~~ assessed because of fraud or other violation of the law.

(7) and (8) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA
IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending ARM 42.3.102 to correct an error by striking the deficiency assessment language from (6) and adding it to (5) where it is more appropriate and more clearly aligns with the language in ARM 42.3.115 regarding the waiver of late payment penalties.

42.3.103 WAIVER OF INTEREST ON THE TAX (1) Except as otherwise provided by statute or rule, interest may be waived by the department for the same reasons or causes as provided in these rules for the waiver of penalties. ~~However~~

(2) Except as provided in (3), 15-1-206, MCA, forbids the waiver of more than ~~$100~~ $500 in interest on the tax per applicable tax period. Therefore, under no circumstances will interest on a tax in excess of ~~$100~~ $500 per applicable taxing period be waived by the department.

(3) A taxpayer that has entered into a payment plan with the department to make installment payments of delinquent taxes, interest, and penalties may receive, upon written request, an additional waiver of $100 of interest for each tax period if the taxpayer has complied with all of the conditions of the payment plan.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA
IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending ARM 42.3.103 to implement House Bill (HB) 379, L. 2015, which revised the amount of interest the department may waive for reasonable cause to $500. Prior to the revision, the department could not waive more than $100. The revision also allows for an additional waiver of interest when a taxpayer complies with the conditions and completes payment of a payment plan.

42.3.115 ~~REASONABLE CAUSE FOR~~ WAIVER OF LATE PAYMENT PENALTY ~~FOR AMENDED TAX RETURNS AND PAYMENT OF DEBT WITHIN 30 DAYS~~ (1) ~~Reasonable cause exists for waiver of the late payment penalty if the taxpayer has voluntarily filed an amended tax return and paid the tax.~~

~~(2) Reasonable cause exists for~~ An automatic waiver of the late payment penalty if the taxpayer pays tax and interest due when notified by the department within 30 days of the date of the department's first ~~Statement of Account (SOA)~~ Notice of Assessment (NOA). This ~~reasonable cause~~ automatic waiver provision only applies to the first ~~SOA~~ NOA sent to the taxpayer for the tax period. For example, the department mails monthly ~~SOAs~~ statements to taxpayers notifying them of ~~any~~ total tax, penalty, and interest due for all tax periods. The department will only ~~consider~~ apply an automatic waiver of the late payment penalty for the first ~~SOA~~ NOA mailed to the taxpayer for that tax period.

(2) An automatic waiver of the late payment penalty is permitted if the taxpayer, subject to the conditions outlined in 15-30-2512, MCA, files an individual income tax return and pays at least 90 percent of the tax, when due, for the current year.

(3) Subject to (5), waiver of the late payment penalty is allowed if the taxpayer:

(a) files an amended tax return and pays the tax and interest due with the amended return;

(b) pays tax and interest due, as a result of a deficiency, within 30 days of the date of the first deficiency notice; or

(c) establishes reasonable cause pursuant to ARM 42.3.105.

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

AUTH: 15-1-201, 15-1-217, MCA
IMP: 15-1-206, 15-1-216, MCA

REASON: The department proposes amending ARM 42.3.115 to implement House Bill (HB) 379, L. 2015, which revised when and how late payment penalties may be waived.

Specifically, the department proposes adding the language in new (2) to provide for an automatic waiver of late payment penalties when a taxpayer pays tax and interest within 30 days of the date of the first notice of a balance due for the period. A written request is still required if additional notices of assessment are issued for a secondary reason. For example, a taxpayer files a 2016 return and does not pay the tax due with the return. The department sends the taxpayer a Notice of Assessment (NOA) for the tax due, the taxpayer pays the balance within 30 days, and the department automatically waives the late payment penalty. Subsequently, the department audits the 2016 tax return and issues an NOA as a result of the audit findings. The taxpayer may still receive a waiver of late payment penalties if the balance due is paid within 30 days of the date of the notice because the audit is a separate event on the period; however, the department requires a written request for the waiver because it is not the first time the taxpayer received an NOA for the period.

The department also proposes changing the title of the rule to simply "Waiver

of Late Payment Penalty" because, as revised, the rule for waiving late pay penalties is being expanded to apply reasonable cause to more circumstances than the more restrictive existing title of the rule implies.

The department further proposes changing references to Statement of Account, or SOA, to Notice of Assessment, or NOA, to correspond with the change to the way the department now notices taxpayers of tax due. The NOA will serve as a bill to the taxpayer and the first notice of an assessment or balance due for a single tax period. The SOA will now serve as a summary of the amount due from a taxpayer for all tax periods.

42.14.204 PENALTIES AND INTEREST (1) Upon request, the late pay and late file penalty may be waived pursuant to ARM 42.2.506, 42.2.507, 42.3.101, 42.3.102, 42.3.103, 42.3.104, ~~42.3.105,~~ 42.3.106, ~~42.3.107,~~ 42.3.108, 42.3.109, 42.3.110, 42.3.111, 42.3.113, 42.3.115, and 42.3.120.

AUTH: 15-65-102, 15-68-801, MCA
IMP: 15-1-206, 15-65-115, 15-68-514, MCA

REASON: The department proposes amending ARM 42.14.204 to update the numbers for rules referenced within the rule that are proposed in this same notice to be transferred. Specifically, ARM 42.3.105 is proposed to be transferred and renumbered ARM 42.2.506, and ARM 42.3.107 is proposed to be transferred and renumbered ARM 42.2.507. The proposed amendment of this rule captures those changes to keep this rule current.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) remains the same.

(2) Original returns are Montana Forms 2, ~~2M,~~ 2EZ, and FID-3 only. Montana Form 2M applies only to tax year 2014 and prior years.

(3) and (4) remain the same.

(5) Late file and late pay penalties are assessed as required under 15-1-216 ~~and 15-30-2641~~, MCA, on the correct amount due on the original return.

(6) remains the same.

(7) If required by 15-1-216 ~~and 15-30-2641~~, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-2609 or 15-30-2602, MCA, as of the due date in (1).

(8) and (9) remain the same.

(10) When an original return for tax years beginning on or after January 1, 2010, is filed after the extended due date, and the department does not issue the requested refund within 45 days of receiving the return, interest as allowed under 15-30-2609, MCA, is payable from the date the return was filed. For example, an original return for tax year ~~2010~~ 2016 requesting a refund is filed November 12, ~~2011~~ 2017, and the department does not issue the refund until January 30, ~~2012~~ 2018. Refund interest is payable from the date the return was filed (November 12, ~~2011~~ 2017) until the date the refund was issued (January 30, ~~2012~~ 2018).

(11) remains the same.

AUTH: 15-30-2620, MCA
IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, ~~15-30-2641,~~ MCA

REASON: The department proposes amending ARM 42.15.315 to implement House Bill (HB) 379, L. 2015, which revised applicable penalties and interest. As a result of the addition of a penalty for filing a fraudulent return, in HB 379 the reference to 15-30-2641, MCA, is outdated and this rule now needs to refer directly to 15-1-216, MCA, instead. For this reason, the department proposes amending (5) and (7) to make this change and also proposes striking 15-30-2641, MCA, from the implementing section of the rule.

The department also proposes removing an outdated reference to Form 2M because the form was eliminated from the available filing options for individuals for tax periods beginning after December 31, 2014.

The department further proposes updating the calendar years in the example provided in (10) to align the example with more current tax years.

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) For tax years beginning after December 31, ~~2004~~ 2015, and before January 1, ~~2010~~ 2017, a ~~four~~ six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the following conditions are met on or before the due date of the return:

(a) through (5) remain the same.

~~(6) An additional two month extension is automatically allowed if the taxpayer has applied for an extension of time to file their federal income tax return and made the payments required for the initial extension described in (1).~~

~~(7) For tax years beginning on or after January 1, 2010, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the conditions of (1)(b) are met on or before the due date of the return.~~

~~(8)~~(6) For tax years beginning after December 31, 2011, and before January 1, 2017, an individual whose income tax liability for the current year is $200 or less, and who pays the entire tax liability and files his or her return on or before the extended due date provided for in 15-30-2604(3)(a), MCA, will not be charged interest or the penalties for late filing and late payment.

(7) For tax years beginning on or after January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

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

AUTH: 15-30-2620, MCA
IMP: 15-1-201, 15-1-216, 15-30-2604, 15-30-2651, MCA

REASON: The department proposes amending ARM 42.15.316 to implement House Bill (HB) 379, L. 2015, which revised when tax, interest, and penalty must be paid in order to receive an extension of time to file a return, as provided for in new (7) beginning on or after January 1, 2017.

The department is changing the years referenced in this rule to appropriately

reference tax years with extension due dates that have not yet expired. The rule is irrelevant with regard to tax years with extension dates that have passed. For this reason, the language in current (6) and (7) is proposed to be stricken and the language in new (7) is proposed to be added to provide more current information in the rule.

42.30.103 FIDUCIARY - INCOME TAX RETURN EXTENSIONS (1) ~~A~~ For tax periods beginning before January 1, 2017, a fiduciary is allowed an automatic six-month extension to file a Montana Income Tax Return for Estates and Trusts (Form FID-3) if:

(a) and (b) remain the same.

(2) For tax years beginning on or after January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

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

AUTH: 15-1-201, 15-30-2104, 15-30-2603, MCA
IMP: 15-30-2154, 15-30-2604, MCA

REASON: The department proposes amending ARM 42.30.103 to implement House Bill (HB) 379, L. 2015, which revised when tax, interest, and penalty must be paid in order to receive an extension of time to file a return as provided for in new (2) beginning on or after January 1, 2017.

The department proposes adding the language in (1) and new (2) to differentiate between the change in rules applicable to an automatic extension for periods prior to and beginning after January 1, 2017. For periods prior to January 1, 2017, multiple conditions need to be met to qualify for the automatic extension. In accordance with the revisions in HB 379, the only condition that needs to be met for an automatic extension is full payment of tax, and applicable penalties and interest, due with the return when filed. Therefore, the department proposes amending the rule to add this distinction.

42.30.107 FIDUCIARY - INTEREST AND PENALTIES (1) remains the same.

(2) If a fiduciary is required to file Form FID-3:

(a) late payment penalties and late filing penalties will be applied as provided in 15-1-216, MCA;

(b) for tax periods beginning before January 1, 2017:

(i) interest on unpaid tax will accrue from the original due date of the return as provided in 15-1-216, MCA, unless the current year's tax liability is $200 or less and the entire tax liability is paid by the extended due date; and

~~(c)~~(ii) underpayment interest, as provided in 15-30-2512, MCA, will accrue from the original due date of the return unless the tax liability is $200 or less and the entire tax liability is paid by the extended due date~~.~~; or

(c) for tax periods beginning on or after January 1, 2017:

(i) interest on unpaid tax will accrue from the original due date of the return as provided in 15-1-216, MCA; and

(ii) underpayment interest, as provided in 15-30-2512, MCA, will accrue from the original due date of the return.

(3) and (4) remain the same.

AUTH: 15-1-201, 15-30-2104, MCA
IMP: 15-1-216, 15-30-2512, 15-30-2604, MCA

REASON: The department proposes amending ARM 42.30.107 to implement House Bill (HB) 379, L. 2015, which revised how interest and penalties are accrued and applied to unpaid balances.

The proposed amendments add language in (2) to make the rule conform with the change enacted by HB 379, which eliminated the provision that interest would not accrue on unpaid tax if the estate or trust's tax liability was $200 or less and was paid by the extended due date of the return, for tax periods beginning on or after January 1, 2017.

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

42.3.105 (42.2.506) REASONABLE CAUSE ~~FOR WAIVER OF PENALTY AND INTEREST ON THE PENALTY~~ (1) and (2) remain the same.

(3) Examples of ~~"~~reasonable cause~~"~~ for failure by a taxpayer to file a tax return or report, ~~or~~ pay a tax on the date required by statute, or reply to a deficiency notice from the department include, but are not limited to:

(a) where it can be substantiated that the return or reply was mailed (whether or not the envelope bore sufficient postage) or electronically filed in time to reach the department in the normal course of business, within the legal period~~,~~ (if the due date is a Saturday, Sunday, or holiday, the following business day is within the legal period);

(b) and (c) remain the same.

(d) where the delinquency or delay was due to destruction by fire or other casualty of the taxpayer's place of business or business records; or

(e) remains the same.

(4) The examples stated in (3) are illustrations only. Other reasonable causes may exist for failure to properly and timely file the tax statement or return, ~~and~~ pay the tax, or reply to a deficiency notice. Each request for waiver will be considered on a case-by-case basis using the following criteria:

(a) the taxpayer's reasons address the penalty and interest that was assessed or the date a reply was due;

(b) the length of time between the event cited as a reason and the filing, ~~or~~ payment, or reply date negate the event's effect;

(c) through (f) remain the same.

(5) The following are examples which do not constitute reasonable cause ~~for waiver of penalty and interest~~ and do demonstrate neglect:

(a) remains the same.

(b) failure to file or reply because of advice by a professional tax preparer, attorney, or accountant;

(c) through (f) remain the same.

(g) the taxpayer started to prepare the return or reply in sufficient time, but found that because of complicated issues the taxpayer was unable to finish the return or reply.

(6) The examples stated in (5) are for illustrations only. Other circumstances may exist which do not constitute reasonable cause ~~for waiver of penalty and interest~~.

(7) and (8) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending and transferring ARM 42.3.105 to ARM Title 42, chapter 2, where it is more appropriate, because the concepts of reasonable cause apply to other administrative functions, not just the waiver of penalties and interest as found in ARM Title 42, chapter 3. Because reasonable cause may be considered in regard to the untimely response to deficiency notice or the untimely filing of a tax appeal, the department believes these concepts belong in chapter ARM Title 42, chapter 2, which contains the department's general rules.

The department proposes striking all but "reasonable cause" from the title of the rule because, as explained above, the amendments to the rule have expanded the scope of where reasonable cause may be a consideration.

As part of the transfer of this rule, the department also intends to add "reasonable cause" to the title of ARM Title 42, chapter 2, subchapter 5, to reflect the inclusion of this rule in that location.

42.3.107 (42.2.507) PROOF OF REASONABLE CAUSE OR LACK OF NEGLECT (1) The taxpayer who requests waiver of penalty and interest on a tax, or submits an untimely reply to a deficiency notice, has the burden of proving to the department that reasonable cause exists for the failure to timely file the tax statement and report, ~~and/or~~ timely pay the tax, or timely submit a reply to a deficiency notice. The taxpayer also must prove the taxpayer was not guilty of neglect when the taxpayer failed to timely file the tax statement and report, ~~and/or~~ timely pay the tax, or timely submit a reply to a deficiency notice.

(2) remains the same.

(3) The simple statement that "reasonable cause" existed for the failure to timely file the tax statement or return, ~~and/or~~ to timely pay the tax, or timely submit a reply to a deficiency notice, is never sufficient to receive a waiver or other consideration. All requests for waiver of penalty and interest or untimely replies to a deficiency notice must include the facts the taxpayer believes demonstrate reasonable cause and lack of neglect.

AUTH: 15-1-201, 15-30-2620, 15-31-501, 15-35-122, 15-53-155, 15-60-104, 15-65-102, MCA

IMP: 15-1-206, 15-1-216, 15-30-2641, 15-31-502, 15-35-105, 15-37-108, 15-38-107, 15-53-155, 15-59-106, 15-60-208, 15-61-205, 15-65-115, MCA

REASON: The department proposes amending and transferring ARM 42.3.107 to ARM Title 42, chapter 2, where it is more appropriate, because the concepts of reasonable cause apply to other administrative functions, not just the waiver of penalties and interest as found in ARM Title 42, chapter 3. Because reasonable cause may be considered in regard to the untimely response to deficiency notice or the untimely filing of a tax appeal, the department believes these concepts belong with the department's general rules.

As part of the transfer of this rule, the department also intends to add "reasonable cause" to the title of ARM Title 42, chapter 2, subchapter 5 to reflect the inclusion of this rule in that location.

6. The department proposes to repeal the following rules:

42.2.306 PENALTY AND INTEREST

AUTH: 15-1-201, 15-1-216, 16-10-104, 16-11-103, MCA
IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 15-30-2512, 16-1-409, 16-1-411, 16-11-143, MCA

REASON: The department proposes repealing ARM 42.2.306 because it has determined that the language in the rule is somewhat duplicative with ARM 42.2.505, and therefore proposes combining the rules together as indicated in the proposed amendment of ARM 42.2.505 in this same notice.

In addition to the repeal of this rule and corresponding amendment of ARM 42.2.505, the department intends to update the title of ARM Title 42, chapter 2, subchapter 5 to include the term "Reasonable Cause," to reflect the updated content of the subchapter.

42.15.320 DEFICIENCY NOTICES AND PAYMENTS

AUTH: 15-30-2620, MCA
IMP: 15-30-2602, 15-30-2604, MCA

REASON: The department proposes repealing ARM 42.15.320 and incorporating the language from the rule into proposed New Rule I, titled "Adjustments to Penalty and Interest," which will explain the department's process for applying penalties and interest to an assessment of tax when a deficiency is discovered, as proposed to be adopted in this same notice.

The department's intent with the repeal of this rule and including the relevant information in the proposed new rule is to better organize similar subject matter together and locate it within a single rule as opposed to having the related information broken up into multiple chapters of ARM Title 42. The department further intends to place the new rule in ARM Title 42, chapter 2, to locate it together with the other penalty and interest related rules to make the information easier for

taxpayers to locate.

42.23.605 PENALTY AND INTEREST

AUTH: 15-31-501, MCA
IMP: 15-1-216, 15-1-222, 15-31-502, 15-31-503, 15-31-510, MCA

REASON: The department proposes repealing ARM 42.23.605 and incorporating the language from the rule into proposed New Rule I, titled "Adjustments to Penalty and Interest," which will explain the department's process for applying penalties and interest to an assessment of tax when a deficiency is discovered, as proposed to be adopted in this same notice.

The department's intent with the repeal of this rule and the adoption of the new rule is to better organize similar subject matter together and locate it within a single rule as opposed to having the related information broken up into multiple chapters of ARM Title 42. The department further intends to place the new rule in ARM Title 42, chapter 2, to locate it together with the other penalty and interest related rules to make the information easier for taxpayers to locate.

7. 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 October 27, 2016.

8. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

9. 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 7 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.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 379, L. 2015, Representative Greg Hertz, was contacted by letter on May 6, 2016, and subsequently contacted by letter on August 25, 2016.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, transfer and amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 7.

| | |
|---|---|
| /s/ Laurie Logan | /s/ Mike Kadas |
| Laurie Logan | Mike Kadas |
| Rule Reviewer | Director of Revenue |

Certified to the Secretary of State September 12, 2016.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through III and amendment of ARM 4.16.201 and 4.16.509 pertaining to growth through agriculture (GTA) | ) ) ) ) ) | CORRECTED NOTICE OF ADOPTION AND AMENDMENT |

TO: All Concerned Persons

1. On May 6, 2016, the Department of Agriculture published MAR Notice No. 4-16-233 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 790 of the 2016 Montana Administrative Register, Issue Number 9. On July 22, 2016, the department published the notice of adoption and amendment at page 1254 of the 2016 Montana Administrative Register, Issue Number 14.

2. A rule number was referenced incorrectly in New Rule I (4.16.104) on the proposal notice. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

4.16.104 COUNCIL REVIEW PROCESS PRIOR TO LOAN OR GRANT

(1) and (1)(a) remain as adopted.

(b) review all complete applications and the accompanying materials required by ARM ~~4.15.503~~ 4.16.503;

(c) through (3) remain as adopted.

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on September 30, 2016.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State September 12, 2016

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 8.119.101 pertaining to the Tourism Advisory Council | ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On August 5, 2016, the Department of Commerce published MAR Notice No. 8-119-148 pertaining to the proposed amendment of the above-stated rule at page 1295 of the 2016 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ Marty Tuttle
Marty Tuttle
Rule Reviewer

/s/ Douglas Mitchell
Douglas Mitchell
Deputy Director
Department of Commerce

Certified to the Secretary of State September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the adoption of a temporary emergency rule closing the Canyon Creek Wildlife Management Area in Lewis and Clark County | ) ) ) ) | NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE |

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of a temporary emergency rule:

(a) The Rattlesnake Wildfire is burning in or near the Canyon Creek Wildlife Management Area.

(b) Persons recreating in the Canyon Creek Wildlife Management Area would be subjected to erratic and unpredictable fire conditions posing a danger of:

(i) becoming surrounded and trapped by the fire;

(ii) becoming a potential burden to rescue and fire crews; or

(iii) death.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 18 of the 2016 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 7, 2016, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The temporary emergency rule is effective September 2, 2016, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I CANYON CREEK WILDLIFE MANAGEMENT AREA TEMPORARY EMERGENCY CLOSURE (1) The Canyon Creek Wildlife Management Area is located in Lewis and Clark County.

(2) The Canyon Creek Wildlife Management Area is closed to all public occupation, hunting, fishing, and recreation.

(3) This rule is effective as long as there is fire threatening the Canyon Creek Wildlife Management Area.

(4) This rule will expire as soon as the department determines the Canyon Creek Wildlife Management Area is again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Signs restricting use of the Canyon Creek Wildlife Management Area will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-303, MCA
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jenny Sika, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; or e-mail jsika@mt.gov. Any comments must be received no later than October 21, 2016.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State September 2, 2016.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 17.56.101, 17.56.201, 17.56.202, 17.56.301, 17.56.302, 17.56.304, 17.56.305, 17.56.309, 17.56.312, 17.56.401, 17.56.402, 17.56.502, 17.56.503, 17.56.505, 17.56.506, 17.56.601, 17.56.603 17.56.604, 17.56.605, 17.56.607, 17.56.701, 17.56.702, 17.56.703, 17.56.705, 17.56.901, 17.56.902, 17.56.1301, 17.56.1303, 17.56.1304, 17.56.1305, 17.56.1306, 17.56.1308, 17.56.1309, 17.56.1401, 17.56.1402, 17.56.1403, 17.56.1404, 17.56.1405, 17.56.1406, 17.56.1407, 17.56.1408, 17.56.1409, 17.56.1410, 17.56.1421, 17.56.1422, 17.56.1502, and 17.56.1503, pertaining to underground storage tanks, petroleum and chemical substances, and the repeal of ARM 17.56.1002, 17.56.1003, 17.56.1004, and 17.56.1005, pertaining to delegation to local governments | NOTICE OF AMENDMENT AND REPEAL<br><br>(UNDERGROUND STORAGE TANKS) |

TO: All Concerned Persons

1. On July 22, 2016, the Department of Environmental Quality published MAR Notice No. 17-385 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1182, 2016 Montana Administrative Register, Issue Number 14.

2. The department has amended ARM 17.56.101, 17.56.201, 17.56.202, 17.56.301, 17.56.302, 17.56.304, 17.56.305, 17.56.309, 17.56.312, 17.56.401, 17.56.402, 17.56.502, 17.56.503, 17.56.505, 17.56.601, 17.56.603 17.56.604, 17.56.605, 17.56.607, 17.56.701, 17.56.702, 17.56.703, 17.56.705, 17.56.901, 17.56.902, 17.56.1301, 17.56.1303, 17.56.1304, 17.56.1305, 17.56.1306, 17.56.1308, 17.56.1309, 17.56.1401, 17.56.1402, 17.56.1403, 17.56.1404, 17.56.1405, 17.56.1406, 17.56.1407, 17.56.1408, 17.56.1409, 17.56.1410, 17.56.1421, 17.56.1422, 17.56.1502, and 17.56.1503, and repealed ARM 17.56.1002, 17.56.1003, 17.56.1004, and 17.56.1005 exactly as proposed.

3. The department has amended ARM 17.56.506, as proposed, but with the following change, stricken matter interlined:

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department ~~and the implementing agency~~ within the specified timeframes and in the following manner:

(a) through (b)(iii) remain as proposed.

4. The following comment was received and appears with the department's response:

COMMENT NO. 1: Throughout the rule package, the department is proposing to remove the language "the implementing agency" in all sections of the referenced rules as described in the reason section for ARM 17.56.305. In the first paragraph of ARM 17.56.506, "the implementing agency" was not stricken.

RESPONSE: The department agrees that the "the implementing agency" should be stricken from ARM 17.56.506(1) and so modifies the rule.

5. No other comments were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

*/s/ John F. North*
JOHN F. NORTH
Rule Reviewer

BY: */s/ Tom Livers*
TOM LIVERS
Director

Certified to the Secretary of State, September 12, 2016.

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

| | | |
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| In the matter of the amendment of ARM 24.174.501 examination for licensure as a registered pharmacist | ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On August 5, 2016, the Board of Pharmacy (board) published MAR Notice No. 24-174-67 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1345 of the 2016 Montana Administrative Register, Issue No. 15.

2. On August 26, 2016, a public hearing was held on the proposed amendment of the above-stated rule in Helena. One comment was received by the September 2, 2016, deadline.

3. The board has thoroughly considered the comment received, and the board's response is as follows:

COMMENT 1: One commenter expressed support for the proposed amendments.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

4. The board has amended ARM 24.174.501 exactly as proposed.

BOARD OF PHARMACY
STARLA BLANK, RPh
PRESIDENT

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

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

Certified to the Secretary of State September 12, 2016

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.177.2105 continuing education and the adoption of NEW RULE I dry needling | ) ) ) ) | NOTICE OF AMENDMENT AND ADOPTION |

TO: All Concerned Persons

1. On April 8, 2016, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-33 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 576 of the 2016 Montana Administrative Register, Issue No. 7.

2. On May 5, 2016, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Numerous comments were received by the May 12, 2016, deadline.

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

NEW RULE I DRY NEEDLING

OPPONENTS:

COMMENT 1: Several commenters opposed the proposed new rule, claiming it would illegally expand the scope of practice for physical therapists. The commenters asserted that the physical therapist practice act does not "clearly and specifically" authorize physical therapists to perform any invasive procedure, as required by 2-4-305(3), MCA, particularly regarding the insertion of needles. The commenters argued that only the legislature can authorize such an expansion of an occupation's scope of practice.

RESPONSE 1: The board concluded that statutory authority already exists for the board to adopt NEW RULE I as proposed. Section 2-4-305(3), MCA, requires the board to clearly and specifically list the "subject matter of the rule," rather than each procedure for every profession. Section 37-11-201(1), MCA, authorizes the board to adopt rules to implement the physical therapist practice act. Section 37-11-104(2), MCA, describes physical therapy treatment to employ, "for therapeutic effects, physical measures, activities and devices, for preventative and therapeutic purposes, exercise, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound."

NEW RULE I (1) clearly and specifically provides "Dry needling is a manual therapy technique that uses a filiform needle as a mechanical device to treat

conditions within the scope of physical therapy practice." And importantly, 37-13-104(2), MCA (acupuncturist practice act), specifically requires that ". . . and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license."

In addition to the statutory foundation, there is also precedent. The board notes that physical therapists have been performing dry needling all over the world for 25 years, including Montana. Physical therapists have also been performing needle Nerve Conduction Studies (NCS) and Electromyography (EMG) since the 1960s. And in 1982, the American Physical Therapy Association (APTA) House of Delegates approved board certification in clinical electrophysiology, which includes needles. Additionally, physical therapists perform various forms of debridement, some of which utilize medical tools and are invasive.

COMMENT 2: One commenter likewise opposed the rule because of procedure and timing, suggesting physical therapists are capable of performing dry needling, but the board should seek specific statutory authority from the legislature before adopting a new rule, like it did for topical medications.

RESPONSE 2: Similar to RESPONSE 1, the board determined that additional legislation is not necessary to recognize that dry needling is within the scope of practice for physical therapists. The new rule is necessary simply to guide the practice to ensure the protection of public health and safety.

COMMENT 3: Several commenters opposed defining dry needling as a "manual therapy," because no accepted medical definition of that term includes penetration of the skin and insertion of needles into underlying tissue and muscle. The commenters believe that only physicians, nurses, phlebotomists, and acupuncturists are specifically authorized to use needles to penetrate the skin.

RESPONSE 3: In the spirit of compromise, the board agrees with the suggestion and is amending the rule to remove the words "manual therapy" from the proposed definition of dry needling.

COMMENT 4: One commenter opposed the new rule, because the original rule proposal referred to the procedure as "trigger point dry needling," while the current proposal refers to it only as "dry needling." The commenter suggested that removing the words "trigger point" is even a further expansion of a physical therapist's scope of practice.

RESPONSE 4: Because the board intends for the updated language to not only standardize regulation nationwide, but also utilize a definition that protects the public as medical technology progresses, the board is not amending per the comment.

COMMENT 5: Several commenters suggested the board should require licensees who perform dry needling to submit proof of passing a clean needle technique exam before performing dry needling.

RESPONSE 5: Because (3) currently contains provisions to ensure clean needle techniques, the board is not further amending per the comment. Additionally, dry needling courses include training in clean needle techniques. Importantly, physicians, physician assistants, and nurses do not have to pass such an exam. The board concluded there is no reason to hold physical therapists to a higher standard and the proposed language suffices to protect public health and safety.

COMMENT 6: Numerous commenters opposed the lack of standards for teaching dry needling and asserted that, while the new rule requires practitioners to obtain the necessary educational foundation, it does not establish standards for teaching dry needling. Several commenters reported that physical therapists appeared to be performing dry needling on patients Monday morning, after receiving only one weekend "crash course," of ten to thirty hours in length. The commenters claimed public safety is at risk because there are no established independent minimum exams to prove competency in either teaching or practicing dry needling.

RESPONSE 6: The board does not believe that completely untrained individuals are taking one crash course in dry needling, and notes that physical therapists are licensed health care providers with seven years of higher education in anatomy, physiology, biomechanics, pharmacology, and more. Increasingly, physical therapy schools are including dry needling patient selection, indications, contraindications, and how to handle adverse reactions in their curricula. For those already graduated, national companies like Kinetacore and others provide continuing education from instructors who have at least four years of experience (two years as an assistant instructor after practicing dry needling for two years).

It is beyond the scope of this board to accredit providers of continuing education. However, (3) requires that licensed physical therapists who perform dry needling are able to demonstrate they have completed training in dry needling that must meet the American Physical Therapy Association (APTA) guidelines or the Federation of State Boards of Physical Therapy (FSBPT) standards. Both documents include standards and qualifications for continuing education providers.

COMMENT 7: Numerous commenters opposed the new rule claiming dry needling and acupuncture are the same thing, and asserted there is a 90+ percent correspondence between dry needling points and acupuncture points. The commenters stated that if physical therapists want to use filiform needles, they should have to get acupuncture licenses.

RESPONSE 7: The board concluded that dry needling and acupuncture are different procedures in terms of historical, philosophical, indicative, and practical context. Acupuncture is based on preserving the ancient theories, principles, and tenets of traditional Chinese medicine, whereas physical therapy is based on theories, principles, and tenets of current, Western medicine. Contemporary physical therapy curriculum does not include traditional Chinese medicine philosophies, nor do physical therapists use traditional acupuncture theories or terminology in daily practice.

The board notes that physical therapists are not attempting to perform acupuncture, nor are they leading clients to believe dry needling is the same as acupuncture. Rather than alter the flow of a person's energy, as in acupuncture, physical therapists use dry needling to stimulate musculoskeletal tissue with the goal of decreasing tissue tone to improve mobility and/or decrease pain, to penetrate the skin, and target specific anatomical structures.

COMMENT 8: Several commenters opposed the rule claiming physical therapists performing dry needling threaten public safety, because they are more likely than acupuncturists to cause potentially harmful side effects – such as pneumothorax, puncturing another large organ (heart, kidney, liver, bladder), or a major blood vessel – because acupuncturists have been practicing for thousands of years, while physical therapists have only been practicing for twenty or so.

RESPONSE 8: The board notes that, although physical therapists have been performing dry needling for more than twenty years, no data, documentation, or articles were submitted to justify the claim that it represents an unreasonable threat to public safety. The board specifically acknowledges the "Brady" study, which included 39 physiotherapists in Ireland and reported 1,463 mild adverse events (AE) in 7,629 treatments with trigger point dry needling (19.18 percent). Common mild AEs included bruising (7.55 percent), bleeding (4.65 percent), pain during treatment (3.01 percent), and pain after treatment (2.19 percent). Uncommon mild AEs were aggravation of symptoms (0.88 percent), drowsiness (0.26 percent), headache (0.14 percent), and nausea (0.13 percent). Rare, mild AEs included fatigue (0.04 percent), altered emotions (0.04 percent), shaking, itching, claustrophobia, and numbness, all 0.01 percent. Critically, zero significant AEs were reported, meaning the estimated upper risk rate for significant AEs was less than or equal to 0.04 percent. The board notes the contrast between that risk (0.04 percent), and the risk associated with taking aspirin (18.7 percent), Ibuprofen (13.7 percent), and Paracetamol (Acetaminophen) (14.5 percent).

COMMENT 9: Several commenters opposed the rule stating they have no confidence physical therapists can address even the mild adverse events possibly caused by dry needling, let alone potential serious adverse events. Examples of serious adverse events include punctured lungs, organs and arteries; bruising, infection and fainting; nausea, dizziness, and blindness; sharp pain, lameness and leaking lumbar spinal fluid; paralysis, and death.

RESPONSE 9: The board notes that, similar to RESPONSE 8, dry needling is not a documented, unreasonable threat to public health and safety. Physical therapists are educated and trained to first and foremost, avoid serious adverse events related to dry needling. Additionally, their education and training also enable them to address both the very rare significant, adverse events, as well as the more common but still rare, mild adverse events associated with dry needling.

COMMENT 10: One commenter suggested NEW RULE I is unnecessary, because physical therapists can release trigger points without having to use needles.

RESPONSE 10: Although true in many cases, the board notes that the intent of the new rule is not to judge the efficacy or adequacy of dry needling. Whether a particular procedure is appropriate and will lead to a successful outcome is for the patient and provider to decide. The board's primary interest is to ensure that qualified physical therapists who provide dry needling, do so in a manner that does not present an unreasonable risk.

COMMENT 11: Several commenters opposed NEW RULE I because of what they anticipate to be negative economic impacts on their small businesses. The commenters stated that the new rule will benefit physical therapists at the expense of acupuncturists who invested resources to learn this procedure, and now the board is authorizing competition.

RESPONSE 11: The board's primary concern is to protect public safety. Further, the board may not restrict trade merely to shield a particular profession from competition. The board's purpose in adopting the new rule is to ensure that physical therapists who provide dry needling treatments on Montana patients are competent, and do not pose an unreasonable risk. The board has no economic interest in this proposal.

PROPONENTS:

COMMENT 12: One commenter, as someone involved in this rulemaking process since before the joint meetings with the Board of Medical Examiners in 2011, supported the proposed new rule, stated the board has done its due diligence to make sure the rule was appropriate, followed administrative procedures, and appropriately considered public feedback. The commenter opined that there is no evidence to show physical therapists performing dry needling represent an unreasonable threat to public safety, and therefore, no legitimate reason to delay the adoption of NEW RULE I.

RESPONSE 12: The board agrees with the comments.

COMMENT 13: One commenter supported the new rule, and opposed specific continuing education and certification for dry needling, saying the board would be unreasonable to expect practitioners to obtain a new license every time they learn a new procedure, or gain a new skill within their trade. Physical therapists are educated professionals adding a skill, not seeing a patient for the first time. As an educator, the commenter knows how painstakingly instructors create curriculums, specifically to avoid injury and death.

RESPONSE 13: The board agrees with the comments.

COMMENT 14: Numerous commenters supported the proposed new rule after learning about opponents who suggest physical therapists are insufficiently trained to perform dry needling. Some were personally offended, saying that understanding

human anatomy is essential to patient safety. Physical therapists are not just random people off the street with one weekend crash course and then sticking needles in people on Monday morning. They receive seven years of undergraduate, graduate, and doctoral level education, and their training includes thousands of hours in human anatomy, physiology, and pathology; biology, biomechanics, and kinesiology; neuroscience, pharmacology, and the origin, insertion, action and innervation of each muscle.

RESPONSE 14: The board agrees with the comments.

COMMENT 15: Several commenters supported the rule because, in addition to physical therapy schools around the nation – including the University of Montana – beginning to incorporate dry needling into their curriculums, physical therapists are receiving training through continuing education by private companies, including Kinetacore, Myopain Seminars, and American Academy of Manipulative Therapy; Intramuscular Stimulation (IMS), and Evidence in Motion (EIM). Kinetacore, for example, includes hands-on training, written and practical examinations in indications for dry needling success, contraindications, potential risks, proper hygiene, proper use of and disposal of needles, appropriate selection of patients, and more.

RESPONSE 15: The board agrees with the comments.

COMMENT 16: Numerous commenters supported the rule proposal because, as practitioners, they have achieved good results using dry needling on patients in Montana, as have their colleagues around the world. They particularly support the rule because although the procedure is minimally invasive, ensuring physical therapists follow certain minimum standards is appropriate to ensure public health and safety.

RESPONSE 16: The board agrees with the comments.

COMMENT 17: Numerous commenters supported the rule proposal because, as patients, physical therapists have performed dry needling on them to successfully:

- Treat low back and shoulder spasms, including those related to Multiple Sclerosis (MS);
- Decrease neck, back, arm, upper leg and knee pain;
- Decrease chronic pain; chronic pain caused by fibromyalgia and fatigue;
- Increase functioning and decrease pain for an above-the-leg amputee;
- Prevent pain of a mixed martial arts fighter;
- Treat rock climbing injuries;
- Release muscle tension;
- Increase range of motion;
- Treat plantar fasciitis;
- Reduce the pain of migraine headaches;

- Treat radiculo-neuropathic myofascial pain (RMNP)(pain stemming from nerve roots);
- Decrease dependence on prescription pain killers; decrease myofascial restrictions (friction within the fascia/"wax paper" effect); and treat
- Neurovascular impairments;
- Overuse injuries;
- TMJ pain;
- Neuropathies (nerve damage);
- Adducer and hip flexor muscle;
- Scar tissue; and
- Balance affected by a big toe injury.

RESPONSE 17: The board agrees with the comments.

COMMENT 18: Numerous commenters supported the rule proposal because, as patients, they recognize dry needling and acupuncture are different. At no time did their physical therapists represent that dry needling treatment was acupuncture.

RESPONSE 18: The board agrees with the comments.

COMMENT 19: Several commenters supported the rule proposal because, as Montana doctors, they and most of their colleagues are comfortable referring patients to physical therapists for dry needling, although hands-on training and an oral exam demonstrating technical proficiency should be part of the rule.

RESPONSE 19: The board agrees with the comments.

COMMENT 20: One commenter supported the proposal because, statistically, the percentage of significant adverse effects from trigger point dry needling is .04 percent, which is less than the adverse effects from taking aspirin or ibuprofen.

RESPONSE 20: The board agrees with the comments.

COMMENT 21: Several comments conveyed that all Kinetacore lead instructors have a minimum of two years of functional dry needling assistant teaching and a minimum of two years practicing dry needling before becoming an assistant instructor.

RESPONSE 21: The board agrees with the comments.

COMMENT 22: Several commenters supported the rules, saying acupuncturists do not own the exclusive right to use a needle to provide health care any more than a carpenter owns the exclusive right to use a hammer or wrench to provide home care. Physical therapists treat muscles not meridians or energy flows.

RESPONSE 22: The board agrees with the comments.

COMMENT 23: A commenter from a small Montana community supported the proposed new rule because if patients cannot access dry needling in Montana, they will travel to Idaho or Washington.

RESPONSE 23: The board agrees with the comments.

COMMENT 24: Numerous commenters supported the proposed new rule because regulating dry needling will expand access to healthcare, by expanding license portability. Specifically, more and more states (31 to date) are regulating dry needling. Licensees don't want to get left behind and believe the proposed new rule will allow Montana to attract higher-qualified providers.

RESPONSE 24: The board agrees with the comments.

COMMENT 25: Several commenters supported the rule proposal, saying that regulators cannot just bury their heads in the sand and act like physical therapists are not already performing dry needling. Physical therapists are currently performing dry needling, because they are being trained to perform it in physical therapy schools and by continuing education providers. Because physical therapists are qualified to perform dry needling, the commenters opined that it is likely illegal for the board to prohibit the procedure. Additionally, because the procedure is minimally invasive, the board would be irresponsible to ignore the practice.

RESPONSE 25: While taking no position on the legal interpretations, the board is only making one minor amendment to the proposed rule, as the board otherwise agrees with the commenters.

COMMENT 26: Multiple health care providers supported the proposed new rule because the healthcare community should seek alternative forms of pain control, including dry needling, instead of defaulting to opioid pain medications.

RESPONSE 26: The board agrees with the comments.

COMMENT 27: One commenter supported the new rule, and suggested the board add language making it unprofessional conduct when a licensee does not comply with the educational requirements.

RESPONSE 27: The suggested amendment exceeds what can be accomplished in a final notice. The board may consider the change in a future rules project.

4. The board has amended ARM 24.177.2105 exactly as proposed.

5. The board has adopted NEW RULE I (ARM 24.177.413) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I DRY NEEDLING (1) Dry needling is a skilled ~~manual therapy~~ technique performed by a physical therapist using a mechanical device, filiform needles, to penetrate the skin and/or underlying tissues to affect change in body structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disability.

(2) through (6) remain as proposed.

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-11-101, 37-11-104, MCA

BOARD OF PHYSICAL THERAPY EXAMINERS
BRIAN MILLER, PRESIDING OFFICER

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

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

Certified to the Secretary of State September 12, 2016

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

| | | |
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| In the matter of the amendment of ARM 37.87.1803, 37.106.1955, and 37.106.1961 pertaining to the removal of Montana Child and Adolescent Needs and Strengths (CANS) assessments for Mental Health Centers (MHC) involving Comprehensive School and Community Treatment (CSCT) | ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On July 8, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-755 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1151 of the 2016 Montana Administrative Register, Issue Number 13.

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

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

COMMENT #1: A few commenters expressed support for the removal of the Child and Adolescent Needs and Strengths (CANS) assessment. The commenters stated that it is too lengthy and they did not find it a useful tool for informing the practice or measuring outcomes. In addition, the commenters stated that the technical difficulties with the electronic CANS system created additional problems. One of the commenters further advocated for each agency to choose their own tool to measure outcomes. However, if the state determines all agencies must be consistent, they recommended the use of the Partners for Change Outcome Management System assessment.

RESPONSE #1: The department appreciates the commenters' support and will continue to solicit feedback from providers in regards to the development of new policies pertaining to outcome measures in the future if a consistent outcome measure is pursued.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the adoption of NEW RULE I and the amendment of ARM 37.5.301 pertaining to formal and informal hearing and appeal procedures concerning the Children's Mental Health Bureau | ) ) ) ) ) ) | NOTICE OF ADOPTION AND AMENDMENT |

TO: All Concerned Persons

1. On July 8, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-756 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1156 of the 2016 Montana Administrative Register, Issue Number 13.

2. The department has adopted the following rule as proposed: New Rule I (37.5.114).

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.5.301 APPLICABILITY (1) This rule and ARM 37.5.304, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337 apply only to hearings in the program areas specified in ARM 37.5.101, 37.5.103, 37.5.105, 37.5.107, 37.5.109, 37.5.113, 37.5.114, 37.5.115, 37.5.117, 37.5.119, 37.5.121, 37.5.123, 37.5.125, 37.5.127, 37.5.129, 37.5.131, and 37.5.301, ~~and [NEW RULE I],~~ and must not be construed to grant a right to hearing in any other matter.

(2) remains as proposed.

(3) Where a right to a hearing is granted in ARM 37.5.103, 37.5.105, 37.5.107, 37.5.109, 37.5.113, 37.5.114, 37.5.115, 37.5.117, 37.5.119, 37.5.121, 37.5.123, 37.5.125, 37.5.127, and 37.5.129, ~~and [NEW RULE I],~~ or any other rule of the department, the right to hearing is not absolute but is subject to all applicable provisions of these rules and other applicable law.

AUTH: 50-1-202, 53-2-201, 53-6-113, MCA
IMP: 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-1-103, 52-2-111, 52-3-406, 53-2-201, 53-2-904, 53-4-202, 53-4-212, 53-4-606, 53-4-1004, 53-6-111, 53-6-113, 53-6-131, 53-6-402, 53-20-305, 53-24-208, 69-8-412, MCA

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

COMMENT #1: Upon review of the original proposed MAR notice, it was discovered that New Rule I (37.5.114) was inadvertently placed in the wrong location. ARM 37.5.114 should have been placed in numerical order in the list of rules in (1) and (3).

RESPONSE #1: The department is amending the proposed notice by moving ARM 37.5.114 from the end of the list and placing it after ARM 37.5.113 in (1) and in (3).

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

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

| | | |
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| In the matter of the amendment of ARM 37.34.3005 and 37.86.3607 pertaining to the reimbursement of services provided to persons who are recipients of developmental disabilities services funded by Medicaid | ) ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On August 5, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-758 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1354 of the 2016 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to July 1, 2016. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/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 September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.36.604 pertaining to updating poverty guidelines to 2016 levels | ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On June 17, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-759 pertaining to the proposed amendment of the above-stated rule at page 1048 of the 2016 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to February 8, 2016. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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

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

Certified to the Secretary of State September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I, the amendment of ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.206, and 37.80.301, and the repeal of ARM 37.80.305 and 37.80.306 pertaining to child care assistance provided through the Best Beginnings Child Care Scholarship (BBCCS) Program | ) | NOTICE OF ADOPTION, AMENDMENT, AND REPEAL |

TO: All Concerned Persons

1. On August 5, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-762 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1359 of the 2016 Montana Administrative Register, Issue Number 15.

2. The department has adopted New Rule I (37.95.103), as proposed. The department has amended and repealed the above-stated rules as proposed.

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

COMMENT #1: The department received a comment regarding the manual changes incorporated by reference in ARM 37.80.101. The commenter points out some inconsistent use of the term "graduated phase-out" for "graduated eligibility," conflicting information about the applicable Federal Poverty Level percentage for graduated eligibility, and a cross-reference error.

RESPONSE #1: The department agrees with the commenter and will correct these typographical errors in the manual.

4. These rule amendments are effective September 30, 2016.

/s/ Geralyn Driscoll
Geralyn Driscoll, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.85.406, 37.86.2803, 37.86.2806, 37.86.2907, 37.86.2916, 37.86.4401, and 37.86.4412 pertaining to hospital reimbursement and FQHC and RHC definitions | ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On July 22, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-765 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1234 of the 2016 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 37.85.406, 37.86.2803, 37.86.2806, 37.86.2907, 37.86.2916, and 37.86.4401.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) through (6) remain as proposed.

(7) Approved RHC and FQHC ~~group and~~ education health service(s) payments will be reimbursed separately from their prospective payment at a rate determined by the department. The fee schedule is adopted and effective as provided at ARM 37.85.105.

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

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

COMMENT #1: One comment was received requesting clarification if dentists and dental hygienists are included in the definition of health professionals.

RESPONSE #1: Currently the Centers for Medicare and Medicaid (CMS) allows billable services to be furnished by the following providers: physicians, which includes dentists, nurse practitioners (NP), physician assistants (PA), certified nurse-midwives (CNM), clinical psychologists (CP), and clinical social workers (CSW).

Montana Medicaid has expanded the definition to include licensed professional counselors (LCPC) and licensed addiction counselors (LAC).

Dental hygienists are not considered a core provider and they can only bill for the services if the dentist sees them face-to-face during the visit.

COMMENT #2: A comment was made that after the initial MAR Notice No. 37-765 was published, the department recognized that services provided by core providers can be offered in a group session.

RESPONSE #2: Therefore, the facility prospective payment system (PPS) rate will be reimbursed for group sessions provided by a core provider. In addition, the department will allow FQHCs and RHCs to submit a change in scope of service to allow services furnished by Licensed Addiction Counselors (LACs) to be effective as of July 1, 2016.

5. These rule amendments are effective October 1, 2016.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 12, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.18.206, 42.18.207, and 42.18.208 pertaining to certification testing requirements for department property appraisers | ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On July 22, 2016, the Department of Revenue published MAR Notice No. 42-2-952 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1243 of the 2016 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 12, 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 June 30, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, 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 June 30, 2016, 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 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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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in August 2016 appear. Vacancies scheduled to appear from October 1, 2016 through December 31, 2016, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

**IMPORTANT**

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2016.

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

## BOARD AND COUNCIL APPOINTEES FROM AUGUST 2016

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Board of Private Security** (Labor and Industry) | | | |
| Mr. Dirk Bauwens | Governor | Chaput | 8/1/2016 |
| Billings | | | 8/1/2018 |
| Qualifications (if required): Representing an Electronic Security Company | | | |
| Mr. James Thomas | Governor | Murray | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): Public Safety Officer Standards and Training Council | | | |
| **Information Technology Managers Advisory Council** (Administration) | | | |
| Mr. Ron Baldwin | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): Chief Information Officer | | | |
| Mr. Tim Bottonfield | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): Department of Revenue | | | |
| Mr. John Daugherty | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): Department of Corrections | | | |
| Mr. Sky Foster | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): Department of Agriculture | | | |

## BOARD AND COUNCIL APPOINTEES FROM AUGUST 2016

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Information Technology Managers Advisory Council** (Administration) cont. | | | |
| Mr. Kreh Germaine | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): | Department of Natural Resources and Conservation | | |
| Ms. Kimberly Moog | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): | Department of Labor and Industry | | |
| Ms. Angela Riley | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): | Montana Public Employees Retirement Administration | | |
| Mr. Mark Van Alstyne | Director | not listed | 8/1/2016 |
| Helena | | | 8/1/2018 |
| Qualifications (if required): | Secretary of State | | |
| **Language Replacement of "Squaw," "Half Breed," or "Breed" Advisory Committee** (Governor) | | | |
| Rep. Norma Bixby | Governor | not listed | 8/31/2016 |
| Lame Deer | | | 6/1/2018 |
| Qualifications (if required): | Public Representative | | |
| Ms. April Christofferson | Governor | not listed | 8/31/2016 |
| Bozeman | | | 6/1/2018 |
| Qualifications (if required): | Public Representative | | |

## BOARD AND COUNCIL APPOINTEES FROM AUGUST 2016

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Language Replacement of "Squaw," "Half Breed," or "Breed" Advisory Committee** (Governor) cont. | | | |
| Mr. Gerald Daumiller | Governor | not listed | 8/31/2016 |
| Helena | | | 6/1/2018 |
| Qualifications (if required): State Agency Representative | | | |
| Mr. Donald Lee Davis | Governor | not listed | 8/31/2016 |
| Helena | | | 6/1/2018 |
| Qualifications (if required): Member of the Little Shell Chippewa Tribe | | | |
| Director Jason Smith | Governor | not listed | 8/31/2016 |
| Helena | | | 6/1/2018 |
| Qualifications (if required): Director of Indian Affairs | | | |
| Ms. Jennifer Stadum | Governor | not listed | 8/31/2016 |
| Helena | | | 6/1/2018 |
| Qualifications (if required): State Agency Representative | | | |
| Mr. Nicholas Peterson Vrooman | Governor | not listed | 8/31/2016 |
| Helena | | | 6/1/2018 |
| Qualifications (if required): Public Representative | | | |

## VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Barbers and Cosmetologists** (Labor and Industry) | | |
| Ms. Darlene Battaiola, Butte<br>Qualifications (if required): cosmetologist | Governor | 10/1/2016 |
| Ms. Juanita Mace, Billings<br>Qualifications (if required): barber | Governor | 10/1/2016 |
| **Board of Occupational Therapy Practice** (Labor and Industry) | | |
| Ms. Brenda Toner, Missoula<br>Qualifications (if required): Occupational Therapist | Governor | 12/31/2016 |
| Ms. Lora Wier, Choteau<br>Qualifications (if required): Public Representative | Governor | 12/31/2016 |
| **Board of Outfitters** (Labor and Industry) | | |
| Mr. Patrick Tabor, Swan Lake<br>Qualifications (if required): Big Game Hunting Outfitter | Governor | 10/1/2016 |
| **Board of Speech-Language Pathologists and Audiologists** (Labor and Industry) | | |
| Ms. Sharon Dinstel, Colstrip<br>Qualifications (if required): Speech-Language Pathologist | Governor | 12/31/2016 |
| Ms. Lucy Hart-Paulson, Missoula<br>Qualifications (if required): Speech-Language Pathologist | Governor | 12/31/2016 |
| Mr. Rich Turner, Billings<br>Qualifications (if required): Consumer | Governor | 12/31/2016 |

## VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Commission on Community Service** (Governor) | | |
| Mr. Holter Bailey, Missoula<br>Qualifications (if required): youth representative | Governor | 10/1/2016 |
| **Corn Crop Advisory Committee** (Agriculture) | | |
| Sen. Donald J Steinbeisser, Sidney<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| Mr. Donald Fast, Glasgow<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| Mr. Glenn Rohde, Glasgow<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| Mr. Jason Brewer, Forsyth<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| Mr. Kim Nile, Forsyth<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| Mr. Jack Dion, Terry<br>Qualifications (if required): Corn Crop Producer | Director | 10/23/2016 |
| **Equal Pay for Equal Work Task Force** (Labor and Industry) | | |
| Sheriff Craig Anderson, Glendive<br>Qualifications (if required): Elected Official | Governor | 11/1/2016 |

## VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Equal Pay for Equal Work Task Force** (Labor and Industry) cont. | | |
| Director Sheila Hogan, Helena<br>Qualifications (if required): Co-Chair | Governor | 11/1/2016 |
| Ms. Aimee Grmoljez Shanight, Helena<br>Qualifications (if required): Business Background | Governor | 11/1/2016 |
| Rep. Clarena M. Brockie, Harlem<br>Qualifications (if required): Higher Education | Governor | 11/1/2016 |
| Ms. Jacquie Helt, Missoula<br>Qualifications (if required): Organized Labor | Governor | 11/1/2016 |
| Ms. Barbara Stiffarm, Havre<br>Qualifications (if required): Tribal Member | Governor | 11/1/2016 |
| Ms. Kimberly Rickard, Helena<br>Qualifications (if required): Organized Labor | Governor | 11/1/2016 |
| Commissioner Pam Bucy, Helena<br>Qualifications (if required): Co-Chair | Governor | 11/1/2016 |
| Mr. Scott Wilson, Bozeman<br>Qualifications (if required): Business Background | Governor | 11/1/2016 |
| Ms. Deb Larson, Bozeman<br>Qualifications (if required): Business Background | Governor | 11/1/2016 |

**VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Equal Pay for Equal Work Task Force** (Labor and Industry) cont. | | |
| Ms. Jen Euell, Helena | Governor | 11/1/2016 |
| Qualifications (if required): Non-Profit Representative | | |
| President Waded Cruzado, Bozeman | Governor | 11/1/2016 |
| Qualifications (if required): Higher Education | | |
| Mrs. K'Lynn Sloan Harris, Helena | Governor | 11/1/2016 |
| Qualifications (if required): Interagency Committee for Change by Women | | |
| Ms. Stacy Klippenstein, Miles City | Governor | 11/1/2016 |
| Qualifications (if required): Higher Education | | |
| Mayor Gene Mim Mack, Stevensville | Governor | 11/1/2016 |
| Qualifications (if required): Elected Official | | |
| **Governor's Council on Healthcare Innovation** (Public Health and Human Services) | | |
| Dr. Monica Berner, Helena | Governor | 10/1/2016 |
| Qualifications (if required): Public and private payers | | |
| Ms. LeeAnn Bruised Head, Missoula | Governor | 10/1/2016 |
| Qualifications (if required): Indian/Tribal Health Representatives | | |
| **Historical Preservation Review Board** (Historical Society) | | |
| Ms. Lesley M Gilmore, Gallatin Gateway | Governor | 10/1/2016 |
| Qualifications (if required): historic architect | | |

**VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Historical Preservation Review Board** (Historical Society), cont. | | |
| Mr. Charles McLeod, Missoula<br>Qualifications (if required): archaelogist | Governor | 10/1/2016 |
| Mr. Jon Axline, Helena<br>Qualifications (if required): architectural historian | Governor | 10/1/2016 |
| **Montana Alfalfa Seed Committee** (Agriculture) | | |
| Mr. Tom Matchett, Billings<br>Qualifications (if required): Alfalfa Seed Grower | Governor | 12/1/2016 |
| Mr. Tom Neibur, Malta<br>Qualifications (if required): Alfalfa Seed Grower | Governor | 12/1/2016 |
| **State Employee Group Benefits Advisory Council** (Administration) | | |
| Mr. John Putnam, Helena<br>Qualifications (if required): state employee representative | Governor | 12/31/2016 |
| **Statewide Independent Living Council** (Public Health and Human Services) | | |
| Ms. Karen Underwood, Billings<br>Qualifications (if required): At-Large Member | Governor | 12/1/2016 |
| Ms. Barbara Varnum, Kalispell<br>Qualifications (if required): Disabilities Community Representative | Governor | 12/1/2016 |
| Mr. Dick Trerise, Helena<br>Qualifications (if required): Agency Representative | Governor | 12/1/2016 |

## VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Statewide Independent Living Council** (Public Health and Human Services), cont. | | |
| Mr. Troy Spang, Ashland | Governor | 12/1/2016 |
| Qualifications (if required): Section 121 Representative | | |
| Mr. Tom Osborn, Black Eagle | Governor | 12/1/2016 |
| Qualifications (if required): Independent Living Center Representative | | |
| Mr. Jarrett Clark, Denton | Governor | 12/1/2016 |
| Qualifications (if required): Disabilities Community Representative | | |
| Ms. Lori Gaustad, Billings | Governor | 12/1/2016 |
| Qualifications (if required): Disabilities Community Representative | | |
| **Task Force on State Public Defender Operations** (Legislative Services Division) | | |
| Ms. Wendy Holton, Helena | Governor | 12/31/2016 |
| Qualifications (if required): Group Facilitator | | |
| Mr. Mike Eakin, Billings | Governor | 12/31/2016 |
| Qualifications (if required): Attorney experienced in the federal Indian Child Welfare Act | | |
| Mr. Jason Trinity Holden, Great Falls | Governor | 12/31/2016 |
| Qualifications (if required): Attorney with experience in the criminal defense of misdemeanor and felony offenses | | |
| Ms. Juli Pierce, Billings | Governor | 12/31/2016 |
| Qualifications (if required): Attorney with experience in the prosecution of misdemeanor and felony offenses | | |

## VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2016 THROUGH DECEMBER 31, 2016

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Trauma Care Committee** (Public Health and Human Services) | | |
| Dr. Freddy Bartoletti, Anaconda | Governor | 11/2/2016 |
| Qualifications (if required): representative of the Montana Medical Association | | |
| Ms. Lauri Jackson, Great Falls | Governor | 11/2/2016 |
| Qualifications (if required): representative of the Central Region Trauma Care Advisory Council | | |
| Mr. Bradley Von Bergen, Billings | Governor | 11/2/2016 |
| Qualifications (if required): representative of the Eastern Region Trauma Care Advisory Council | | |
| Dr. Brad Pickhardt, Missoula | Governor | 11/2/2016 |
| Qualifications (if required): representative of the Western Region Trauma Care Advisory Council | | |
| Mr. Rick Haraldson, Sidney | Governor | 11/1/2016 |
| Qualifications (if required): Montana Hospital Association | | |
| **Vocational Rehabilitation Council** (Public Health and Human Services) | | |
| Ms. Robin Haux, Montana City | Governor | 10/1/2016 |
| Qualifications (if required): Organized Labor | | |
| **Water and Waste Water Operators' Advisory Council** (Environmental Quality) | | |
| Mr. John Alston, Bozeman | Governor | 10/16/2016 |
| Qualifications (if required): representative of a municipality | | |