# MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

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

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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through VIII pertaining to Fuel Tax Bridge and Road Safety and Accountability Program | ) ) ) ) ) | NOTICE OF PROPOSED ADOPTION<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On November 13, 2017, the Department of Transportation proposes to adopt the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on November 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Larry Flynn, Department of Transportation, Administration Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9418; fax (406) 444-5411; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail lflynn@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 2017 Legislature enacted Chapter 267, Laws of 2017 (House Bill 473), an Act revising highway funding laws; revising laws concerning the deposit and expenditure of highway revenue; establishing a highway restricted account and a bridge and road safety and accountability restricted account; increasing the fuel tax and special fuel tax; providing that the new revenue must fund highway projects and local road projects; providing for a local government road match program; requiring a performance audit of the Department of Transportation; requiring the Department of Transportation to publish a website showing projects funded with the increased revenue; and providing a statutory appropriation and an appropriation.

The bill established the Bridge and Road Safety and Accountability (BARSAA) program to provide funding to eligible local governments for construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, and bridges. A portion of motor fuel tax revenues generated within the State of Montana provides the funding for this program, and allocates a portion of the fuel tax to local governments. The bill became effective July 1, 2017.

The department is adopting New Rules I through VIII to conform to the new legislative changes and implement the bill by detailing the process used by local governments for the new BARSAA program.

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

NEW RULE I DEFINITIONS The following definitions apply to terms found in this subchapter:

(1) "Allocate" or "allocation" means the department's annual calculation of a local government's share, in the ratio provided for in 15-70-101, MCA, of BARSAA revenue collected during the previous calendar year.

(2) "Bridge and Road Safety and Accountability" program, or "BARSAA" means the local government road construction and maintenance match program established by [Ch. 267, L. 2017].

(3) "Calendar year" means a twelve-month period between January 1 and the following December 31.

(4) "Collected" means revenue received as required by 15-70-403, MCA.

(5) "Completed project" means a closed project on which planned expenditures for the project have been paid in full.

(6) "Distribute" or "distribution" means the department's disbursement of allocated or reserved BARSAA funds to local governments.

(7) "Fiscal year" means the twelve-month period between July 1 and the following June 30.

(8) "Local government" means a Montana city, town, county or consolidated city-county government.

(9) "Locally designated signature authority" means the person identified by a local government as authorized to approve requests for distribution, requests for reservation, and annual reports.

(10) "Obligate" or "obligation of funds" means an action by a local government to commit the BARSAA funds to a project, either through a contract or by inclusion as an authorized expenditure in a local government's fiscal year budget.

(11) "Project description" includes: project name, project location, type of work, total cost estimate, source of match, and estimated completion date.

(12) "Reserve" means allocated BARSAA funds held by the department at the request of a local government.

(13) "Unobligated funds" means funds not obligated by March 1, five years after the calendar year in which the funds were distributed or would have been distributed if not reserved, which must be returned to the department's BARSAA local government restricted account.

(14) "Unused funds" means funds not used by a local government for the requested purpose or project, by March 1, five years after the calendar year in which the funds were distributed or would have been distributed if not reserved, which must be returned to the department's BARSAA local government restricted account.

(15) "Withdrawn project" means a project a local government has removed from its original distribution request list or re-prioritized after distribution of funds.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2, 3, and 5, L. 2017

NEW RULE II ELIGIBILITY – ALLOCATION – MATCHING FUNDS (1) Any local government in Montana is eligible to receive BARSAA program funds.

(2) BARSAA revenue collected in the previous calendar year must be allocated by the department and held in the BARSAA restricted account for the benefit of local governments.

(3) Allocations must be made by the department by March 1 of each year.

(4) The department shall notify a local government of its allocation amount annually, by March 1 of each year.

(5) A local government must match each $20 request for distribution with at least $1 of local government budgeted matching funds. A local government must identify the source of the budgeted matching funds, which may not be from the motor fuel tax allocation in 15-70-101, MCA.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2 and 3, L. 2017

NEW RULE III DISTRIBUTION TERMS AND CONDITIONS (1) The department allocates, reserves, and distributes the local government share of BARSAA funds, and maintains a project reporting website under the BARSAA program. The department does not monitor or oversee local government projects included in the local government's request for distribution.

(2) All BARSAA funds allocated under this program must be utilized for:

(a) construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, and bridge projects; or roads and streets a local government has the responsibility to maintain, which does not include purchase of capital equipment; or

(b) a match for federal funds used for the construction of roads and streets that are a part of the national, primary, secondary or urban highway systems; or roads and streets a local government has the responsibility to maintain.

(3) The proposed projects must be detailed in a distribution request submitted by an eligible local government, in a format provided by the department. A local government requestor is responsible for retaining and providing documentation to ensure all funding received under the program is spent as defined and as provided in a local resolution and annual report.

(4) Projects budgeted within a local government's current fiscal year are eligible for distribution request of BARSAA program funds.

(5) The department shall make distribution within 30 calendar days of receipt of the completed request for distribution.

(6) A local government may withdraw a project originally listed on a distribution request, which action shall be deemed a completed project, creating unused funds. Within 90 days of completion or withdrawal of a project, a local government shall notify the department of the intent to obligate any unused funds for additional project(s) by March 1, five years after the calendar year in which the funds were distributed or would have been distributed if not reserved, or to return any unused funds to the department. Additional projects are subject to the same request requirements found in these rules.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2, 3, and 5, L. 2017

NEW RULE IV BARSAA MATCH FUNDS – ADMINISTRATION OF FEDERAL-AID PROJECTS (1) BARSAA program funds identified as match for federally funded projects being administered by the department will not be distributed separately to the local government, but will be moved by the department, upon request from the local government, to the highway state special revenue account as credit for the local government match for that identified project.

(2) BARSAA program funds identified as match for federally funded projects administered by a local government from federal funds received directly by the local government, or administered by another federal or state agency, including but not limited to discretionary or earmarked funds, will be distributed directly to the local government under this chapter.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sec. 3, L. 2017

NEW RULE V DISTRIBUTION REQUEST PROCESS – DEADLINES

(1) All eligible local government requestors must complete the BARSAA program distribution request form found on the Department of Transportation's web site at www.mdt.mt.gov.

(2) The local government requestor may request a distribution of allocated funds by submitting a request to the department between March 1 and November 1 of the calendar year the funds were allocated. The distribution request must include all requirements stated in [Ch. 267, Sec. 3, L. 2017] including:

(a) the amount of BARSAA funding sought, which may not exceed the amount allocated for that year, plus any eligible prior year reserved funds;

(b) a copy of an adopted resolution to request and accept the funding by the governing body of the local government. The resolution must identify the source of the matching funds required under [Ch. 267, Sec. 3, L. 2017];

(c) a description of the project(s) to be funded, which must be for:

(i) construction, reconstruction, maintenance or repair of rural roads, city or town streets or alleys, or bridges; or roads and streets the local government has responsibility to maintain; or

(ii) as a match for federal funds used for the construction of road and streets that are part of the national, primary, secondary or urban highway systems; or roads and streets the local government has responsibility to maintain.

(3) Each distribution request must be complete and accompanied by all required supplemental materials. The department has an obligation to screen projects for eligibility and may request additional information to ensure the distribution request meets the requirements of [Ch. 267, Sec. 3, L. 2017]. Distribution requests must be verified via electronic signature, by the locally designated signature authority, per the adopted resolution.

(4) All BARSAA program funds must be utilized solely for the project(s) as described in a local government's distribution request.

(5) Within 90 days of completion of a project, the local government shall notify the department of its intent to obligate any remaining funds for additional projects within five years of original allocation, or to return any unused funds to the

department. Additional projects are subject to the same request requirements found in these rules.

(6) BARSAA program funds not distributed or reserved by a local government, or which are returned as unused, will remain in the BARSAA local government restricted account to be allocated in the next calendar year.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2 and 3, L. 2017

NEW RULE VI RESTRICTED ASSET ACCOUNT – OBLIGATION OF FUNDS (1) A local government shall place BARSAA funds distributed by the department and the corresponding matching funds in a restricted asset account within the fuel tax apportionment fund that is carried forward until there is a need for the expenditure. The account must be kept separate from other local government accounts.

(2) A local government must obligate the funds by March 1, five years after the calendar year in which the funds were distributed or would have been distributed if not reserved.

(3) Unobligated funds must be returned to the department within 30 days of invoice date, and deposited in the BARSAA local government restricted account to be allocated for the BARSAA program in the next calendar year.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2 and 3, L. 2017

NEW RULE VII RESERVATION OF ALLOCATED FUNDS (1) A local government's share of allocated BARSAA program funds may be reserved for up to two years.

(2) A local government may only reserve allocated funds if it is unable to match the funds as required by [Ch. 267, Sec. 3, L. 2017].

(3) An eligible local government requestor must complete the BARSAA program reservation request form found on the Department of Transportation's web site at www.mdt.mt.gov.

(4) Completed fund reservation requests and all supplemental materials must be received between September 1 and November 1 of the fiscal year after the fiscal year in which the department allocated the funds.

(5) The local government requestor must adopt a resolution to reserve the funding, and state the reservation is necessary due to the local government's inability to match funds as required by [Ch. 267, Sec. 3, L. 2017]. The resolution must be attached to the local government's reservation request to the department. Reservation requests must be verified via electronic signature, by the locally designated signature authority.

(6) If the local government does not request distribution of the reserved funds by November 1 of the fiscal year two years after the reservation request, the funds shall revert to the BARSAA local government restricted account to be allocated for the BARSAA program in the next calendar year.

(7) Requests for distribution of reserved funds are subject to the same distribution request requirements found in these rules.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sections 2 and 3, L. 2017

NEW RULE VIII ANNUAL REPORT (1) A local government must submit an annual report to the department by December 31 of each year providing information on projects listed on the appropriate annual distribution request (including projects administered by the department or by other government agencies), changes to the list of projects funded (including withdrawn projects, or added projects), and final project costs.

AUTH: 15-70-104, MCA
IMP: Ch. 267, Sec. 5, L. 2017

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Larry Flynn, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9418; fax (406) 444-5411; or e-mail lflynn@mt.gov, and must be received no later than 5:00 p.m., November 10, 2017.

6. 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 Larry Flynn at the above address no later than 5:00 p.m., November 10, 2017.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 persons based on 185 eligible local governments.

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 5 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 Department of Transportation's website at www.mdt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on May 19, 2017.

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

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 23.2.301 pertaining to the affidavit of indigence and statement of inability to pay court costs and fees | ) ) ) ) ) | NOTICE OF PROPOSED AMENDMENT<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. The Department of Justice proposes to amend the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Justice no later than 5:00 p.m. on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact J. Stuart Segrest, Department of Justice, P.O. Box 201401, Helena, Montana, 59620-1401; telephone (406) 444-2026; fax (406) 444-3549; or e-mail contactdoj@mt.gov.

3. The rule as proposed to be amended provides as follows: [following is the rule in its current form]

23.2.301 AFFIDAVIT OF INDIGENCE

AFFIDAVIT OF INDIGENCE
AND ORDER

**ANSWER ALL QUESTIONS. USE N/A IF NOT APPLICABLE**

STATE OF MONTANA )
:ss.
County of _____ )

I, _____ , being first duly sworn, depose and say: That I have a good cause of action or defense but am unable to pay the costs or get security to secure the cause of action or defense. I request the court or administrative tribunal to waive the costs and approve indigence status. I declare the following:

**I. PERSONAL INFORMATION**

Name _____
Address _____
Telephone _____ Birthdate _____ Age ___ SSN _____
Employed Yes ___ No ____ Self-Employed Yes _____ No _____

Employer's name & address _____

_____

Month last employed _____ Job _____
Single _____ Married _____ Divorced ____ Separated ____
Dependents? Spouse _____ Number of children _____
Spouse's name _____
Spouse's birthdate _____ Age _____ Spouse's SSN _____
Spouse's employer & address _____

_____

Are you sharing expenses with anyone? Yes _____ No _____
Explain _____
Are you sharing income with anyone? Yes _____ No _____
Explain _____

## II. INCOME

Income available:

My wages or salary $ _____ AFDC $ _____
Other wages/salary $ _____ Unemployment $ _____
Workers' Comp $ _____ SSI $ _____
Food Stamps $ _____ Medicaid $ _____
Pension $ _____ Retirement $ _____
Child support $ _____ Other Income $ _____

Total Household Income:

Last month $ _____ Previous 12 months $ _____

## III. ASSETS

A. Motor vehicles? Yes _____ No _____ How many? _____
Spouse's motor vehicles _____
Is/are vehicle(s) paid for? Yes _____ No _____
If not, how much do you owe? $ _____
Year, make and model _____

B. Do you or your spouse own any land or other real estate or are you or your spouse buying any? Yes _____ No _____
What is the approximate value? _____
How much did you pay for it? $_____ When? _____
Is it paid for? Yes _____ No _____
If not, how much do you or your spouse owe? _____

C. Checking accounts? Yes _____ No _____ $ _____
Savings accounts? Yes _____ No _____ $ _____
Bank _____
Stocks or bonds? Yes _____ No _____ $ _____
Wages due but not yet received $ _____
Money owed to me or my spouse $ _____

Guns, boats, sporting equipment, trailer, camper, or tools $ _____
Stereo or TV $ _____
Furniture & appliances $ _____
Other personal property $ _____
Specify: _____
_____

## IV. OBLIGATIONS/DEBTS

Do you or your spouse have any outstanding debts or obligations: (specify and list amount): _____
_____
_____

I further declare that I am the person named above, that I have read the foregoing questions and information and know the same to be true of my own knowledge, AND THAT IF ANY PART OF THE ABOVE IS MADE FALSELY I AM SUBJECT TO PROSECUTION FOR PERJURY.

_____
Signature of Requestor

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19___.

_____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____

## ORDER

Indigence status is hereby denied/granted.

DATED: _____

_____
Judge/Administrative Officer

[following is the rule in its proposed form]

23.2.301 STATEMENT OF INABILITY TO PAY COURT COSTS AND FEES

_____
Name

_____
Mailing Address

_____
City State Zip Code

_____
Phone Number

_____
E-mail Address *(optional)*
**Appearing without a lawyer**

☐ **MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY**
☐ **IN THE JUSTICE COURT OF _____ COUNTY, STATE OF MONTANA**
☐ **IN THE MUNICIPAL OR CITY COURT OF _____, MONTANA**

| | |
|---|---|
| _____,<br>Petitioner / Plaintiff,<br>and<br>_____,<br>Respondent / Defendant. | **Case No: _____**<br>*(leave blank, the clerk will write in)*<br><br>Statement of Inability to Pay Court Costs and Fees |

I have a good cause of action or defense but am unable to pay filing or other court fees. I request the court waive the costs and fees. I provide the following information about my income and expenses.

My full legal name is: _____. I was born in this month _____ and this year _____.

☐ I am represented by an entity that provides free legal services to low-income persons.

Or

☐ I am represented by a volunteer/pro bono attorney, and am financially eligible for free legal services. *(Attach a certificate of eligibility from legal aid organization.)*
*[If you checked either box above, skip to the bottom of this form, and sign it. You don't need to fill out pages 2, 3, and 4. If you did not check either box above, you*

*may still qualify for a fee waiver—please continue to fill out pages 2, 3, and 4 of this form so the Court has the information it needs to decide if you qualify for the fee waiver.]*

## I. INCOME

**What do you do for work?**_____

**Who is your employer?**_____

**Are you married?** ☐ Yes ☐ No **NOTE: You do not need to provide your spouse's income below if you are not married, if you and your spouse are separated, or if one of you is filing for dissolution of marriage.**

Do you receive any of these benefits *[check the box for each benefit you receive]*?
☐ SNAP ☐ TANF ☐ SSI ☐ Medicaid ☐ WIC ☐ LIEAP

- *If you checked a box, skip to the bottom of this form, and sign it. You don't need to fill out the rest of this form.*
- If no, then fill in the chart below with the income you receive.
- If you or your spouse don't receive income from a listed source, put a "0" in the blank for that amount per month.

| Income Sources | Gross amount YOU receive per month | Gross amount YOUR SPOUSE receives per month |
|---|---|---|
| Employment | $ | $ |
| Investments | $ | $ |
| Rental Income | $ | $ |
| Retirement | $ | $ |
| Workers' Compensation | $ | $ |
| Social Security | $ | $ |
| Unemployment | $ | $ |
| Survivor's Benefits | $ | $ |
| Veterans Benefits | $ | $ |

| | | |
|---|---|---|
| Child Support | $ | $ |
| Pension | $ | $ |
| A person or agency pays my rent or other monthly expenses | $ | $ |
| Other Income--describe: _____ | $ | $ |
| **Total here:** | $ | $ |

If you are unemployed, when were you last employed? _____
Your job?_____

How many persons, if any, depend on you financially? If none, then write ′N/A′ below. *[Attach another page if needed.]*

| Initials only, of the person | Age | Relationship to You |
|---|---|---|
| | | |
| | | |

## II. ASSETS

What property do you own, along with your spouse, if married and not separated and not filing for dissolution? Fill in the chart below, for each item that you could sell for $600 or more. If you don′t own an item listed, write "N/A" in the "Value" column for that item.

| Asset | Value* |
|---|---|
| Cash, savings and checking | $ |
| Vehicle 1, provide year, make and model: _____ | $ |
| Vehicle 2, provide year, make and model: _____ | $ |
| Home where you live now | $ |
| Real estate other than home you're living in | $ |
| Motorcycle/Four wheeler | $ |
| Snowmobile | $ |

| | |
|---|---|
| Camper/RV | $ |
| Mobile home (if not the home where you live now) | $ |
| Guns, collections | $ |
| Boat/Watercraft | $ |
| Other Item worth more than $600 | $ |

***** *Value is the amount the item would sell for less the amount you still owe on it, if anything*

## III. MONTHLY EXPENSES

What bills do you (and your spouse, if married) actually pay each month? Fill in the chart below. If you don't have a monthly expense that's listed in the chart, write "0" in the amount column for that expense.

| **Monthly expense:** | **Amount per Month** |
|---|---|
| Rent/Mortgage | $ |
| Utilities (all combined) | $ |
| Phone (cell/landline) | $ |
| Vehicle Payments (all combined) | $ |
| Vehicle Insurance (all combined) | $ |
| Health insurance | $ |
| Other health costs, such as prescriptions | $ |
| Other Insurance | $ |
| Groceries | $ |
| Credit card payments actually paid | $ |
| Child support payments actually paid | $ |
| Spousal support payments actually paid | $ |
| School-related expenses | $ |
| Child care | $ |
| Wages withheld by court order | $ |

| | |
|---|---|
| Internet/Cablevision/Satellite TV (combined) | $ |
| Gas for vehicle (or other transportation costs, such as bus fare) | $ |
| Other monthly bills, describe: _____ | $ |
| **Total here:** | $ |

**IV. OTHER INFORMATION -- *optional***

If you have additional information that you want the court to consider about your inability to pay court costs, attach another page called "Additional Information." Check here if you attach another page: ☐

**I declare under penalty of perjury and under the laws of the State of Montana that the information in this document is true and correct. I understand that it is a crime to give false information in this document.**

Date: _____ City _____ State _____

Signature: _____

**☐ MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY**
**☐IN THE JUSTICE COURT OF _____ COUNTY, STATE OF MONTANA**
**☐IN THE MUNICIPAL OR CITY COURT OF _____, MONTANA**

| | |
|---|---|
| _____,<br>Petitioner / Plaintiff,<br>and<br>_____,<br>Respondent / Defendant. | **Case No: _____**<br>(*leave blank, the clerk will write in)*<br><br>Order Regarding Statement of Inability to Pay Court Costs |

***Warning! Read carefully the section checked below.***
***It is a court order.***

□ Waiver of court costs is **Granted**. Declarant shall proceed without payment of court fees or costs.

☐ Temporary Waiver of court costs is **Granted**. Declarant may file without payment of court fees or costs, but the Court may determine at a later time that the declarant has the ability to pay all fees or costs and will require declarant to do so.

☐ Temporary Waiver of fees is **Granted**. Declarant may file without payment of court fees or costs, but must appear before the Court at _____ a.m/p.m. on the _____ day of _____ and show cause why the declarant lacks the ability to pay all fees or costs.

***Warning! If this third box is checked, you must come to court on the date ordered above. If you don't come, the judge will deny your request to waive court costs, and you will have to pay the court costs.***

☐ Waiver of Fees and costs is **Denied**. Waiver is denied based on the following:

_____

_____

_____

Ordered this _____ day of _____, 20_____.

_____
Presiding Judge

AUTH: 25-10-404, MCA
IMP: 25-10-404, MCA

REASON: This rule amendment is reasonably necessary to address deficiencies with the current financial statement form, as requested by the Access to Justice Commission. As noted by the Access to Justice Commission, the current form is not uniformly used. The current form also does not provide a section to indicate that the person is represented by a legal services organization, and thus not required to file a financial statement under 25-10-404(3), MCA. The amended form is also easier to understand than the current form, which will facilitate its use by pro se litigants. Finally, the amended form provides a separate, standalone order, which will assist the court in timely addressing fee waiver applications.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: J. Stuart Segrest, Department of Justice, P.O. Box 201401, Helena, Montana, 59620-1401; telephone (406) 444-

2026; fax (406) 444-3549; or e-mail contactdoj@mt.gov, and must be received no later than 5:00 p.m., November 10, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to J. Stuart Segrest at the above address no later than 5:00 p.m., November 10, 2017.

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

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

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

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

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

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of NEW RULES I through IX and the repeal of ARM 24.22.301, 24.22.304, 24.22.307, 24.22.311, 24.22.316, and 24.22.321 pertaining to the incumbent worker training program | ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On November 3, 2017, at 10:00 a.m., a public hearing will be held in the Lewis Room (basement conference room) at the Walt Sullivan Building, 1315 E. Lockey Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact Chris Wilhelm, Workforce Services Division, 1315 E. Lockey Avenue, P.O. Box 1728, Helena MT 59604-1728; telephone (406) 444-3351; Montana Relay 711; facsimile (406) 444-3037; or ChrisWilhelm@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt new rules to implement the provisions of Chap. 25, Laws of 2017 (House Bill 88) while repealing the existing rules on the same topic. Because the amended statutes completely removed the inclusion of the local BEAR (the business expansion and retention) programs as the gatekeeper for access to incumbent worker training (IWT) funds and make other significant changes, the department concludes that it is reasonably necessary to propose new rules and repeal existing rules in order to provide clarity and reduce confusion for businesses that want to apply for IWT grant funding. New rules will help ensure that businesses are following the correct version of the rules and statutes, as the new application process will only reference the new rules. This general statement of reasonable necessity applies to all of the rules proposed for adoption and repeal.

There is reasonable necessity to include NEW RULES II, III, VII, and VIII in light of the department's experience in processing IWT grants. The department believes that providing greater detail and explanation of the IWT grant application process will assist employers in applying for, and obtaining, IWT grants.

4. The proposed new rules are as follows:

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

(1) "Conference" means a meeting, seminar, discussion, or other similar event where the principal presentation, in the format of a lecture or similar presentation, is the primary purpose, and participation by attendees is a secondary purpose.

(2) "Credential" means a nationally recognized degree or certification or state-recognized credential. Credentials include, but are not limited to post-secondary degrees/certificates, recognized skill standards, licensure or industry-recognized certificates (i.e., ASE car repair, Hazmat, CAN, CDL, Boiler Operator, Flag Person, Heavy Equipment Operator, etc.), and all state education agency recognized credentials.

(3) "Department" means the Department of Labor and Industry.

(4) "Employer":

(a) means a for profit or non-profit business entity that:

(i) employs no more than 50 employees statewide; and

(ii) is properly registered with the secretary of state to conduct business as a sole proprietor, if required, or as a corporation, a partnership, a limited liability company, or an association; but

(b) does not include governmental entities.

(5) "Predominately year-round job" means a position that provides work in at least 11 months of a 12-month period.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE II GENERAL REQUIREMENTS REGARDING TRAINING

(1) In order to qualify for reimbursement, training must:

(a) be provided by an eligible training provider; and

(b) consist of:

(i) skills-based training that meets the criteria contained in (4);

(ii) certified education that meets the criteria contained in (5); or

(iii) online training that meets the criteria contained in (6).

(2) A training provider is eligible to provide training if the trainer is:

(a) a qualified educational institution recognized under 53-2-1216, MCA;

(b) a registered apprenticeship program that is in compliance with Title 39, chapter 6, MCA; or

(c) an other entity or individual approved by the department to provide workforce training.

(3) An "other entity or individual" may be approved by the department to provide workforce training, based one or more of the following criteria:

(a) the trainer can demonstrate substantial experience and background in the industry or occupational field relevant to the proposed course of training;

(b) the trainer possesses industry-recognized competency in the subject matter of the proposed training, as demonstrated by a certificate or similar credential issued by a bona fide industry source or organization; or

(c) the trainer demonstrates other suitable qualifications as may be reasonably accepted by the department.

(4) Skills-based training:

(a) is training that:

(i) increases the quality of tasks an incumbent worker is able to perform;

(ii) increases the number of types of tasks an incumbent worker is able to perform; or

(iii) provides the ability to demonstrate that the incumbent worker is able to execute new tasks, or old tasks in new ways, as a direct result of the training; but

(b) does not refer to training that generally increases an incumbent worker's knowledge of a topic area or areas.

(5) Certified education must result in a nationally recognized or industry-recognized credential being awarded in recognition of attainment of a measurable technique or occupational skill, based on standards developed or endorsed by employers.

(6) Training may be provided in any of the following methods:

(a) classroom training where the student travels to the trainer;

(b) on-site training where the trainer travels to the grantee's business and customizes training to the business's needs; or

(c) online training that is interactive, where:

(i) the student has access to the trainer;

(ii) the student demonstrates or practices what the student is learning; and

(iii) the online training has the capability to provide suitable proof of completion.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE III GENERAL PROVISIONS RELATING TO GRANT FUNDS

(1) The employer that is seeking grant funding must pay for all training and associated expenses "up front," and then seek reimbursement from the department for eligible expenses after the training is completed.

(2) Grant funding may be used to purchase:

(a) skills-based training or certified education as outlined in [NEW RULE II];

(b) required materials and supplies, as identified by the course syllabus or the trainer; and

(c) testing fees, but only if the test occurs within 90 days of the training completion date.

(3) Grant funding can reimburse the employer at a rate not to exceed:

(a) 80 percent for the cost of training paid to the training provider, and for associated required training expenses, such as books;

(b) 80 percent for in-state transportation and lodging costs reasonably incurred, if required to attend training; and

(c) 50 percent for out-of-state transportation and lodging costs reasonably incurred, if required to attend training.

(4) The unreimbursed portion of allowed training, travel, and lodging expenses that the employer pays for is referred to as "matching funds" or "the matching share." The matching share paid by the employer may include:

(a) the cost of tuition, fees for certified education, or the cost of skills-based training;

(b) the cost of educational materials, training supplies, or lab fees required for training;

(c) the cost of testing fees, but only if the tests are completed within 90 days of the date of training completion;

(d) in-state transportation and lodging costs required for training, calculated at the current state of Montana rate; and

(e) any costs incurred for training that are above the allowable grant cap.

(5) Wages, at the regular hourly rate, paid by the employer to an employee who is undergoing required training, for the time spent in training and in transit to and from the training site may be claimed as a credit for the matching share.

(a) Wages paid may not be credited as the matching share for any portion of out-of-state transportation and lodging costs paid by the employer.

(b) Sole proprietors may not use their own wages to meet the matching share requirements.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE IV GRANT APPLICATION PROCESS (1) The department shall make available incumbent worker training grant application forms, which a business entity must complete for the purpose of applying for a grant award.

(2) The fiscal year for this program is from July 1 through June 30. A business entity may submit an application during the fiscal year for eligible training that will begin by June 20th of that same fiscal year.

(3) The department shall verify that the applicant is an employer that meets the definition in [NEW RULE I] and that the information contained in the application is accurate and complete.

(4) The department shall evaluate the application based upon the incumbent worker training program grant award criteria provided in 53-2-1218, MCA, and make a determination as to:

(a) whether a grant should be awarded; and

(b) the amount of the grant award.

(5) Applications submitted to the department for grant funding must be submitted as follows:

(a) applications may be submitted by:

(i) the employer;

(ii) a direct employee of the employer; or

(iii) a grant writer designated by the employer.

(b) applications submitted by anyone other than those listed in (a) will not be accepted.

(6) Applications must address, at a minimum, the following:

(a) the goals of the proposed training of incumbent workers;

(b) the anticipated economic benefits to the employer from the training;

(c) the anticipated benefits to the incumbent workers to be trained; and

(d) the costs of the training.

(7) The application must also include:

(a) a course description of the training to be provided; and

(b) either a training schedule or course curriculum, sufficient for the department to determine if the proposed training meets the required criteria.

(8) Applicants requesting incumbent worker training grant funding for training provided by a department-approved training provider as allowed by 53-2-1216, MCA, must provide sufficient information for the department to determine the industry-recognized competency in the subject matter to be taught. Information about the proposed trainer should include, but is not limited to:

(a) the trainer's professional biography; and

(b) the trainer's professional resume, including any industry-recognized credentials earned by the trainer.

(9) Applications must be received by the department with sufficient time for processing. Generally, 20 calendar days prior to the date training begins is sufficient for the department to:

(a) verify completeness of the application; and

(b) evaluate eligibility in accordance with the incumbent worker training program grant award criteria that are provided by 53-2-1218, MCA.

(10) The department shall review the expenditures of the incumbent worker training program throughout the fiscal year. When funds are depleted before the end of the fiscal year, the department may suspend the grant program until the beginning of the next fiscal year.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE V EVALUATION OF GRANT APPLICATIONS AND LIMITATIONS (1) Except as provided in (a) and (b), the department provides grant funding on a first-come, first-served basis, in accordance with the receipt by the department of a complete application for funding.

(a) Although incumbent worker training grants are generally available on a first-come, first-served basis, the department reserves the right to defer the review of multiple grant applications submitted by any single employer, in order to provide funding to employers on an equitable basis. The department encourages employers not to submit multiple applications "shotgun style," but instead make applications that are well tailored to the specific needs of the employer and the employer's workforce.

(b) Applications for which review has been deferred will be reconsidered and evaluated on a quarterly basis during the state fiscal year in which the application was submitted. An employer's successful use of grant funding for completed training during the current year or previous years is a factor which will generally weigh in favor of additional applications being granted during the year.

(2) The department shall award incumbent worker training grant funds to employers in accordance with the grant award criteria set forth by 53-2-1218, MCA.

(3) The department shall award incumbent worker training grant funds only to employers who have demonstrated that incumbent worker training is an integral part of a plan for worker retention, skill improvement, or wage enhancement. The plan is demonstrated by the information provided on the grant application.

(4) The department shall award incumbent worker training grant funds on a prospective basis only and may not award grant funding to an employer for training that occurred prior to the date upon which the application was approved by the department.

(5) The department shall award incumbent worker training grant funds only for training that is completed in less than a year.

(6) The following are not eligible for incumbent worker training grant funding:

(a) continuing education that is necessary to maintain a license or certification;

(b) conferences, or training that occurs in conjunction with a conference;

(c) training customarily provided or required by the employer or the industry. This includes new employee training and training required to perform the duties the incumbent worker was hired to perform; and

(d) periodic updates regarding laws or product lines.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE VI AWARD OF GRANT (1) Upon approval of an application for grant funds, the department shall enter into a funding agreement for incumbent worker training with the employer.

(2) A funding agreement must contain the following:

(a) the terms of the grant;

(b) a schedule for reimbursement of approved costs to the employer; and

(c) the grant reporting requirements of the employer.

(3) Upon approval of an application for grant funds, the employer must:

(a) sign the financial agreement within 14 calendar days; and

(b) submit a completed state of Montana form SW9 (Substitute W-9) or IRS form W-9.

(4) Grants are funded on the basis of the state fiscal year. Funding may not exceed:

(a) $1,000 per incumbent worker working an average of 20-34 hours a week, predominantly year round; and

(b) $2,000 per incumbent worker working an average of 35 or more hours a week, predominantly year round.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE VII CHANGES TO THE APPLICATION OR APPROVED GRANT (1) An employer may request to amend an application by contacting the department. An amendment will change the submission date of the application.

(2) An employer may request a modification to an approved grant by submitting a modification request form.

(a) In order to determine whether the modification will be approved, the following changes must be received before training begins:

(i) changes to the person or entity designated as the trainer;

(ii) changes to the training delivery, method, or location; and

(iii) a change in attendees of the training.

(b) A request for a change of the training completion date must be received prior to the date upon which the previously approved training was to be completed.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE VIII PAYMENT OF GRANT FUNDS (1) Reimbursement of expenses will be made after the employer has purchased and completed the approved training as outlined on the application. The employer has 30 calendar days from the date of training completion to submit a reimbursement claim which includes:

(a) a receipt for the training issued by the trainer;

(b) receipts for other approved costs issued by the vendor; and

(c) proof of completion of the training by the employee(s), issued by the trainer.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

NEW RULE IX APPEALS (1) An employer has the right to appeal when the department:

(a) decides not to award grant funding for incumbent worker training; or

(b) awards less grant funding than requested.

(2) If an employer disagrees with the department's decision to not approve an application, or to approve less funding than was requested, the employer may either:

(a) request an administrative review within 30 calendar days of the date of the notice of the department's decision regarding the application. The employer may seek informal administrative review of a decision by submitting a written request for an administrative review to the department: Department of Labor and Industry, Incumbent Worker Training Program, P.O. Box 1728, Helena MT 59604-1728, or electronically to iwt@mt.gov; or

(b) request a contested case proceeding within 20 calendar days of the date of the notice of final decision of the department, which may be the result of an administrative review requested pursuant to (a). The employer shall submit a written request to the department for a contested case proceeding, pursuant to Title 2, chapter 4, MCA, at the address provided in this rule.

(3) The employer bears the burden of demonstrating that the action by the department constitutes an abuse of discretion.

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

5. The department proposes to repeal the following rules:

24.22.301 DEFINITIONS

AUTH: 53-2-1220, MCA
IMP: 53-2-1215, 53-2-1216, MCA

24.22.304 RECOGNITION OF A BEAR PROGRAM

AUTH: 53-2-1220, MCA
IMP: 53-2-1216, MCA

24.22.307 GENERAL REQUIREMENTS

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

24.22.311 GRANT APPLICATION PROCEDURES

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

24.22.316 EVALUATION CRITERIA AND LIMITATIONS

AUTH: 53-2-1220, MCA
IMP: 53-2-1217, 53-2-1218, MCA

24.22.321 APPEAL PROCEDURE

AUTH: 2-4-201, 53-2-1220, MCA
IMP: 2-4-201, 53-2-1218, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Chris Wilhelm, Workforce Services Division, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59604-1728, by facsimile to (406) 444-3037, or e-mail to ChrisWilhelm@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

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 59604-1728, 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. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on September 22, 2017, by telephone.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will have a significant and direct impact on small businesses that choose to participate in the incumbent worker training program.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

| | |
|---|---|
| /s/ MARK CADWALLADER | /s/ GALEN HOLLENBAUGH |
| Mark Cadwallader | Galen Hollenbaugh, Acting Commissioner |
| Alternate Rule Reviewer | DEPARTMENT OF LABOR AND INDUSTRY |

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.141.507 military training or experience, 24.141.2301 unprofessional conduct, and 24.141.2401 screening panel, and the repeal of ARM 24.141.401 board meetings, 24.141.402 apprentice registration, 24.141.2101 renewals, and 24.141.2402 complaint procedure | ) ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On November 3, 2017, at 10:30 a.m., a public hearing will be held in Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Electrical Board (board) no later than 5:00 p.m., on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdele@mt.gov (board's e-mail).

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

24.141.507 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an electrician. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Since adopting this rule, the board has become aware that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.141.2301 UNPROFESSIONAL CONDUCT (1) and (1)(a) remain the same.

(b) being adjudicated under Title 39, MCA, by the court or agency having jurisdiction, as having violated any workers' compensation, unemployment insurance, or independent contractor law in Montana while engaged in the electrical trade; ~~and~~

(c) failure to comply with continuing education requirements set forth in ARM 24.141.2102; and

(d) failing or refusing to provide the board verification of an employee's hours worked in the employ of the licensee when the request for verification is made for purposes of licensure.

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, ~~37-68-201,~~ MCA
IMP: 37-1-307, 37-1-316, 37-1-319, ~~50-60-601, 50-60-603, 50-60-604,~~ MCA

REASON: Obtaining a license to practice as a journeyman, residential, or master electrician requires that applicants show proof of a certain number of hours worked. Recently, the board learned that former employers have failed or even refused to provide such proof. Therefore, the board determined it is reasonably necessary to amend this rule by adding this failure to those actions the board considers as unprofessional conduct. The board concluded that such conduct impedes otherwise qualified individuals from obtaining a license, and obstructs the board from licensing otherwise qualified individuals. The board notes that nothing in the amended rule will require an employer to endorse or recommend an individual's competence or skill to practice.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.141.2401 SCREENING PANEL (1) remains the same.

(2) The screening panel will not consider anonymous complaints.

AUTH: 37-1-131, ~~37-68-201,~~ MCA
IMP: 37-1-307, MCA

REASON: The language in new (2) is being relocated to this rule from ARM 24.141.2402 which is proposed to be repealed in this notice. The board determined

it is reasonably necessary to retain this prohibition on anonymous complaints to ensure that the public uses the board's compliance process to resolve legitimate health and safety issues, rather than be misused for illegitimate business competition or harassment purposes.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. The board proposes to repeal the following rules:

24.141.401 BOARD MEETINGS

AUTH: 37-68-201, MCA
IMP: 37-68-201, MCA

REASON: The board is repealing this unnecessary rule because the department now administers standardized processes regarding board meetings, minutes, and agendas, that apply to all professional and occupational licensing boards.

24.141.402 APPRENTICE REGISTRATION

AUTH: 37-68-201, MCA
IMP: 37-68-303, MCA

REASON: The board determined it is reasonably necessary to repeal this rule because the implemented statute, 37-68-303, MCA, was repealed by the 2015 Montana Legislature. Since then, the Montana Registered Apprenticeship and Training Program, rather than the board, has provided complete oversight of electrical apprentices.

24.141.2101 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-68-201, MCA
IMP: 37-1-141, 37-68-310, MCA

REASON: The board is repealing this unnecessary rule because the department now administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

24.141.2402 COMPLAINT PROCEDURE

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-101, 37-1-131, 37-1-307, 37-1-308, 37-1-309, MCA

REASON: The board determined it is reasonably necessary to repeal this unnecessary rule because the department now administers a standardized complaint procedure for all professional and occupational licensure boards.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdele@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

6. An electronic copy of this notice of public hearing is available at www.electrician.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdele@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.141.507, 24.141.2301, and 24.141.2401 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.141.401, 24.141.402, 24.141.2101, and 24.141.2402 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; facsimile (406) 841-2305; or to dlibsdele@mt.gov.

10. Jason Steffins, Executive Officer, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
MEL MEDHUS III, PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.177.503 military training or experience, 24.177.510 foreign-trained physical therapist applicants, and 24.177.2105 continuing education, and the repeal of ARM 24.177.410 list of licensed physical therapists | ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On November 7, 2017, at 10:00 a.m., a public hearing will be held in Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Physical Therapy Examiners no later than 5:00 p.m., on October 31, 2017, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdptp@mt.gov (board's e-mail).

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

24.177.503 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a physical therapist or physical therapist assistant. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Since adopting this rule, the board has become aware that certain military personnel (reservists and national guardsmen who have never been

activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.177.510 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANTS

(1) Foreign-trained physical therapist applicants shall be subject to the following requirements:

(a) compliance with educational standards equivalent to the national standards of the Commission on Accreditation of Physical Therapy Education of the American Physical Therapy Association by using an evaluation of educational background performed by the Foreign Credentialing Commission of Physical Therapy, Inc. (FCCPT), ~~P.O. Box 258227, Alexandria, VA 22313-9998~~ as listed on the board's web site.

(b) through (d) remain the same.

(e) if from a non-English speaking culture, the applicant shall display competency in the English language by passing the national examination test of English as foreign language (TOEFL) with a passing score as designated by the Federation of State Boards of Physical Therapy (FSBPT). The applicant would contact TOEFL ~~by writing:~~ as listed on the board's web site.

~~TOEFL~~
~~Box 899~~
~~Princeton, NJ 08541, USA~~

A fee is required by TOEFL and must be paid by the applicant.

(f) through (2) remain the same.

AUTH: 37-1-131, 37-11-201, MCA
IMP: 37-1-131, 37-11-310, MCA

REASON: Both the Foreign Credentialing Commission of Physical Therapy, Inc. (FCCPT) and the national examination test of English as foreign language (TOEFL) have changed contact information. The board is amending this rule to ensure the correct contact information for the FCCPT and TOEFL is immediately available to applicants. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.177.2105 CONTINUING EDUCATION (1) through (4)(b)(viii) remain the same.

(ix) taking and satisfactorily completing the FSBPT's ~~Practice Review Tool~~ current competency evaluation tool(s). Max hour/credit one.

(5) and (6) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-11-201,~~ MCA
IMP: 37-1-131, 37-1-306, MCA

REASON: The board determined it is reasonably necessary to amend and update this rule as the Federation of State Boards of Physical Therapy (FSBPT) no longer administers the Practice Review Tool and has replaced this continuing education option with various competency evaluation tools. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority and remove an erroneous citation.

4. The board proposes to repeal the following rule:

24.177.410 LIST OF LICENSED PHYSICAL THERAPISTS

AUTH: 37-1-134, 37-11-201, MCA
IMP: 37-11-201, MCA

REASON: Following the 2015 revision of Montana's public records laws by House Bill 123, the board is repealing this rule as unnecessary. To comply with the provisions of 2-6-1017, MCA, the department now administers a standardized process to address requests for licensee lists for all professional and occupational licensure boards.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdptp@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

6. An electronic copy of this notice of public hearing is available at www.pt.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdptp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.177.503, 24.177.510, and 24.177.2105 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.177.410 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdptp@mt.gov.

10. Mark Jette, legal counsel, has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY EXAMINERS
KELSEY WADSWORTH, PT, DPT, OCS
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 24.213.403 abatement of renewal fees, 24.213.2101 continuing education requirements, and the adoption of NEW RULE I nonroutine applications | ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION |

TO: All Concerned Persons

1. On November 3, 2017, at 11:00 a.m., a public hearing will be held in the Basement Conference Room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Respiratory Care Practitioners (board) no later than 5:00 p.m., on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrcp@mt.gov (board's e-mail).

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

24.213.403 ABATEMENT OF RENEWAL FEES (1) ~~This rule is intended to provide a process whereby the board may reduce its cash balance when the board's cash balance is excessive. This rule provides for an abatement of certain fees when that cash balance is excessive.~~ The Board of Respiratory Care Practitioners adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

~~(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.~~

~~(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.~~

~~(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain~~

~~classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.~~

~~(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The department, to the extent it provides by rule, may impose a late penalty fee on untimely submissions of renewal applications or other required documentation.~~

~~(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. (As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years worth of fees for operational expense.)~~

~~(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs.~~

AUTH: ~~37-1-101,~~ 37-1-131, ~~37-1-134,~~ MCA
IMP: 17-2-302, 17-2-303, ~~37-1-101, 37-1-131,~~ 37-1-134, ~~37-1-141,~~ MCA

REASON: The board has determined it is reasonably necessary to amend this rule and incorporate by reference ARM 24.101.301 to authorize the department to perform renewal licensure fee abatements as appropriate and necessary, without waiting to obtain a board vote. The department adopted ARM 24.101.301 in 2004 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs administratively attached to the department. Most of the licensing boards have since adopted and incorporated this rule to similarly facilitate the prompt abatement of fees and comply with statutory budget parameters.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) ~~Upon renewal of licensure, each~~ Each respiratory care practitioner must ~~affirm on the renewal form in each even numbered year beginning in 2008 that the licensee completed~~ complete 24 continuing education units in the preceding 24 months, by the renewal deadline in even-numbered years. One continuing education unit is equivalent to 50 minutes in length.

(2) through (6) remain the same.

(7) Misrepresentation of compliance ~~shall~~ may constitute grounds for disciplinary action.

AUTH: 37-1-131, 37-1-319, ~~37-28-104,~~ MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule to align with 37-1-306, MCA, providing that renewal cannot be preconditioned on completion of continuing education (CE), and clarify more specifically the CE requirements. Following a recommendation by department legal staff, the board is amending this rule to align the affirmation of CE requirements at renewal with the statutory provisions. The amendments fall within standardized department procedure that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

(a) the applicant has a prior felony conviction. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;

(c) any of the applicant's occupational or professional licenses have been disciplined or an application for any occupational or professional license was denied in this state, another state, or jurisdiction;

(d) the applicant voluntarily or involuntarily surrendered an occupational or professional license in this state, another state, or jurisdiction;

(e) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(f) the applicant has been a respondent in a complaint for unlicensed practice of respiratory care in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action;

(g) the applicant has addiction issues, including active or previous alcohol and/or drug abuse, and treatment for the same;

(h) the applicant has not been active in the profession of respiratory care for the preceding three years or more; or

(i) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-101, 37-1-131, 37-28-202, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly delineate the criteria to categorize license applications as nonroutine and further implement 37-1-

101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board has previously relied on its nonroutine policy, this new rule will replace that policy and provide licensing staff clarification and guidance to differentiate between routine and nonroutine applications.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 431-2305, or e-mail to dlibsdrcp@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

6. An electronic copy of this notice of public hearing is available at www.respcare.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 431-2305; e-mailed to dlibsdrcp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.213.403 and 24.213.2101 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibsdrcp@mt.gov.

10. L'Joy Griebenow, Bureau Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
LEONARD BATES, RCP
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption New Rules I through XIV pertaining to certification of behavioral health peer support specialists (CBHPSS) | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On November 3, 2017, at 9:00 a.m., a public hearing will be held in Basement Conference Room #B07, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Behavioral Health (board) no later than 5:00 p.m., on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdbbh@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2017 Montana Legislature enacted Chapter 127, Laws of 2017 (Senate Bill 62), an act providing for certification and regulation of behavioral health peer support specialists, establishing certification requirements, and providing rulemaking authority for the board to implement the bill. The bill was signed by the Governor on March 31, 2017, and will become effective on October 1, 2017. Therefore, the board is adopting new rules to further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The proposed new rules are as follows:

NEW RULE I DEFINITIONS (1) "Behavioral health disorder" means a wide range of mental health conditions or disorders that affect mood, thinking, and behavior that impair the individual's ability to build or maintain satisfactory interpersonal relationships and to manage daily functioning.

(2) "Behavioral health disorder recovery" or "recovery from a behavioral health disorder" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(3) "CBHPSS" means a certified behavioral health peer support specialist.

(4) "Exploitation" means the manipulation or use, or the attempted manipulation or use, of a professional relationship with a client for a CBHPSS's

emotional, financial, romantic, sexual, or personal advantage, or for the advancement of the CBHPSS's personal, religious, political, or business interests.

(5) "Sexual contact" includes but is not limited to sexual intercourse, either genital or anal, cunnilingus, fellatio, or the handling of the breasts, genital areas, buttocks, or thighs, whether clothed or unclothed.

(6) "Supervision plan" means a plan, in a form approved by the board that describes the type, structure, and amount of supervision that a CBHPSS must have in order to satisfy the requirements for the certification.

(7) "Supervisor," when used to refer to a person who supervises the work of a CBHPSS, means a person who meets the criteria set forth in [NEW RULE IV].

AUTH: 37-1-131, Chap. 127, sections 2 and 4, L. of 2017, MCA
IMP: 37-1-131, Chap. 127, sections 2 and 4, L. of 2017, MCA

NEW RULE II FEE SCHEDULE FOR BEHAVIORAL HEALTH PEER SUPPORT SPECIALISTS

| | |
|---|---|
| (1) Application fee | $125.00 |
| (2) Renewal fee (based on annual renewal) | 110.00 |
| (3) Renewal fee (inactive to active) | 55.00 |
| (4) Inactive certificate fee (based on annual renewal) | 55.00 |

(5) Additional standardized fees are specified in ARM 24.101.403.

AUTH: Chap. 127, section 4, L. of 2017, MCA
IMP: Chap. 127, section 4, L. of 2017, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and set fees to further implement the 2017 legislation. The board is statutorily required to set fees related to its program area that provides the amount of money usually needed for the operation of the board for services per 37-1-134, MCA. The legislation requires the board to certify and regulate behavioral health peer support specialists and the proposed fees will enable the board to meet this mandate.

The board is setting fees for each type of certificate contemplated by the legislation to cover the board's expenses for the initial certificate processing of an estimated 200 applicants. The annual renewal fee is proposed at $110, which will be charged beginning in fiscal year 2018. It is estimated that the new fees will affect approximately 200 individuals and result in approximately $25,000 of board revenue for fiscal year 2018 and an approximate average of $30,606 in annual revenue thereafter through fiscal year 2022.

NEW RULE III MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for certification as a behavioral health peer support specialist.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

(a) United States Armed Forces;

(b) United States Reserves;

(c) state national guard; or

(d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a behavioral health peer support specialist. Satisfactory evidence includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The statute requires each licensing board to adopt rules providing that certification or licensure requirements of the board may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U. S. Coast Guard. It is reasonably necessary for the board to adopt New Rule III to further implement the statute regarding behavioral health peer support specialists.

NEW RULE IV SUPERVISOR QUALIFICATIONS (1) An individual supervising post-certification employment of a CBHPSS shall have the minimum qualifications set forth in this rule. The supervisor must be a physician licensed under Title 37, chapter 3, MCA; a psychologist licensed under Title 37, chapter 17, MCA; a social worker licensed under Title 37, chapter 22, MCA; a professional counselor licensed under Title 37, chapter 23, MCA; an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health nursing; a marriage and family therapist licensed under Title 37, chapter 37, MCA; or a licensed addiction counselor licensed under Title 37, chapter 35, MCA.

(2) The supervisor must hold an active and current license in good standing, issued by the licensing board or other officially recognized licensing body.

(3) The supervisor must have:

(a) three years of licensed experience working in the supervisor's respective discipline; or

(b) board-approved training in clinical supervision, which shall consist of a minimum of:

(i) one semester credit of post-licensure board-approved graduate education; or

(ii) 20 clock hours of board-approved training in clinical supervision.

AUTH: 37-1-131, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, Chap. 127, section 4, L. of 2017, MCA

NEW RULE V CBHPSS APPLICATION PROCEDURES (1) Any person seeking certification as a CBHPSS must apply on the board's official forms, which may be obtained through the department or from the board web site. All requirements must be met at the time of application. Incomplete applications will not be considered by the board.

(2) Completed applications must include:

(a) payment of an application fee;

(b) attestation by the applicant of the applicant's diagnosed behavioral health disorder;

(c) attestation by the applicant of the applicant's behavioral health disorder recovery that does not include any period of incarceration, or hospitalization or any inpatient admission related to a behavioral health disorder that exceeds 72 hours, within the two years immediately preceding application;

(d) receipt of fingerprint and background results as reported to the board office by the Department of Justice within 90 days of making application;

(e) official transcripts or training certificates provided directly from the provider documenting completion of 40 hours of the training course in behavioral health peer support, per [NEW RULE VI]; and

(f) a written agreement and supervision plan between the applicant and the qualified supervisor who will provide supervision once the certificate is issued. The agreement shall include:

(i) the name and signatures of the applicant and supervisor, including the supervisor's license type, license number, signature, and the service delivery site; and

(ii) a work plan that complies with the supervision guidelines outlined in [NEW RULE VII].

(3) Individuals who have practiced as behavioral health peer support specialists prior to October 1, 2017, shall complete all requirements of this rule.

(a) Training hours may include peer support specialist education hours completed in the past five years.

(b) On-the-job training does not qualify as approvable education hours.

(4) The certificate will be effective as of the date all requirements are met and the certificate is issued by the board office.

(5) An applicant shall not work as a CBHPSS until the effective date of the certificate.

(6) If the applicant fails to satisfy the requirements for certification within one year of the date the application is determined by the department to be complete, the application will expire, the application fee will be forfeited, and a new completed application and application fee will be required.

AUTH: 37-1-131, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, Chap. 127, section 4, L. of 2017, MCA

NEW RULE VI CBHPSS EDUCATION REQUIREMENTS (1) Applicants must provide documentation of completion of 40 hours of a training course in behavioral health peer support.

(2) All training programs must be approved by the board and those approved programs shall be posted on the board's web site. All education programs must provide content in the following domains:

(a) Substance Abuse and Mental Health Administration core competencies;
(b) boundaries and ethics;
(c) confidentiality;
(d) scope of practice;
(e) communication skills;
(f) self-care;
(g) suicide awareness;
(h) stages of change;
(i) trauma-informed care;
(j) cultural awareness;
(k) pathways of recovery;
(l) recovery story;
(m) clinical supervision;
(n) accessing community resources;
(o) emotional intelligence;
(p) supporting others in recovery;
(q) one-on-one session skills;
(r) support group facilitation; and
(s) recovery planning.

(3) The training course in behavioral health peer support shall include successful completion of an exam. Exam scores shall be submitted with the training course.

AUTH: 37-1-131, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, Chap. 127, section 4, L. of 2017, MCA

NEW RULE VII CBHPSS POST-CERTIFICATION CLINICAL SUPERVISION REQUIREMENTS (1) For the purpose of meeting the ongoing supervision requirement in [Chap. 127, section 4, L. of 2017], MCA, a CBHPSS shall comply with the supervision guidelines as follows:

(a) A supervisor must meet the requirements of [NEW RULE IV].

(b) A supervision agreement shall be in writing and on a form available on the board web site. The agreement shall include, but is not limited to:

(i) the CBHPSS's and supervisor's names, signatures, and dates of supervision;

(ii) the duties and obligations of the CBHPSS and supervisor per this rule, frequency and method of supervision, and duration and termination provisions; and

(iii) a statement of compliance with applicable patient privacy laws.

(c) The supervisor's relationship with the CBHPSS shall not be a conflict of interest, such as, but not limited to, being in a cohabitation or financially dependent relationship.

(d) The supervisor shall not be the certificate holder's parent, child, spouse, or sibling.

(2) A record of supervision must be maintained by the CBHPSS and must include:

(a) names of the CBHPSS and supervisor, and signatures of both;

(b) date and length of supervision in increments of not less than 15 minutes;

(c) content that confirms that the CBHPSS has received a minimum of one hour of face-to-face supervision and consultation for every 20 hours of work experience. No more than 40 hours of work experience may transpire without receiving the required hours of supervision and/or consultation. Less frequent supervision may take place only with prior approval of the licensure board;

(d) content summary (excluding confidential information); and

(e) content demonstrating the CBHPSS's ongoing competence. Supervisory comments must indicate ongoing competence and any areas in need of improvement.

(3) The supervisor must attest to (1)(b) through (d) and (2)(a) through (e) under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentation and a violation of professional ethics, which may result in discipline of the certificate holder or supervisor's license.

(4) All reports, written interpretations, and results sent to other public or private agencies that affect the current status of a client must be reviewed by and contain the approval and signature of the supervisor.

(5) All interventions, results, and interpretations used in the planning and/or implementation of interventions shall be reviewed and preapproved by the supervisor on a continual and ongoing basis.

(6) All professional communications, both private and public, including advertisements, shall clearly indicate the certification status as a CBHPSS.

(7) Upon a change of supervisor:

(a) the CBHPSS must notify the board prior to beginning work; and

(b) the CBHPSS's previous supervisor must provide the record of supervision to the board.

(8) For any other substantial change in the CBHPSS's supervision plan, the CBHPSS must notify the board within ten business days.

(9) The CBHPSS and supervisor are responsible for ensuring that the CBHPSS and supervisor comply with the requirements of this rule and the statutes, rules, and standards pertaining to the practice of a CBHPSS.

(10) The CBHPSS must maintain the record of supervision, which must be maintained according to the requirements of this rule for a minimum of seven years and may be requested by the board at any time.

AUTH: 37-1-131, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, Chap. 127, section 4, L. of 2017, MCA

NEW RULE VIII APPLICATION TO CONVERT AN ACTIVE STATUS CERTIFICATE TO AN INACTIVE STATUS CERTIFICATE AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A CBHPSS may place a certificate on inactive status by either indicating on the renewal form that inactive status is desired or by informing the board office in writing that an inactive status is desired. The certificate must have been active and in good standing prior to the first time it is placed on inactive status. It is the sole responsibility of the inactive CBHPSS to keep the board informed as to any change of address during the period of time the certificate remains on inactive status. Inactive CBHPSSs must pay the inactive certificate fee annually to maintain certification status.

(2) A certificate shall not be on inactive status for more than five consecutive years. At the end of the fifth year that a certificate has been on inactive status, the certificate must be converted to active status. If the certificate is not converted to active status, the provisions of 37-1-141, MCA, apply to the renewal, lapse, expiration, or termination of the certificate.

(3) An inactive status certificate does not entitle the holder to practice as a CBHPSS in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive certificate if the applicant does each of the following:

(a) presents satisfactory evidence that the applicant has not been out of active practice for more than five years and that the applicant has attended 10 hours of continuing education per year of inactive status, with a maximum of 50 hours of continuing education, which comply with the continuing education rules; and

(b) submits certification from the jurisdictions where the applicant is licensed, certified, or has practiced that the applicant:

(i) is in good standing and without any disciplinary action against the applicant's license or certificate; or

(ii) if not in good standing, an explanation of the nature of the violation(s) resulting in that status including any disciplinary treatment imposed.

AUTH: 37-1-319, MCA
IMP: 37-1-302, 37-1-319, MCA

NEW RULE IX CERTIFICATION OF OUT-OF-STATE APPLICANTS

(1) Certification as a CBHPSS may be issued to the holder of an out-of-state peer support specialist license or certificate, provided the applicant meets the requirements of [NEW RULE V]. Official written verification of such licensure or certification status must be received by the board directly from the other state(s) or jurisdiction(s).

AUTH: 37-1-131, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, 37-1-304, Chap. 127, section 4, L. of 2017, MCA

NEW RULE X CODE OF ETHICS (1) Pursuant to 37-1-319 and 37-22-201, MCA, the board adopts the following professional and ethical standards for CBHPSSs to ensure their ethical, qualified, and professional practice for the protection of the general public. These standards supplement current applicable statutes and rules of the board. A violation of the following is considered unprofessional conduct as set forth elsewhere in rule, and may subject the CBHPSS to such penalties and sanctions provided in 37-1-136, MCA.

(2) All CBHPSSs shall:

(a) act in a way that encourages and promotes recovery for themselves and those they serve without placing judgment on the recovery path of others;

(b) share their own recovery story in a manner that promotes recovery, instills hope, and is a benefit to those they are serving;

(c) always use first person or recovery language and encourage this practice in others;

(d) engage in resolving concerns in a respectful and professional manner;

(e) maintain high standards of personal and professional conduct, always acting in a way that represents peer support in a positive and beneficial light;

(f) act as a positive role model in recovery;

(g) conduct themselves in a way that fosters their own recovery. CBHPSSs shall take personal responsibility to seek support and manage their wellness;

(h) provide clients with accurate and complete information regarding the extent and nature of the services available to them;

(i) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;

(j) make every effort to keep scheduled appointments;

(k) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;

(l) attempt to make appropriate referrals pursuant to the client's needs;

(m) obtain informed written consent of the client or the client's legal guardian and supervisor approval prior to the client's involvement in any research project of the CBHPSS that might identify the client or place the client at risk;

(n) obtain informed written consent of the client or the client's legal guardian and supervisor approval prior to taping, recording, or permitting third-party observation of the client's activities that might identify the client or place the client at risk;

(o) safeguard information provided by clients. Except where required by law or court order, a CBHPSS shall obtain the client's informed written consent prior to releasing confidential information;

(p) disclose the estimated fees and/or the method of fee calculation to the client or prospective client, and obtain written acknowledgement of the disclosure;

(q) respect and protect the confidentiality, rights, and dignity of those they serve;

(r) advocate for those they serve unless it would threaten the safety, security, or recovery of others;

(s) take proper and adequate measures to prevent, report, and correct unethical conduct;

(t) follow all state and federal laws including the Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR part 2;

(u) as mandatory reporters, report elder abuse and child abuse to appropriate authorities and supervisors;

(v) disclose any pre-existing relationships, sexual or otherwise, to immediate supervisor prior to providing services to that individual; and

(w) report risk of imminent harm to self or others to the proper authorities and to their supervisor. When reporting, the minimum amount of information necessary will be given to maintain confidentiality.

(3) A CBHPSS shall not:

(a) commit fraud or misrepresent services performed;

(b) engage or offer advice on the matters of diagnosis, treatment, or medications;

(c) divide a fee or accept or give anything of value for receiving or making a referral;

(d) violate a position of trust by knowingly committing any act detrimental to a client;

(e) engage in or promote behaviors or activities that would jeopardize the CBHPSS's recovery or the recovery of those they serve;

(f) participate in bartering, unless bartering is considered to be essential for the provision of services negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. A CBHPSS who accepts goods or services from a client as payment for professional services assumes the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship;

(g) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(h) engage in or solicit sexual contact with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the CBHPSS;

(i) enter into sexual or personal relationships with a client or a client's immediate family member;

(j) condone or engage in sexual harassment. Sexual harassment is defined as deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient;

(k) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;

(l) abuse, harass, demean, or discriminate against others based on race, culture, religion, age, gender, gender identity, disability, nationality, sexual orientation, or economic condition;

(m) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services; or

(n) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.

AUTH: 37-1-131, 37-1-136, 37-1-319, Chap. 127, section 5, L. of 2017, MCA
IMP: 37-1-131, 37-1-136, 37-1-316, Chap. 127, section 5, L. of 2017, MCA

NEW RULE XI CONTINUING EDUCATION HOURS AND CREDITS

(1) Each CBHPSS shall earn 20 clock hours of accredited continuing education for each year. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) CBHPSSs may apply for exemption from the continuing education requirements of these rules by filing a statement with the board setting forth good faith reasons why the CBHPSS is unable to comply with these rules, and an exemption may be granted by the board.

(3) CBHPSSs certified before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those certified July 1 through October 1 are required to obtain one-half of the 20-hour requirement. Those certified after October 1 will not be required to obtain continuing education credits for renewal.

AUTH: 37-1-319, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-306, 37-1-319, Chap. 127, section 4, L. of 2017, MCA

NEW RULE XII CONTINUING EDUCATION STANDARDS (1) Continuing education for a CBHPSS is training that:

(a) has significant intellectual or practical content and the primary objective is to increase the certificate holder's professional competence as a CBHPSS; and

(b) constitutes an organized program of learning, dealing with matters directly related to the practice of peer support services, professional responsibility, or ethical obligations of a CBHPSS. Academic credit may be used for continuing education hours.

(2) CBHPSSs shall maintain documentation of completed continuing education for four years and make the records available to the department if the CBHPSS is selected for a random audit. The documentation must include a certificate of attendance, the agenda of the continuing education course, and the description of the course and the credentials of the presenters.

(3) Documentation for college credits shall include the course syllabi and an official transcript. One college quarter credit equals ten hours and one college semester credit equals 15 hours.

(4) The board office shall maintain and make available a list of board-approved programs and providers.

(5) Continuing education courses offered by providers not on the list will be accepted if all criteria listed in (1) are met. The board may delegate authority to staff to determine compliance with criteria.

AUTH: 37-1-319, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-306, 37-1-319, Chap. 127, section 4, L. of 2017, MCA

NEW RULE XIII REPORTING REQUIREMENTS (1) CBHPSSs will be required to indicate an understanding of the continuing education requirements at the time of renewal as required by the renewal process.

(2) If a CBHPSS is unable to acquire sufficient continuing education credits, the CBHPSS may request a hardship exemption prior to renewing the certificate. All requests for exemptions will be evaluated by the board on an individual basis.

(3) CBHPSSs must submit a clinical supervision summary report from their supervisor at the time of renewal.

AUTH: 37-1-131, 37-1-319, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, 37-1-306, Chap. 127, section 4, L. of 2017, MCA

NEW RULE XIV CONTINUING EDUCATION NONCOMPLIANCE (1) In the event that a CBHPSS fails to comply with these continuing education rules in any respect, the board shall promptly send a notice of noncompliance. The notice shall specify the nature of the noncompliance and state that unless the noncompliance is corrected or a request for a hearing before the board is made within 60 days, the statement of noncompliance shall be considered grounds for suspension or revocation.

AUTH: 37-1-131, 37-1-136, 37-1-319, Chap. 127, section 4, L. of 2017, MCA
IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-321, Chap. 127, section 4, L. of 2017, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdbbh@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

6. An electronic copy of this notice of public hearing is available at www.bbh.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-

mailed to dlibsdbbh@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on April 10, 2017, by postal mail, April 11, 2017, by telephone, and April 12, 2017, by electronic mail.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through XIV will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibsdbbh@mt.gov.

10. L'Joy Griebenow, executive officer, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC
CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I, II, and III and the amendment of ARM 37.86.4412 pertaining to the promising pregnancy care program | ) ) ) ) | AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT |

TO: All Concerned Persons

1. On May 12, 2017 the Department of Public Health and Human Services published MAR Notice No. 37-793 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 595 of the 2017 Montana Administrative Register, Issue Number 9.

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 20, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. Subsequent to filing the proposal notice, the department determined the statement of reasonable necessity did not adequately explain the reasonable necessity of promulgating new rules establishing the Promising Pregnancy Care program.

4. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

The Department of Public Health and Human Services (department) is proposing new rules regarding the Promising Pregnancy Care program. The new rules outline the definitions, general provisions, and reimbursement requirements for the department's group prenatal program, Promising Pregnancy Care. The department is also proposing amendments to ARM 37.86.4412 regarding Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) and long-acting reversible contraceptives (LARCs).

<u>The new rules are necessary to establish the Promising Pregnancy Care program, an evidence-based health care delivery system that combines prenatal visits with group education sessions. The department is establishing the program to improve health outcomes for Montana Medicaid members. The goal of the program is to reduce the incidence of preterm birth in Montana and improve health outcomes for</u>

mothers and babies. Studies have shown that pregnant women who participate in group education during their pregnancy are 33 percent less likely to deliver a preterm infant. The program is also intended to result in cost savings for the Montana Medicaid Program, which pays for 45 percent of all births in Montana.

New Rule I

Proposed New Rule I provides a set of definitions for principal terms appearing in the proposed rule. Definitions are an essential feature of understanding the meaning of written text. The department determined that a comprehensive presentation of the definitions in one rule is the most appropriate practice and is essential to the implementation of the new rules.

New Rule II

Proposed New Rule II provides the department's requirements for a Promising Pregnancy Care (PPC) program. This rule specifies the topics that must be presented to members and it requires that providers commit to sharing data related to their pregnant Medicaid members, even if they are not enrolled in the providers PPC program. All providers who seek reimbursement for the PPC program must be state approved.

New Rule III

Proposed New Rule III outlines the reimbursement policy for the new Promising Pregnancy Care program. Providers will be reimbursed for the group sessions in addition to the individual prenatal visit.

Fiscal Impact

The proposed rule adoption is projected to have a total fiscal impact of $42,000 in SFY2018. $14,499 of this impact is from the state general fund. This rule will impact 45 FQHCs, 28 RHCs, 330 physicians, and 69,947 Medicaid members.

ARM 37.86.4412

The department is proposing to make two amendments to this subsection of rule. In (7), the proposed amendment will allow an enhanced prospective payment system (PPS) rate for approved FQHCs and RHCs that participate in Promising Pregnancy Care. The proposed amendment provides an avenue for FQHCs and RHCs to receive payment for the educational portion of the new Promising Pregnancy Care program.

The department is proposing to add a new (8) which allows a separate reimbursement for LARCs in addition to the PPS rate. This proposed change is necessary to increase access to LARCs for the Medicaid population.

Fiscal Impact

The proposed amendment is budget neutral.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on October 27, 2017. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.84.102, 37.84.106, 37.84.107, and 37.85.204, and the repeal of ARM 37.84.108, 37.84.109, 37.84.112, and 37.84.115 pertaining to health and economic livelihood partnership (HELP) program | ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On November 6, 2017, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal 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 27, 2017, 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:

37.84.102 HELP ACT: DEFINITIONS ~~(1) "Advance Benefit Notice (ABN)" means a notice that providers give to the participant when they have determined that a service or item is a noncovered benefit of the HELP Plan. The ABN provides notice to the participant that the participant is responsible for the full payment of the particular service.~~

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

~~(3)~~ (2) "~~Aligned~~ Medicaid ~~Alternative~~ Benefit Plan" means a service plan available to Medicaid and HELP members that is equivalent to the Medicaid services described in ARM Title 37~~, chapters 86 and 88~~.

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

~~(6)~~ (5) "Benefits" means the services a person is eligible to receive. The HELP Program benefits are stated in the ~~Evidence of Coverage or the Aligned~~ Medicaid ~~Alternative~~ Benefit Plan ~~as applicable~~.

~~(7)~~ (6) "Copayment" means a predetermined portion of the cost for a health care service or item that is owed by the ~~participant~~ member directly to a provider for a covered health care service.

(8) and (9) remain the same, but are renumbered (7) and (8).

~~(10)~~ (9) "Emergency medical condition" means a medical condition manifesting itself with acute symptoms of sufficient severity, including severe pain, such that a prudent layperson could reasonably expect the absence of immediate medical attention to result in any of the following:

(a) serious jeopardy to the health of the ~~participant~~ member or the ~~participant's~~ member's unborn child;

(b) and (c) remain the same.

~~(11) "Evidence of Coverage (EOC)" means a document that explains covered services, defines the HELP Plan's obligations, and explains the rights and responsibilities of the HELP Plan participant.~~

(12) through (15) remain the same, but are renumbered (10) through (13).

~~(16) "Health and economic livelihood partnership (HELP) plan" means the participant's benefits as described in the evidence of coverage, the network of providers, the coordination of care, and the claims processing that is administered by the third-party administrator pursuant to the HELP Act.~~

(17) remains the same, but is renumbered (14).

~~(18)~~ (15) "Healthy behavior plan" means a program implemented to improve the health of ~~participants~~ members by providing services focused on the promotion or maintenance of good health.

(19) remains the same, but is renumbered (16).

~~(20)~~ (17) "Inpatient hospital services" means services or supplies provided to the ~~participant~~ member who has been admitted to a hospital as a registered bed patient and who is receiving services under the direction of a participating provider with staff privileges at that hospital, including a critical access hospital. The facility must:

(a) and (b) remain the same.

(21) remains the same, but is renumbered (18).

~~(22) "Medically necessary" or "medically necessary covered services" means services and supplies that are necessary and appropriate for the diagnosis, prevention, or treatment of physical or mental conditions as specified in the HELP Plan Evidence of Coverage provided in ARM 37.84.106.~~

(23) through (25) remain the same, but are renumbered (19) through (21).

~~(26) "Participant" means an individual enrolled in the HELP Program established in Title 53, chapter 6, part 13, MCA, and Title 39, chapter 12, MCA. A participant is eligible for and enrolled with the HELP Program and receiving benefits through the HELP Plan.~~

(22) "Participant" means a member with a modified adjusted gross income between 50% and 138% of the federal poverty level and is subject to premium payment provided for in the HELP Act, Title 53, chapter 6, part 13, MCA.

~~(27)~~ (23) "Participating provider" means a health care professional or facility that is participating in ~~either the HELP Plan network or~~ the Medicaid program.

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

~~(29)~~ (25) "Premium" means a fee owed by an individual as a participant in the HELP ~~Plan~~ Program.

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

~~(32) "Third party administrator (TPA)" means an entity appropriately authorized, as may be required by Montana law, to provide administrative services including, but not limited to, claims processing, maintaining an adequate network of participating providers, coordination of care, health education, notices, quality assurance, reporting, case management services, and customer service.~~

(33) remains the same, but is renumbered (28).

~~(34)~~ (29) "Workforce program" means a program developed and administered by the Department of Labor and Industry that includes employment assessment and workforce development opportunities to ~~participants~~ members.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-131, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, MCA

37.84.106 HELP ACT: BENEFITS ~~PLANS~~ (1) Coverage for a person in the HELP Program~~, except as provided in (2),~~ is provided through the ~~HELP Plan~~ Medicaid Benefit Plan.

~~(2) A person eligible under the HELP Program may be excluded from the HELP Plan and receive coverage through the Aligned Medicaid Alternative Benefit Plan if the person:~~

~~(a) lives in a geographical area, including an Indian reservation, where the TPA is unable to make arrangements with sufficient numbers and types of health care providers to offer services to participants;~~

~~(b) needs continuity of care that would not otherwise be available or cost-effective through the TPA, including American Indians and Alaska Natives;~~

~~(c) has been determined by the department to have exceptional health care needs, including, but not limited to, a medical, mental health, or developmental condition; and~~

~~(d) is exempt by federal law, including all individuals with incomes up to 50 percent of the FPL, from premium or cost-sharing obligations and other exemptions not waived by CMS.~~

~~(3) The department adopts and incorporates by reference the HELP Plan Evidence of Coverage (EOC) dated January 1, 2016, which is available on the department's web site at http://dphhs.mt.gov/MontanaHealthcarePrograms.~~

~~(4) The HELP Plan EOC describes the health care benefits, inclusive of limitations upon those benefits, available to the HELP Plan participants.~~

~~(5) Services that are not reimbursable, not medically necessary, experimental, investigational, unproven, or performed in an inappropriate setting are not covered benefits in the HELP Plan.~~

~~(6) Prior authorization may be required for certain types and levels of services.~~

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1305, MCA

37.84.107 HELP ACT: ~~HELP PLAN~~ PREMIUMS (1) A HELP ~~Plan~~ participant must pay a premium equal to two percent of the prorated share of the participant's annual household income. The premium will be billed in twelve equal monthly amounts.

(2) remains the same.

(3) The process for collection of overdue premiums is as follows:

(a) Within 30 days of the date a participant's premium payment was due, the ~~TPA~~ department must notify the participant that the payment is overdue and that all overdue premiums must be paid within 90 days of the date the notification was sent. ~~The TPA must provide a copy of the notice to the department.~~

(b) through (4) remain the same.

(5) A participant is not subject to disenrollment for failure to pay a premium if the participant meets two of the following criteria:

(a) through (c) remain the same.

(d) participation in any of the following health behavior activities developed by a health care provider or ~~the TPA or~~ approved by the department:

(i) through (iii) remain the same.

(iv) a program requiring the ~~participant~~ member to obtain primary care services from a designated provider and to obtain prescriptions from a designated pharmacy;

(v) remains the same.

(vi) a tobacco use prevention or cessation program; or

(vii) a substance abuse treatment program~~; or~~.

~~(viii) a care coordination or health improvement plan administered by the TPA.~~

(6) remains the same.

(7) A participant is exempt from paying a premium if the individual:

(a) has a modified adjusted gross income under 50% of the federal poverty level;

(b) has been determined to be medically frail;

(c) is American Indian or Alaska Native;

(d) is receiving Medicaid services under a presumptive eligibility program; or

(e) is pregnant.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1307, MCA

37.85.204 MEMBER REQUIREMENTS, COST SHARING (1) through (5) remain the same.

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

(a) through (i) remain the same.

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

(k) through (9) remain the same.

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

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

4. The department proposes to repeal the following rules:

37.84.108 HELP ACT: HELP PLAN COPAYMENTS Found on page 37-19230 of the Administrative Rules of Montana.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1306, MCA

37.84.109 HELP ACT: HELP PLAN REIMBURSEMENT Found on page 37-19232 of the Administrative Rules of Montana.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1305, MCA

37.84.112 HELP ACT: HELP PLAN PROVIDER QUALIFICATIONS Found on page 37-19237 of the Administrative Rules of Montana.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1305, MCA

37.84.115 HELP ACT: HELP PLAN GRIEVANCE AND APPEAL PROCESS Found on page 37-19241 of the Administrative Rules of Montana.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1305, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend or repeal the administrative rules listed above to eliminate references to the Third Party Administrator (TPA) from the Health and Economic Livelihood Partnership (HELP) Plan. The proposed rule changes are necessitated by Senate Bill (SB) 261, which was passed by the 65th Legislature, and mandates changes to the administration of the HELP Plan, which provides health services to Montanans with low or moderate incomes, eligible through the HELP Act.

On May 22, 2017, Governor Bullock signed into law SB 261, an act revising budgeting laws, which provides that for the biennium beginning July 1, 2017, the department:

(a) may not enter into a new contract with one or more insurance companies or third-party administrators to assist in administering the HELP Act provided for in 53-6-1301, MCA; and

(b) must terminate any existing contract with an insurance company or third-party administrator related to the HELP Act.

As a consequence, the department will no longer contract with the TPA to administer the delivery of health care to HELP members. By operation of SB 261, the existing contract with the TPA expires on December 31, 2017. The rule amendments are proposed to be effective on January 1, 2018.

The department must amend or repeal administrative rules to reflect the changes mandated by SB 261. As contemplated by SB 261, participants who are currently served by the TPA will transition to standard Medicaid, which is administered by the department. The proposed rule amendments reflect this change. All benefits and processes will be aligned with standard Medicaid.

The department is responsible for overseeing the implementation and operation of these changes. Specifically, the proposed amendments and rule repeals are as follows:

ARM 37.84.102

The HELP Plan definition was removed, as this definition was previously used to identify individuals enrolled in the TPA Plan. The definition of participant was updated to refer to the subset of Medicaid members who are responsible for paying a premium. The term "participant" is used in these rules to refer to individuals who are required to pay premiums as distinguished from others who are not required to pay premiums.

The term "advanced benefit notice" (ABN) was removed, as this definition referred only to those in the TPA. Any language referring to the evidence of coverage and TPA were removed. The department is also proposing to replace the term "Aligned Medicaid Alternative Benefit Plan" with "Medicaid Benefit Plan," to clarify that there is now one Medicaid benefit plan.

ARM 37.84.106

This proposed amendment provides that Medicaid Expansion TPA participants will be served by the standard Medicaid Benefit Plan.

ARM 37.84.107

The department proposes to remove references to the TPA to align the rule with the updated definition in ARM 37.84.102.

ARM 37.85.204

The department proposes to replace the term "Health and Economic Livelihood Plan" with "Health and Economic Livelihood Partnership."

ARM 37.84.108

The department proposes to repeal this rule in its entirety. This rule sets copayments for individuals covered by the TPA network. After December 31, 2017, HELP benefits will be aligned with the standard Medicaid Benefit Plan, and this rule would be duplicative of ARM 37.85.204. Repealing this rule also will eliminate the two percent premium credit and will relieve the department of the complexity of tracking the spending of individual participants to determine when they meet the two percent credit. The five percent maximum cost share obligation will not change, as provided in ARM 37.85.204(8).

ARM 37.84.109

The department proposes to repeal this rule in its entirety. This rule was previously needed to allow for "carved" out services to be administered by the standard Medicaid Benefit Plan. With this rule repeal, all services will be administered by the standard Medicaid Benefit Plan.

ARM 37.84.112

The department proposes to repeal this rule in its entirety. This rule refers to provider qualifications for participation in the TPA network, which is no longer applicable after December 31, 2017. After that date, HELP members will receive health care through the standard Medicaid Benefit Plan and from providers who participate in that plan.

ARM 37.84.115

The department proposes to repeal this rule in its entirety. This rule refers to the grievance and appeal process for HELP members whose health care is administered by the TPA. After December 31, 2017, HELP members will transition to the standard Medicaid Benefit Plan and will use the grievance and appeal process in ARM 37.5.103.

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., November 10, 2017.

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. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail correspondence on September 28, 2017.

10. As provided in 2-4-111, MCA, the department has determined the following impact to small businesses, as that term is defined in 2-4-102(13), MCA: Under the existing HELP Plan, licensed addiction counselors (LAC) may contract with the TPA as in-network providers. Montana Medicaid, however, does not allow LACs to enroll as providers unless they are associated with a Federally Qualified Health Center (FQHC), Rural Health Center (RHC), Indian Health Service (IHS), or a chemical dependency clinic. The department has identified 9 LACs that are enrolled in the HELP TPA and will not be eligible to contract with Medicaid. Since implementation of the HELP Plan on January 1, 2016, a total of $20,802.75 in claims has been paid to the 9 LACs that are not associated with a FQHC, RHC, IHS, or a chemical dependency clinic.

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.

12. If an agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, 2-4-302(1)(c), MCA, requires the agency to include an estimate of the cumulative amount for all persons of the proposed increase, decrease, or new amount and the number of persons affected. The department has determined that removing the 2% premium cost share credit will potentially impact premium paying members with income greater than 50% FPL, who are not premium exempt. As of December 31, 2016, there are 18,704 premium paying members enrolled in Medicaid Expansion. The number of members affected will vary based on members' income in relation to FPL and services received, as income and services can vary from quarter to quarter. The quarterly impact will range from $0 to $83.22, with a median quarterly impact of $75.42. The member's 5% maximum out of pocket cost share obligation will not change.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.62.103, 37.62.106, 37.62.144, 37.62.501, 37.62.911, 37.62.1311, and 37.62.2101 pertaining to child support guidelines for the calculation of support obligations | ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On November 2, 2017, at 9:00 a.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, at 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 20, 2017, 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:

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) through (6) remain the same.

(7) "Incarceration" means a parent is held in a correctional, detention, or treatment facility for more than 180 days.

(7) through (15) remain the same, but are renumbered (8) through (16).

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.106 IMPUTED INCOME FOR CHILD SUPPORT (1) and (2) remain the same.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

(a) the parent's recent work and earnings history;

(b) the parent's occupational, educational, and professional qualifications; ~~and~~

(c) existing job opportunities and associated earning levels in the community or the local trade area~~.~~;

(d) the parent's age, literacy, health, criminal record, record of seeking work, and other employment barriers;

(e) the availability of employers willing to hire the parent; and

(f) other relevant background factors.

(4) and (5) remain the same.

(6) Income is not imputed if any of the following conditions exist:

(a) remains the same.

(b) a parent is physically or mentally disabled to the extent that the parent cannot earn income, or is incarcerated for more than 180 days;

(c) through (e) remain the same.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.144 SOCIAL SECURITY AND VETERANS BENEFITS (1) Social security and veterans benefits which are based on the earning record of either parent shall be considered in establishing new support orders or modification of existing orders under the following conditions:

(a) through (d) remain the same.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.501 TERMS AND CONDITIONS (1) through (12) remain the same.

(13) If the customer is the obligee, the customer agrees that the value of CSED services exceeds any interest that might have accrued on collections that are held pending proof of validity, confirmation of funds, or possible adjustments from joint federal tax offsets, and thereby waives that interest. Joint federal tax offsets may be held up to six months pursuant to federal law.

AUTH: 40-5-202, MCA
IMP: 40-5-203, MCA

37.62.911 FILING AND PROOF OF SERVICE (1) Whenever a rule or statute requires or permits a request for hearing, motion, brief, responsive answer or other document relating to the hearing to be filed with the department or the CSED, the place of filing shall be the OALJ. The location, mailing address, email address, and fax number of the OALJ shall be provided on the contested case notice and on each order, subsequent notice or other document mailed by the OALJ to a party. Excluding legal holidays, the hours for filing papers are between 8:00 a.m. and 5:00 p.m., Monday through Friday. Any papers presented or delivered after 5:00 p.m. shall be stamped the next business day. All original papers shall be filed with the OALJ and not the ALJ.

(2) Facsimile (fax) filings and electronic filings may be accepted. If the fax or electronic copy is offered to prove a fact, the fax or electronic copy will be stamped "received" by the OALJ and the original document must be filed with the OALJ within 5 business days in order to be filed as of the received date of the fax or electronic copy. The fax or electronic copy and the original document must be identical, or the filing is void. If the original is not timely filed, the received fax or electronic copy shall be void except upon a finding of good cause by the ALJ.

(3) remains the same.

(4) Whenever service of a document is required by ARM 37.62.917, an original certificate of service shall be attached to each document filed under this rule including fax or electronic filings. The copies served on other parties or entities entitled to service shall also attach certificates of service. Certificates of service shall be affixed to the document and shall include the date the document was served, and the name of each party and entity served.

(5) and (6) remain the same.

AUTH: 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825, 40-5-906, MCA
IMP: 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-906, MCA

37.62.1311 PROCEDURES FOR DETERMINING FINANCIAL HARDSHIP PAYMENT PLAN TERMS (1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining the payment terms of a financial hardship payment plan:

(a) the obligor must request a financial hardship determination in writing to the CSED office issuing the notice of intent to suspend stating the reasons a hardship adjustment is appropriate ~~and the length of time it should remain in effect~~. The CSED will determine if the obligor is eligible for a reduction of the amount which would normally be paid or withheld, under a standard payment plan, to defray the support delinquency and interest and fees, if any;

(b) the standard for determining the amount of the monthly payment toward support debt under a financial hardship payment plan will take into consideration the ~~total net~~ gross income ~~and assets~~ of the obligor and ~~obligor's current household,~~ the United States poverty index promulgated each year by the United States office of management and budget~~, the actual amount of allowable special expenses described in ARM 37.62.1307, and other support obligations for dependents not in obligor's household~~;

(c) the CSED will determine the length of time the financial hardship determination will continue, based on the information provided by the obligor. ~~The hardship determination period will not exceed 2 years unless there are extraordinary circumstances.~~ The financial hardship payment plan will terminate at the end of the determined period, cessation of the financial hardship condition, or upon modification of the obligor's current/future support obligation, whichever occurs first. In the event the financial hardship condition continues after the end of such period, it shall be the obligor's duty to request further review prior to the date of expiration;

(d) and (e) remain the same.

AUTH: 40-5-713, MCA
IMP: 40-5-710, 40-5-713, MCA

37.62.2101 MODIFICATION OF SUPPORT ORDERS (1) and (2) remain the same.

(3) The CSED may conduct a review for modification of a support order which it is enforcing upon receipt of documentation that the obligated parent will be incarcerated for more than 180 days. The results of this review may be abatement of any support due during the period of incarceration and for 60 days following the release from incarceration.

AUTH: 40-5-202, MCA
IMP: 40-5-226, MCA

4. STATEMENT OF REASONABLE NECESSITY

In December 2016, the U.S. Department of Health and Human Services adopted federal regulations titled "Flexibility, Efficiency and Modernization in Child Support Enforcement Programs." These regulations mandate a change in approach of the department's Child Support Enforcement Division (CSED) as to the child support obligations of incarcerated persons, as well as changes in the guidelines concerning imputed income. As a result, it is necessary to amend ARM 37.62.103, 37.62.106, and 37.62.2101.

ARM 37.62.103 is the child support guideline definitions rule. The rule requires amendment to include a definition of "incarceration" in the guideline. The amendment is necessitated by changes to 45 C.F.R. § 302.56(c)(3) which forbids states from treating incarceration as voluntary unemployment for the purposes of calculating a child support obligation.

ARM 37.62.106 is the child support guideline rule regarding imputed income. The rule requires amendment to clarify the circumstances which support imputation of income to a parent. Changes to 45 CFR § 302.56(c)(1)(iii) require an imputation of income to take into consideration the specific circumstances of a parent, including assets, residence, employment and earnings history, job skills, educational level, literacy, age, health, criminal record, other employment barriers, record of job seeking, local job market, availability of employers willing to hire a parent, and prevailing earning levels in the community. The proposed rule amendments seek to clarify that persons who have been sentenced to jail or prison for a period of time to exceed 180 days are subject to the imputation of income circumstances and should not be considered to be voluntarily unemployed or underemployed.

ARM 37.62.2101 is the rule describing when the CSED may review an order for possible modification. The proposed amendment adds a new section to address the

modification of support of incarcerated parents. This addition is necessitated by changes to 45 C.F.R. 303.56(3) and 45 C.F. R. 302.8(b)(2).

ARM 37.62.144 is the child support guideline rule, based on long-standing case law, In Re Marriage of Cowan (1996), allowing a child support credit when the children are receiving a benefit payment based on that parent's disability. While veteran's benefits for children are not as common as receipt of social security payments, the reasoning behind the allowance of a credit is the same as that for social security disability benefits: the payment is treated as a substitute for that parent's ability to support the family through wage income. The proposed change to ARM 37.62.144 is necessary to ensure consistent treatment of payments received from veteran's benefits.

ARM 37.62.501 is the rule setting the contractual terms and conditions for the CSED services in non-TANF cases. It is necessary to amend the rule to clarify under which circumstances the CSED will hold payments over the amount of $2,500 up to six months. The applicant will agree to waive the collection of interest on the amounts held, in exchange for IV-D services. This change is necessary because of an increase in the number and amount of fraudulent and non-sufficient funds payments made to the CSED through third party payment sources, and injured spouse refunds which are reclaimed by the Internal Revenue Service. The hold period will allow the CSED to verify the existence of the funds prior to distributing the funds to the custodial parent. Additionally, the rule requires updating to better inform the public how the CSED intends to collect overpayments. Both obligees and obligors may receive money to which they are not entitled. This can happen in several instances including when money is distributed, either as a collection or a refund, and the payment is later recalled by the issuing entity or is returned non-sufficient funds. In addition, for many years the CSED has had and used the ability to collect receivables through the state debt offset process of 17-4-105, MCA.

Additional rule changes are required regarding the terms and conditions under which child support is offered to parents who are not receiving public assistance. In 2001, the CSED agreed to discontinue a hold on federal tax refund intercepts and to distribute collected funds within two business days. With the advent of online banking, changes are needed to the hold period. The CSED is experiencing increasing receivables growth as a result of the two-day turn around; funds enter the system and are disbursed to the custodial parent, only to be recalled by the issuing bank or entity. The amendment of ARM 37.62.501 is necessary to stem the growth of receivables.

The proposed amendments to ARM 37.62.911 are necessary to broaden the rule to allow for persons to email documents to the office of the administrative law judge. The existing rule restricts persons to facsimile machines. It is reasonable and necessary to permit persons with business involving the CSED to use current technology to file and receive documents.

ARM 37.62.1311 describes the license suspension financial hardship payment plan process. When the CSED received the ability to suspend state-issued licenses pursuant to 40-5-701, MCA, et seq., the license suspension financial hardship payment plan process was modeled after the CSED's income withholding hardship process, which was a known and proven process. Because the CSED revised its income withholding hardship process administrative rules in 2016, the CSED determined it necessary to amend this rule to again match the hardship process for license suspension. The result allows for streamlined processes, and greater case worker flexibility to make adjustments to each child support obligor's personal circumstances.

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., November 10, 2017.

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

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

/s/ Caroline Warne
Caroline Warne
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.23.802 and 42.23.805 pertaining to the carryforward and carryback provisions of corporate net operating losses | ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On November 2, 2017, at 1 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception 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 23, 2017, 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 as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.23.802 CARRYOVERS OF NET OPERATING LOSSES (1) ~~A~~ For taxable periods beginning before January 1, 2018, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding taxable period, then to the first preceding taxable period, and then forward to the next seven succeeding taxable periods in the order of their occurrence.

(2) For taxable periods beginning after December 31, 2017, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding taxable period, then to the first preceding taxable period, and then forward to the next ten succeeding taxable periods in the order of their occurrence. A net operating loss carryback provided in this subsection may not exceed $500,000 per taxable period.

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

~~(3)~~(4) The taxable income as modified by the adjustments shown in ~~(2)~~(3) shall not be considered to be less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

~~(4)~~(5) For taxable periods beginning after December 31, 1988, a taxpayer may elect to forgo the entire carryback period. Montana corporate income tax Form CIT provides an area to perfect this election. When Form CIT is filed with the department,

the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on Form CIT, the net operating loss will be carried back and applied as provided in (1) and (2). For state purposes, an election to forgo a federal net operating loss carryback provision will not be accepted as a valid election.

AUTH: 15-31-501, MCA
IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.802 to properly implement House Bill 550, L. 2017, which changed the carryforward period for net operating losses for corporate income tax purposes from seven years to ten years for tax years beginning after December 31, 2017, and also limited the amount of net operating loss allowed to be carried back to $500,000 per taxable period for taxable periods beginning after December 31, 2017. Therefore, the department proposes adding language in (1) to separately provide for tax years that began prior to this change, and proposes adding language in new (2) to include the provisions that will begin after January 1, 2018. The remainder of the rule and internal section references are proposed to be renumbered accordingly, to accommodate the new language.

42.23.805 TREATMENT OF NET OPERATING LOSSES SPANNING A CHANGE IN REPORTING METHODS (1) remains the same.

(2) A corporation that makes a valid water's-edge election or does not renew a prior election is agreeing that unused net operating loss carryover from a water's-edge year may only be carried to a water's-edge year, and unused net operating loss carryover from a non-water's-edge year may only be carried to a non-water's-edge year. When applying the three-year carry-back, and seven-year or ten-year carry-forward limitations, provided for in 15-31-119, MCA, all taxable periods are included, even though the loss can only be deducted in those periods in which the filing method is the same.

(3) through (4) remain the same.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.805 to properly implement House Bill 550, L. 2017, which changed the carryforward period for net operating losses for corporate income taxes from seven years to ten years for tax years beginning after December 31, 2017, by updating the language in (2) to add the ten-year carryforward provision into the rule.

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 November 13, 2017.

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, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 550, L. 2017, Representative Jeff Essmann, was contacted by regular mail on June 14, 2017 and September 14, 2017.

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.

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| /s/ Laurie Logan | /s/ Mike Kadas |
| Laurie Logan | Mike Kadas |
| Rule Reviewer | Director of Revenue |

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I though VI, and the amendment of ARM 42.26.201, 42.26.202, 42.26.203, 42.26.204, 42.26.205, 42.26.206, 42.26.207, 42.26.208, 42.26.210, 42.26.229, 42.26.230, 42.26.231, 42.26.232, 42.26.236, 42.26.241, 42.26.251, 42.26.252, 42.26.253, 42.26.254, 42.26.257, 42.26.259, 42.26.263, 42.26.302, 42.26.307, 42.26.308, 42.26.309, 42.26.312, 42.26.401, 42.26.602, 42.26.605, 42.26.606, 42.26.702, 42.26.704, 42.26.705, 42.26.802, 42.26.805, 42.26.807, 42.26.902, 42.26.903, 42.26.904, 42.26.905, 42.26.1002, 42.26.1003, 42.26.1102, 42.26.1103, 42.26.1202, and 42.26.1204 pertaining to the allocation and apportionment of income of multistate corporate taxpayers necessitated by House Bill 511, L. 2017 | ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL |
| Also, in the matter of the adoption of New Rule VII (Finnigan Rule) and related amendment of ARM 42.26.255 and repeal of ARM 42.26.511 (Joyce Rule) pertaining to the department's method of administering the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected through multiple entities | ) | |

TO: All Concerned Persons

1. On November 2, 2017, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, 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 23, 2017, 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 as proposed to be adopted provide as follows:

NEW RULE I NUMERATOR OF RECEIPTS FACTOR - SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY - MARKET BASED SOURCING (1) In order to satisfy the requirements of this rule, a taxpayer's assignment of receipts from sales of other than tangible personal property must be consistent with the following principles:

(a) A taxpayer shall apply the principles set forth in this rule based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning receipts, including the underlying assumptions, and shall provide those records to the department upon request.

(b) This rule provides various assignment methods that apply sequentially in a hierarchy. For each sale to which a hierarchical method applies, a taxpayer must make a reasonable effort to apply the primary method applicable to the sale before seeking to apply the next method in the hierarchy (and must continue to do so with each succeeding method in the hierarchy, where applicable). For example, in some cases, the applicable method first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the method requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary method in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

(c) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth is this rule, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(2) Methods of reasonable approximation.

(a) In general, this rule establishes uniform principles for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Montana. This rule also sets forth methods of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in

accordance with these specific methods of approximation. In other cases, this rule permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable methods.

(b) Approximation based on known sales. In an instance where, applying the applicable principles set forth in [New Rule IV] (sale of a service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its receipts factor in the same proportion as its assigned receipts. This principle also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.

(c) Where a taxpayer has receipts subject to this rule from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

(3) Methods with respect to the exclusion of receipts from the receipts factor.

(a) The receipts factor only includes those amounts defined as receipts under ARM 42.26.202.

(b) Certain receipts arising from the sale of intangibles are excluded from the numerator and denominator of the receipts factor pursuant to [New Rule VI(1)(d)].

(c) If a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned pursuant to this rule (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the denominator of the taxpayer's receipts factor.

(d) If a taxpayer can ascertain the state or states to which receipts from a sale are to be assigned pursuant to this rule, but the taxpayer is not taxable in one or more of those states, the receipts that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the denominator of the taxpayer's receipts factor.

(e) Receipts of a taxpayer from hedging transactions, or from holding cash or securities, or from the maturity, redemption, sale, exchange, loan, or other disposition of cash or securities, shall be excluded from the receipts factor.

(4) Changes in methodology and review by the department.

(a) Nothing in this rule is intended to limit the application of 15-31-312, MCA, or the authority granted to the department under 15-31-312, MCA. To the extent that regulations adopted pursuant to 15-31-312, MCA, conflict with provision of this rule, the regulations adopted pursuant to 15-31-312, MCA, control. If the application of this rule results in the attribution of receipts to the taxpayer's receipts factor that does not fairly represent the extent of the taxpayer's business activity in Montana, the taxpayer may petition for or the department may require the use of a different method for attributing those receipts.

(b) In any case in which a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment including a

method of reasonable approximation, in accordance with this rule, the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither the department nor the taxpayer (through the form of an audit adjustment, amended return, abatement application, or otherwise) may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year. However, the department and the taxpayer may each subsequently, through the applicable administrative process, correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

(c) The department's ability to review and adjust a taxpayer's assignment of receipts on a return to more accurately assign receipts consistently with this rule includes, but is not limited to, each of the following potential actions:

(i) If a taxpayer fails to properly assign receipts from a sale in accordance with this rule, including the failure to properly apply a hierarchy of methods consistent with the principles of (1)(b) above, the department may adjust the assignment of the receipts in accordance with this rule.

(ii) If a taxpayer uses a method of approximation to assign its receipts and the department determines that the method of approximation employed by the taxpayer is not reasonable, the department may substitute a method of approximation that the department determines is appropriate or may exclude the receipts from the taxpayer's numerator and denominator, as appropriate.

(iii) If the department determines that a taxpayer's method of approximation is reasonable, but has not been applied in a consistent manner with respect to similar transactions or year to year, the department may require that the taxpayer apply its method of approximation in a consistent manner.

(iv) If a taxpayer excludes receipts from the denominator of its receipts factor on the theory that the assignment of the receipts cannot be reasonably approximated, the department may determine that the exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the department determines is appropriate.

(v) If a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to the department upon request, the department may treat the taxpayer's assignment of receipts as unsubstantiated, and may adjust the assignment of the receipts in a manner consistent with this rule.

(vi) If the department concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the department may adjust the assignment of receipts from sales to that customer in a manner consistent with this rule.

(vii) A taxpayer that seeks to change its method of assigning its receipts under this rule must disclose, in the original return filed for the year of the change, the fact that it has made the change. If a taxpayer fails to adequately disclose the change, the department may disregard the taxpayer's change and substitute an assignment method that the department determines is appropriate.

(viii) The department may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, including changing the

taxpayer's method of approximation, if upon reviewing the taxpayer's filing methodology applied for a prior tax year, the department determines that the change is appropriate to reflect a more accurate assignment of the taxpayer's receipts within the meaning of this rule, and determines that the change can be reasonably adopted by the taxpayer. The department will provide the taxpayer with a written explanation as to the reason for making the change. If a taxpayer fails to comply with the department's direction on subsequently filed returns, the department may deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and may substitute an assignment method that the department determines is appropriate.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule I to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from sales other than sales of tangible personal property for purposes of the receipts apportionment factor. The new language added by HB 511 to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach. Proposed New Rule I is modeled after these apportionment regulations adopted by the MTC.

As proposed, New Rule I sets forth provisions under a market based sourcing approach for receipts from sales other than sales of tangible personal property. Section (1) addresses the principles to be applied when sourcing these types of receipts. Section (2) addresses the methods of reasonable approximation that are to be used when sourcing receipts of sales other than sales of tangible personal property to the Montana apportionment receipts numerator. Section (3) addresses the methods to be used with respect to the exclusion of certain receipts from the receipts apportionment factor. Section (4) sets forth the provisions to be used when there is a change in methodology and review of these methods by the department.

The department considers the adoption of New Rule I necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE II NUMERATOR OF RECEIPTS FACTOR - SALE, RENTAL, LEASE, OR LICENSE OF REAL PROPERTY (1) In the case of a sale, rental, lease, or license of real property, the receipts from the sale are in Montana if and to the extent that the property is in Montana.

AUTH: 15-1-201; 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule II to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment

of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from the sale, rental, lease, or license of real property for purposes of the receipts apportionment factor.

The new language added by HB 511 to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach.

Proposed New Rule II is modeled after these apportionment regulations adopted by the MTC. As proposed, New Rule II addresses when receipts from the sale, rental, lease, or license of real property are properly sourced to the Montana receipts apportionment numerator. The department considers the adoption of New Rule II necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE III NUMERATOR OF RECEIPTS FACTOR - RENTAL, LEASE, OR LICENSE OF TANGIBLE PERSONAL PROPERTY (1) In the case of a rental, lease, or license of tangible personal property, the receipts from the sale are in Montana if and to the extent that the property is in Montana. If the property is mobile property that is located both within and without Montana during the period of the lease or other contract, the receipts assigned to Montana are the receipts from the contract period multiplied by the fraction computed under ARM 42.26.234(3) (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule III to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from the sale, rental, lease, or license of tangible personal property for purposes of the receipts apportionment factor. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach. Proposed New Rule III is modeled after these apportionment regulations adopted by the MTC.

As proposed, New Rule III addresses when receipts from the rental, lease, or license of tangible personal property are properly sourced to the Montana receipts apportionment numerator. The department considers the adoption of New Rule III necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE IV NUMERATOR OF RECEIPTS FACTOR - SALE OF A SERVICE (1) The receipts from a sale of a service are in Montana if and to the extent that the service is delivered to a location in Montana. In general, the term

"delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The methods to determine the location of the delivery of service in the context of several specific types of service transactions are set forth in this rule.

(2) In-person services.

(a) Except as otherwise provided in this rule, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services including medical testing, x-rays, and mental health care and treatment; child care; haircutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at a location that is owned or operated by the service provider or a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial, and consulting services, and other similar services, although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this rule.

(b) Method of determination. Except as otherwise provided, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in Montana if and to the extent the customer receives the in-person service in Montana. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received as follows:

(i) If the service is performed with respect to the body of an individual customer in Montana (i.e., haircutting or x-ray services) or in the physical presence of the customer in Montana (i.e., live entertainment or athletic performances), the service is received in Montana.

(ii) If the service is performed with respect to the customer's real estate in Montana or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in Montana, the service is received in Montana.

(iii) If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside Montana, the service is received in Montana if the property is shipped or delivered to the customer in Montana.

(c) Method of reasonable approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the receipts are to be assigned can be determined or reasonably approximated, but the taxpayer is not

taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor.

(3) Services delivered to the customer or on behalf of the customer, or delivered electronically through the customer.

(a) If the service provided by the taxpayer is not an in-person service within the meaning of (2) above, or a professional service within the meaning of (4) below, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in Montana if and to the extent that the service is delivered in Montana. For purposes of this rule, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(b) Assignment of receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and nature of the customer. Separate methods of assignment apply to services delivered by physical means and services delivered by electronic transmission (for purposes of this rule, a service delivered by an electronic transmission is not a delivery by a physical means). If a method of assignment set forth in this rule depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. If the state to which the receipts from a sale are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to that state are excluded from the denominator of the taxpayer's receipts factor.

(i) Delivery to or on behalf of a customer by physical means whether to an individual or business customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers, or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (i.e., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. This rule applies whether the taxpayer's customer is an individual customer or a business customer.

(A) Method of determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the

service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

(B) Method of reasonable approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

(ii) Delivery to a customer by electronic transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases, or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following principles apply.

(A) Services delivered by electronic transmission to an individual customer.

(I) Method of determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in Montana if and to the extent that the taxpayer's customer receives the service in Montana. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

(II) Methods of reasonable approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

(B) Services delivered by electronic transmission to a business customer.

(I) Method of determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in Montana if and to the extent that the taxpayer's customer receives the service in Montana. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this rule, it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

(II) Method of reasonable approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

(III) Secondary method of reasonable approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this rule. In these cases, unless the taxpayer can apply the safe harbor set forth in (IV) below,

the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than 5 percent of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

(IV) Safe harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under (II) or (III) above, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the method stated in (II) or (III) above, apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxpayer year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether business or individual, and does not derive more than 5 percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.

(V) Related party transaction. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary method of reasonable approximation in (III) above, but may use the method of reasonable approximation in (II) above, and the safe harbor in (IV) above, provided that the department may aggregate sales to related parties in determining whether the sales exceed 5 percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

(iii) Services delivered electronically through or on behalf of an individual or business customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

(A) Method of determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in Montana if and to the extent that the end users or other third-party recipients are in Montana. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in Montana to the extent that the audience for the advertising is in Montana. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially

identical form to third-party recipients, the service is delivered in Montana to the extent that the end users or other third-party recipients receive the services in Montana. The methods in this subsection apply whether the taxpayer's customer is an individual or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

(B) Method of reasonable approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

(C) Select secondary methods of reasonable approximation.

(I) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary methods of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

(II) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third-party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.

(III) When using the secondary reasonable approximation methods provided above, the relevant specific geographic area of delivery include only the area where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

(4) Professional services.

(a) Except as otherwise provided in this rule, professional services are services that require specialized knowledge and in some cases require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized

knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

(b) Overlap with other categories of services.

(i) Certain services that fall within the definition of "professional services" set forth in this rule are nevertheless treated as "in-person services" within the meaning of (2) above, and are assigned under the methods of that section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services, are assigned as professional services under this rule, notwithstanding the fact that these services may involve some amount of in-person contact.

(ii) Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment methods that apply are those set forth in this section and not those set forth in (3) above, pertaining to services delivered to a customer or through or on behalf of a customer.

(c) Assignment of receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general method of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service irrespective of whether another person pays for or also benefits from the taxpayer's services. In any instance in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

(i) Receipts from sales of professional services other than those services described in (c)(ii) below (architectural and engineering services), (c)(iii) below (services provided by a financial institution), and (c)(iv) below (transactions with related parties), are assigned in accordance with this section.

(A) Professional services delivered to individual customers. Except as otherwise provided in this section, in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5 percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

(B) Professional services delivered to business customers. Except as otherwise provided in this section, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth in (C) below, the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5 percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

(C) Safe harbor; large volume of transactions. Notwithstanding the provisions set forth in (A) and (B) above, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than 5 percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of this rule and not otherwise.

(ii) Architectural and engineering services with respect to real or tangible personal property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this rule. However, unlike in the case of the general method that applies to professional services, the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These provisions apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described here, the receipts from a sale of these services must be assigned under the general method for professional services.

(iii) Services provided by a financial institution. The apportionment rules that apply to financial institutions are set forth at ARM Title 42, chapter 26, [subchapter 13, MAR Notice Number 42-2-986]. ARM Title 42, chapter 26, [subchapter 13] includes specific rules to determine a financial institution's receipts factor. However, the rules in ARM Title 42, chapter 26, [subchapter 13] also provide that receipts from sales, other than sales of tangible personal property, including services transactions that are not otherwise apportioned under that subchapter, are to be assigned pursuant to this rule. In any instance in which a financial institution performs services that are to be assigned pursuant to this rule including, for example, financial custodial services, those services are considered professional services within the meaning of this rule, and are assigned according to the general method for professional services transactions set forth in this rule.

(iv) Related party transactions. In any instance in which the professional service is sold to a related party, rather than applying the method for professional services delivered to business customers, the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: 1.) If the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or 2.) If the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states. The taxpayer may use the safe harbor provided by this rule provided that the department may aggregate the receipts from sales to related parties in applying the 5 percent method if necessary or appropriate to avoid distortion.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule IV to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from the sale of a service for purposes of the receipts apportionment factor. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach. Proposed New Rule IV is modeled after these apportionment regulations adopted by the MTC.

As proposed, New Rule IV sets forth provisions under a market based sourcing approach for receipts from sales of services. Section (1) addresses the principles to be applied when sourcing receipts from sales of services to the Montana receipts apportionment factor numerator. Section (2) addresses the methods to be used specifically for in-person services such as warranty and repair services, carpentry, medical and dental services, and live entertainment and athletic

services to name just a few. Section (3) addresses the methods to be used specifically for receipts from services delivered to the customer or on behalf of the customer, or delivered electronically through the customer. Section (4) specifically addressed receipts from professional services such as fiduciary services, tax preparation, accounting services, legal services, and engineering services to name a few.

The department considers the adoption of New Rule IV necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE V NUMERATOR OF RECEIPTS FACTOR - LICENSE OR LEASE OF INTANGIBLE PROPERTY (1) General provisions.

(a) The receipts from the license of intangible property are in Montana if and to the extent the intangible property is used in Montana. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The provisions that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth in (2) through (5) below. For purposes of the provisions set forth in this rule, a lease of intangible property is to be treated the same as a license of intangible property.

(b) In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of [New Rule VI]. Note, however, that a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property.

(c) Intangible property licensed as part of the sale or lease of tangible property is treated as the sale or lease of tangible property.

(d) In any instance in which the taxpayer is not taxable in the state to which the receipts from the license of intangible property are assigned, the receipts are excluded from the denominator of the taxpayer's receipts factor.

(e) Nothing in this rule shall be construed to allow or require inclusion of receipts in the receipts factor that are not included in the definition of "gross receipts" pursuant to ARM 42.26.202, or related regulations, or that are excluded from the numerator and the denominator of the receipts factor pursuant to [New Rule VI(1)(d)]. To the extent that the transfer of either a security or business "goodwill" or similar intangible value, including, without limitation, "going concern value" or "workforce in place," may be characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and denominator of the taxpayer's receipts factor.

(2) License of a marketing intangible. Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items such as a marketing intangible to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to Montana to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in

Montana. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television, or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to Montana, it shall assign that amount or proportion to Montana. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from Montana consumers, the portion of the licensing fee to be assigned to Montana must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Montana population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to Montana must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Montana population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

(3) License of a production intangible. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to Montana to the extent that the use for which the fees are paid takes place in Montana. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in the manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile, where the licensee is a business, or the licensee's state of primary residence, where the licensee is an individual. If the department can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in Montana, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside Montana. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

(4) License of a mixed intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department will accept the separate

statement for purposes of this rule. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees are to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the department can reasonably establish otherwise.

(5) License of intangible property where substance of transaction resembles a sale of goods or services.

(a) In some cases, the license of intangible property will resemble the sale of an electronically delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the provisions set forth in [New Rule IV(3)] as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this section include, without limitation, the license of database access, the license of access to information, the license of digital goods, and the license of certain software, where the transaction of pre-written software that is treated as the sale of tangible personal property.

(b) Sublicenses. Pursuant to (a) above, the provisions of [New Rule IV(3)(b)(iii)] may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the provisions set forth at [New Rule IV(3)(b)(iii)] that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (i.e., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule V to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from the license or lease of intangible property for purposes of the receipts apportionment factor. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach. Proposed New Rule V is modeled after these apportionment regulations adopted by the MTC.

As proposed, New Rule V addresses when receipts from the license or lease of intangible property are properly sourced to the Montana receipts apportionment numerator. The department considers the adoption of New Rule V necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE VI NUMERATOR OF RECEIPTS FACTOR - SALE OF INTANGIBLE PROPERTY (1) Assignment of receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this rule, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the provisions that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of property, see [New Rule V(1)].

(a) Contract right or government license that authorizes business activity in specific geographic area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state the taxpayer shall assign the sale to Montana. If the intangible property is used or is authorized to be used in Montana and one or more other states, the taxpayer shall assign the receipts from the sale to Montana to the extent that the intangible property is used in or authorized for use in Montana, through the means of a reasonable approximation.

(b) Sale that resembles a license; receipts are contingent on productivity, use, or disposition of the intangible property. In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the provisions set forth in [New Rule V], pertaining to the license or lease of intangible property.

(c) Sale that resembles a sale of goods or services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the provisions set forth in [New Rule V(5)], relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in [New Rule V(5)].

(d) Excluded receipts. Receipts from the sale of intangible property are not included in the receipts factor in any case in which the sale does not give rise to gross receipts within the meaning of ARM 42.26.202. In addition, in any case in which the sale of intangible property does result in gross receipts within the meaning of ARM 42.26.202, those receipts are excluded from the numerator and denominator

of the taxpayer's receipts factor if the receipts are not referenced in [New Rule I]. The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's receipts factor under this provision includes, without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value. Also, in any instance in which the state to which the receipts from a sale is to be assigned can be determined or reasonably approximated, but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned to such state shall be excluded from the numerator and denominator of the taxpayer's receipts factor.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule VI to provide guidance in the implementation of House Bill (HB) 511, L. 2017. With the enactment of HB 511, corporate income tax taxpayers are required to use a market sourcing approach to sourcing receipts from the sale of intangible property for purposes of the receipts apportionment factor. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations addressing the sourcing of receipts using the market sourcing approach. Proposed New Rule VI is modeled after these apportionment regulations adopted by the MTC.

As proposed, New Rule VI addresses when receipts from the sale of intangible property are properly sourced to the Montana receipts apportionment numerator. The department considers the adoption of New Rule VI necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

NEW RULE VII APPLICATION OF THE FINNIGAN RULE (1) In determining whether the activities of any company have been conducted within Montana beyond the protection of P.L. 86-272, the principle established in Appeal of Finnigan Corporation, 88-SBE-022 (8/25/1988) and Appeal of Finnigan Corporation, 88-SBE-22A, Opinion on Petition of Rehearing (1/24/1990), commonly known as the "Finnigan Rule," shall apply. When calculating the Montana apportionment numerators provided for in 15-31-306, 15-31-309, and 15-31-311, MCA, a group of corporations engaged in a unitary business as defined in 15-31-301, MCA, shall include Montana property, payroll, and receipts from all members of the unitary group as long as one or more members has nexus with Montana.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule VII to notify taxpayers of a change in the way the department administers the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected

through multiple entities. Historically, the department applied what is known as the "Joyce Rule," in ARM 42.26.511, which is proposed to be repealed in conjunction with the proposed adoption of this new rule and the proposed amendment of ARM 42.26.255, the "Finnigan Rule" in this same notice.

The "Joyce" and "Finnigan" rules both address issues surrounding the calculation of a unitary group's apportionment factor numerators. Under "Joyce," in order to include the apportionment factor numerators of a member of a unitary group, that individual member must have nexus within the taxing state. Under "Finnigan," the apportionment factor numerators of all members of a unitary group are included if just one member of the unitary group has nexus within the taxing state.

The department proposes the adoption of New Rule VII to limit the risk of manipulation of the apportionment factors of a unitary combined group. A corporate structure can separate nexus creating activities from sales or other revenue-generating activities. By applying the "Joyce" rules, this has a direct impact on the Montana apportionment factor. The purpose of the apportionment factors is to reflect the Montana business activity of the unitary group. The corporate structure of a unitary group should not alter the reflection of business activity in the apportionment factors.

When dealing with combined unitary groups, the department is seeing a trend in businesses with more diverse corporate structures. The department is also seeing more economic presence issues. These issues can have material effects on the apportionment factors, of which the intent is to reflect the business activity of the unitary group in Montana. The adoption of the "Finnigan" rules can help limit the risk of manipulation of the apportionment factors of unitary groups. The department believes applying the "Joyce" rules no longer adequately addresses these issues and by adopting the "Finnigan" approach, a combined unitary group will provide a more accurate reflection of its business activity in Montana.

The proposed adoption of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

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

42.26.201 INTENT (1) The ~~following~~ regulations in this subchapter of ARM Title 42, chapter 26 are applicable to Article IV of the Multistate Tax Compact, 15-1-601, MCA, and to the Uniform Division of Income for Tax Purposes Act, 15-31-302 through 15-31-312, MCA~~.~~, and are modeled after ~~The~~ regulations ~~were~~ adopted by the Multistate Tax Commission ~~on February 21, 1973~~. Statutory references in the regulations are to 15-31-302 through 15-31-312, MCA, but also apply to the corresponding subsections of Article IV of the Multistate Tax Compact, 15-1-601, MCA.

(2) ~~These~~ The regulations in this subchapter are intended to set forth ~~rules~~ methods concerning the application of the apportionment and allocation provisions of Title 15, chapter 31, part 3, MCA, and Article IV of 15-1-601, MCA. The ~~apportionment rules~~ provisions set forth in ~~these regulations~~ this subchapter are applicable to any taxpayer having ~~business~~ apportionable income, regardless of

whether or not it has ~~nonbusiness~~ nonapportionable income, and the allocation rules are applicable to any taxpayer having ~~nonbusiness~~ nonapportionable income, regardless of whether or not it has ~~business~~ apportionable income.

(3) The only exceptions to ~~these~~ the allocation and apportionment rules contained in ~~these rules~~ this subchapter are set forth in ARM 42.26.261 through 42.26.264 pursuant to the authority of 15-31-312, MCA. Special rules pertaining to certain industries are referenced in other ~~subsections~~ subchapters of ~~this chapter~~ ARM Title 42, chapter 26.

(4) ~~These~~ The regulations in this subchapter are not intended to modify existing rules concerning jurisdictional standards.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.201 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income" and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

The department also proposes amending language throughout the rule to make the location of the regulations being referred to within the rule clearer. The current language in the rule uses terms such as "these regulations" and "apportionment rules." As proposed to be amended, the rule will instead reference the specific location of the regulations and rules as being in this same subchapter of ARM Title 42, chapter 26.

The department further proposes removing the date associated with the Multistate Tax Commission's adoption of the regulations of the Multistate Tax Compact in 1973 in (1), because it is an unnecessary detail to include in the rule. The department has its own rules to provide for these same regulations and leaving an old date in this informational section of the rule could potentially create confusion.

42.26.202 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Allocation" means the assignment of ~~nonbusiness~~ nonapportionable income to a particular state.

(2) and (3) remain the same.

(4) "Apportionment" means the division of ~~business~~ apportionable income between states by the use of a formula containing apportionment factors.

(5) "Average value of property" means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the property. ~~(~~See ARM 42.26.237.~~)~~

(6) and (7) remain the same.

(8) "Billing address" means the location indicated in the books and records of

the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

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

(10) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a nonprofit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned for receipts apportionment purposes consistent with the rules for those sales.

(11) "Code" means the Internal Revenue Code as currently written and subsequently amended.

(9) through (11) remain the same, but are renumbered (12) through (14).

~~(12)~~(15) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction which produces ~~business~~ apportionable income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the federal IRC.

(a) remains the same.

(b) Gross receipts, even if ~~business~~ apportionable income, do not include, for example, such items as:

(i) through (ix) remain the same.

(x) amounts realized from the exchange of inventory, except those amounts actually received by the taxpayer and that exceeded any corresponding amounts paid to the other party, and which were to account for excess deliveries under the exchange agreement, as calculated on an annual basis. Thus, the net amount of payments received in excess of the net payments made during the year may be included in the ~~sales~~ receipts factor; and

(xi) remains the same.

(c) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as ~~business or nonbusiness~~ apportionable or nonapportionable income.

(13) remains the same, but is renumbered (16).

(17) "Individual customer" means a customer that is not a business customer.

(18) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical or artistic compositions; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and except as otherwise provided, computer software.

(14) through (17) remain the same, but are renumbered (19) through (22).

~~(18)~~(23) "Original cost" means the basis of the property for federal income

tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factory at its fair market value as of the date of acquisition by the taxpayer. ~~(~~See ARM 42.26.235.~~)~~

(24) "Place of order" means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

(25) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

(19) and (20) remain the same, but are renumbered (26) and (27).

(28) "Related party" means:

(a) a stockholder who is an individual, or a member of the stockholder's family, set forth in section 318 of the Code if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, over 50 percent of the value of the taxpayer's outstanding stock;

(b) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trust, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, over 50 percent of the value of the taxpayer's outstanding stock; or

(c) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns directly, indirectly, beneficially, or constructively, over 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(29) "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

(21) through (24) remain the same, but are renumbered (30) through (33).

~~(25)~~(34) "Value of owned real and tangible personal property" means its original cost. ~~(~~See ARM 42.26.235.~~)~~

~~(26)~~(35) "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate. ~~(~~See ARM 42.26.236.~~)~~

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.202 to properly

implement House Bill (HB) 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

The department also proposes adding and defining terms proposed to be used in its new rules to implement HB 511, which adopted a market sourcing approach to sourcing receipts for apportionment factor purposes. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations, including definitions, addressing the sourcing of receipts using the market sourcing approach. The definitions the department is proposing are modeled after the apportionment regulations adopted by the MTC.

The new definitions proposed to be added to the rule include the terms "billing address" in new (8), "business customer" in new (10), "code" in new (11), "individual customer" in new (17), "intangible property" in new (18), "place of order" in new (24), "population" in new (25), "related party" in new (28), and "state where a contract of sale is principally managed by the customer," in new (29). These terms are used in New Rules I through VI that the department is proposing for adoption in this same notice.

The department further proposes correcting punctuation errors at the end of (5) and the end of newly numbered (23), (34), and (35). The department is removing unnecessary parentheses from rule citations.

The department considers these amendments to ARM 42.26.202 necessary in its implementation of HB 511, in that the definitions provide essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

42.26.203 CONSISTENCY AND UNIFORMITY IN REPORTING (1) In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as ~~business income or nonbusiness~~ apportionable or nonapportionable income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under Article IV of the Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as ~~business or nonbusiness~~ apportionable or nonapportionable income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, Title 15, chapter 31, part 3, MCA

REASON: The department proposes amending ARM 42.26.203 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

42.26.204 COMBINED REPORTS (1) If a particular trade or business is carried on by a taxpayer and one or more unitary affiliated corporations owned greater than 50 percent, the taxpayer is required to file a "combined report" whereby the entire ~~business~~ apportionable income of such trade or business is apportioned in accordance with 15-31-305 through 15-31-311, MCA.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.204 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.205 TWO OR MORE BUSINESSES OF A SINGLE TAXPAYER (1) A taxpayer may have more than one "trade or business." In such cases, it is necessary to determine the ~~business~~ apportionable income attributable to each separate trade or business. The income of each business is then apportioned by an apportionment formula which takes into consideration the in-state and out-of-state factors which relate to the trade or business income being apportioned.

(2) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, Title 15, chapter 31, part 3, MCA

REASON: The department proposes amending ARM 42.26.205 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.206 ~~BUSINESS~~ APPORTIONABLE AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED (1) Section 15-31-301, MCA, requires that every item of income be classified either as ~~business income or nonbusiness~~ apportionable or nonapportionable income. Income for purposes of classification as ~~business or nonbusiness~~ apportionable or nonapportionable includes gains and losses. ~~Business~~ Apportionable income is apportioned among jurisdictions by use of a formula. ~~Nonbusiness~~ Nonapportionable income is specifically assigned or allocated to one or more specific jurisdictions pursuant to express rules. An item of income is classified as ~~business~~ apportionable income if it falls within the definition of ~~business~~ apportionable income. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is ~~business~~ apportionable income. An item of income is ~~nonbusiness~~ nonapportionable income only if it does not meet the definitional requirements for being classified as ~~business~~ apportionable

income. For purposes of administration, the income of the taxpayer is ~~business~~ apportionable income unless clearly classifiable as ~~nonbusiness~~ nonapportionable income.

(2) ~~Business~~ Apportionable income means income of any type or class, and from any activity, that meets the relationship described either in (3), the "transactional test," or (4), the "functional test." The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no assistance in determining whether income is ~~business or nonbusiness~~ apportionable or nonapportionable income. Accordingly, the critical element in determining whether income is "~~business~~ apportionable income" or "~~nonbusiness~~ nonapportionable income" is the identification of the transactions and activities which are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activities arising in the regular course of and will constitute integral parts of a trade or business. ~~(~~See ARM 42.26.207 for more specific examples of the classification of income as ~~business or nonbusiness~~ apportionable or nonapportionable income; see ARM 42.26.202 and 42.26.205 for further explanation of what constitutes a trade or business.~~)~~

(3) Under the transactional test, ~~business~~ apportionable income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(a) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within this state, the resulting income of the transaction or activity is ~~business~~ apportionable income for this state. Income may be ~~business~~ apportionable income even though the actual transaction or activity that gives rise to the income does not occur in this state.

(b) remains the same.

(c) The transactional test also includes, but is not limited to: income from the sale of property used in the production of ~~business~~ apportionable income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(4) Under the functional test, ~~business~~ apportionable income includes income from tangible and intangible property, if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(a) ~~Business~~ Apportionable income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of ~~business~~ apportionable income of the trade or business, part of which trade or business is or was conducted within this state. Property that has been converted to ~~nonbusiness~~ nonapportionable use through the passage of a sufficiently lengthy

period of time, generally, five years is sufficient, has lost its character as a business asset and is not subject to the rule of the preceding sentence.

(b) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation, including complete or partial liquidations, or the winding-up of business, is ~~business~~ apportionable income, if the property is or was used in the taxpayer's trade or business operations.

(i) Property that has been converted to ~~nonbusiness~~ nonapportionable use has lost its character as a business asset and is not subject to (4)(b).

(ii) Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes ~~business~~ apportionable income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(c) Under the functional test, income from intangible property is ~~business~~ apportionable income when the intangible property serves an operational function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities.

(d) If the property is or was held in furtherance of the taxpayer's trade or business then income from that property may be ~~business~~ apportionable income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this state.

(e) If, with respect to an item of property, a taxpayer takes a deduction from ~~business~~ apportionable income that is apportioned to this state or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.

(f) Application of the functional test is generally unaffected by the form of the property (e.g., tangible or intangible property, real or personal property). Income arising from an intangible interest, as, for example, corporate stock or other intangible interest in a business or a group of assets, is ~~business~~ apportionable income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations.

(g) Property that has been converted to ~~nonbusiness~~ nonapportionable use has lost its character as a business asset and is not subject to (4)(f).

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-302, MCA

REASON: The department proposes amending ARM 42.26.206 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable

income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to accurately reflect the rule content as amended.

42.26.207 DETERMINATION OF ~~BUSINESS AND NONBUSINESS~~ APPORTIONABLE AND NONAPPORTIONABLE INCOME (1) Rental income from real and tangible property is characterized as ~~business~~ apportionable income if the property with respect to which the rental income was received is, or was, used in the taxpayer's trade or business and therefore is includable in the property factor under ARM 42.26.231 and 42.26.237. Property that has been converted to ~~nonbusiness~~ nonapportionable use has lost its character as a business asset and is not subject to the rule of the preceding sentence.

(2) Gain or loss from the sale, exchange, or other dispositions of real property or of tangible or intangible personal property constitutes ~~business~~ apportionable income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of, the taxpayer's trade or business. However, if such property was utilized for the production of ~~nonbusiness~~ nonapportionable income or otherwise was removed from the property factor before its sale, exchange, or other disposition, the gain or loss will constitute ~~nonbusiness~~ nonapportionable income. See ARM 42.26.232.

(3) Interest income is characterized as ~~business~~ apportionable income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations.

(4) Dividends constitute ~~business~~ apportionable income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations.

(5) Patent and copyright royalties are characterized as ~~business~~ apportionable income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the acquiring and holding the patent or copyright is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-302, MCA

REASON: The department proposes amending ARM 42.26.207 to properly implement House Bill 511, L. 2017, which changed the term "business income" to

"apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to accurately reflect the rule content as amended.

42.26.208 ALLOCATION OF INCOME AND DEDUCTIONS (1) In most cases an allowable deduction of a taxpayer will be applicable only to the ~~business~~ apportionable income arising from a particular trade or business or to a particular item of ~~nonbusiness~~ nonapportionable income. In some cases an allowable deduction may be applicable to the ~~business~~ apportionable incomes of more than one trade or business and/or to several items of ~~nonbusiness~~ nonapportionable income. In such cases, the deduction shall be prorated among such trades or business and such items of ~~nonbusiness~~ nonapportionable income in a manner which fairly distributes the deduction among the classes of income to which it is applicable.

(2) through (4) remain the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.208 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

42.26.210 TAXABLE IN ANOTHER STATE (1) remains the same.

(2) A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in such other state pertaining to the production of ~~nonbusiness~~ nonapportionable income or business activities relating to a separate trade or business.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-303, MCA

REASON: The department proposes amending ARM 42.26.210 to properly implement House Bill 511, L. 2017, which changed the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.229 PARTNERSHIPS AND DISREGARDED ENTITIES - ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME (1) A partnership or disregarded entity that is not part of a unitary business operation of a corporate

partner or disregarded entity owner will be treated as follows:

(a) The corporate partner's or disregarded entity owner's share of partnership or disregarded entity income will not be included in ~~business~~ apportionable income to be apportioned, but allocated to the states where the partnership or disregarded entity operates based upon the apportionment formula outlined in 15-31-305, MCA.

(2) Gain or loss from the sale of a non-unitary partnership or disregarded entity owner interest is allocable to this state in the ratio of the original cost of partnership or disregarded entity tangible property in this state to the original cost of partnership or disregarded entity tangible property everywhere, determined at the time of sale. In the event that more than 50 percent of the value of the assets of a partnership or disregarded entity consists of intangibles, gain, or loss from the sale of the partnership or disregarded entity owner interest shall be allocated to this state in accordance with the ~~sales~~ receipts factor of the partnership or disregarded entity for its first full tax period immediately preceding its tax period during which the partnership or disregarded entity interest was sold. If a disregarded entity does not have a tax period, the allocation will be made in accordance with the ~~sales~~ receipts factor of the partnership or disregarded entity for the 12 full calendar months preceding the month the interest was sold.

AUTH: 15-31-501, MCA
IMP: 15-31-304, 15-31-305, MCA

REASON: The department proposes amending ARM 42.26.229 to properly implement House Bill 511, L. 2017, which changed the terms "business income" to "apportionable income," "nonbusiness income" to "nonapportionable income," and "sales factor" to "receipts factor." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.230 APPORTIONMENT FORMULA - EXCLUSIONS (1) If a taxpayer has property, payroll, or ~~sales~~ receipts assignable under 15-31-305 through 15-31-311, MCA, and attendant regulations to a location where it is not taxable under 15-31-303, MCA, the property, payroll, or ~~sales~~ receipts assigned to that location shall be excluded from the apportionment formula.

(2) remains the same.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.230 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.231 PROPERTY FACTOR IN GENERAL (1) remains the same.

(2) Property used in connection with the production of ~~nonbusiness~~ nonapportionable income shall be excluded from the property factor.

(3) Property used both in the regular course of taxpayer's trade or business and in the production of ~~nonbusiness~~ nonapportionable income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend on the facts of each case.

(4) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, MCA

REASON: The department proposes amending ARM 42.26.231 to properly implement House Bill 511, L. 2017, which changed the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.232 PROPERTY USED FOR THE PRODUCTION OF ~~BUSINESS~~ APPORTIONABLE INCOME (1) and (2) remain the same.

(3) Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of ~~nonbusiness~~ nonapportionable income, its sale, or the lapse of an extended period of time (normally five years) during which the property is held for sale.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, MCA

REASON: The department proposes amending ARM 42.26.232 to properly implement House Bill 511, L. 2017, which changed the terms "business income" to "apportionable income" and "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.236 VALUATION OF RENTED PROPERTY (1) Property rented by the taxpayer is valued at eight times its net annual rental rate.

(a) remains the same.

(b) Sub-rents are not deducted when the sub-rents constitute ~~business~~ apportionable income because the property that produces the sub-rents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value.

(2) and (3) remain the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, MCA

REASON: The department proposes amending ARM 42.26.236 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.241 PAYROLL FACTOR IN GENERAL (1) and (2) remain the same.

(3) The compensation of any employee on account of activities which are connected with the production of ~~nonbusiness~~ nonapportionable income shall be excluded from the factor.

(4) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-308, 15-31-309, MCA

REASON: The department proposes amending ARM 42.26.241 to properly implement House Bill 511, L. 2017, which changed the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.251 ~~SALES~~ RECEIPTS FACTOR IN GENERAL (1) Section 15-31-302, MCA, defines the term ~~"sales"~~ "receipts" to mean all gross receipts of the taxpayer not allocated under 15-31-304, MCA. Thus, for the purposes of the ~~sales~~ receipts factor of the apportionment formula for each trade or business of the taxpayer, the term ~~"sales"~~ "receipts" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of such trade or business.

(2) The following are procedures for determining ~~"sales"~~ "receipts" in various situations:

(a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, ~~"sales"~~ "receipts" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, ~~"sales"~~ "receipts" includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service

contracts or research and development contracts, ~~"sales"~~ "receipts" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, ~~"sales"~~ "receipts" includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, ~~"sales"~~ "receipts" includes the gross receipts therefrom.

(3) In some cases, certain gross receipts should be disregarded in determining the ~~"sales"~~ "receipts" factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business as set forth in ARM 42.26.263.

(4) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.251 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.252 CONSISTENCY IN REPORTING WITH RESPECT TO ~~SALES~~ RECEIPTS (1) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the ~~sales~~ receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, Title 15, chapter 31, part 3, MCA

REASON: The department proposes amending ARM 42.26.252 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.253 DENOMINATOR OF ~~SALES~~ RECEIPTS FACTOR (1) The denominator of the ~~sales~~ receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under ARM 42.26.263.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.253 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.254 NUMERATOR OF ~~SALES~~ RECEIPTS FACTOR (1) The numerator of the ~~sales~~ receipts factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(2) Intercompany revenues between members of the unitary group that are attributable to this state shall be excluded from the numerator of the ~~sales~~ receipts factor.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.254 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.255 SALES OF TANGIBLE PERSONAL PROPERTY (1) through (6) remain the same.

(7) ~~If~~ For taxable years beginning before January 1, 2018, if a taxpayer whose ~~salesman~~ salesperson operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(a) and (b) remain the same.

(8) For taxable years beginning after December 31, 2017, for purposes of determining whether receipts are in Montana and included in the numerator of the receipts factor, if the activities of any member of a unitary group exceeds the activity protected under P.L. 86-272 then sales of tangible personal property into Montana,

from an out-of-state location, by any member of the unitary group, shall be included in Montana's receipts factor numerator.

(9) For taxable years beginning after December 31, 2017, if any member of a unitary group is taxable in another state, sales of tangible personal property from a Montana location into that state by any member of the unitary group shall not be included in Montana's receipts factor numerator.

(10) For taxable years beginning after December 31, 2017, if no member of a unitary group is taxable in another state, sales of tangible personal property from a Montana location into that state by any member of the unitary group shall be included in Montana's receipts factor numerator.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.255 in conjunction with its proposed adoption of New Rule VII, and proposed repeal of ARM 42.26.511, in this same notice. The proposed amendment of this rule is unrelated to any new legislation being addressed in this same notice.

As proposed, New Rule VII notifies taxpayers of a change in the way the department administers the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected through multiple entities. Historically, the department applied what is known as the "Joyce Rule" in ARM 42.26.511, which the department is proposing to repeal in this same notice in conjunction with proposing to adopt New Rule VII.

The "Joyce" and "Finnigan" rules both address issues surrounding the calculation of a unitary group's apportionment factor numerators. Under "Joyce," in order to include the apportionment factor numerators of a member of a unitary group, that individual member must have nexus within the taxing state. Under "Finnigan," the apportionment factor numerators of all members of a unitary group are included if just one member of the unitary group has nexus within the taxing state. The proposed amendments to ARM 42.26.255 set forth the provisions of the "Finnigan" rules in sourcing receipts in the Montana receipts numerator.

The additional language proposed to be added to (7) provides taxpayers with the applicable tax years for which the "Joyce" rule would still apply. The proposed addition of new (8) provides taxpayers with the tax years in which the "Finnigan" approach becomes effective, as well as provides the language necessary to invoke the "Finnigan" rules for sales of tangible personal property. The proposed addition of new (9) and (10) provides taxpayers with guidance for situations that require receipts being thrown back to Montana and situations where a throwback is not appropriate under the "Finnigan" rules.

42.26.257 SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY - COSTS OF PERFORMANCE (1) Section 15-31-311, MCA, provides for the inclusion in the numerator of the ~~sales~~ receipts factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under this section, gross receipts are attributed to this state if the income-producing activity, which gave rise to the receipts, is

performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state, based on costs of performance.

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning before January 1, 2018. For tax years beginning after December 31, 2017, refer to [New Rule I through New Rule VI].

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.257 to properly implement House Bill (HB) 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable in (1), to align the rule with the revised statute.

The department also proposes adding new (5) to include the effective date for the rule and to direct taxpayers to rules adopting the marketing based approach of sourcing receipts provided for in HB 511.

The department further proposes updating the catchphrase for the rule to make it clear that this rule addresses only those receipts that are sourced under the costs of performance approach for receipts apportionment factor purposes.

42.26.259 SALE OF TANGIBLE AND INTANGIBLE PROPERTY COMPUTATION OF THE ~~SALES~~ RECEIPTS FACTOR (1) remains the same.

(2) If a taxpayer derives receipts from the sale of tangible property or the sale or redemption of intangible property not held primarily for sale to customers in the ordinary course of its trade or business such receipts will constitute sales for inclusion in the ~~sales~~ receipts factor to the following extent:

(a) Only the net receipts from the sale of tangible or the sale or redemption of intangible property shall be included in the ~~sales~~ receipts factor.

(b) In the case where the taxpayer has multiple transactions from the sale of tangible or the sale or redemption of intangible property only the net gains in excess of net losses will be included in the ~~sales~~ receipts factor.

(c) Before the net receipts from the sale of tangible property or the sale or redemption of intangible property may be included in the ~~sales~~ receipts factor the sales transactions must constitute ~~business~~ apportionable income to the taxpayer.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.259 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.263 SPECIAL COMPUTATIONS RELATED TO ~~SALES~~ RECEIPTS FACTOR (1) The following special criteria are established in respect to the ~~sales~~ receipts factor of the apportionment formula:

(a) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the ~~sales~~ receipts factor unless such exclusion would materially affect the amount of income apportioned to this state.

(b) ~~Where~~ For tax periods beginning before January 1, 2018, where the income-producing activity in respect to ~~business~~ apportionable income from intangible personal property can be readily identified, such income is included in the denominator of the ~~sales~~ receipts factor and, if the income-producing activity occurs in this state, in the numerator of the ~~sales~~ receipts factor as well. For example, usually the income-producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property (ARM 42.26.251) and income from sale, licensing, or other use of intangible personal property (ARM 42.26.257).

(2) ~~Where~~ For tax periods beginning before January 1, 2018, where ~~business~~ apportionable income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, such income cannot be assigned to the numerator of the ~~sales~~ receipts factor for any state and shall be excluded from the denominator of the ~~sales~~ receipts factor. For example, where ~~business~~ apportionable income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the ~~sales~~ receipts factor.

(3) Section 631 of the IRC (gains) which are attributable to internal transactions must be eliminated from the ~~sales~~ receipts factor. The ultimate sale to outsiders will be included in line 1 sales. IRC section 631(A) (log sales) and section 631(B) (gains) should be included in the factor at the gross sales price used to calculate the gain. IRC section 631(C) (gains) should be included to the extent of gross royalties received prior to the capital gains offset and prior to the netting of long-term capital gains and losses.

(4) Software transactions. A license or sale of prewritten software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in Montana as determined under the rules for the sale of tangible personal property set forth in ARM 42.26.255. In all other cases, the receipts from a license or sale of software are to be assigned to Montana as determined otherwise under [New Rule I, New Rule IV, New Rule V, or New Rule VI] (i.e., depending on the facts, as the development and sale of custom software, as a license of a marketing intangible, as a license of a production intangible, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, or as a sale of intangible property).

(5) Sales of licenses of digital goods or services.

(a) In the case of a sale or license of digital goods or services, including among other things, the sale of various video, audio, and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in [New Rule IV], as if the transaction were a service delivered to an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service.

(b) Telecommunication companies. In the case of a taxpayer that provides telecommunication or ancillary services and that is thereby subject to ARM Title 42, chapter 26, subchapter 12, receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that subchapter are assigned pursuant to this section, by applying the rules set forth in [New Rule IV] as if the transaction were a service delivered to an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product, it may reasonably approximate this location using the customer's place of primary use of the purchased product.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.263 to properly implement House Bill (HB) 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

The department also proposes amending the rule to address the treatment of software transactions and sales of licenses of digital goods or services enacted by HB 511, which adopted a market sourcing approach to sourcing receipts for apportionment factor purposes. The new language added by HB 511, to 15-1-601, Article IV(17), MCA, is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact Article IV. In support of the Revised Compact, the MTC also adopted apportionment regulations, including definitions, addressing the sourcing of receipts using the market sourcing approach. The language the department is proposing to add to this rule is modeled after these apportionment regulations adopted by the MTC.

The language proposed to be added in new (4) specifically addresses the sourcing of receipts in the receipts apportionment factor numerator of software transactions, and the receipts from the sales of license of digital goods or services is proposed to be addressed in new (5).

The department considers these amendments to ARM 42.26.263 necessary in its implementation of HB 511, in that it provides essential guidance to taxpayers in sourcing various types of receipts under a market sourcing approach.

42.26.302 PROCEDURE (1) and (1)(a) remain the same.

(b) If a taxpayer files a water's-edge election after the 90-day deadline, the taxpayer must establish reasonable cause for failing to satisfy the 90-day deadline.

(i) Reasonable cause is defined in ARM 42.2.304. Examples of what ordinarily does or does not constitute reasonable cause are provided in ARM ~~42.3.105~~ 42.2.512.

(ii) through (4) remain the same.

AUTH: 15-31-501, MCA
IMP: 15-31-324, MCA

REASON: The department proposes amending ARM 42.26.302 to replace an incorrect ARM number reference in (1)(b)(i). The proposed change to this rule is housekeeping in nature and unrelated to any new legislation being addressed in this same rulemaking notice.

42.26.307 APPORTIONMENT AND ALLOCATION GENERALLY

(1) remains the same.

(2) Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its ~~nonbusiness~~ nonapportionable income or loss within or without this state in accordance with 15-31-304, MCA.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.307 to properly implement House Bill 511 which changed the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, in (2), to align the rule with the revised statute.

42.26.308 APPORTIONMENT FORMULA (1) All ~~business~~ apportionable income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in 15-31-305, MCA. The elements of the apportionment formula are the property factor (see ARM 42.26.231), the payroll factor (see ARM 42.26.241), and the ~~sales~~ receipts factor (see ARM 42.26.251) of the trade or business of the taxpayer.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, MCA

REASON: The department proposes amending ARM 42.26.308 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms where applicable, to align the rule with the revised statute.

42.26.309 APPORTIONMENT FACTORS (1) remains the same.

(2) The apportionment provisions of Title 15, chapter 31, part 3, MCA, and related regulations regarding the inclusion, valuation, and attribution of apportionment factors by location shall apply to the computation of Montana tax liability under a water's-edge election. Only property, payroll, and ~~sales~~ receipts of corporations actually included in the water's-edge combined group shall be considered.

AUTH: 15-31-501, MCA
IMP: 15-31-323, MCA

REASON: The department proposes amending ARM 42.26.309 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, in (2), to align the rule with the revised statute.

42.26.312 TREATMENT OF DIVIDENDS FOR PURPOSES OF A WATER'S-EDGE COMBINED RETURN (1) Eighty percent of the dividends apportionable under this rule are to be excluded from income subject to apportionment where:

(a) through (e) remain the same.

(f) the limited inclusion of dividend income specified in this rule is in lieu of attempts to allocate expenses attributable to the generation of such dividend income. For apportionment factor purposes only the dividend income considered to be ~~business~~ apportionable income shall be included in the receipts factor numerator or denominator as appropriate.

AUTH: 15-31-501, MCA
IMP: 15-31-325, MCA

REASON: The department proposes amending ARM 42.26.312 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, in (1)(f), to align the rule with the revised statute.

42.26.401 SPECIAL RULES RELATED TO INSTALLMENT SALES

(1) remains the same.

(2) The separate calculation shall be made as follows:

(a) for purposes of the ~~sales~~ receipts factor the total net gains from the sale shall be included in the ~~sales~~ receipts factor in the year of the sale unless specifically excluded from the ~~sales~~ receipts factor under another part of ARM 42.26.263;

(b) for purposes of calculating apportionable ~~business~~ income from the installment sale, the factors of the year of sale shall be utilized in apportioning the gain regardless of the year in which the income is reported; and

(c) the factors of the year of sale shall be applied to the gain from the sale as it is reported by the taxpayer to determine the amount of ~~business~~ apportionable income from the sale which is apportionable to this state, unless the gain is accelerated under ARM 42.26.276.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-305, MCA

REASON: The department proposes amending ARM 42.26.401 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms where applicable, to align the rule with the revised statute.

42.26.602 GENERAL RULES FOR RAILROADS (1) Where a railroad has income from sources both within and without this state, the amount of ~~business~~ apportionable income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by regulation.

(2) For definitions, rules, and examples for determining ~~business and nonbusiness~~ apportionable and nonapportionable income, see ARM 42.26.206.

(3) Except as modified in this regulation, the apportionment factors shall be determined as follows:

(a) and (b) remain the same.

(c) the ~~sales~~ receipts factor in accordance with ARM 42.26.251 through 42.26.259, inclusive.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.602 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor," "business income" to "apportionable income," and "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms where applicable, to align the rule with the revised statute.

42.26.605 THE PAYROLL FACTOR (1) The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of ~~business~~ apportionable income as provided in ARM 42.26.243. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244. With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to this state.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-308, 15-31-309, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.605 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.606 THE ~~SALES (REVENUE)~~ RECEIPTS FACTOR (1) All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces ~~business~~ apportionable income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the ~~revenue~~ receipts factor as provided in ARM 42.26.253. The numerator of the ~~revenue~~ receipts factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254 through 42.26.259.

(2) The total revenue of the taxpayer in this state during the income year for the numerator of the ~~revenue~~ receipts factor from hauling freight, mail, and express shall be attributable to this state as follows:

(a) and (b) remain the same.

(3) The numerator of the ~~sales (revenue)~~ receipts factor shall include:

(a) and (b) remain the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.606 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.702 GENERAL RULES FOR TRUCKING COMPANIES (1) Where a trucking company has income from sources both within and without this state, the amount of ~~business~~ apportionable income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by this rule. ARM 42.26.202 provides the definitions that are applicable to the numerator and the denominator of the property factor, as well as other apportionment factor descriptions.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-301, MCA

REASON: The department proposes amending ARM 42.26.702 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.704 THE PAYROLL FACTOR (1) The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of ~~business~~ apportionable income as provided in ARM 42.26.243. The numerator of the payroll factor is the total compensation paid in this state during the income year by the taxpayer. With respect to all personnel, except those performing services within and without this state, compensation paid to such employees shall be included in the numerator as provided in ARM 42.26.244.

(2) remains the same.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-308, 15-31-309, MCA

REASON: The department proposes amending ARM 42.26.704 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.705 THE ~~SALES (REVENUE)~~ RECEIPTS FACTOR (1) In general, all revenues derived from transactions and activities in the regular course of the taxpayer's trade or business which produces ~~business~~ apportionable income shall be included in the denominator of the ~~revenue~~ receipts factor as provided in ARM 42.26.253.

(2) The numerator of the ~~revenue~~ receipts factor is the total revenue of the taxpayer in this state during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with ARM 42.26.254 through 42.26.259.

(3) Numerator of the ~~sales (revenue)~~ receipts factor from freight, mail, and express. The total revenue of the taxpayer attributable to this state during this income year from hauling freight, mail, and express shall be:

(a) and (b) remain the same.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-310, 15-31-311, MCA

REASON: The department proposes amending ARM 42.26.705 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.802 GENERAL STATEMENT (1) Where an airline has income from sources both within and without this state, the amount of ~~business~~ apportionable income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by this rule.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.802 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.805 THE ~~SALES (TRANSPORTATION REVENUE)~~ RECEIPTS FACTOR (1) The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the ~~revenue~~ receipts factor as provided in ARM 42.26.253. The numerator of the ~~revenue~~ receipts factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

(a) remains the same.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.805 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.807 AIRLINE REGULATION EXAMPLES (1) Assume the following facts for an airline for the tax year:

(a) through (d) remain the same.

(e) From its operations, it has total receipts of $50,000,000, ~~business~~ apportionable net income of $1,000,000 and no ~~nonbusiness~~ nonapportionable income. The total $50,000,000 is flight revenue; there is no nonflight revenue.

(f) remains the same.

(g) State X has a corporate tax rate of 10 percent. The airline's tax liability to state X would be determined as follows:

Property Factor:

| Numerator | | Denominator |
|---|---|---|
| 43,200,000 (747s) | | 432,000,000 (747s) |
| + 80,000,000 (727s) | + | 400,000,000 (727s) |
| + 10,000,000 (n.t.p.) | + | 200,000,000 (n.t.p.) |
| 133,200,000 | / | 1,032,000,000 = 12.91% |

~~Sales~~ Receipts Factor:

| Numerator | | Denominator |
|---|---|---|
| 43,200,000 (747s) | | 432,000,000 (747s) |
| + 80,000,000 (727s) | + | 400,000,000 (727s) |
| 123,200,000 | / | 832,000,000 = 14.8% |

departure ratio = 14.8%

7,403,846 (14.8% x 50,000,000) / 50,000,000 = 14.81%

Payroll Factor:

| Numerator | | Denominator |
|---|---|---|
| 6,000,000 (nonflight) | | 40,000,000 (nonflight) |
| + 8,880,000 (14.8% x 60,000,000 flight) | + | 60,000,000 (flight) |
| 14,880,000 | + | 100,000,000 = 14.88% |

Average Ratio Equals the sum of the property, ~~sales~~ receipts, and payroll factors divided by 3.

(12.91% + 14.81% + 14.88%) /3 = 14.20%

Taxable Income in state X: .1420 x 1,000,000 = $142,000

Tax Liability to state X: .10 x $142,000 = $14,200

(2) Same facts except (1)(f) is changed to read:

(a) remains the same.

(b) State Y has a corporate tax rate of 6.5 percent. The airline's tax liability to state Y would be determined as follows:

Property Factor:

| Numerator | | Denominator |
|---|---|---|
| 25,920,000 (747s) | | 432,000,000 (747s) |
| + 124,000,000 (727s) | + | 400,000,000 (727s) |
| + 6,000,000 (n.t.p.) | + | 200,000,000 (n.t.p.) |
| 155,920,000 | / | 1,032,000,000 = 15.1085% |

~~Sales~~ Receipts Factor:

| Numerator | | Denominator |
|---|---|---|
| 25,920,000 (747s) | | 432,000,000 (747s) |
| + 124,000,000 (727s) | + | 400,000,000 (727s) |

149,920,000 / 832,000,000 = 18.0192%

departure ratio = 18.0192%

9,009,600 (18.0192% x 50,000,000) / 50,000,000 = 18.0192 percent

Payroll Factor:

| Numerator | | Denominator |
|---|---|---|
| 2,800,000 (nonflight) | | 40,000,000 (nonflight) |
| +10,811,520 (18.0192% x 60,000,000 flight) | + | 60,000,000 (flight) |
| 13,611,520 | / | 100,000,000 = 13.6114% |

Average Ratio Equals the sum of the property, ~~sales~~ receipts, and payroll factors divided by 3.

(15.1085% + 18.0192% + 13.6114%) / 3 = 15.5797%

Taxable Income in state Y: .155797 x 1,000,000 = $155,797

Tax Liability to state Y: .065 x $155,797 = $10,127

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.807 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor," "business income" to "apportionable income," and "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, in (1)(e) and (g) and (2)(b), to align the rule with the revised statute.

42.26.902 LONG-TERM CONSTRUCTION CONTRACTS (1) When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without this state from a trade or business, (for purposes of determining whether a taxpayer's operations are within or without, the test shall be for each separate entity in a combined group electing the completed contract method, rather than the combined group as a whole), the amount of ~~business~~ apportionable income derived from such long-term contracts from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "~~business~~ apportionable income" and which portion constitutes "~~nonbusiness~~ nonapportionable income" pursuant to ARM 42.26.206 and 42.26.207. ~~Nonbusiness~~ Nonapportionable income is directly allocated to specific states pursuant to the

provisions of ARM 42.26.221 inclusive. ~~Business~~ Apportionable income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and ~~sales~~ receipts apportionment factors set forth in this regulation. The sum of the items of ~~nonbusiness~~ nonapportionable income directly allocated to this state, plus the amount of ~~business~~ apportionable income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-301, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.902 to properly implement House Bill 511, L. 2017, which changed the terms "business income" to "apportionable income" and "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

42.26.903 APPORTIONMENT OF ~~BUSINESS~~ APPORTIONABLE INCOME

(1) ~~Business~~ Apportionable income, in general, is apportioned to this state by a three-factor formula consisting of property, payroll, and ~~sales~~ receipts regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and ~~sales~~ receipts percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to ~~business~~ apportionable income to determine the amount apportioned to this state.

(2) Under the percentage of completion method of accounting for long-term contracts, the amount to be included each year as ~~business~~ apportionable income from each contract is the amount by which the gross contract price that corresponds to the percentage of the entire contract that has been completed during the income years exceeds all expenditures made during the income year in connection with the contract. In so doing, the account must be made of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

(3) Under the completed contract method of accounting, ~~business~~ apportionable income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of ~~business~~ apportionable income attributable to this state from each completed contract. Thus, all receipts and expenditures applicable to such contracts, whether complete or incomplete as of the end of the income year, are excluded from ~~business~~ apportionable income derived from other sources. For example, short-term contracts, interest, rents, royalties, etc., which are apportioned by the regular three-factor formula of property, payroll, and ~~sales~~ receipts.

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

(c) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, ~~business~~ apportionable income is computed separately.

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

(c) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, ~~business~~ apportionable income is computed separately.

(6) In general the numerator and denominator of the ~~sales~~ receipts factor shall be determined as set forth in ARM 42.26.253 and 42.26.254. However, the following special criteria are also applicable:

(a) remains the same.

(b) If the percentage of completion method is used, the ~~sales~~ receipts factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

(c) If the completed contract method of accounting is used, the ~~sales~~ receipts factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

(d) The ~~sales~~ receipts factor, except as noted in (6)(b) and (c), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though under the completed contract method of accounting, ~~business~~ apportionable income is computed separately.

(7) The total of the property, payroll, and ~~sales~~ receipts percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to ~~business~~ apportionable income to establish the amount apportioned to this state.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-301, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.903 to properly implement House Bill 511, L. 2017, which changed the terms "business income" to "apportionable income" and "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.904 COMPLETED CONTRACT METHOD - SPECIAL COMPUTATION

(1) The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state, plus other ~~business~~ apportionable income apportioned to this state by the regular three-factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all ~~nonbusiness~~

nonapportionable income allocated to this state is the measure of income for the income year.

(2) through (2)(b)(ii) remain the same.

(iii) The percentages determined in (ii) for each year the contract was in progress are totaled. The amount of total income (or loss) from the contract is multiplied by the total percentage. The resulting income (or loss) is the amount of ~~business~~ apportionable income from such contract derived from sources within this state.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-301, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.904 to properly implement House Bill 511, L. 2017, which changed the terms "business income" to "apportionable income" and "nonbusiness income" to "nonapportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.905 COMPUTATION FOR YEAR OF WITHDRAWAL, DISSOLUTION, OR CESSATION OF BUSINESS - COMPLETED CONTRACT METHOD

(1) remains the same.

(2) The amount of income (or loss) from each such contract to be apportioned to this state by the apportionment method set forth in ARM 42.26.904 shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of ~~business~~ apportionable income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-301, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.905 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.1002 GENERAL RULE (1) Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing, or distributing newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and outside of Montana, the amount of ~~business~~

apportionable income from sources within Montana from such business activity shall be determined pursuant to Title 15, chapter 31, part 3, MCA, and the supporting administrative rules.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1002 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.1003 APPORTIONMENT OF ~~BUSINESS~~ APPORTIONABLE INCOME

(1) through (8) remain the same.

(9) For purposes of this subchapter, the ~~sales~~ receipts factor will be determined as follows:

(a) The denominator of the ~~sales~~ receipts factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under ARM 42.26.251, 42.26.252, 42.26.253, 42.26.254, 42.26.255, 42.26.256, 42.26.257, 42.26.259, 42.26.261, 42.26.262, and 42.26.263.

(b) The numerator of the ~~sales~~ receipts factor shall include all gross receipts of the taxpayer from sources within Montana including, but not limited to, the following:

(i) and (ii) remain the same.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which Montana is located, the taxpayer may petition, or the department may require, that a portion of such receipts be attributed to the ~~sales~~ receipts factor numerator of Montana on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by (9)(b)(ii). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in Montana of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double-counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, advertising, and the sale, rental, or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the ~~sales~~ receipts factor for such state, shall be included in the numerator of the ~~sales~~ receipts factor of Montana if the printed material or other property is shipped from an office,

store, warehouse, factory, or other place of storage or business in Montana.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1003 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.1102 GENERAL RULE (1) When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission, or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated, or independent television or radio broadcasting station, has income from sources both within and outside Montana, the amount of ~~business~~ apportionable income from sources within Montana shall be determined pursuant to Title 15, chapter 31, part 3, MCA, and the supporting Administrative Rules of Montana, except as modified by this rule.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1102 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.1103 APPORTIONMENT OF ~~BUSINESS~~ APPORTIONABLE INCOME
(1) The property factor shall be determined in accordance with 15-31-306, MCA, the payroll factor in accordance with 15-31-308, MCA, and the ~~sales~~ receipts factor in accordance with 15-31-310, MCA, except as modified by this rule.
(2) through (4) remain the same.
(5) For purposes of this subchapter, the ~~sales~~ receipts factor will be determined as follows:
(a) The ~~sales~~ receipts factor denominator shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under ARM 42.26.263.
(b) The numerator of the ~~sales~~ receipts factor shall include all gross receipts of the taxpayer from sources within Montana including, but not limited to, the following:
(i) through (iii) remain the same.

(iv) receipts from the sale, rental, licensing, or other disposition of audio or video cassettes, discs, or similar media intended for home viewing or listening shall be included in the ~~sales~~ receipts factor as provided in ARM 42.26.257.

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1103 to properly implement House Bill 511, L. 2017, which changed the terms "sales factor" to "receipts factor" and "business income" to "apportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

42.26.1202 GENERAL RULE (1) Except as specifically modified by the rules in this subchapter, when a person providing telecommunications services generates ~~business~~ apportionable income from sources within and outside of Montana, the amount of such ~~business~~ apportionable income arising from sources within Montana shall be determined pursuant to Title 15, chapter 31, part 3, MCA, and the supporting administrative rules.

AUTH: 15-1-201, 15-31-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1202 to properly implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute.

42.26.1204 ~~SALES~~ RECEIPTS FACTOR (1) through (7) remain the same.
(8) Gross receipts from the sale of telecommunications services which are not taxable in the state to which they would be apportioned pursuant to (1) through (6), shall be excluded from the denominator of the ~~sales~~ receipts factor.

AUTH: 15-1-201, 15-31-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.1204 to properly implement House Bill 511, L. 2017, which changed the term "sales factor" to "receipts factor." The department proposes striking the old term and replacing it with the new term, where applicable, to align the rule with the revised statute. The department also proposes updating the catchphrase for the rule to reflect content of the rule as amended.

5. The department proposes to repeal the following rule:

42.26.511 APPLICATION OF THE JOYCE RULE

AUTH: 15-1-201, 15-31-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes repealing ARM 42.26.511 in conjunction with the proposed amendment of ARM 42.26.255, and the proposed adoption of New Rule VII, in this same notice, to notify taxpayers of a change in the way the department administers the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected through multiple entities. To determine taxable nexus of these corporate groups, the department has historically applied this "Joyce Rule," ARM 42.26.511, and is now proposing to adopt and apply the "Finnigan Rule" (New Rule VII), to make these determinations.

The "Joyce Rule" and the "Finnigan Rule" both address issues surrounding the calculation of a unitary group's apportionment factor numerators. Under the "Joyce Rule," in order to include the apportionment factor numerators of a member of a unitary group, that individual member must have nexus within the taxing state. Under the "Finnigan Rule," the apportionment factor numerators of all members of a unitary group are included if just one member of the unitary group has nexus within the taxing state.

The department proposes the repeal of ARM 42.26.511, the amendment of ARM 42.26.255, and the adoption of New Rule VII, to limit the risk of manipulation of the apportionment factors of a unitary combined group. A corporate structure can separate nexus creating activities from sales or other revenue generating activities. By applying the "Joyce Rule," this has a direct impact on the Montana apportionment factor. The purpose of the apportionment factors is to reflect the Montana business activity of the unitary group. The corporate structure of a unitary group should not alter the reflection of business activity in the apportionment factors.

When dealing with combined unitary groups, the department is seeing a trend in businesses with more diverse corporate structures. The department is also seeing more economic presence issues. These issues can have material effects on the apportionment factors, of which the intent is to reflect the business activity of the unitary group in Montana. The adoption of the "Finnigan Rule" can help limit the risk of manipulation of the apportionment factors of unitary groups. The department believes applying the "Joyce Rule" no longer adequately address these issues and by adopting the "Finnigan Rule" approach, a combined unitary group will provide a more accurate reflection of its business activity in Montana.

The proposed repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

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: 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 November 13, 2017.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. 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 6 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.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 511, L. 2017, Representative Rob Cook, was contacted by regular mail on June 14, 2017 and September 20, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment and repeal of the above-referenced rules will 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 6.

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|---|---|
| /s/ Laurie Logan | /s/ Mike Kadas |
| Laurie Logan | Mike Kadas |
| Rule Reviewer | Director of Revenue |

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through III pertaining to apportionment and allocation of income for financial institutions | ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On November 2, 2017, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption 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 23, 2017, 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 as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter.

(1) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on such later date in the taxable year when the customer relationship began, as the address where any notice, statement, and/or bill relating to a customer's account is mailed.

(2) "Borrower or credit card holder located in this state" means:

(a) a borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in Montana; or

(b) a borrower that is not engaged in a trade or business or a credit card holder whose billing address is in Montana.

(3) "Card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(4) "Commercial domicile" means:

(a) the headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of the rules

in ARM Title 42, chapter 26, [subchapter 13] to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.

(5) "Credit card" means a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(6) "Debit card" means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(7) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(8) "Financial institution" means:

(a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. sections 21 et seq.;

(c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. section 1813(b)(1);

(d) any bank or thrift institution incorporated or organized under the laws of any state;

(e) any corporation organized under the provisions of 12 U.S.C. sections 611 through 631;

(f) any agency or branch of a foreign depository as defined in 12 U.S.C. section 3101;

(g) a state credit union the loan assets of which exceed $50,000,000 as of the first day of its taxable year;

(h) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

(i) any corporation whose voting stock is more than fifty percent owned, directly or indirectly, by any person or business entity described in subsections (a) through (h) above other than an insurance company;

(j) a corporation or other business entity that derives more than fifty percent of its total gross income for financial accounting purposes from finance leases. For purposes of the rules in ARM Title 42, chapter 26, [subchapter 13], a "finance lease" shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board

Statement No. 13, "Accounting for Leases," or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For this classification to apply:

(i) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent requirement; and

(ii) gross income from incidental or occasional transactions shall be disregarded; or

(k) any other person or business entity, other than an insurance company, a real estate broker, or a securities dealer which derives more than fifty percent of its gross income from activities that a person described in (b) and (h) through (j) above.

(9) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customers, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes. Loans shall not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage backed or asset backed security; and other similar items.

(10) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(11) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

(12) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(13) "Person" means an individual, estate, trust, partnership, corporation, or any other business entity.

(14) "Principal base of operation" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the "principal base of operations" means the place of more or less permanent nature from which the employee regularly starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer; or communicates with his or her customers or other persons; or performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(15) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied, and used by employees of the taxpayer.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

(17) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(18) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like.

AUTH: 15-1-201, 15-1-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule I to define terms that are used in New Rule III, which is also proposed for adoption in this same notice. The three rules being proposed in this notice will be placed in a new subchapter 13 of ARM Title 42, chapter 26, "Corporate Multistate Activities." As proposed, this new definition rule will aid taxpayers in the application of New Rule III, "Receipts Factor."

New Rule I and the other two rules being proposed for adoption in this notice are modeled after regulations adopted by the Multistate Tax Commission. The proposed new rules are intended to more fairly apportion the receipts of financial institutions to states in which they do business.

NEW RULE II APPORTIONMENT AND ALLOCATION (1) Except as specifically modified by the administrative rules in this subchapter, a financial institution whose business activity is taxable both within and without Montana shall allocate and apportion its net income as provided in Title 15, chapter 31, part 3, MCA, and the supporting administrative rules located in ARM Title 42, chapter 26.

AUTH: 15-1-201, 15-1-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule II to provide specific direction to financial institutions for including specific types of receipts in the numerator of the receipts apportionment factor. As proposed, New Rule II directs taxpayers to Title 15, chapter 31, part 3, MCA, and the supporting administrative rules in ARM Title 42, chapter 26, for apportionment and allocation issues not specifically addressed in this subchapter.

New Rule II and the other two rules being proposed for adoption in this notice are modeled after regulations adopted by the Multistate Tax Commission. The

proposed new rules are intended to more fairly apportion the receipts of financial institutions to states in which they do business.

NEW RULE III RECEIPTS FACTOR (1) The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in Montana during the taxable year and the denominator of which is the receipts of the taxpayer within and without Montana during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described herein which constitute apportionable income and are included in the computation of the apportionable income base for the taxable year.

(2) Interest, fees, and penalties imposed in connection with loans secured by real property.

(a) The numerator of the receipts factor includes interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within Montana. If the property is located both within Montana and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within Montana. If more than fifty percent of the fair market value of the real property is not located within any one state, then the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in Montana.

(b) The determination of whether the real property securing a loan is located within Montana shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(3) Interest, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in Montana.

(4) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

(a) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (2) above, and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (5) below, and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(5) Receipts from fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and penalties charged to

credit, debit, or similar card holders, including but not limited to annual fees and overdraft fees, if the billing address of the card holder is in Montana.

(6) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(7) Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(a) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders.

(b) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(c) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(8) Receipts from merchant discount.

(a) If the taxpayer can readily determine the location of the merchant and if the merchant is in Montana, the numerator of the receipts factor includes receipts from the merchant discount.

(b) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(i) in the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(ii) in the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (5) above, and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(c) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (a) and (b) above, and must be used on all subsequent return for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(9) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(a) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in Montana.

(b) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in Montana.

(10) Loan servicing fees.

(a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (2) above, and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to (3) above, and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in Montana.

(11) Receipts from the financial institution's investment assets and activity and trading assets and activity.

(a) Interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (i) and (ii) below, the receipts factor shall include the amounts described.

(i) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(ii) The receipts factor shall include the amount by which interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities described in (a) above, that are attributable to Montana.

(i) The amount of interest, dividends, net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to Montana and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within Montana, and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Montana and included in the numerator is determined by multiplying the amount described in (a)(i) above, from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within Montana and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding amounts described in (i) and (ii) above, attributable to Montana and included in the numerator is determined by multiplying the amount described in (a)(ii) above, by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within Montana and the denominator of which is the average value of all such assets.

(iv) For purposes of this section, average value shall be determined using the rules for determining the average value of tangible personal property set forth in 15-31-307, MCA.

(c) In lieu of using the method set forth in (b) above, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in Montana, the use of the method set forth in this subsection.

(i) The amount of interest, dividends, net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to Montana and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within Montana and denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Montana and included in the numerator is determined by multiplying the amount described in (a)(i) above, from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within Montana and denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions (but excluding

amounts described in (c)(i) and (c)(ii) above), attributable to Montana and included in the numerator is determined by multiplying the amount described in (a)(ii) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within Montana and the denominator of which is the gross income from all such assets and activities.

(d) If the taxpayer elects or is required by the department to use the method set forth in subsection (c) above, it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires, a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset activity was properly assigned to a regular place of business outside of Montana by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside Montana. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in Montana and one such regular place of business is outside Montana, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(12) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in Montana.

AUTH: 15-1-201, 15-1-313, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes adopting New Rule III to provide specific direction to financial institutions for including specific types of receipts in the numerator of the receipts apportionment factor. As proposed, New Rule III addresses specific types of receipts and how those receipts are assigned to the Montana receipts factor numerator for financial institutions.

New Rule III and the other two rules being proposed for adoption in this notice are modeled after regulations adopted by the Multistate Tax Commission. The proposed new rules are intended to more fairly apportion the receipts of financial institutions to states in which they do business.

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 November 13, 2017.

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, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption 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 October 2, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.160, and 42.22.1311 pertaining to the trended depreciation schedules for valuing property | ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT |

TO: All Concerned Persons

1. On November 2, 2017, at 2:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception 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 23, 2017, 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. GENERAL STATEMENT OF REASONABLE NECESSITY. The department uses data from the guides and valuation manuals listed in its rules to determine the trended depreciation schedules published in those rules. Personal property is valued annually and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process. The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

ARM 42.21.157 requires the department to update the depreciation schedules of tangible personal property on an annual basis. The annual changes affect all businesses with taxable tangible personal property. By annually updating the depreciation schedules the department accounts for the impact an additional year of wear and tear has on the value of tangible personal property. Small businesses would see a negative impact if these tables were not updated. Therefore, it is reasonably necessary to update the trend tables to reflect any changes for the upcoming year.

This general statement of reasonable necessity applies to all of the following rules. Supplemental statements of reasonable necessity have been provided for ARM 42.21.123, to add implementing citations and incorporate changes enacted by House Bill 115, L. 2017; for ARM 42.21.131, to add an implementing citation; and for ARM 42.21.160 and 42.22.1311, for format corrections.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, weekly, semimonthly, or monthly basis, but is not exempt under 15-6-202 or 15-6-219, MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of $0 to $500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

| YEAR NEW/ACQUIRED | TRENDED % GOOD |
|---|---|
| ~~2016~~ 2017 | 70% |
| ~~2015~~ 2016 | 44% |
| ~~2014~~ 2015 | 19% |
| ~~2013~~ 2014 | 9% |
| Older | 5% |

(b) For equipment that has an acquired cost of $501 to $1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

| YEAR NEW/ACQUIRED | TRENDED % GOOD |
|---|---|
| ~~2016~~ 2017 | 85% |
| ~~2015~~ 2016 | ~~70%~~ 69% |
| ~~2014~~ 2015 | ~~54%~~ 53% |
| ~~2013~~ 2014 | 35% |
| ~~2012~~ 2013 | ~~23%~~ 24% |
| Older | 18% |

(c) For equipment that has an acquired cost of $1,501 to $5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

| YEAR NEW/ACQUIRED | TRENDED % GOOD |
|---|---|
| ~~2016~~ 2017 | 92% |
| ~~2015~~ 2016 | 85% |
| ~~2014~~ 2015 | ~~78%~~ 77% |
| ~~2013~~ 2014 | 70% |
| ~~2012~~ 2013 | 61% |

| | |
|---|---|
| ~~2011~~ 2012 | ~~53%~~ 52% |
| ~~2010~~ 2011 | 42% |
| ~~2009~~ 2010 | 33% |
| ~~2008~~ 2009 | ~~28%~~ 26% |
| ~~2007~~ 2008 | 25% |
| Older | 20% |

(d) For equipment that has an acquired cost of $5,001 to $15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

| YEAR NEW/ACQUIRED | TRENDED % GOOD |
|---|---|
| ~~2017~~ 2018 | 80% |
| ~~2016~~ 2017 | ~~65%~~ 52% |
| ~~2015~~ 2016 | ~~60%~~ 50% |
| ~~2014~~ 2015 | ~~50%~~ 48% |
| ~~2013~~ 2014 | ~~47%~~ 46% |
| ~~2012~~ 2013 | ~~44%~~ 43% |
| ~~2011~~ 2012 | ~~41%~~ 40% |
| ~~2010~~ 2011 | ~~39%~~ 38% |
| ~~2009~~ 2010 | ~~37%~~ 36% |
| ~~2008~~ 2009 | ~~35%~~ 36% |
| ~~2007~~ 2008 | ~~33%~~ 34% |
| ~~2006~~ 2007 | ~~30%~~ 31% |
| ~~2005~~ 2006 | 29% |
| ~~2004~~ 2005 | ~~29%~~ 28% |
| ~~2003~~ 2004 | 27% |
| ~~2002~~ 2003 | ~~24%~~ 27% |
| ~~2001~~ 2002 | ~~22%~~ 25% |
| ~~2000~~ 2001 | ~~22%~~ 23% |
| ~~1999~~ 2000 | ~~21%~~ 22% |
| ~~1998~~ 1999 and older | 20% |

(e) For rental video tapes and digital video disks, the following trended depreciation schedule will be used:

| YEAR NEW/ACQUIRED | TRENDED % GOOD |
|---|---|
| ~~2016~~ 2017 | 25% |
| ~~2015~~ 2016 | 15% |
| ~~2014~~ 2015 and older | 10% |

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-219, MCA

42.21.123 FARM MACHINERY AND EQUIPMENT (1) remains the same.

(2) The market value for farm machinery and equipment shall be the "average wholesale" value as shown in the ~~Iron Solutions, Northwest Region Official Guide, Fall Edition, for the year previous to the year of the assessment. This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, 1195 Smizer Mill Road, Fenton, Missouri 63026-3480~~ online version of the guide known as Equipment Watch, as of October of the year prior to the year of assessment. This online guide is incorporated by reference and may be reviewed in the department or purchased from the publisher: Dataquest, 1290 Ridder Park Drive, San Jose, California 95131.

(3) through (7) remain the same.

(8) The trended depreciation schedule referred to in (2) through (6) is listed below and shall be used for tax year ~~2017~~ 2018. The schedule is derived by using the guide listed in (2) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

| YEAR NEW/ACQUIRED | TRENDED % GOOD WHOLESALE |
|---|---|
| ~~2017~~ 2018 | 80% |
| ~~2016~~ 2017 | ~~75%~~ 50% |
| ~~2015~~ 2016 | ~~65%~~ 48% |
| ~~2014~~ 2015 | ~~59%~~ 45% |
| ~~2013~~ 2014 | ~~52%~~ 45% |
| ~~2012~~ 2013 | ~~49%~~ 43% |
| ~~2011~~ 2012 | ~~45%~~ 40% |
| ~~2010~~ 2011 | ~~43%~~ 40% |
| ~~2009~~ 2010 | ~~39%~~ 40% |
| ~~2008~~ 2009 | ~~40%~~ 39% |
| ~~2007~~ 2008 | ~~40%~~ 38% |
| ~~2006~~ 2007 | ~~37%~~ 38% |
| ~~2005~~ 2006 | ~~34%~~ 37% |
| ~~2004~~ 2005 | ~~33%~~ 36% |
| ~~2003~~ 2004 | ~~30%~~ 36% |
| ~~2002~~ 2003 | ~~25%~~ 34% |
| ~~2001~~ 2002 and older | ~~20%~~ 31% |

(9) remains the same.

(10) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-207, 15-6-219, 15-8-111, MCA

REASON: In addition to the general statement of reasonable necessity provided at the beginning of this notice pertaining to the annual data updates to the

rules in this notice, the department further proposes amending ARM 42.21.123 to incorporate a change enacted by House Bill 115, L. 2017 and to add two implementing citations for the rule.

House Bill 115 replaced the requirement that the department use a specifically named publication to value farm machinery with language that allows the department to seek out and use other published valuation guides that meet the criteria in the statute instead. House Bill 115 further requires the department to adopt the selected valuation guide(s) by rule. Therefore, the department proposes updating (2) to strike the former guide from the rule and add language to adopt, by reference, the same online valuation source the department has been using to value heavy equipment for many years. The selected publication now also offers farm machinery values and meets the requirements in 15-8-111, MCA. Using a single valuation source for both heavy equipment and farm machinery offers the department an opportunity to cut annual costs and improve efficiency.

This proposed change may positively or negatively affect taxpayers depending on the model year. For example, farm machinery and equipment new two years ago would have had a trended percentage wholesale of 75 percent using the current valuation guide but has a trended percentage wholesale of 50 percent using the proposed valuation guide. On the other hand, farm machinery and equipment older than 20 years would have had a trended percentage wholesale of 20 percent using the current valuation guide but has a trended percentage wholesale of 31 percent using the proposed valuation guide. It is estimated up to 4,600 property owners have the possibility of being effected. Further, based on estimates from the property assessment division of the department of revenue, the statewide change will decrease taxable value by $120,000. Using the average TY 2016 mill values for agricultural equipment, this would imply a statewide decrease in taxes paid of approximately $60,000.

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2017~~ 2018. The values derived through the use of these percentages approximate the "quick sale" values provided in the guide listed in (1).

| YEAR NEW/ACQUIRED | TRENDED % GOOD WHOLESALE |
|---|---|
| ~~2017~~ 2018 | 80% |
| ~~2016~~ 2017 | ~~65%~~ 52% |
| ~~2015~~ 2016 | ~~60%~~ 50% |
| ~~2014~~ 2015 | ~~50%~~ 48% |
| ~~2013~~ 2014 | ~~47%~~ 46% |
| ~~2012~~ 2013 | ~~44%~~ 43% |
| ~~2011~~ 2012 | ~~41%~~ 40% |
| ~~2010~~ 2011 | ~~39%~~ 38% |
| ~~2009~~ 2010 | ~~37%~~ 36% |
| ~~2008~~ 2009 | ~~35%~~ 36% |
| ~~2007~~ 2008 | ~~33%~~ 34% |

| | |
|---|---|
| ~~2006~~ 2007 | ~~30%~~ 31% |
| ~~2005~~ 2006 | 29% |
| ~~2004~~ 2005 | ~~29%~~ 28% |
| ~~2003~~ 2004 | 27% |
| ~~2002~~ 2003 | ~~24%~~ 27% |
| ~~2001~~ 2002 | ~~22%~~ 25% |
| ~~2000~~ 2001 | ~~22%~~ 23% |
| ~~1999~~ 2000 | ~~21%~~ 22% |
| ~~1998~~ 1999 and older | 20% |

(6) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017, and applies to all heavy equipment.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-219, MCA

REASON: In addition to the general statement of reasonable necessity provided at the beginning of this notice, the department further proposes amending ARM 42.21.131 to add another implementing statute in support of the rule.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2017~~ 2018.

SEISMOGRAPH UNIT

| YEAR NEW/ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD | WHOLESALE FACTOR | WHOLESALE % GOOD |
|---|---|---|---|---|---|
| ~~2017~~ 2018 | 100% | 1.000 | 100% | 80% | 80% |
| ~~2016~~ 2017 | 85% | 1.000 | 85% | 80% | 68% |
| ~~2015~~ 2016 | 69% | ~~0.988~~ 1.011 | ~~68%~~ 70% | 80% | ~~55%~~ 56% |
| ~~2014~~ 2015 | 52% | ~~0.996~~ 1.001 | 52% | 80% | ~~41%~~ 42% |
| ~~2013~~ 2014 | 34% | ~~1.008~~ 1.009 | 34% | 80% | 27% |
| ~~2012~~ 2013 | 23% | ~~1.009~~ 1.021 | 23% | 80% | 19% |
| ~~2011~~ 2012-2006 | 18% | ~~1.037~~ 1.023 | ~~19%~~ 18% | 80% | 15% |
| 2005 and older | 5% | | | | 5% |

SEISMOGRAPH ALLIED EQUIPMENT

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2017~~ 2018 | 100% | 1.000 | 100% |
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~0.988~~ 1.011 | ~~68%~~ 70% |
| ~~2014~~ 2015 | 52% | ~~0.996~~ 1.001 | 52% |
| ~~2013~~ 2014 | 34% | ~~1.008~~ 1.009 | 34% |

| | | | |
|---|---|---|---|
| ~~2012~~ 2013 | 23% | ~~1.009~~ 1.021 | 23% |
| ~~2011~~ 2012-2006 | 18% | ~~1.037~~ 1.023 | ~~19%~~ 18% |
| 2005 and older | 5% | | 5% |

(5) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT (1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~2017~~ 2018.

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2017~~ 2018 | 100% | 1.000 | 100% |
| ~~2016~~ 2017 | 95% | 1.000 | 95% |
| ~~2015~~ 2016 | 90% | ~~0.988~~ 1.011 | ~~89%~~ 91% |
| ~~2014~~ 2015 | 85% | ~~0.996~~ 1.001 | 85% |
| ~~2013~~ 2014 | 79% | ~~1.008~~ 1.009 | 80% |
| ~~2012~~ 2013 | 73% | ~~1.009~~ 1.021 | ~~74%~~ 75% |
| ~~2011~~ 2012 | 68% | ~~1.037~~ 1.023 | 70% |
| ~~2010~~ 2011 | 62% | ~~1.065~~ 1.050 | ~~66%~~ 65% |
| ~~2009~~ 2010 | 55% | ~~1.050~~ 1.079 | ~~58%~~ 59% |
| ~~2008~~ 2009 | 49% | ~~1.087~~ 1.064 | ~~53%~~ 52% |
| ~~2007~~ 2008 | 43% | ~~1.136~~ 1.101 | ~~49%~~ 47% |
| ~~2006~~ 2007 | 37% | ~~1.203~~ 1.151 | ~~45%~~ 43% |
| ~~2005~~ 2006 | 31% | ~~1.264~~ 1.219 | ~~39%~~ 38% |
| ~~2004~~ 2005 | 26% | ~~1.371~~ 1.280 | ~~36%~~ 33% |
| ~~2003~~ 2004 | 23% | ~~1.419~~ 1.389 | ~~33%~~ 32% |
| ~~2002~~ 2003 and older | 21% | ~~1.447~~ 1.438 | 30% |

(4) and (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-213, 15-6-219, MCA

42.21.139 WORK-OVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~2017~~ 2018.

| YEAR/NEW ACQUIRED | % GOOD | TREND FACTOR | WHOLESALE FACTOR | TRENDED WHOLESALE % GOOD |
|---|---|---|---|---|
| ~~2017~~ 2018 | 100% | 1.000 | 80% | 80% |
| ~~2016~~ 2017 | 92% | 1.000 | 80% | 74% |
| ~~2015~~ 2016 | 84% | ~~0.988~~ 1.011 | 80% | ~~66%~~ 68% |
| ~~2014~~ 2015 | 76% | ~~0.996~~ 1.001 | 80% | 61% |
| ~~2013~~ 2014 | 67% | ~~1.008~~ 1.009 | 80% | 54% |
| ~~2012~~ 2013 | 58% | ~~1.009~~ 1.021 | 80% | 47% |
| ~~2011~~ 2012 | 49% | ~~1.037~~ 1.023 | 80% | ~~41%~~ 40% |
| ~~2010~~ 2011 | 39% | ~~1.065~~ 1.050 | 80% | 33% |
| ~~2009~~ 2010 | 30% | ~~1.050~~ 1.079 | 80% | ~~25%~~ 26% |
| ~~2008~~ 2009 | 24% | ~~1.087~~ 1.064 | 80% | ~~21%~~ 20% |
| ~~2007~~ 2008 and older | 21% | ~~1.136~~ 1.101 | 80% | ~~19%~~ 18% |

(6) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published in the Marshall & Swift Valuation Service Guide. The "% good" for all drill rigs less than one year old shall be 100 percent. The trended depreciation schedule for tax year ~~2017~~ 2018 is listed below.

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2017~~ 2018 | 100% | 1.000 | 100% |
| ~~2016~~ 2017 | 92% | 1.000 | 92% |
| ~~2015~~ 2016 | 84% | ~~0.988~~ 1.011 | ~~83%~~ 85% |
| ~~2014~~ 2015 | 76% | ~~0.996~~ 1.001 | 76% |
| ~~2013~~ 2014 | 67% | ~~1.008~~ 1.009 | 68% |
| ~~2012~~ 2013 | 58% | ~~1.009~~ 1.021 | 59% |
| ~~2011~~ 2012 | 49% | ~~1.037~~ 1.023 | ~~51%~~ 50% |
| ~~2010~~ 2011 | 39% | ~~1.065~~ 1.050 | ~~42%~~ 41% |
| ~~2009~~ 2010 | 30% | ~~1.050~~ 1.079 | ~~31%~~ 32% |
| ~~2008~~ 2009 | 24% | ~~1.087~~ 1.064 | 26% |
| ~~2007~~ 2008 and older | 21% | ~~1.136~~ 1.101 | ~~24%~~ 23% |

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.151 LOCALLY ASSESSED CABLE TELEVISION SYSTEMS
(1) through (3) remain the same.
(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~2017~~ 2018.

FIVE-YEAR "DISHES"

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~0.990~~ 1.016 | ~~68%~~ 70% |
| ~~2014~~ 2015 | 52% | ~~0.999~~ 1.008 | 52% |
| ~~2013~~ 2014 | 34% | ~~1.012~~ 1.018 | ~~34%~~ 35% |
| ~~2012~~ 2013 and older | 23% | ~~1.021~~ 1.031 | ~~23%~~ 24% |

TEN-YEAR "TOWERS"

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 92% | 1.000 | 92% |
| ~~2015~~ 2016 | 84% | ~~0.990~~ 1.016 | ~~83%~~ 85% |
| ~~2014~~ 2015 | 76% | ~~0.999~~ 1.008 | ~~76%~~ 77% |
| ~~2013~~ 2014 | 67% | ~~1.012~~ 1.018 | 68% |
| ~~2012~~ 2013 | 58% | ~~1.021~~ 1.031 | ~~59%~~ 60% |
| ~~2011~~ 2012 | 49% | ~~1.050~~ 1.039 | 51% |
| ~~2010~~ 2011 | 39% | ~~1.083~~ 1.069 | 42% |
| ~~2009~~ 2010 | 30% | ~~1.074~~ 1.102 | ~~32%~~ 33% |
| ~~2008~~ 2009 | 24% | ~~1.105~~ 1.094 | ~~27%~~ 26% |
| ~~2007~~ 2008 and older | 21% | ~~1.149~~ 1.126 | 24% |

(5) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.153 SKI LIFT EQUIPMENT (1) through (3) remain the same.
(4) The trend and depreciation schedule referred to in (2) and (3) is listed below.

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 92% | 1.000 | 92% |
| ~~2015~~ 2016 | 84% | ~~0.990~~ 1.016 | ~~83%~~ 85% |
| ~~2014~~ 2015 | 76% | ~~0.999~~ 1.008 | ~~76%~~ 77% |
| ~~2013~~ 2014 | 67% | ~~1.012~~ 1.018 | 68% |
| ~~2012~~ 2013 | 58% | ~~1.021~~ 1.031 | ~~59%~~ 60% |
| ~~2011~~ 2012 | 49% | ~~1.050~~ 1.039 | 51% |
| ~~2010~~ 2011 | 39% | ~~1.083~~ 1.069 | 42% |
| ~~2009~~ 2010 | 30% | ~~1.074~~ 1.102 | ~~32%~~ 33% |
| ~~2008~~ 2009 | 24% | ~~1.105~~ 1.094 | ~~27%~~ 26% |
| ~~2007~~ 2008 and older | 21% | ~~1.149~~ 1.126 | 24% |

(a) and (b) remain the same.

(5) This methodology is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2017~~ 2018 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 70% | 1.000 | 70% |
| ~~2015~~ 2016 | 45% | ~~0.969~~ 0.982 | 44% |
| ~~2014~~ 2015 | 20% | ~~0.948~~ 0.951 | 19% |
| ~~2013~~ 2014 | 10% | ~~0.935~~ 0.930 | 9% |
| Older | | | 5% |

CATEGORY 2

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~1.015~~ 1.002 | ~~70%~~ 69% |
| ~~2014~~ 2015 | 52% | ~~1.040~~ 1.018 | ~~54%~~ 53% |
| ~~2013~~ 2014 | 34% | ~~1.038~~ 1.042 | 35% |
| ~~2012~~ 2013 | 23% | ~~0.999~~ 1.040 | ~~23%~~ 24% |
| Older | | | 18% |

CATEGORY 3

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~0.988~~ 0.994 | ~~68%~~ 69% |
| ~~2014~~ 2015 | 52% | ~~0.983~~ 0.982 | 51% |
| ~~2013~~ 2014 | 34% | ~~0.982~~ 0.977 | 33% |
| ~~2012~~ 2013 | 23% | ~~0.966~~ 0.976 | 22% |
| Older | | | 18% |

CATEGORY 4

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~1.002~~ 0.992 | ~~69%~~ 68% |
| ~~2014~~ 2015 | 52% | ~~0.992~~ 0.994 | 52% |
| ~~2013~~ 2014 | 34% | ~~0.988~~ 0.984 | ~~34%~~ 33% |
| ~~2012~~ 2013 | 23% | ~~0.987~~ 0.980 | 23% |
| Older | | | 18% |

CATEGORY 5

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~1.005~~ 1.004 | 69% |
| ~~2014~~ 2015 | 52% | ~~1.018~~ 1.009 | ~~53%~~ 52% |
| ~~2013~~ 2014 | 34% | ~~1.026~~ 1.022 | 35% |
| ~~2012~~ 2013 | 23% | ~~1.037~~ 1.031 | 24% |
| Older | | | 18% |

CATEGORY 6

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 85% | 1.000 | 85% |
| ~~2015~~ 2016 | 69% | ~~1.019~~ 1.021 | 70% |
| ~~2014~~ 2015 | 52% | ~~1.035~~ 1.040 | 54% |
| ~~2013~~ 2014 | 34% | ~~1.049~~ 1.057 | 36% |
| ~~2012~~ 2013 | 23% | 1.071 | 25% |
| Older | | | 18% |

CATEGORY 7

| YEAR NEW/ | | TREND | TRENDED |
|---|---|---|---|

| ACQUIRED | % GOOD | FACTOR | % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 92% | 1.000 | 92% |
| ~~2015~~ 2016 | 84% | ~~1.008~~ 1.006 | ~~85%~~ 84% |
| ~~2014~~ 2015 | 76% | ~~1.020~~ 1.014 | 77% |
| ~~2013~~ 2014 | 67% | ~~1.034~~ 1.026 | 69% |
| ~~2012~~ 2013 | 58% | ~~1.052~~ 1.040 | ~~61%~~ 60% |
| ~~2011~~ 2012 | 49% | ~~1.083~~ 1.058 | ~~53%~~ 52% |
| ~~2010~~ 2011 | 39% | ~~1.100~~ 1.089 | ~~43%~~ 42% |
| ~~2009~~ 2010 | 30% | ~~1.094~~ 1.107 | 33% |
| ~~2008~~ 2009 | 24% | ~~1.129~~ 1.101 | ~~27%~~ 26% |
| ~~2007~~ 2008 | 21% | ~~1.149~~ 1.136 | 24% |
| Older | | | 20% |

CATEGORY 8

| YEAR NEW/ ACQUIRED | % GOOD | TREND FACTOR | TRENDED % GOOD |
|---|---|---|---|
| ~~2016~~ 2017 | 92% | 1.000 | 92% |
| ~~2015~~ 2016 | 84% | ~~1.006~~ 1.009 | 85% |
| ~~2014~~ 2015 | 76% | ~~1.030~~ 1.015 | ~~78%~~ 77% |
| ~~2013~~ 2014 | 67% | ~~1.044~~ 1.040 | 70% |
| ~~2012~~ 2013 | 58% | ~~1.047~~ 1.053 | 61% |
| ~~2011~~ 2012 | 49% | ~~1.079~~ 1.057 | ~~53%~~ 52% |
| ~~2010~~ 2011 | 39% | ~~1.089~~ 1.088 | 42% |
| ~~2009~~ 2010 | 30% | ~~1.094~~ 1.099 | 33% |
| ~~2008~~ 2009 | 24% | ~~1.163~~ 1.104 | ~~28%~~ 26% |
| ~~2007~~ 2008 | 21% | ~~1.188~~ 1.174 | 25% |
| Older | | | 20% |

(3) This rule is effective for tax years beginning after December 31, ~~2016~~ 2017.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-219, MCA

42.21.160 DEFINITIONS For purposes of this chapter the following definitions apply:

(1) through (11) remain the same.
(12) remains the same, but is renumbered (13).
(13) remains the same, but is renumbered (12).

AUTH: 15-1-201, 15-9-101, MCA
IMP: 15-1-121, 15-1-137, 15-6-138, 15-8-104, MCA

REASON: The department proposes amending ARM 42.21.160 to correct the alphabetical order of two terms in the rule to meet with the preferred format for definition rules. No other changes are being proposed for the rule at this time.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(2) Life expectancies for industrial machinery and equipment are shown in the trend table below.

INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

| Description | | Trend Table | Life |
|---|---|---|---|
| (a) through (bp) remain the same. | | | |
| (bq) | Renewable Energy Generation | (11) | 20 |
| (bq) through (cf) remain the same, but are renumbered (br) through (cg). | | | |
| ~~(cg)~~ | ~~Renewable Energy Generation~~ | ~~(11)~~ | ~~20~~ |
| (ch) through (cj) remain the same. | | | |

Note: 1. Lab equipment is included in its related industry's table at ten-year life expectancy.

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

| ~~YEAR~~ | ~~TABLE 1 Airplane Mfg.~~ | ~~TABLE 2 Baking~~ | ~~TABLE 3 Bottling~~ | ~~TABLE 4 Brew/Dis.~~ | ~~TABLE 5 Candy Confect.~~ |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.983~~ | ~~0.990~~ | ~~0.986~~ | ~~0.992~~ | ~~0.990~~ |
| ~~2014~~ | ~~0.986~~ | ~~1.000~~ | ~~0.994~~ | ~~1.003~~ | ~~1.001~~ |
| ~~2013~~ | ~~0.996~~ | ~~1.014~~ | ~~1.007~~ | ~~1.016~~ | ~~1.016~~ |
| ~~2012~~ | ~~0.997~~ | ~~1.023~~ | ~~1.011~~ | ~~1.025~~ | ~~1.026~~ |
| ~~2011~~ | ~~1.026~~ | ~~1.052~~ | ~~1.039~~ | ~~1.052~~ | ~~1.055~~ |
| ~~2010~~ | ~~1.064~~ | ~~1.086~~ | ~~1.073~~ | ~~1.081~~ | ~~1.089~~ |
| ~~2009~~ | ~~1.047~~ | ~~1.078~~ | ~~1.063~~ | ~~1.075~~ | ~~1.082~~ |
| ~~2008~~ | ~~1.077~~ | ~~1.104~~ | ~~1.090~~ | ~~1.105~~ | ~~1.108~~ |
| ~~2007~~ | ~~1.121~~ | ~~1.149~~ | ~~1.138~~ | ~~1.154~~ | ~~1.153~~ |
| ~~2006~~ | ~~1.183~~ | ~~1.230~~ | ~~1.207~~ | ~~1.223~~ | ~~1.238~~ |
| ~~2005~~ | ~~1.244~~ | ~~1.287~~ | ~~1.269~~ | ~~1.286~~ | ~~1.294~~ |
| ~~2004~~ | ~~1.347~~ | ~~1.384~~ | ~~1.376~~ | ~~1.390~~ | ~~1.391~~ |
| ~~2003~~ | ~~1.398~~ | ~~1.436~~ | ~~1.426~~ | ~~1.437~~ | ~~1.441~~ |
| ~~2002~~ | ~~1.424~~ | ~~1.460~~ | ~~1.452~~ | ~~1.463~~ | ~~1.466~~ |
| ~~2001~~ | ~~1.429~~ | ~~1.470~~ | ~~1.459~~ | ~~1.472~~ | ~~1.475~~ |
| ~~2000~~ | ~~1.439~~ | ~~1.486~~ | ~~1.472~~ | ~~1.488~~ | ~~1.492~~ |
| ~~1999~~ | ~~1.465~~ | ~~1.516~~ | ~~1.500~~ | ~~1.516~~ | ~~1.522~~ |
| ~~1998~~ | ~~1.467~~ | ~~1.521~~ | ~~1.503~~ | ~~1.524~~ | ~~1.527~~ |
| ~~1997~~ | ~~1.478~~ | ~~1.537~~ | ~~1.514~~ | ~~1.539~~ | ~~1.543~~ |
| ~~1996~~ | ~~1.496~~ | ~~1.563~~ | ~~1.537~~ | ~~1.564~~ | ~~1.571~~ |

| YEAR | TABLE 1 Airplane Mfg. | TABLE 2 Baking | TABLE 3 Bottling | TABLE 4 Brew/Dis. | TABLE 5 Candy Confect. |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.017 | 1.019 | 1.015 | 1.011 | 1.018 |
| 2015 | 1.002 | 1.011 | 1.003 | 1.005 | 1.011 |
| 2014 | 1.006 | 1.021 | 1.011 | 1.016 | 1.023 |
| 2013 | 1.016 | 1.036 | 1.024 | 1.030 | 1.038 |
| 2012 | 1.016 | 1.045 | 1.029 | 1.038 | 1.047 |
| 2011 | 1.046 | 1.074 | 1.057 | 1.066 | 1.077 |
| 2010 | 1.085 | 1.109 | 1.091 | 1.095 | 1.112 |
| 2009 | 1.067 | 1.101 | 1.081 | 1.089 | 1.105 |
| 2008 | 1.098 | 1.128 | 1.109 | 1.120 | 1.131 |
| 2007 | 1.143 | 1.173 | 1.158 | 1.170 | 1.177 |
| 2006 | 1.206 | 1.256 | 1.227 | 1.239 | 1.264 |
| 2005 | 1.269 | 1.314 | 1.290 | 1.303 | 1.322 |
| 2004 | 1.374 | 1.413 | 1.399 | 1.408 | 1.420 |
| 2003 | 1.426 | 1.467 | 1.451 | 1.456 | 1.472 |
| 2002 | 1.452 | 1.492 | 1.477 | 1.482 | 1.497 |
| 2001 | 1.457 | 1.501 | 1.484 | 1.492 | 1.506 |
| 2000 | 1.467 | 1.518 | 1.497 | 1.508 | 1.524 |
| 1999 | 1.494 | 1.548 | 1.526 | 1.536 | 1.554 |
| 1998 | 1.496 | 1.554 | 1.529 | 1.544 | 1.559 |
| 1997 | 1.508 | 1.570 | 1.540 | 1.559 | 1.576 |

| ~~YEAR~~ | ~~TABLE 6 Cement Mfg.~~ | ~~TABLE 7 Chemical Mfg.~~ | ~~TABLE 8 Clay Mfg.~~ | ~~TABLE 9 Contractor Eq.~~ | ~~TABLE 10 Creamery/Dairy~~ |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.992~~ | ~~0.988~~ | ~~0.994~~ | ~~0.997~~ | ~~0.991~~ |
| ~~2014~~ | ~~0.999~~ | ~~0.996~~ | ~~1.003~~ | ~~1.009~~ | ~~1.003~~ |
| ~~2013~~ | ~~1.012~~ | ~~1.008~~ | ~~1.017~~ | ~~1.023~~ | ~~1.017~~ |
| ~~2012~~ | ~~1.022~~ | ~~1.009~~ | ~~1.029~~ | ~~1.043~~ | ~~1.027~~ |
| ~~2011~~ | ~~1.057~~ | ~~1.037~~ | ~~1.062~~ | ~~1.077~~ | ~~1.055~~ |
| ~~2010~~ | ~~1.087~~ | ~~1.065~~ | ~~1.094~~ | ~~1.108~~ | ~~1.089~~ |
| ~~2009~~ | ~~1.073~~ | ~~1.050~~ | ~~1.086~~ | ~~1.104~~ | ~~1.084~~ |
| ~~2008~~ | ~~1.121~~ | ~~1.087~~ | ~~1.135~~ | ~~1.136~~ | ~~1.108~~ |
| ~~2007~~ | ~~1.171~~ | ~~1.136~~ | ~~1.184~~ | ~~1.173~~ | ~~1.155~~ |
| ~~2006~~ | ~~1.233~~ | ~~1.203~~ | ~~1.248~~ | ~~1.214~~ | ~~1.237~~ |
| ~~2005~~ | ~~1.293~~ | ~~1.264~~ | ~~1.307~~ | ~~1.269~~ | ~~1.298~~ |
| ~~2004~~ | ~~1.406~~ | ~~1.371~~ | ~~1.411~~ | ~~1.355~~ | ~~1.397~~ |
| ~~2003~~ | ~~1.462~~ | ~~1.419~~ | ~~1.462~~ | ~~1.395~~ | ~~1.445~~ |
| ~~2002~~ | ~~1.492~~ | ~~1.447~~ | ~~1.490~~ | ~~1.416~~ | ~~1.469~~ |
| ~~2001~~ | ~~1.501~~ | ~~1.455~~ | ~~1.501~~ | ~~1.427~~ | ~~1.479~~ |
| ~~2000~~ | ~~1.515~~ | ~~1.469~~ | ~~1.517~~ | ~~1.436~~ | ~~1.495~~ |
| ~~1999~~ | ~~1.541~~ | ~~1.493~~ | ~~1.543~~ | ~~1.461~~ | ~~1.526~~ |
| ~~1998~~ | ~~1.547~~ | ~~1.500~~ | ~~1.548~~ | ~~1.473~~ | ~~1.532~~ |
| ~~1997~~ | ~~1.564~~ | ~~1.516~~ | ~~1.564~~ | ~~1.489~~ | ~~1.548~~ |
| ~~1996~~ | ~~1.583~~ | ~~1.535~~ | ~~1.589~~ | ~~1.519~~ | ~~1.574~~ |

| YEAR | TABLE 6 | TABLE 7 | TABLE 8 | TABLE 9 | TABLE 10 |
|---|---|---|---|---|---|

| | Cement Mfg. | Chemical Mfg. | Clay Mfg. | Contractor Eq. | Creamery/Dairy |
|---|---|---|---|---|---|
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.014 | 1.011 | 1.016 | 1.013 | 1.015 |
| 2015 | 1.007 | 1.001 | 1.012 | 1.012 | 1.008 |
| 2014 | 1.015 | 1.009 | 1.021 | 1.024 | 1.020 |
| 2013 | 1.028 | 1.021 | 1.035 | 1.038 | 1.035 |
| 2012 | 1.038 | 1.023 | 1.047 | 1.058 | 1.044 |
| 2011 | 1.074 | 1.050 | 1.081 | 1.093 | 1.073 |
| 2010 | 1.104 | 1.079 | 1.113 | 1.124 | 1.108 |
| 2009 | 1.089 | 1.064 | 1.105 | 1.120 | 1.103 |
| 2008 | 1.139 | 1.101 | 1.156 | 1.153 | 1.128 |
| 2007 | 1.189 | 1.151 | 1.205 | 1.189 | 1.175 |
| 2006 | 1.252 | 1.219 | 1.270 | 1.232 | 1.258 |
| 2005 | 1.313 | 1.280 | 1.330 | 1.287 | 1.320 |
| 2004 | 1.428 | 1.389 | 1.436 | 1.375 | 1.421 |
| 2003 | 1.484 | 1.438 | 1.488 | 1.415 | 1.470 |
| 2002 | 1.515 | 1.467 | 1.517 | 1.437 | 1.495 |
| 2001 | 1.524 | 1.475 | 1.528 | 1.448 | 1.505 |
| 2000 | 1.539 | 1.489 | 1.544 | 1.456 | 1.521 |
| 1999 | 1.565 | 1.513 | 1.570 | 1.482 | 1.552 |
| 1998 | 1.572 | 1.520 | 1.576 | 1.494 | 1.559 |
| 1997 | 1.588 | 1.536 | 1.592 | 1.511 | 1.574 |

| ~~YEAR~~ | ~~TABLE 11 Elec. Pwr. Eq.~~ | ~~TABLE 12 Elec. Eq. Mfg.~~ | ~~TABLE 13~~ Cannery/Fish | ~~TABLE 14 Flour, Cer. Feed~~ | ~~TABLE 15~~ Cannery/Fruit |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.970~~ | ~~0.975~~ | ~~0.989~~ | ~~0.989~~ | ~~0.991~~ |
| ~~2014~~ | ~~0.966~~ | ~~0.974~~ | ~~0.999~~ | ~~0.999~~ | ~~1.003~~ |
| ~~2013~~ | ~~0.967~~ | ~~0.979~~ | ~~1.014~~ | ~~1.012~~ | ~~1.018~~ |
| ~~2012~~ | ~~0.956~~ | ~~0.972~~ | ~~1.023~~ | ~~1.020~~ | ~~1.031~~ |
| ~~2011~~ | ~~0.977~~ | ~~0.998~~ | ~~1.052~~ | ~~1.050~~ | ~~1.059~~ |
| ~~2010~~ | ~~1.031~~ | ~~1.046~~ | ~~1.087~~ | ~~1.084~~ | ~~1.094~~ |
| ~~2009~~ | ~~1.023~~ | ~~1.032~~ | ~~1.077~~ | ~~1.075~~ | ~~1.089~~ |
| ~~2008~~ | ~~1.027~~ | ~~1.049~~ | ~~1.105~~ | ~~1.104~~ | ~~1.111~~ |
| ~~2007~~ | ~~1.083~~ | ~~1.100~~ | ~~1.150~~ | ~~1.151~~ | ~~1.153~~ |
| ~~2006~~ | ~~1.173~~ | ~~1.177~~ | ~~1.232~~ | ~~1.226~~ | ~~1.228~~ |
| ~~2005~~ | ~~1.258~~ | ~~1.250~~ | ~~1.288~~ | ~~1.288~~ | ~~1.281~~ |
| ~~2004~~ | ~~1.377~~ | ~~1.362~~ | ~~1.388~~ | ~~1.390~~ | ~~1.374~~ |
| ~~2003~~ | ~~1.440~~ | ~~1.419~~ | ~~1.441~~ | ~~1.442~~ | ~~1.425~~ |
| ~~2002~~ | ~~1.464~~ | ~~1.444~~ | ~~1.467~~ | ~~1.466~~ | ~~1.448~~ |
| ~~2001~~ | ~~1.458~~ | ~~1.442~~ | ~~1.476~~ | ~~1.474~~ | ~~1.458~~ |
| ~~2000~~ | ~~1.468~~ | ~~1.452~~ | ~~1.492~~ | ~~1.490~~ | ~~1.473~~ |
| ~~1999~~ | ~~1.498~~ | ~~1.479~~ | ~~1.522~~ | ~~1.520~~ | ~~1.504~~ |
| ~~1998~~ | ~~1.491~~ | ~~1.474~~ | ~~1.526~~ | ~~1.526~~ | ~~1.509~~ |
| ~~1997~~ | ~~1.493~~ | ~~1.480~~ | ~~1.542~~ | ~~1.541~~ | ~~1.522~~ |
| ~~1996~~ | ~~1.501~~ | ~~1.494~~ | ~~1.570~~ | ~~1.564~~ | ~~1.553~~ |

| YEAR | TABLE 11 Elec. Pwr. Eq. | TABLE 12 Elec. Eq. Mfg. | TABLE 13 Cannery/Fish | TABLE 14 Flour, Cer. Feed | TABLE 15 Cannery/Fruit |
|---|---|---|---|---|---|
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.019 | 1.019 | 1.019 | 1.016 | 1.019 |
| 2015 | 0.989 | 0.995 | 1.011 | 1.008 | 1.012 |
| 2014 | 0.985 | 0.994 | 1.021 | 1.017 | 1.024 |
| 2013 | 0.987 | 0.999 | 1.037 | 1.031 | 1.040 |
| 2012 | 0.975 | 0.992 | 1.045 | 1.039 | 1.053 |
| 2011 | 0.997 | 1.018 | 1.075 | 1.069 | 1.082 |
| 2010 | 1.052 | 1.068 | 1.111 | 1.104 | 1.117 |
| 2009 | 1.044 | 1.053 | 1.101 | 1.095 | 1.113 |
| 2008 | 1.048 | 1.070 | 1.130 | 1.124 | 1.135 |
| 2007 | 1.105 | 1.122 | 1.175 | 1.172 | 1.178 |
| 2006 | 1.197 | 1.201 | 1.259 | 1.249 | 1.254 |
| 2005 | 1.284 | 1.275 | 1.316 | 1.312 | 1.309 |
| 2004 | 1.405 | 1.390 | 1.419 | 1.416 | 1.404 |
| 2003 | 1.469 | 1.449 | 1.473 | 1.468 | 1.456 |
| 2002 | 1.493 | 1.473 | 1.499 | 1.493 | 1.479 |
| 2001 | 1.488 | 1.472 | 1.509 | 1.501 | 1.490 |
| 2000 | 1.498 | 1.482 | 1.525 | 1.517 | 1.505 |
| 1999 | 1.528 | 1.509 | 1.556 | 1.547 | 1.536 |
| 1998 | 1.521 | 1.504 | 1.560 | 1.554 | 1.541 |
| 1997 | 1.523 | 1.511 | 1.576 | 1.569 | 1.555 |

| ~~YEAR~~ | ~~TABLE 16 Packing/ Fruit~~ | ~~TABLE 17 Laundry/ Clean~~ | ~~TABLE 18 Logging Eq.~~ | ~~TABLE 19 Packing/ Meat~~ | ~~TABLE 20 Metal Work~~ |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.995~~ | ~~0.989~~ | ~~0.987~~ | ~~0.994~~ | ~~0.984~~ |
| ~~2014~~ | ~~1.009~~ | ~~0.997~~ | ~~0.994~~ | ~~1.007~~ | ~~0.989~~ |
| ~~2013~~ | ~~1.027~~ | ~~1.010~~ | ~~1.006~~ | ~~1.023~~ | ~~1.000~~ |
| ~~2012~~ | ~~1.046~~ | ~~1.018~~ | ~~1.017~~ | ~~1.035~~ | ~~1.000~~ |
| ~~2011~~ | ~~1.075~~ | ~~1.047~~ | ~~1.047~~ | ~~1.065~~ | ~~1.030~~ |
| ~~2010~~ | ~~1.108~~ | ~~1.081~~ | ~~1.077~~ | ~~1.097~~ | ~~1.065~~ |
| ~~2009~~ | ~~1.107~~ | ~~1.072~~ | ~~1.062~~ | ~~1.091~~ | ~~1.045~~ |
| ~~2008~~ | ~~1.129~~ | ~~1.108~~ | ~~1.098~~ | ~~1.126~~ | ~~1.084~~ |
| ~~2007~~ | ~~1.168~~ | ~~1.154~~ | ~~1.136~~ | ~~1.171~~ | ~~1.126~~ |
| ~~2006~~ | ~~1.223~~ | ~~1.216~~ | ~~1.184~~ | ~~1.247~~ | ~~1.189~~ |
| ~~2005~~ | ~~1.273~~ | ~~1.271~~ | ~~1.236~~ | ~~1.301~~ | ~~1.241~~ |
| ~~2004~~ | ~~1.359~~ | ~~1.371~~ | ~~1.329~~ | ~~1.394~~ | ~~1.339~~ |
| ~~2003~~ | ~~1.406~~ | ~~1.420~~ | ~~1.376~~ | ~~1.441~~ | ~~1.382~~ |
| ~~2002~~ | ~~1.427~~ | ~~1.446~~ | ~~1.398~~ | ~~1.466~~ | ~~1.404~~ |
| ~~2001~~ | ~~1.440~~ | ~~1.454~~ | ~~1.407~~ | ~~1.477~~ | ~~1.407~~ |

| | | | | | |
|---|---|---|---|---|---|
| ~~2000~~ | ~~1.451~~ | ~~1.467~~ | ~~1.415~~ | ~~1.493~~ | ~~1.417~~ |
| ~~1999~~ | ~~1.482~~ | ~~1.494~~ | ~~1.440~~ | ~~1.521~~ | ~~1.436~~ |
| ~~1998~~ | ~~1.489~~ | ~~1.497~~ | ~~1.446~~ | ~~1.528~~ | ~~1.436~~ |
| ~~1997~~ | ~~1.501~~ | ~~1.509~~ | ~~1.458~~ | ~~1.545~~ | ~~1.450~~ |
| ~~1996~~ | ~~1.537~~ | ~~1.533~~ | ~~1.481~~ | ~~1.573~~ | ~~1.468~~ |

| YEAR | TABLE 16 Packing/ Fruit | TABLE 17 Laundry/ Clean | TABLE 18 Logging Eq. | TABLE 19 Packing/ Meat | TABLE 20 Metal Work |
|---|---|---|---|---|---|
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.019 | 1.017 | 1.016 | 1.017 | 1.018 |
| 2015 | 1.016 | 1.008 | 1.005 | 1.014 | 1.004 |
| 2014 | 1.030 | 1.016 | 1.012 | 1.027 | 1.009 |
| 2013 | 1.048 | 1.029 | 1.025 | 1.043 | 1.020 |
| 2012 | 1.068 | 1.037 | 1.035 | 1.055 | 1.020 |
| 2011 | 1.098 | 1.067 | 1.066 | 1.086 | 1.051 |
| 2010 | 1.130 | 1.102 | 1.097 | 1.118 | 1.087 |
| 2009 | 1.130 | 1.092 | 1.082 | 1.113 | 1.066 |
| 2008 | 1.152 | 1.128 | 1.118 | 1.148 | 1.106 |
| 2007 | 1.192 | 1.175 | 1.157 | 1.194 | 1.149 |
| 2006 | 1.248 | 1.239 | 1.206 | 1.272 | 1.213 |
| 2005 | 1.300 | 1.295 | 1.259 | 1.326 | 1.266 |
| 2004 | 1.387 | 1.397 | 1.353 | 1.421 | 1.366 |
| 2003 | 1.435 | 1.447 | 1.401 | 1.469 | 1.410 |
| 2002 | 1.457 | 1.474 | 1.423 | 1.494 | 1.433 |
| 2001 | 1.470 | 1.482 | 1.432 | 1.506 | 1.435 |
| 2000 | 1.482 | 1.494 | 1.440 | 1.522 | 1.445 |
| 1999 | 1.513 | 1.522 | 1.466 | 1.551 | 1.465 |
| 1998 | 1.520 | 1.525 | 1.472 | 1.558 | 1.465 |
| 1997 | 1.532 | 1.537 | 1.484 | 1.576 | 1.479 |

| ~~YEAR~~ | ~~TABLE 21 Mine Mill~~ | ~~TABLE 22 Paint Mfg.~~ | ~~TABLE 23 Petroleum~~ | ~~TABLE 24 Printing~~ | ~~TABLE 25 Paper Mfg.~~ |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.996~~ | ~~0.988~~ | ~~0.988~~ | ~~0.986~~ | ~~0.988~~ |
| ~~2014~~ | ~~1.007~~ | ~~0.996~~ | ~~0.996~~ | ~~0.990~~ | ~~0.998~~ |
| ~~2013~~ | ~~1.022~~ | ~~1.009~~ | ~~1.007~~ | ~~0.998~~ | ~~1.012~~ |
| ~~2012~~ | ~~1.042~~ | ~~1.014~~ | ~~1.014~~ | ~~1.002~~ | ~~1.021~~ |
| ~~2011~~ | ~~1.088~~ | ~~1.045~~ | ~~1.044~~ | ~~1.028~~ | ~~1.052~~ |
| ~~2010~~ | ~~1.124~~ | ~~1.079~~ | ~~1.071~~ | ~~1.060~~ | ~~1.086~~ |
| ~~2009~~ | ~~1.123~~ | ~~1.067~~ | ~~1.054~~ | ~~1.050~~ | ~~1.074~~ |
| ~~2008~~ | ~~1.174~~ | ~~1.103~~ | ~~1.097~~ | ~~1.073~~ | ~~1.108~~ |
| ~~2007~~ | ~~1.223~~ | ~~1.152~~ | ~~1.151~~ | ~~1.110~~ | ~~1.153~~ |
| ~~2006~~ | ~~1.277~~ | ~~1.219~~ | ~~1.225~~ | ~~1.172~~ | ~~1.211~~ |
| ~~2005~~ | ~~1.340~~ | ~~1.280~~ | ~~1.297~~ | ~~1.219~~ | ~~1.266~~ |
| ~~2004~~ | ~~1.452~~ | ~~1.388~~ | ~~1.409~~ | ~~1.299~~ | ~~1.372~~ |
| ~~2003~~ | ~~1.507~~ | ~~1.441~~ | ~~1.459~~ | ~~1.337~~ | ~~1.426~~ |

| | | | | | |
|---|---|---|---|---|---|
| ~~2002~~ | ~~1.536~~ | ~~1.470~~ | ~~1.487~~ | ~~1.359~~ | ~~1.453~~ |
| ~~2001~~ | ~~1.555~~ | ~~1.479~~ | ~~1.503~~ | ~~1.360~~ | ~~1.465~~ |
| ~~2000~~ | ~~1.566~~ | ~~1.492~~ | ~~1.521~~ | ~~1.372~~ | ~~1.474~~ |
| ~~1999~~ | ~~1.592~~ | ~~1.521~~ | ~~1.543~~ | ~~1.391~~ | ~~1.503~~ |
| ~~1998~~ | ~~1.599~~ | ~~1.525~~ | ~~1.551~~ | ~~1.392~~ | ~~1.507~~ |
| ~~1997~~ | ~~1.617~~ | ~~1.540~~ | ~~1.572~~ | ~~1.400~~ | ~~1.520~~ |
| ~~1996~~ | ~~1.643~~ | ~~1.563~~ | ~~1.598~~ | ~~1.423~~ | ~~1.551~~ |

| YEAR | TABLE 21 Mine Mill | TABLE 22 Paint Mfg. | TABLE 23 Petroleum | TABLE 24 Printing | TABLE 25 Paper Mfg. |
|---|---|---|---|---|---|
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.014 | 1.016 | 1.009 | 1.016 | 1.017 |
| 2015 | 1.012 | 1.006 | 0.999 | 1.005 | 1.007 |
| 2014 | 1.023 | 1.014 | 1.006 | 1.008 | 1.016 |
| 2013 | 1.038 | 1.027 | 1.018 | 1.016 | 1.031 |
| 2012 | 1.058 | 1.032 | 1.025 | 1.020 | 1.040 |
| 2011 | 1.105 | 1.063 | 1.054 | 1.047 | 1.071 |
| 2010 | 1.141 | 1.098 | 1.082 | 1.080 | 1.106 |
| 2009 | 1.140 | 1.086 | 1.064 | 1.069 | 1.094 |
| 2008 | 1.192 | 1.123 | 1.109 | 1.093 | 1.129 |
| 2007 | 1.242 | 1.173 | 1.163 | 1.131 | 1.174 |
| 2006 | 1.297 | 1.241 | 1.237 | 1.193 | 1.234 |
| 2005 | 1.360 | 1.303 | 1.310 | 1.241 | 1.290 |
| 2004 | 1.475 | 1.413 | 1.423 | 1.323 | 1.398 |
| 2003 | 1.530 | 1.467 | 1.474 | 1.362 | 1.452 |
| 2002 | 1.560 | 1.497 | 1.503 | 1.384 | 1.480 |
| 2001 | 1.578 | 1.505 | 1.518 | 1.385 | 1.492 |
| 2000 | 1.590 | 1.519 | 1.537 | 1.397 | 1.501 |
| 1999 | 1.616 | 1.548 | 1.559 | 1.417 | 1.532 |
| 1998 | 1.624 | 1.552 | 1.567 | 1.418 | 1.536 |
| 1997 | 1.641 | 1.567 | 1.588 | 1.426 | 1.549 |

| ~~YEAR~~ | ~~TABLE 26~~ Refrigeration | ~~TABLE 27~~ Rubber | ~~TABLE 28~~ Steam Power | ~~TABLE 29~~ Textile | ~~TABLE 30~~ Warehousing |
|---|---|---|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.991~~ | ~~0.990~~ | ~~0.984~~ | ~~0.986~~ | ~~0.993~~ |
| ~~2014~~ | ~~1.000~~ | ~~0.997~~ | ~~0.989~~ | ~~0.992~~ | ~~1.004~~ |
| ~~2013~~ | ~~1.014~~ | ~~1.008~~ | ~~0.999~~ | ~~1.004~~ | ~~1.018~~ |
| ~~2012~~ | ~~1.020~~ | ~~1.009~~ | ~~0.999~~ | ~~1.010~~ | ~~1.034~~ |
| ~~2011~~ | ~~1.051~~ | ~~1.036~~ | ~~1.027~~ | ~~1.035~~ | ~~1.064~~ |
| ~~2010~~ | ~~1.087~~ | ~~1.066~~ | ~~1.064~~ | ~~1.061~~ | ~~1.095~~ |
| ~~2009~~ | ~~1.080~~ | ~~1.051~~ | ~~1.054~~ | ~~1.047~~ | ~~1.088~~ |
| ~~2008~~ | ~~1.117~~ | ~~1.089~~ | ~~1.090~~ | ~~1.079~~ | ~~1.122~~ |
| ~~2007~~ | ~~1.165~~ | ~~1.131~~ | ~~1.142~~ | ~~1.116~~ | ~~1.162~~ |
| ~~2006~~ | ~~1.233~~ | ~~1.192~~ | ~~1.219~~ | ~~1.164~~ | ~~1.204~~ |

| | | | | | |
|---|---|---|---|---|---|
| ~~2005~~ | ~~1.292~~ | ~~1.241~~ | ~~1.284~~ | ~~1.208~~ | ~~1.246~~ |
| ~~2004~~ | ~~1.394~~ | ~~1.331~~ | ~~1.399~~ | ~~1.293~~ | ~~1.334~~ |
| ~~2003~~ | ~~1.444~~ | ~~1.378~~ | ~~1.451~~ | ~~1.331~~ | ~~1.381~~ |
| ~~2002~~ | ~~1.473~~ | ~~1.407~~ | ~~1.480~~ | ~~1.350~~ | ~~1.397~~ |
| ~~2001~~ | ~~1.485~~ | ~~1.411~~ | ~~1.485~~ | ~~1.356~~ | ~~1.402~~ |
| ~~2000~~ | ~~1.499~~ | ~~1.423~~ | ~~1.497~~ | ~~1.367~~ | ~~1.410~~ |
| ~~1999~~ | ~~1.528~~ | ~~1.444~~ | ~~1.520~~ | ~~1.387~~ | ~~1.436~~ |
| ~~1998~~ | ~~1.534~~ | ~~1.450~~ | ~~1.522~~ | ~~1.389~~ | ~~1.438~~ |
| ~~1997~~ | ~~1.550~~ | ~~1.465~~ | ~~1.533~~ | ~~1.400~~ | ~~1.443~~ |
| ~~1996~~ | ~~1.575~~ | ~~1.486~~ | ~~1.549~~ | ~~1.425~~ | ~~1.466~~ |

| YEAR | TABLE 26 | TABLE 27 | TABLE 28 | TABLE 29 | TABLE 30 |
|---|---|---|---|---|---|
| | Refrigeration | Rubber | Steam Power | Textile | Warehousing |
| 2017 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 2016 | 1.017 | 1.017 | 1.015 | 1.011 | 1.019 |
| 2015 | 1.009 | 1.009 | 1.001 | 0.998 | 1.013 |
| 2014 | 1.019 | 1.016 | 1.005 | 1.004 | 1.025 |
| 2013 | 1.033 | 1.028 | 1.016 | 1.017 | 1.039 |
| 2012 | 1.039 | 1.028 | 1.016 | 1.022 | 1.055 |
| 2011 | 1.071 | 1.056 | 1.045 | 1.048 | 1.086 |
| 2010 | 1.107 | 1.087 | 1.082 | 1.074 | 1.117 |
| 2009 | 1.100 | 1.071 | 1.071 | 1.060 | 1.111 |
| 2008 | 1.138 | 1.110 | 1.108 | 1.092 | 1.145 |
| 2007 | 1.187 | 1.153 | 1.161 | 1.130 | 1.186 |
| 2006 | 1.256 | 1.215 | 1.239 | 1.179 | 1.229 |
| 2005 | 1.317 | 1.266 | 1.305 | 1.223 | 1.272 |
| 2004 | 1.420 | 1.357 | 1.423 | 1.309 | 1.361 |
| 2003 | 1.471 | 1.405 | 1.475 | 1.347 | 1.409 |
| 2002 | 1.500 | 1.434 | 1.505 | 1.367 | 1.426 |
| 2001 | 1.513 | 1.438 | 1.510 | 1.373 | 1.431 |
| 2000 | 1.527 | 1.450 | 1.523 | 1.384 | 1.439 |
| 1999 | 1.557 | 1.472 | 1.546 | 1.404 | 1.466 |
| 1998 | 1.563 | 1.478 | 1.548 | 1.407 | 1.467 |
| 1997 | 1.579 | 1.494 | 1.559 | 1.418 | 1.472 |

| ~~YEAR~~ | ~~TABLE 31 Woodworking~~ | ~~TABLE 32 Glass Mfg.~~ |
|---|---|---|
| ~~2016~~ | ~~1.000~~ | ~~1.000~~ |
| ~~2015~~ | ~~0.996~~ | ~~0.988~~ |
| ~~2014~~ | ~~1.014~~ | ~~0.994~~ |
| ~~2013~~ | ~~1.032~~ | ~~1.005~~ |
| ~~2012~~ | ~~1.050~~ | ~~1.011~~ |
| ~~2011~~ | ~~1.078~~ | ~~1.041~~ |
| ~~2010~~ | ~~1.111~~ | ~~1.076~~ |
| ~~2009~~ | ~~1.102~~ | ~~1.065~~ |
| ~~2008~~ | ~~1.128~~ | ~~1.100~~ |

| | | |
|---|---|---|
| ~~2007~~ | ~~1.165~~ | ~~1.151~~ |
| ~~2006~~ | ~~1.212~~ | ~~1.220~~ |
| ~~2005~~ | ~~1.257~~ | ~~1.286~~ |
| ~~2004~~ | ~~1.343~~ | ~~1.399~~ |
| ~~2003~~ | ~~1.384~~ | ~~1.454~~ |
| ~~2002~~ | ~~1.405~~ | ~~1.483~~ |
| ~~2001~~ | ~~1.417~~ | ~~1.490~~ |
| ~~2000~~ | ~~1.419~~ | ~~1.505~~ |
| ~~1999~~ | ~~1.443~~ | ~~1.533~~ |
| ~~1998~~ | ~~1.445~~ | ~~1.537~~ |
| ~~1997~~ | ~~1.451~~ | ~~1.549~~ |
| ~~1996~~ | ~~1.487~~ | ~~1.570~~ |

| YEAR | TABLE 31<br>Woodworking | TABLE 32<br>Glass Mfg. |
|---|---|---|
| 2017 | 1.000 | 1.000 |
| 2016 | 1.026 | 1.015 |
| 2015 | 1.024 | 1.004 |
| 2014 | 1.043 | 1.011 |
| 2013 | 1.061 | 1.022 |
| 2012 | 1.079 | 1.028 |
| 2011 | 1.108 | 1.058 |
| 2010 | 1.142 | 1.094 |
| 2009 | 1.133 | 1.083 |
| 2008 | 1.159 | 1.118 |
| 2007 | 1.197 | 1.170 |
| 2006 | 1.245 | 1.240 |
| 2005 | 1.292 | 1.307 |
| 2004 | 1.380 | 1.422 |
| 2003 | 1.422 | 1.478 |
| 2002 | 1.444 | 1.507 |
| 2001 | 1.457 | 1.515 |
| 2000 | 1.458 | 1.530 |
| 1999 | 1.483 | 1.559 |
| 1998 | 1.485 | 1.562 |
| 1997 | 1.491 | 1.575 |

AUTH: 15-1-201, MCA
IMP: 15-6-138, 15-8-111, MCA

REASON: In addition to the general statement of reasonable necessity provided at the beginning of this notice pertaining to the annual data updates to the rules in this notice, the department further proposes amending ARM 42.22.1311 to correct the alphabetical order of the table in (2) by relocating (cg), Renewable Energy Generation, as newly numbered (bq), and renumbering the remainder of table accordingly.

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: 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 November 13, 2017.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. 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 5 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.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 115, L. 2017, Representative George Kipp III, was contacted by regular mail on June 23, 2017 and September 14, 2017.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may directly impact small businesses that own and pay property tax on farm machinery and equipment. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

| | |
|---|---|
| /s/ Laurie Logan | /s/ Mike Kadas |
| Laurie Logan | Mike Kadas |
| Rule Reviewer | Director of Revenue |

Certified to the Secretary of State October 2, 2017.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 44.11.226, 44.11.227, 44.11.302, and 44.11.605 pertaining to campaign finance reporting, disclosure, and practices | ) ) ) ) ) ) | AMENDED NOTICE OF PROPOSED AMENDMENT AND EXTENSION OF COMMENT PERIOD<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On September 8, 2017, the Office of the Commissioner of Political Practices published MAR Notice No. 44-2-229 pertaining to the proposed amendment of the above-stated rules at page 1509 of the 2017 Montana Administrative Register, Issue No. 17.

2. The Office of the Commissioner of Political Practices has determined it is reasonable and necessary to extend the written comment period until 5:00 pm on November 13, 2017.

3. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Commissioner of Political Practices no later than 5:00 p.m. on November 6, 2017 to advise us of the nature of the accommodation that you need. Please contact Jaime MacNaughton, Office of the Commissioner of Political Practices, 1209 Eighth Ave., P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov.

4. The commissioner has determined that it is reasonable and necessary to amend the notice as proposed to add clarification to a statement of reasonable necessity and to provide clarifying guidance within a proposed rule itself.

5. ARM 44.11.226 and 44.11.302 remain as proposed.

6. The statement of reasonable necessity for ARM 44.11.227 is being amended as follows, new matter underlined, deleted matter interlined:

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits to candidates from individuals or political parties for the 2018 and 2019 elections ~~election cycle~~. The law is currently under review by the 9th Circuit Court of Appeals in *Lair v. Motl*. Section (1) contribution limits will only be enforced if the 9th Circuit upholds the State's individual and political committee contribution limits as enacted by citizen initiative in November 1994. Under the currently controlling federal court order in *Lair* the 2018 and 2019 contribution limits

per election cycle for individuals are: $2,040 for gubernatorial candidates, $1,020 for other statewide offices, $540 for PSC, district court judge and state senators, and $340 for any other office. The 2018 and 2019 per election cycle contribution limits for political committees are $10,890 for gubernatorial candidates, $2,720 for other statewide offices, $1,360 for PSC, $850 for state senator, and $410 for any other office. Section (2) political party per election contribution limits will be effective the day after publication of the adoption notice.

7. ARM 44.11.605 remains as proposed, but with the following changes to the original proposal, new matter underlined, deleted matter interlined:

44.11.605 ELECTIONEERING COMMUNICATION (1) through (3)(c) remain as proposed.

(d) any other regular or normal communication by a local government or a state agency that includes information about a candidate, ballot issue, or election including sample ballots, and the time, place, or manner information regarding an upcoming election. ~~A local government or state agency informational communication concerning a ballot issue~~ Any other communication may be ~~is not a regular and normal communication and is~~ subject to reporting and disclosure as an electioneering communication. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

(4) through (8) remain as proposed.

AUTH: 13-37-114, MCA
IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

8. 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: Jaime MacNaughton, Office of the Commissioner of Political Practices, 1209 Eighth Ave., P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

9. 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 a written request for a hearing and submit this request along with any written comments to Jaime MacNaughton at the above address no later than 5:00 p.m., November 13, 2017.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State September 29, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through XII pertaining to Air Ambulance and Hold Harmless Dispute Resolution | ) ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On July 21, 2017, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-230 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1069 of the 2017 Montana Administrative Register, Issue Number 14.

2. The commissioner has adopted the following rules as proposed: New Rule II (ARM 6.6.8602) and New Rule VIII (6.6.8608).

3. The commissioner has adopted the following rules, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (6.6.8601) PURPOSE AND SCOPE (1) remains as proposed.

(2) The rules in this subchapter apply to disputes between:

(a) health insurance issuers, as defined in 33-22-140, MCA, government health plans authorized in Title 2, chapter 18, part 7, MCA, or health plans established by the Montana university system authorized by Title 20, chapter 25, part 13, MCA; and

(b) out-of-network air ambulance services, which are not owned or controlled by a Montana hospital system.

(3) The rules in this subchapter do not apply to any disputes:

(a) with self-funded health plans, unless they are expressly identified in (2); or

(b) with air ambulance services owned or controlled by a Montana hospital system.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-720, 20-25-1320, 33-2-2306, MCA

NEW RULE III (6.6.8603) CONFIDENTIALITY (1) The parties and independent reviewer shall maintain the confidentiality of all information protected under applicable law, including protected health information under the Health Insurance Portability and Accountability Act of 1996, trade secret information protected by Title 30, chapter 14, part 4, MCA, or personal information protected under Title 33, chapter 19, MCA.

(2) The parties are entitled to discovery of any documents or information relevant to the determination of fair market value. However, the ~~The~~ parties shall

limit disclosure of protected information, including to the independent reviewer, to the minimum necessary to effectuate the dispute resolution process.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, 33-19-106, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, 33-19-306, MCA

NEW RULE IV (6.6.8604) NOTICE OF DISPUTE – CONTENT (1) ~~Within 30 days of~~ After determining that an insurer or health plan and an air ambulance service cannot resolve a billing dispute, either party may communicate in writing to the other party its intent to submit the dispute to this arbitration process. Within 30 days of that communication, the parties shall file a notice of dispute with the commissioner. The notice shall be mailed to: Office of the Montana State Auditor, c/o Chief Legal Counsel, 840 Helena Avenue, Helena, MT 59601.

(2) The notice must specify:

(a) the parties to the dispute;

(b) the date(s) of service;

(c) through (3) remain as proposed.

(4) Parties shall make reasonable efforts to jointly file the notice of dispute with the commissioner. If one party is uncooperative, a party may file the notice of dispute without the participation of the uncooperative party. In such a case, the filing party ~~shall~~ must document in the notice the efforts made to coordinate with the other party and must serve a copy of the notice on the uncooperative party by mail to the registered agent, or if the entity does not have a registered agent in Montana, to the last known business address of the uncooperative party.

(5) The parties shall notify each other of the acceptable form of service before or at the time the notice of dispute is filed. If a party does not specify a form of service, service shall be effectuated by mail to the entity's registered agent, or if the entity does not have a registered agent in Montana, to the last known business address of the entity.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE V (6.6.8605) INDEPENDENT REVIEWER SELECTION – SUBSTITUTION (1) through (3) remain as proposed.

(4) A request under (2) must be made either within 10 calendar days after the commissioner notifies the parties of assignment of the independent reviewer or replacement independent reviewer, or within 10 calendar days of discovering new facts demonstrating that the reviewer has a conflict of interest.

(5) In addition to the one request for a replacement independent review allowed by (3), a party may make a request to the commissioner to assign a different independent reviewer if a conflict of interest exists. If the commissioner has good cause to believe reassignment of the independent reviewer is necessary, the commissioner may grant the request. Any request for reassignment must follow the timing requirements in (4).

(6) An independent reviewer may recuse himself or herself if an actual conflict of interest exists.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-719, 2-18-720, 20-25-1319, 20-25-1320, 33-2-2305, 33-2-2306, MCA

NEW RULE VI (6.6.8606) PRELIMINARY CONFERENCE ~~HEARING~~

(1) Unless otherwise ordered by the independent reviewer or agreed to by the parties, within 30 days of appointment the independent reviewer shall hold a telephonic preliminary conference ~~hearing~~.

(2) During the preliminary ~~hearing~~ conference, the parties and independent reviewer shall address any issues precedent to the hearing, including as applicable:

(a) and (b) remain as proposed.

(c) procedures for maintaining confidentiality of documents, information, or testimony;

(d) through (g) remain as proposed.

(3) The preliminary conference and any other communications or proceedings may only be conducted with the participation of all parties. Parties may not participate in any ex parte communications on the subject of the arbitration with an appointed independent reviewer.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE VII (6.6.8607) DISCOVERY (1) Within 14 days after the preliminary ~~hearing~~ conference, the parties shall exchange all documents upon which they intend to rely at hearing, ~~and~~ a list of all witnesses they intend to call, and a summary of the expected testimony from each identified witness. The parties shall promptly supplement the disclosures as additional documents or witnesses become known.

(2) remains as proposed.

(3) A party may request additional documentation from the other party that it reasonably believes to be relevant and material to ~~the outcome of the dispute~~ any factor in 33-2-2305(6), MCA. If a party refuses to comply, the requesting party may petition the independent reviewer, who shall require production if the request is for documentation reasonably believed to meet the standards of relevance and materiality, and would not be overly burdensome for the refusing party to produce.

(4) remains as proposed.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE IX (6.6.8609) PREPARATION FOR HEARING (1) remains as proposed.

(2) No less than 10 days prior to the adjudicatory hearing, each party shall submit a prehearing brief setting forth its ~~calculation~~ determination of the fair market price for the services provided, and summarizing the basis for that ~~calculation~~ determination. A prehearing brief may not exceed 10 double-spaced pages, inclusive of any attachments.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE X (6.6.8610) HEARING (1) Unless otherwise requested by either party, all hearings during the independent dispute resolution process ~~must~~ should be held telephonically.

(2) Each party shall present evidence, which may include witness ~~and~~ testimony in support of its fair market price ~~calculation~~ determination. Witnesses shall be subject to examination by the adverse party and independent reviewer. Evidence may only be presented if it was provided to all parties at least 21 days prior to the hearing.

(3) remains as proposed.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE XI (6.6.8611) NON-COMPLIANCE WITH ORDER (1) through (2)(b) remain as proposed.

(c) a determination that the other party's calculation accurately reflects the fair market price of the services provided; ~~or~~

(d) if requested by the party not subject to the sanction, dismissal of the arbitration proceeding; and

(d) remains as proposed, but is renumbered (e).

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA
IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, MCA

NEW RULE XII (6.6.8612) FINAL DETERMINATION (1) and (2) remain as proposed.

(3) The final determination ~~may not~~ must be held confidential by all parties and the independent reviewer~~, except that any information protected from disclosure by law must be redacted prior to dissemination to a third party~~. However, upon the request of the commissioner any party or independent reviewer shall provide information necessary to review the efficiency, effectiveness, or outcomes of this process.

AUTH: 2-18-720, 20-25-1320, 33-2-2306, MCA

IMP: 2-18-718, 2-18-719, 2-18-720, 20-25-1318, 20-25-1319, 20-25-1320, 33-2-2304, 33-2-2305, 33-2-2306, 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 No. 1: Two commenters requested an addition to New Rule I regarding the scope of this arbitration process. Specifically, both commenters wanted clarification on who the rules apply to. One commenter wanted clarification of the language "non-Montana hospital controlled out-of-network air ambulance service" in 33-2-2302, MCA. The other commenter stated that self-funded health plans should be subject to this arbitration process. In addition to these comments, the CSI received two emails from separate individuals asking whether self-funded health plans should be part of this process.

RESPONSE No. 1: Given these multiple requests for clarification, the CSI has added two subsections to New Rule I on the scope of these rules. The CSI believes that only those insurers, health plans, and air ambulance providers expressly identified in Senate Bill 44 may take part in this arbitration process.

COMMENT No. 2: One commenter requested revision to New Rule III, on confidentiality of information. The commenter noted that trade secret information should also be expressly protected. The commenter also suggested two additional paragraphs providing that parties are entitled to discovery of confidential information, and suggesting that independent reviewers enter protective orders so the parties will maintain the confidentiality of the information. The commenter also suggested that the CSI should enforce these confidentiality rules against breaching parties.

RESPONSE No. 2: The CSI agrees with the substance of this comment, and has made some changes to New Rule III. The CSI included an express reference to trade secret information, and included language that parties are entitled to discover information otherwise confidential. The CSI disagrees that it should enforce this rule on confidentiality, however. The independent reviewer can issue sanctions through New Rule XI, and the parties have standard legal remedies for any unlawful dissemination of confidential information.

COMMENT No. 3: One commenter requested additional language in New Rule IV to clarify when the parties notify each other of a potential dispute, and how that triggers the period of time to provide a notice of dispute to the CSI.

RESPONSE No. 3: The CSI agrees with the commenter, and has modified New Rule IV accordingly.

COMMENT No. 4: One commenter stated that notices of dispute under New Rule IV should be submitted within 90 days of payment by the insurer or health plan. The

commenter argued that there should be a reasonable time limit for parties to file notices of dispute after one party believes a claim has been resolved.

RESPONSE No. 4: While the CSI agrees that notices typically should be filed within a reasonable time, the CSI disagrees with setting any outside bound or statute of limitations on notices of dispute. Because this arbitration process is non-binding and is mandatory before filing a lawsuit in district court, the CSI does not believe it should set a bar or limitation on this arbitration process that would then, in effect, be a bar on a party's statutory and constitutional right to file a lawsuit.

COMMENT No. 5: One commenter suggested language requiring that when notices of dispute are filed by one party under New Rule IV, that a copy of the notice should be served on the other party.

RESPONSE No. 5: The CSI agrees with the commenter, and has revised New Rule IV to provide for service of a notice of dispute on the other party, in the event the parties do not jointly file the notice. The CSI also modified the service language to first require service on a party's registered agent, if one exists.

COMMENT No. 6: One commenter suggested that in New Rule V the requirement for multiple disputes to be filed together should be changed. The commenter stated that multiple disputes would be more likely to create a conflict for a single independent reviewer, and those multiple cases might involve different issues.

RESPONSE No. 6: The commenter's point about conflicts is well-taken, but the CSI disagrees with modifying the rule. Conflicts of interest can be addressed after the notice of dispute has been filed and an independent reviewer has been assigned. Since this process is a non-binding but necessary step before filing legal action, the overarching goal of these rules is to establish as expedient and economical process as possible. The CSI believes that consolidating notices of dispute as much as possible helps to meet that goal. Finally, given the narrow issue this process is designed to resolve—what is a fair market price for an air ambulance service—it is unlikely that separate matters would have significantly differing issues involved.

COMMENT No. 7: Two commenters suggested removal of the one-time substitution of independent reviewers contained in New Rule V. One of those commenters noted that there are likely to be conflicts of interest with multiple reviewers, given the small population of this state, and suggested the rule provide for unlimited substitutions for conflicts of interest. The second commenter suggested additional rule language allowing for the commissioner to review requests for removal because of conflicts of interest. The second commenter also suggested language allowing for a request for removal within ten days of discovering new evidence of a potential conflict of interest for the independent reviewer.

RESPONSE No. 7: The CSI agrees with these comments, and has modified New Rule V to allow for multiple requests for substitution due to conflicts of interest. The CSI has also included language regarding the discovery of new evidence, and

allowing for the commissioner to review additional requests for substitution. Finally, the CSI added language expressly allowing independent reviewers to recuse themselves if they believe a conflict exists.

COMMENT No. 8: One commenter requested the inclusion of language to New Rule V requiring that any time an independent reviewer is appointed by the CSI, the CSI will send the reviewer's curriculum vitae to the parties. The commenter stated that the purpose would be for the parties to identify potential conflicts of interest.

RESPONSE No. 8: The CSI disagrees that it should collect and send out such information every time an independent reviewer is selected. Given the limited number of potential participants in this arbitration process, providing a curriculum vitae would not be necessary in most instances. Also, the CSI believes a curriculum vitae would not identify many potential conflicts of interest. This does not preclude a party from requesting such information whenever they feel it is necessary.

COMMENT No. 9: One commenter requested that New Rule VI be changed from "preliminary hearing" to "preliminary conference" to avoid confusion with New Rule IX and New Rule X, which provide for an actual hearing.

RESPONSE No. 9: The CSI agrees with the commenter, and has changed New Rule VI accordingly.

COMMENT No. 10: One commenter suggested two additions to the list of topics that must be addressed at a preliminary conference under New Rule VI. The first requested addition was for "any anticipated discovery issues" and the second was for "any other matters[.]"

RESPONSE No. 10: The CSI disagrees that it is necessary to include those two additions to the express list of topics in New Rule VI. The list is not meant to be exhaustive, and those topics may be raised by any party in any conference, but they do not have to be.

COMMENT No. 11: One commenter stated that expert witnesses are not necessary to this arbitration process, and requested the removal of a reference to expert witnesses in New Rule VI. The commenter also suggested new language to New Rule VII prohibiting the use of expert witnesses.

RESPONSE No. 11: While the CSI agrees that expert witnesses typically should not be necessary in these arbitration proceedings, they could assist an independent reviewer with several factors related to fair market value of air transport services. As such, providing parties the option to use expert witnesses does comport with the legislative intent for this process. And while hiring an expert witness would add expense to these proceedings, it is each party's autonomous decision whether to do so.

COMMENT No. 12: One commenter states that expressly authorizing only one deposition would be too limiting, and requested the removal of (2) in New Rule VII.

RESPONSE No. 12: The CSI disagrees with this comment. The purpose of these rules is to create as expedient and economical an arbitration process as possible. The CSI notes that the American Arbitration Association (AAA) rules on commercial arbitration do not automatically provide for depositions at all, and the AAA rules on disputes between health insurers and healthcare providers only allow for one deposition as a rule. The CSI believes that given the narrow scope of this arbitration process, one deposition should be sufficient in most cases. Also, more depositions may be agreed to between the parties or granted by the independent reviewer should they become necessary.

COMMENT No. 13: One commenter suggested that parties should be required to exchange "a summary of testimony" expected from each witness at the same time that parties are required to exchange lists of witnesses under New Rule VII.

RESPONSE No. 13: The CSI agrees with the commenter, and has modified New Rule VII accordingly.

COMMENT No. 14: One commenter requested additional language in New Rule VII to prohibit the use of information at the hearing that was not disclosed to other parties at least 21 days before the hearing.

RESPONSE No. 14: The CSI agrees with the commenter, except that the CSI believes this language is more appropriate in the rule on the hearing itself, instead of the rule on discovery. The CSI has modified New Rule X accordingly.

COMMENT No. 15: One commenter suggested that the language in (3) of New Rule VII be altered to directly reference the factors listed in 33-2-2304, MCA. In addition, the commenter requested including a limitation on discovery to keep the process "efficient and economical."

RESPONSE No. 15: The CSI agrees with the commenter, and has modified the language of New Rule VII accordingly, except that the CSI substituted standard "overly burdensome" language as a limitation on discovery.

COMMENT No. 16: Two commenters think that the 10-page limitation on prehearing briefs, inclusive of any attachments, in New Rule IX is too restrictive. One commenter requested that the page limitation be increased to 15 pages, and both commenters requested that attachments not be included in the page limit.

RESPONSE No. 16: The CSI disagrees with both commenters. The purpose of the pre-hearing brief is to provide a simple overview of the materials and arguments that will be presented at the hearing. The CSI believes ten pages will be sufficient to provide such an overview, and any attachments not included with the pre-hearing brief can be provided at the hearing itself.

COMMENT No. 17: One commenter stated that hearings in person are typically better for all parties, and requested removing language in New Rule X creating the presumption that hearings will be by telephone.

RESPONSE No. 17: The CSI understands the commenter's concern about telephonic versus in-person hearings. The CSI has changed the language from "must" to "should," to reduce the presumption that hearings are to be held telephonically. However, the CSI still believes, given the primary purpose of expediency and knowing that some parties will be based outside the state, that the presumption of telephonic hearings should remain. In addition, any party to an arbitration may request that the hearing be in-person.

COMMENT No. 18: One commenter suggested adding the word "cross" before "examination" in subsection (2) of New Rule X.

RESPONSE No. 18: The CSI disagrees with adding the word "cross," because cross-examination implies the standard procedure used at trial, which may include elements that would be overly restrictive for these proceedings, particularly as it applies to the independent reviewer.

COMMENT No. 19: One commenter requested that an additional potential sanction be added to New Rule XI, namely that if the other party requested it, the independent reviewer could dismiss the arbitration proceeding. The commenter also requested the inclusion of a provision prohibiting the independent reviewer from issuing monetary sanctions.

RESPONSE No. 19: The CSI agrees that this additional sanction would fit the primary purpose of keeping this process expedient. If one party subverts the process to the extent that finishing it would provide no benefit to either party, then the independent reviewer should have the authority to end the process. The CSI has modified New Rule XI accordingly. However, the CSI disagrees with including a provision prohibiting monetary sanctions. The CSI is attempting to avoid making rules which are redundant with statutes. Monetary sanctions are already prohibited by 33-2-2304, MCA, and are therefore already prohibited by New Rule IX because they are "disallowed by law."

COMMENT No. 20: Two commenters argue that final arbitration decisions must be confidential, and that the language in New Rule XII should be modified to accommodate this request. Both commenters note that the majority of air ambulance services will not go through this arbitration process, and so public disclosure of the relatively few final determinations under these rules would probably not be a fair representation of the actual market rate air ambulance services charge to insurers. Both commenters stated their concern that public final determinations would affect the actual market rate in a manner not intended by the legislature.

RESPONSE No. 20: These comments were well-taken, and the CSI has revised the confidentiality language in New Rule XII. The CSI does expressly retain the right to request information necessary to review this arbitration process, but otherwise the parties and independent reviewers will keep these final determinations confidential.

COMMENT No. 21: One commenter requested the addition of another new rule to prohibit ex parte communications.

RESPONSE No. 21: The CSI agrees that ex parte communications should be prohibited. The CSI included language to this effect in New Rule VI, instead of in a separate rule.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State October 2, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

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| In the matter of the repeal of ARM 6.6.1804 unfair discrimination; 6.6.4101 accreditation fees; 6.6.5101 small employer reinsurance; 6.6.5201, 6.6.5202, 6.6.5203, 6.6.5204, 6.6.5207, 6.6.5208, 6.6.5210, 6.6.5211, 6.6.5212, 6.6.5215, 6.6.5216, 6.6.5219, 6.6.5220, 6.6.5221, 6.6.5224 Insure Montana program; 6.6.5801, 6.6.5802, 6.6.5803, 6.6.5804, and 6.6.5805 managed care community networks | ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF REPEAL |

TO: All Concerned Persons

1. On July 21, 2017, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-231 pertaining to the proposed repeal of the above-stated rules at page 1078 of the 2017 Montana Administrative Register, Issue Number 14.

2. The commissioner has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State October 2, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

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| In the matter of the amendment of ARM 6.6.304, 6.6.311, 6.6.312, 6.6.313, replacement of life insurance; 6.6.608, Medicare Select; 6.6.712, life insurance illustrations; 6.6.1006, funeral insurance; 6.6.2202, title insurance; 6.6.2403, group coordination of benefits; 6.6.3001, 6.6.3007, loss cost advisory rate filings; 6.6.3401, hazardous financial conditions; 6.6.3501, 6.6.3515, 6.6.3520, audited reports and annual statements; 6.6.3715, holding company systems; 6.6.4603 guaranty association; 6.6.6501, 6.6.6502, 6.6.6503, 6.6.6504, 6.6.6505, 6.6.6508, 6.6.6509, actuarial opinions; 6.6.6805, 6.6.6820, captive insurers; 6.6.7101, 6.6.7102 mortality tables; and 6.6.8504 and 6.6.8505, viatical settlement agreements | ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On August 4, 2017, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-232 pertaining to the proposed amendment of the above-stated rules at page 1186 of the 2017 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State October 2, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

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| In the matter of the amendment of ARM 6.2.101, 6.2.120, and 6.2.121 pertaining to agency rulemaking and contested case procedures; the repeal of ARM 6.2.103, 6.2.104, 6.2.107, 6.2.123, and 6.2.124 pertaining to agency contested case procedures; and the transfer and amendment of ARM 6.6.4401 through 6.6.4404 pertaining to agency debt collection practices | ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT, REPEAL, AND TRANSFER AND AMENDMENT |

TO: All Concerned Persons

1. On August 4, 2017, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-233 pertaining to the public hearing on the proposed amendment, repeal, and transfer of the above-stated rules at page 1200 of the 2017 Montana Administrative Register, Issue Number 15.

2. The commissioner has amended, repealed, and transferred and amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State October 2, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

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| In the matter of the repeal of ARM 6.6.101, 6.6.102, 6.6.104, and 6.6.105 pertaining to insurance producer licensing and ARM 6.6.4301, 6.6.4302, and 6.6.4303 pertaining to electronic filing of the appointment and termination of insurance producers | ) | NOTICE OF REPEAL |

TO: All Concerned Persons

1. On August 4, 2017, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-234 pertaining to the proposed repeal of the above-stated rules at pages 1206 of the 2017 Montana Administrative Register, Issue Number 15.

2. The commissioner has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State October 2, 2017.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 10.64.301 pertaining to school bus requirements | ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On April 14, 2017, the Board of Public Education published MAR Notice No. 10-64-279 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 391 of the 2017 Montana Administrative Register, Issue Number 7.

2. The Board of Public Education has amended the above-stated rule as proposed.

3. The following comments were received:

COMMENT NO. 1: Greg D. Beach, Vice President of Beach Transportation, submitted a written comment stating that Beach Transportation agreed with the majority of the proposed new standards. However they were concerned about the increase from 10 to 15 hours for the annual training requirement. He requested the board postpone implementation of this requirement until the board had an opportunity to fully review the financial impacts and any evidence that the training requirement needed to be changed because of an increase in accidents.

RESPONSE: The Board of Public Education thanks Mr. Beach for his support of the standards and comment regarding training hours. The Office of Public Instruction (OPI) has training materials available upon request at no cost to assist schools and bus contractors in providing the additional training. The board adopts the training requirement as proposed.

COMMENT NO. 2: Denise Williams, Executive Director of the Montana Association of School Business Officials, submitted a written comment requesting that grammatical changes be made to the standards, including general evacuation procedures, and requesting that all students be required to participate in the evacuation drills.

RESPONSE: The Board of Public Education thanks Ms. Williams for her comments and states that the standards were thoroughly reviewed by OPI staff and board member, Ms. Tammy Lacey. Many grammatical changes were made. With regard to the bus evacuation procedures, the current standards do contain general evacuation procedures and all students are required to participate.

COMMENT NO. 3: Bob Vogel, Director of Government Relations for the Montana School Boards Association (MTSBA), testified at the hearing, stating that

the MTSBA was a proponent of the rule change. He thanked the OPI and board for their work on the new standards and noted that both state and federal requirements were considered when crafting the standards. Mr. Vogel also commented that the passage of HB 355 by the 2017 Montana Legislature, creating a new category for buses, would require additional updates to the standards.

RESPONSE: The Board of Public Education thanks Mr. Vogel for his comment, appreciates MTSBA's support, and states that the OPI is working on revising the standards to address the changes made by HB 355.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll, Chair
Board of Public Education

Certified to the Secretary of State October 2, 2017.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 23.16.101, 23.16.122, 23.16.202, 23.16.1703, 23.16.1705, 23.16.1823, and 23.16.2602 and the repeal of ARM 23.16.1803, 23.16.1805, and 23.16.1807 pertaining to loans to licensees from institutional and noninstitutional sources, use of checks and debit cards for certain gambling activities, prohibition on use of credit cards for gambling, sports pool wagers, and applications, fees and issuance of video gambling machine permits | ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On August 18, 2017, the Department of Justice published MAR Notice No. 23-16-247 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1352 of the 2017 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 23.16.202, 23.16.1703, 23.16.1705, 23.16.1823, and 23.16.2602 as proposed, and repealed ARM 23.16.1803, 23.16.1805, and 23.16.1807 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

23.16.101 DEFINITIONS (1) through (15)(b) remain as proposed.

(i) who make actual debt payments on behalf of a gambling licensee and ~~who~~ fail to meet the suitability requirements of 23-5-176, MCA; or

(ii) who make actual debt payments on behalf of a gambling licensee and ~~who~~ fail to timely make complete disclosures of payments as required by 23-5-118, MCA;

(c) through (21) remain as proposed.

23.16.122 LOAN EVALUATION - GUARANTOR PAYMENTS (1) through (2)(a) remain as proposed.

(b) a loan guarantor on a noninstitutional loan must within 90 days of ~~the~~ any payment under the guarantee elect to treat payments made under a ~~loan~~ guarantee agreement as loans, paid in capital, or other equity contributions.

(i) through (7) remain as proposed.

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: This rules package was a direct result of legislation passed in the 2017 legislature. Commenters at the public hearing thanked the gambling control division for its role in working with gambling industry representatives and representatives of nonprofit organizations during the session on SB 25 (relaxing gambling machine permit restrictions in certain cases, allowing nonprofits to sell raffle tickets online, and creating gift enterprise exclusions), SB 302 (allowing use of checks and debit cards for Calcutta auctions and casino nights), and SB 344 (removing impediments on loans from regulated lenders). Except for comments pertaining to certain rules implementing SB 344 (set out below), all public comments were favorable.

RESPONSE #1: The department will adopt each of the proposed rule amendments and repeal those rules for which it received favorable comments or no comments at all.

COMMENT #2: Two commenters opposed the proposed changes to ARM 23.16.101(15), amending the definition of "owner" or "owner of an interest" in a gambling license.

One comment noted that the proposed language of the amendment provided that a coborrower, guarantor, or pledgor of collateral on a loan to a gambling licensee from a regulated lender could be found to be an owner of an interest in a gambling license if that person failed to meet the suitability standards found in 23-5-176, MCA, or failed to timely disclose payment on behalf of the licensee. In that commenter's judgment, the rule leads to an absurd result because it declares that one unsuitable to hold a license is, by definition, an owner of the licensee whose loan he or she is supporting as a coborrower, guarantor, or pledgor.

The second commenter concurred, suggesting the language of ARM 23.16.101(15)(b) should be parallel to that found in ARM 23.16.101(15)(a). This change, the commenter suggested, will clarify an ownership interest does not arise unless a payment is actually made by a coborrower, guarantor, or pledgor.

RESPONSE #2: The department recognizes the apparent unintended result of an unsuitable person being declared an owner of an interest in a licensee. However, the amendments to 23-5-118, MCA, found in SB 344 specifically declare that, in a regular commercial loan to a licensee, a coborrower, guarantor, or pledgor will not be an owner of an interest in the licensee *only if* the coborrower, guarantor, or pledgor meets the suitability standards of 23-5-176, MCA, and the licensee timely discloses the payment. *See* 23-5-118(4) through 23-5-118(6), MCA. The implication, as noted by a commenter, is that the coborrower, guarantor, or pledgor

*could be* an owner of an interest if the person is unsuitable or the payment is not disclosed.

While that appears to be a possibility, in practice that outcome is unlikely because the department has designed other rules calling for a suitability determination before the coborrower, guarantor, or pledgor makes a payment. Under the proposed amendments to ARM 23.16.122(3) and (4), an applicant or a licensee with a loan supported by a coborrower, guarantor, or pledgor must disclose that loan to the department to initiate a suitability investigation. In both cases, the coborrower, guarantor, or pledgor may not make a payment on the loan until after the investigation demonstrates suitability.

No coborrower, guarantor, or pledgor may make a payment on the licensee's loan until the department has determined the payor meets the requirements of 23-5-176, MCA. ARM 23.16.122(3) and (4) as adopted in this notice.

The department's proposed rules are designed to avoid the peculiar result of an unsuitable person being statutorily declared to be an owner of an interest in a gambling license. Statutes must be interpreted and rules devised to fulfill the state's public policy of a clean gambling industry, permitting only suitable individuals to participate. *See* 23-5-110 through 23-5-176, MCA. Well-established rules of statutory construction require statutes to be applied in concert to effect the Legislature's intent. *See, e.g., Houston Lakeshore Tract Owners Against Annexation Inc. v. City of Whitefish,* 2017 MT 62, ¶10 (courts interpret statutes as part of a whole statutory scheme to avoid an absurd result). The proposed rules aim for the same result. Consequently, under other proposed rule amendments, a coborrower, guarantor, or pledgor will not be allowed to make a payment unless they are first found to be suitable under the standards of 23-5-176, MCA.

Nonetheless, commenters found the language of the proposed rules difficult to understand which suggests the need for improvement. To underscore the fact that, in a regulated loan, a coborrower, guarantor, or pledgor could only be found to be an owner of an interest in a licensee if they have made a payment, the department will include such language in the amendments to ARM 23.16.101(15)(b).

COMMENT #3: Commenters objected to the proposed amendments found in ARM 23.16.122(6) and (7), related to nonlicensee loans, arguing the rule could improperly and unnecessarily extend into licensee's personal loan transactions unrelated to the gambling operation.

The proposed rule requires disclosure of a licensee's participation as a coborrower, guarantor, or pledgor in a nonlicensee's loan. Commenters objected on the grounds that such a rule would require a licensee to disclose co-signing on an automobile loan for a child or a child's student loan. Commenters viewed the rule as overreaching into a licensee's private affairs and involving the department in personal loans unrelated to legitimate regulatory concerns.

RESPONSE #3: The legislature's amendments to 23-5-118, MCA, contained in SB 344 are not limited to commercial loans *to licensees* – the legislation includes commercial loans *to nonlicensees* where the licensee serves as a coborrower, guarantor, or pledgor, supporting a loan to a stranger to the license. That creates the possibility that an unsuitable person, unable to secure a gambling license in his own right, could enjoy the benefits of a license by drawing off a gambling licensee's income in the form of loan payments. The amendments to ARM 23.16.122 creating new (6) and (7) were meant to address that situation by implementing the statute requiring disclosure of the loan and a determination of the suitability of the borrower.

The department concedes that the new rules will have a different impact on sole proprietors than licensees operating under an LLC or corporation. The rules require "licensees" to disclose their participation in loans to third parties and to disclose payments under their obligations as a coborrower, guarantor, or pledgor. In the case of a sole proprietorship, there is no distinction between an individual in his/her capacity as a licensee and in his/her personal capacity. If a parent, who owns a gambling operation as a sole-proprietor, co-signs on a child's auto loan, the rules require disclosure. Conversely, if the parent is a sole-shareholder of a corporation licensed to offer gambling, co-signing on a child's auto loan in an individual capacity need not be disclosed.

One suggestion offered to limit the scope of the rule and to avoid unnecessary disclosure was to change the language from

> A ***licensee*** participating as a coborrower, guarantor, or pledgor, in a nonlicensee's loan from a regulated lender . . . .

to

> A ***licensed entity*** participating as a coborrower, guarantor, or pledgor, in a nonlicensee's loan from a regulated lender . . . .

The aim of the change was to refocus on a business' participation as a coborrower, guarantor, or pledgor rather than a human being's participation as a coborrower, guarantor, or pledgor.

The nature of a sole proprietor is generally understood, but there is no definition of a "sole proprietor" in the Montana code. *Loos v. Waldo*, 257 Mont. 266, 270, 849 P.2d 166, 168 (1993). Simply put, in a sole proprietorship there is no distinction between the business and the individual. The gambling code includes a definition of "person" which "means both natural and artificial persons" and both may be licensees. *See* 23-5-112(32), MCA. Consequently, sole proprietors would see no advantage to changing the language in ARM 23.16.122(6) and (7) from "licensee" to "licensed entity."

In practice, the number of licensees conducting business as sole proprietors is declining in no small part because of the advantages of creating an entity to hold the gambling license separate from the individual himself or herself. Nevertheless, there remain many Montana gambling licensees conducting business as sole proprietorships. The department's duty to assure that strangers to the license are not exerting influence on licensees requires review of these loans. Therefore, while the division is mindful of the impact on certain gambling operators, it must uniformly apply the statutory language and will adopt the proposed rule as written over the commenters' objections.

COMMENT #4: One commenter objected to deleting certain language from the former version of ARM 23.16.122 and urged that the proposed amendments return that language. Formerly, the rule specifically provided that an institutional lender was empowered to limit movement of a licensee's assets. Noting that such restrictions are common in commercial loan documents, the commenter requested that language remain in the amended version of the rule to comport with the intent of 16-4-801, MCA, "to be clear regulated lenders can use their normal loan documents."

RESPONSE #4: The department's rules are meant to implement SB 344's amendments to 23-6-118, MCA. Those amendments declare in plain terms that a regulated lender may use loan documentation consistent with commercial loans generally. The statute is complete enough in itself. Moreover, it would be impracticable to attempt to write a rule that affirms every term typically found in a commercial loan – whether restrictions on movement of assets or a myriad of other loan terms. Therefore, the department will adopt the proposed rule as written over the commenter's objections.

COMMENT #5: One commenter offered the following input regarding the proposed changes to ARM 23.16.122(2) regarding guarantors on noninstitutional loans:

> In (2)(a), pertaining to non-institutional loans, the wording provides that guarantors must meet 23-5-176 requirements prior to closing on the loan. I ask that the Department clarify that if the guarantor is an owner of the licensee entity, they are thus already qualified under 23-5-176, and if the requirements of 23.16.120(7) are met, prior approval is not required for closing on the loan. In other words, please clarify that this provision doesn't limit the applicability of 23.16.120(7).

RESPONSE #5: This commenter envisions an instance in which, for example, a licensee corporation acquires a loan from a third party noninstitutional lender (NIL) source where that NIL source insists upon a guarantee from an owner (a shareholder) of the licensee. The commenter is correct in noting that the shareholder previously would have been investigated and declared suitable under 23-5-176, MCA. In that case, the proposed amendments to ARM 23.16.122(2)(a) will pose no impediment to the NIL with a secured guarantee. But the commenter

argues prior approval should not be necessary in situations covered by ARM 23.16.120(7).

That rule provides prior department approval is not required when an owner of an entity, such as a shareholder, supplies a loan to the entity, such as a corporation (subject to certain restrictions). The loans covered by ARM 23.16.120(7) will involve two parties: a licensee borrower and a shareholder lender. However, the loans covered by ARM 23.16.122(2) will involve three parties: a third party NIL source, a licensee borrower, and a shareholder guarantor.

Typically under ARM 23.16.120(7), there will not be a guarantor because a shareholder is lending money to his own corporation. There is no third party seeking assurances and security from another source. To that extent it is difficult to imagine interplay between the proposed amendments to ARM 23.16.122(2)(a) and ARM 23.16.120(7) and the changes to ARM 23.16.122(2)(a) will not limit ARM 23.16.120(7). Therefore, the division will adopt the proposed rule as written over the commenter's objections.

COMMENT #6: One commenter suggested ARM 23.16.122(2)(b) could be clarified. The proposed version makes reference to an election within 90 days of "the payment." The commenter offered that provision would be clearer if it read, "a loan guarantor on a noninstitutional loan must within 90 days of any payment made under the guarantee elect to treat payments made under …."

RESPONSE #6: The suggestion is accepted and the rule as adopted will be changed accordingly.

COMMENT #7: One commenter suggested that it is unnecessary to require in ARM 23.16.122(3) a suitability investigation on a coborrower, guarantor, or pledgor, if that person had undergone a suitability investigation within two years.

RESPONSE #7: The department understands and appreciates the comment. However, the department's practice of only repeating an investigation after the passage of two years is not established in rule and the department will not insert that term here. Therefore, the department will adopt the proposed rule as written over the commenter's objections.

COMMENT #8: One commenter objected to the requirement of a suitability investigation of guarantors, etc., found in the proposed amendments to ARM 23.16.122(3) and (4), unless the funds from the loan are actually used in the licensed business. The commenter noted that the applicant/licensee may have existing businesses unrelated to alcohol or gambling and sole proprietors often will have personal loans, unrelated to the proposed or existing licensed business, such as car loans, mortgages or student loans. Those loans may well have a guarantor who, the commenter argues, should not face a suitability investigation.

RESPONSE #8: Under the prior version of ARM 23.16.122(4)(b), vetting of guarantors is required as part of the application or loan approval process on applicant/licensee loans. The proposed amendments to ARM 23.16.122 do not change that requirement, but rather extend it to coborrowers and pledgors of assets as required by 23-16-118, MCA, as amended by SB 344.

The language in SB 344 did not address the use of loan proceeds or exempt loans unrelated to alcohol or gambling from the loan review process. In the department's view, regardless of what an institutional loan is used for, it is still an obligation of the licensed entity in which they could use profits from any of their business ventures (including the gambling operation) to pay the existing liabilities. If a guarantor is called on to make a payment on any of the licensee's loans (related to gambling/alcohol or not), that payment puts the guarantor in a position of sharing in the liabilities of the licensed entity necessitating a suitability investigation.

The new law eases restrictions on regulated loans, but requires the department to determine if the borrower, coborrower, guarantor, and pledgor meet the suitability requirements of 23-5-176, MCA. *See* 23-5-118(4), MCA. In the department's view, the statute must be applied to all licensees regardless of their entity type (i.e., corporation, LLC, sole proprietor, etc.). Therefore, the department will adopt the proposed rule as written over the commenter's objections.

COMMENT #9: One commenter objected to the requirement in ARM 23.16.122(5) and (7) to submit on Form 45 "all mandatory disclosures and related documentation" because new Form 45 has yet to be created and made available for review. The commenter seeks assurance that Form 45 will not impose requirements beyond information described in rule or statute.

RESPONSE #9: The department is developing Form 45 at this time. When completed, Form 45 will include the mandatory disclosures and documentation contemplated by statute and rule. The department recognizes the commenter's concern, but the form does not amount to governing law. Instead, it will serve the public by condensing the statutes' and rules' requirements in one form. Therefore, the department will adopt the proposed rule as written over the commenter's objection.

/s/ Matthew Cochenour
Matthew Cochenour
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State October 2, 2017.

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

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| In the matter of the amendment of ARM 24.171.408 outfitter records, 24.171.412 safety and first aid provisions, 24.171.413 watercraft identification, 24.171.502 outfitter qualifications, 24.171.504 successorship, 24.171.505 fishing outfitter operations plan, 24.171.520 operations plans and amendments, and 24.171.2101 renewals | ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On April 14, 2017, the Board of Outfitters (board) published MAR Notice No. 24-171-37 regarding the public hearing on the proposed amendment of the above-stated rules, at page 428 of the 2017 Montana Administrative Register, Issue No. 7.

2. On May 9, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the May 12, 2017, deadline.

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

COMMENT 1: Numerous commenters supported the proposed rule amendments.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: Numerous commenters supported the proposed amendments to ARM 24.171.502 (stating the changes will facilitate licensure while ensuring outfitters are qualified), 24.171.504 (the change is a responsible and practical approach that will streamline the successorship process and provide for the orderly transition of business interest), 24.171.505 (the amendment will clarify what fishing outfitters must report on operations plans), 24.171.520 (the change eliminates redundancies in information collection, maintains a high degree of integrity in the land use reporting system, and provides clear direction to outfitters on how to comply with the rule), and 24.171.2101 (a simple housekeeping amendment).

RESPONSE 2: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

Comments 3 through 8 apply to ARM 24.171.408:

COMMENT 3: Several commenters oppose the amendments to ARM 24.171.408, expressing dismay that some hunting outfitters resist providing harvest data for public review and the use of game management by Fish, Wildlife and Parks (FWP).

RESPONSE 3: The board understands no state agency has ever used this information to manage wildlife resources and has concluded the amendments are necessary to streamline data collection for licensing and compliance purposes.

COMMENT 4: Several commenters opposed the record keeping and sharing amendments stating that information reporting should be transparent, and the public desires accountability from commercial interests. Referring to the Governor's veto of Senate Bill 264 (2017), the commenters agreed that harvest data, fishing stream and stretch data, and other information should be made available to state and federal agency managers, biologists, and wardens.

RESPONSE 4: These proposed rules were filed concurrently with the 2017 Legislature's consideration of Senate Bill 264. At the same time as the board filed the proposed rule amendments, the Governor vetoed Senate Bill 264. Because the amendments to this rule are in direct contradiction to the Governor's direction in the veto, the rule changes should not have continued. The proposal inadvertently moved forward due to the timing of the filing.

Due to this conflict between the board's proposed amendments to ARM 24.171.408 and the Governor's direction that, pursuant to statutory authority, outfitters continue to report information to the board that is important to the state, hunters, anglers, and the people of Montana, as demonstrated in the veto of Senate Bill 264, the department is not proceeding with the proposed changes to this rule at this time. The department will refer the matter and any potential rule amendments to the board for further research, discussion, and consideration.

COMMENT 5: Numerous commenters opposed the amendments to ARM 24.171.408 that will remove several requirements from outfitter records, including districts hunted, game animals taken by clients, species and sex of each animal, and whether game was taken on public land or private land within the outfitter's operations plan. The commenters asserted that FWP has regularly requested and used this information for years and noted that in just the last year, investigators and wardens requested records from the board approximately 20 times. The commenters provided specific examples of how FWP has used this information which was essential to wardens in making cases.

RESPONSE 5: The board understands that no other state agency requests the information in ARM 24.171.408(2), or uses it in a meaningful way to manage wildlife resources. Moreover, FWP is able to gather this information. As such, the board has determined it should not continue to use licensee fees to gather this information.

COMMENT 6: Numerous commenters expressed concern about ARM 24.171.408(5)(d), which would only provide for release of outfitter records for resource management purposes subject to board approval. The commenters stated that FWP's river recreation programs have requested outfitter information from the board, and have been informed that most information was unavailable and would not be released. The commenters were concerned that, following the amendment, FWP will continue to hear that records would not be provided for management needs. The commenters suggested that, if the board proceeds with the amendment, the board establish very specific sideboards to define when the board has reasonable cause to deny a public records request.

RESPONSE 6: The board understands the commenters' concerns about how and when the board may share information with other agencies for resource management purposes. However, the board must consider board costs to provide this information. The proposed amendment strikes a balance between requests for information from other agencies, and the board's duty to consider costs. Any request to the board will be taken seriously and handled expeditiously. The board will continue to work on its records management system to attempt to further streamline information sharing.

COMMENT 7: One commenter supported amending ARM 24.171.408 to remove the requirement to report species and sex of game taken and hunting district. The commenter also supported clarifying when and where land use data must be maintained and the conditions under which an agency may obtain a licensee's records.

RESPONSE 7: The board appreciates all comments received during the rulemaking process.

COMMENT 8: Numerous commenters supported the amendments to ARM 24.171.408, stating the changes will help reduce the board's operation costs by eliminating data collection that is outside of the scope of the board's core licensing function, and will tighten up conditions under which an agency can obtain outfitter records.

RESPONSE 8: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

Comments 9 through 11 apply to ARM 24.171.412:

COMMENT 9: Numerous commenters opposed the amendment to ARM 24.171.412 to require hands-on first aid training every four years. The commenters noted the difficulty of access to hands-on first aid training in rural locations and believed that current online first aid classes are as good as or better than in-person training. Many stated that requiring a hands-on course every four years is an unnecessary burden that is not based on any documentation that online services are deficient. The commenters asserted there is no evidence that online course training affects a

guide's ability to address first aid issues in the field any differently than in-person training.

RESPONSE 9: The board does not agree that requiring licensees to attend hands-on training every four years is overly burdensome, and some members remain concerned that online first aid training may not be as effective without periodic hands-on refresher courses. However, the board generally agrees that, after an initial hands-on course, periodic recertification through online courses is adequate for the protection of the public health, safety, and welfare. Therefore, the board is further amending ARM 24.171.412 to remove the requirement that licensees complete a hands-on course every four years.

COMMENT 10: Several commenters supported the changes to ARM 24.171.412 that will require hands-on first aid training every fourth year.

RESPONSE 10: See RESPONSE 9.

COMMENT 11: Several commenters supported the amendments to ARM 24.171.412 because the wide variety of board-approved first aid courses enable outfitters to seek local hands-on training well in advance of the four-year deadline.

RESPONSE 11: See RESPONSE 9.

Comments 12 and 13 apply to ARM 24.171.413:

COMMENT 12: Several commenters opposed any change to ARM 24.171.413 since the board has received no complaints from personnel responsible for ensuring compliance with the current rule.

RESPONSE 12: The board agrees the current watercraft identification system is working. However, the board is amending the rule exactly as proposed to help facilitate the department's standardized processes.

COMMENT 13: Numerous commenters supported the proposed amendments to ARM 24.171.413, believing the changes will increase efficiencies and streamline processes.

RESPONSE 13: The board agrees with the commenters' statements as they align with the board's reasons for the amendments.

4. The board has amended ARM 24.171.413, 24.171.502, 24.171.504, 24.171.505, 24.171.520, and 24.171.2101 exactly as proposed.

5. The board is not amending ARM 24.171.408.

6. The board has amended ARM 24.171.412 with the following changes, stricken matter interlined, new matter underlined:

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) and (2) remain as proposed.

(3) For purposes of initial licensure, only basic first aid certification that involves the direct, hands-on application of first aid materials and techniques is acceptable. ~~Online courses are acceptable for a period of three years after the hands-on course, but licensees must take a hands-on course every four years.~~

(4) through (8) remain as proposed.

BOARD OF OUTFITTERS
JOHN WAY, PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 2, 2017.

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 37.79.304 pertaining to clarifying contents of Healthy Montana Kids (HMK) evidence of coverage and adopting the Medicaid ambulance contracts | ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On June 23, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-743 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 861 of the 2017 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~September 1, 2017~~ October 14, 2017, which is available on the department's web site at www.hmk.mt.gov.

(2) remains as proposed.

3. No comments or testimony were received.

4. This rule amendment is effective October 14, 2017.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

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 37.86.3401, 37.86.3402, 37.86.3405, 37.86.3410, 37.86.3415, 37.86.3901, 37.86.3902, 37.86.3905, 37.86.3906, and 37.86.3910 and the repeal of ARM 37.86.3411, 37.86.3801, 37.86.3805, 37.86.3806, 37.86.3810, and 37.86.3811 pertaining to targeted case management | ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On July 21, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-768 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1103 of the 2017 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 37.86.3401, 37.86.3402, 37.86.3405, 37.86.3415, 37.86.3901, 37.86.3902, 37.86.3905, and 37.86.3910.

3. The department has repealed the following rules as proposed: ARM 37.86.3411, 37.86.3801, 37.86.3805, 37.86.3806, 37.86.3810, and 37.86.3811.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.3410 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, PROVIDER REQUIREMENTS (1) through (4) remain as proposed.

(5) A targeted case management provider must:

(a) through (g) remain as proposed.

(h) assure that ongoing communication and coordination of member care occurs within the targeted case management team and with the member's medical prenatal care provider at least quarterly or at the time of any medical referrals;

(i) through (8) remain as proposed.

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

37.86.3906 TARGETED CASE MANAGEMENT SERVICES FOR CHILDREN AND YOUTH WITH SPECIAL HEALTH CARE NEEDS, PROVIDER REQUIREMENTS (1) through (4) remain as proposed.

(5) A targeted case management provider must:

(a) through (g) remain as proposed.

(h) assure ongoing communication and coordination of the child's care occurs within the targeted case management team and ~~among the child's care providers~~ the child's primary care provider at least quarterly or at the time of any medical referral;

(i) through (8) remain as proposed.

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

5. 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 that the language in ARM 37.86.3410(5)(h) regarding communication with the member's prenatal care provider have additional language added stating that communication should occur at least quarterly or at time intervals agreed upon by the provider.

Response #1: The department agrees with the comment and has updated the rule language.

Comment #2: One comment was received requesting that the language in ARM 37.86.3906(5)(h) regarding communication with the primary care provider be updated to state that communication should occur at least quarterly or at the time of referrals.

Response #2: The department agrees with the comment and has updated the language.

Comment #3: One comment expressed support for the department's efforts to update the definitions of targeted case management.

Response #3: The department thanks the commenter for their support of the rule amendments.

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

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 37.87.2203 pertaining to changes to the non-Medicaid services provider manual | ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On June 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-798 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 776 of the 2017 Montana Administrative Register, Issue Number 11.

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

37.87.2203 NON-MEDICAID SERVICES PROGRAM (1) and (2) remain as proposed.

(3) The department adopts and incorporates by reference the CMHB's Non-Medicaid Services Program Provider Manual, dated ~~August 5, 2017~~ October 14, 2017 (the Manual), which sets forth the requirements and limitations of the CMHB's Non-Medicaid Services Program.

(4) remains as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-701, 53-21-702, MCA

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: Two commenters responded to the proposed change to reduce the family financial eligibility limit for non-Medicaid services to 275% of Federal Poverty Level for family size.

One commenter expressed disappointment seeing reduction in access to mental health services for low-income families with seriously emotionally disturbed children and commented that the proposed new family financial eligibility limit for non-Medicaid services seems a quick but not effective way to balance budgets.

The second commenter stated there will be children who will not get their necessary mental health support because their families will not attempt to admit their child to therapeutic group home services due to the cost of room and board. The

commenter hoped the department would reconsider the proposed change and opined that providers will see increased business losses in these treatment arrangements because some families will not pay their portion of treatment costs despite signing contracts and receiving monthly bills.

RESPONSE #1: The department regrets the need to lower the financial eligibility limit in order to provide access to non-Medicaid services funding for the entire state fiscal year. A fixed amount of state general funds is allocated for these services. When the funding is spent, no non-Medicaid services can be authorized for youth. Beginning February of state fiscal years (SFY) 2015 and 2016, the department instituted wait lists and a prioritization paradigm for requests for the remainder of the fiscal year. In SFY 2017, CMHB was running out of these funds again by February.

COMMENT #2: One commenter asked for clarification of the program goals that the proposed reduction of the family financial eligibility limit for non-Medicaid services would address.

RESPONSE #2: The department desires that non-Medicaid services funding would be available during the entire state fiscal year, without having to issue denials for lack of funds or to institute wait lists for possible funding. The department will review whether the proposed change results in the intended outcome and will consider unintended consequences as well.

COMMENT #3: One commenter asked for a definition of the "new language" to help understand the reason behind the proposed changes related to room and board funding for Therapeutic Group Home (TGH) for youth with HMK/CHIP. This commenter also questioned the need for third party involvement, which appears to add to the expense of running a program and requiring a longer waiting period for a child to be admitted to the TGH. The commenter believes that as a licensed clinical therapist who receives referral information from licensed psychiatrists, licensed mental health facilities, licensed PRTFs, and licensed mental health workers, that referral based information should be enough to verify if the youth has met SED requirements.

RESPONSE #3: The current non-Medicaid Services Manual (Manual) includes the requirement that room and board requests have a prior authorization for TGH therapeutic services from HMK+/Medicaid or HMK/CHIP. For the proposed Manual, the department included new language which clarifies that the TGH therapeutic services authorization for youth with HMK/CHIP is made by that program's third-party administrator for clinical review for medical necessity. This is not a change of practice. Additional language provides that HMK/CHIP extended mental health benefit status is not required for eligibility for room and board requests or other non-Medicaid services requests.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

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

| | | |
|---|---|---|
| In the matter of the adoption of New Rules I through III pertaining to the Montana medical marijuana program | ) ) ) | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On August 4, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-806 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1273 of the 2017 Montana Administrative Register, Issue Number 15.

2. The department has adopted New Rules I (37.107.128), II (37.107.132), and III (37.107.116) 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 commenter expressed support for the rules and addressed topics outside the scope of the rulemaking.

RESPONSE #1: The department thanks the commenter for their support of the rules.

4. These rule adoptions are effective October 28, 2017.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State October 2, 2017.

## 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 an online 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, 2017. This table includes those rules adopted during the period March 31, 2017, through June 30, 2017, 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, 2017, 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 2017 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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# MONTANA ADMINISTRATIVE REGISTER

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**COREY STAPLETON**
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620