

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED ADOPTION
Rule I pertaining to the definition of	)	AND AMENDMENT
"regularly engage" and the amendment	)	
of ARM 2.59.1738 pertaining to renewal	)	NO PUBLIC HEARING
fees for mortgage brokers, lenders,	)	CONTEMPLATED
servicers, and originators	)	

TO: All Concerned Persons

1. On September 12, 2016, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 29, 2016, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

NEW RULE I CLARIFICATION OF DEFINITION OF "REGULARLY ENGAGE" (1) A person who advertises in any manner is holding themselves out to the public as being able to act as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana. By so doing, the person expects to engage in the business of a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana within the meaning of 32-9-103(39), MCA.

(2) If a person licensed through the NMLS as a mortgage loan originator, mortgage broker, mortgage lender, mortgage servicer, or similar person in another state acts as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer in Montana, they are regularly engaging in business in Montana within the meaning of 32-9-103(39), MCA.

AUTH: 32-9-130, MCA  
IMP: 32-9-103(39), MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding this new rule to clarify the license exemption for mortgage loan originators, mortgage brokers, mortgage lenders, and mortgage servicers conducting business in Montana. The term "regularly engage" applies to persons who engage in the business of a mortgage broker, lender, servicer, or mortgage loan originator on more

than five residential mortgage loans in a calendar year or expect to engage in business on more than five residential mortgage loans in a calendar year.

The department has received inquiries from persons not licensed in Montana, who claim to be exempt from licensure under 32-9-103(39), MCA, because they have not originated, brokered, acted as a lender, or serviced more than five residential mortgage loans in a calendar year in Montana. However, these persons have advertisements on the internet or other media that indicate the persons are actively seeking to engage in these business activities in Montana.

Each of the definitions of mortgage loan originator, mortgage broker, mortgage lender, and mortgage servicer contains a provision that requires licensure if the person represents or holds themselves out to the public as a mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer in Montana. See 32-9-103(32)(b), 32-9-103(31), 32-9-103(30)(a), and 32-9-103(33)(c), MCA, respectively. A person who is not licensed and has not yet originated, brokered, loaned, or serviced any loans in the state of Montana, but is advertising those services on the internet or other media is, in fact, representing themselves to the public as being ready, willing, and able to perform those services in Montana and does not fall under the exemption from licensure. Given the fact that the person is advertising to the world that they can perform these services, it is disingenuous to claim that they do not expect to engage in more than five transactions in Montana.

The department does not want to create a situation that allows unlicensed entities to advertise that they are able to do business in Montana, and then claim they are exempt from licensure because they didn't do enough business in Montana.

New Rule I(2) is being added to address the situation in which an entity is licensed as a mortgage loan originator, mortgage broker, mortgage lender, mortgage servicer, or similar person in another state and engages in a mortgage-related transaction in Montana. It cannot be argued that a person licensed in another state is not regularly engaged in business. Clearly, they are. Therefore, the person cannot avail themselves of the exemption for persons who are not regularly engaged in business. The language "or similar person" is intended to cover the fact that states have different terminology for what Montana calls mortgage loan originators, mortgage brokers, mortgage lenders, and mortgage servicers. In some states mortgage loan originators are called mortgage bankers, and mortgage lenders are called residential first mortgage lenders or residential second mortgage lenders. There are many individual state variations in terminology. The rule is intended to cover any person who performs the acts covered by the Montana definitions of mortgage loan originator, mortgage broker, mortgage lender, and mortgage servicer.

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

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

Mortgage Broker Entity	\$500.00
Mortgage Broker Branch	\$250.00
Mortgage Lender Entity	\$750.00
Mortgage Lender Branch	\$250.00
Mortgage Loan Originator	\$400.00
Mortgage Servicer <u>Entity</u>	\$750.00
Mortgage Servicer Branch	\$250.00

(2) The renewal fees listed in (1) are reduced by 50 percent for ~~2016~~ 2017.  
This section sunsets on March ~~17, 2016~~ 1, 2017.

AUTH: 32-9-117, MCA

IMP: 32-9-117, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding the word, "Entity" to the name of the Mortgage Servicer license listed above for consistency in the names of the mortgage license types. The department is proposing to reduce by 50 percent the renewal fees charged to mortgage licensees for 2017. The department's Division of Banking and Financial Institutions is self-funded through its licensing fees and endeavors to keep its licensing fees consistent with the expenditures of each licensing program. The mortgage program is currently generating more revenue than it is spending. The department believes this excess revenue is largely due to Montana's recent adoption of the Uniform State Test, which has resulted in an increased number of mortgage loan originators applying for a Montana license. A 50 percent reduction will approximate needed expenditures for the year.

The department does not intend to permanently decrease renewal fees for the mortgage program because it does not know whether this trend will continue, and has elected to reduce the renewal fees by 50 percent for 2017 only. The department will continue to monitor its revenue and expenses in the future and may, if necessary, revise the licensing and/or renewal fees up or down as necessary to keep mortgage program revenues in line with expenses.

Currently licensed in Montana, there are:

- 95 mortgage broker entities, 151 mortgage lender entities, and 135 mortgage servicer entities;
- 73 mortgage broker branches, 224 mortgage lender branches, and 119 mortgage servicer branches; and
- 2,370 mortgage loan originators.

The department expects that not all the current licensees will renew their licenses for 2017. However, based on prior years' renewals, the department predicts that approximately 85 percent of its mortgage loan originators, 98 percent of mortgage companies, and 93 percent of mortgage company branch licensees will renew their licenses for 2017. This proposed change to the rule will reduce department revenues by approximately \$579,156.

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546;

faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., September 6, 2016.

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

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 317 persons based on the 3,167 existing licensed mortgage entities, branches, and mortgage loan originators.

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

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

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

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

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

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

Certified to the Secretary of State July 25, 2016



BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration	)	PROPOSED ADOPTION
of the 2017 and 2018 Program Year	)	
Community Development Block Grant	)	
(CDBG) Program – Small-Scale	)	
Housing Development and	)	
Rehabilitation Application Guidelines	)	

TO: All Concerned Persons

1. On August 25, 2016, at 10:30 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., August 22, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail [bmartello@mt.gov](mailto:bmartello@mt.gov).

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE  
ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT  
(CDBG) – SMALL-SCALE HOUSING DEVELOPMENT AND REHABILITATION  
APPLICATION GUIDELINES

(1) The Department of Commerce adopts and incorporates by reference the 2017-2018 Application Guidelines for Small-Scale Housing Development and Rehabilitation projects as rules for the administration of the 2017-2018 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the application, scope, and procedures for the award of project grants to cities, towns, counties, or consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Grants Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Grants Bureau web site at <http://comdev.mt.gov/Programs/CDBG/Housing/Applying>.

AUTH: 90-1-103, MCA  
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Grants Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail [DOCDBG@mt.gov](mailto:DOCDBG@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

5. Andrew Chanania, CDBG Public Facility and Housing Program Manager, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ MARTY TUTTLE  
MARTY TUTTLE  
Rule Reviewer

/s/ DOUGLAS MITCHELL  
DOUGLAS MITCHELL  
Deputy Director  
Department of Commerce

Certified to the Secretary of State July 25, 2016.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.119.101 pertaining to the	)	AMENDMENT
Tourism Advisory Council	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 4, 2016, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on September 1, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie J. Martello, Paralegal, Montana Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD (406) 841-2702; or e-mail [bmartello@mt.gov](mailto:bmartello@mt.gov).

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

8.119.101 TOURISM ADVISORY COUNCIL (1) remains the same.

(2) The Tourism Advisory Council incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, 2014 April 2016," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Office of Tourism, Department of Commerce, 301 South Park Avenue, Helena, Montana 59620, or on the Montana Office of Tourism web site at <http://www.travelmontana.mt.gov/forms/February%202014%20Final.pdf> <http://tourism.mt.gov/Portals/92/shared/docs/pdf/Regulations%20%20April%202016%20Final%20proposed.pdf>.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, 2014 April 2016."

AUTH: 2-15-1816, MCA  
IMP: 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule because the "Regulations and Procedures for the Regional/CVB Tourism Organizations, June 2014" were

amended by the Tourism Advisory Council in April 2016 to include the changes to the way the region and CVB annual marketing plans are developed.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Barbara Sanem, Department of Commerce, Montana Office of Tourism, 301 South Park Avenue, P.O. Box 200533, Helena, Montana 59620-0533; telephone (406) 841-2769; fax (406) 841-2871; TDD (406) 841-2702; or e-mail [bsanem@mt.gov](mailto:bsanem@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Barbara Sanem at the above address no later than 5:00 p.m., September 2, 2016.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 persons based on 18 convention and visitor bureaus, 6 tourism regions, 13 TAC members, and at least 182 potential applicants for grants of accommodation tax funds.

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

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

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

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

/s/ Marty Tuttle  
Marty Tuttle  
Rule Reviewer

/s/ Douglas Mitchell  
Douglas Mitchell  
Deputy Director  
Department of Commerce

Certified to the Secretary of State July 25, 2016.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through X, the amendment	)	PROPOSED ADOPTION,
of ARM 10.53.101 and 10.54.2501,	)	AMENDMENT, AND REPEAL
and the repeal of ARM 10.54.5010	)	
through 10.54.5013, 10.54.5020	)	
through 10.54.5023, 10.54.5030	)	
through 10.54.5033, 10.54.5040	)	
through 10.54.5043, 10.54.5050	)	
through 10.54.5053, 10.54.5060	)	
through 10.54.5063, and 10.54.5087	)	
through 10.54.5098 pertaining to K-	)	
12 science content standards	)	

TO: All Concerned Persons

1. On August 30, 2016, at 10:00 a.m., the Board of Public Education will hold a public hearing in room 172 of the Montana Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Board of Public Education 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 Board of Public Education no later than 5:00 p.m. on August 22, 2016, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail [pdonovan@mt.gov](mailto:pdonovan@mt.gov).

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

NEW RULE I SCIENCE CONTENT STANDARDS (1) The content areas included in the science standards are:

(a) physical science for which students will use crosscutting concepts, science and engineering practices, and technology while investigating how matter and energy exist in a variety of forms and how physical and chemical interactions change matter and energy;

(b) life science for which students will use crosscutting concepts, science and engineering practices, and technology while investigating the characteristics, structures, and functions of living things; the processes and diversity of life; and how living organisms interact with each other and their environments; and

(c) earth and space science for which students will use crosscutting concepts, science and engineering practices, and technology while investigating the composition, history, and processes that shape earth, the solar system, and the universe.

(2) Students will learn science with integration of content area ideas, crosscutting concepts, science and engineering practices, and technology.

(3) Content standards for science ensure integration of the history, contemporary portrayals, and contributions of American Indians, with an emphasis on Montana Indians, for all students, across all content areas. Students will understand that American Indians' use of scientific knowledge and practices are interdisciplinary and are a valid way to learn about the natural world.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE II DEFINITIONS (1) For purposes of science content standards contained in this subchapter, the following definitions apply:

(a) "Crosscutting concepts" are those that connect learning across the different areas of disciplinary content. They are:

- (i) patterns;
- (ii) cause and effect;
- (iii) scale, proportion, and quantity;
- (iv) systems and system models;
- (v) energy and matter, flows, cycles, and conservation;
- (vi) structure and function; and
- (vii) stability and change.

(b) "Science and engineering practices" are methods of inquiry by which ideas are developed and refined. They are:

- (i) asking questions as it applies to science and defining problems as it applies to engineering;
- (ii) developing and using models;
- (iii) planning and carrying out investigations;
- (iv) analyzing and interpreting data;
- (v) using mathematics and computational thinking;
- (vi) constructing explanations as it applies to science and designing solutions as it applies to engineering;
- (vii) engaging in argument from evidence; and
- (viii) obtaining, evaluating, and communicating information.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE III SCIENCE CONTENT STANDARDS FOR KINDERGARTEN

(1) Physical science content standards for kindergarten are that each student will:

- (a) plan and conduct an investigation to compare the effects of different strengths or different directions of pushes and pulls on the motion of an object;
- (b) analyze data to determine whether a design solution works as intended to change the speed or direction of an object with a push or a pull;
- (c) construct an explanation based on observations of the effect of sunlight on earth's surface; and



(d) use tools and materials to design and build a structure to reduce the warming effect of sunlight on an area.

(2) Life science content standards for kindergarten are that each student will:

(a) use observations to describe patterns of what plants and animals, including humans, need to survive.

(3) Earth and space science content standards for kindergarten are that each student will:

(a) construct an argument supported by evidence for how plants and animals, including humans, can change the environment to meet their needs;

(b) use a model to represent the relationship between the needs of different plants or animals, including humans, and the places they live;

(c) communicate ideas about the impact of humans on the land, water, air, or other living things in the local environment;

(d) use and share observations of local weather conditions to describe patterns over time; and

(e) ask questions to obtain information about the purpose of weather forecasting to predict, prepare for, and respond to weather.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

#### NEW RULE IV SCIENCE CONTENT STANDARDS FOR FIRST GRADE

(1) Physical science content standards for first grade are that each student will:

(a) plan and conduct investigations to provide evidence that vibrating materials can make sound and that sound can cause materials to vibrate;

(b) make observations to construct an evidence-based explanation that objects can be seen only when illuminated;

(c) plan and conduct an investigation to determine the effect of placing objects made with different materials in the path of a beam of light; and

(d) design a solution or build a device that facilitates communication over distance using light or sound.

(2) Life science content standards for first grade are that each student will:

(a) use materials to design a solution to a human problem by mimicking plant and animal structures and functions that help them survive, grow, and meet their needs;

(b) use information from print and other media to identify patterns in behavior of parents and offspring that help offspring survive; and

(c) make an evidence-based explanation of how young plants and animals are like, but not exactly like, their parents.

(3) Earth and space science content standards for first grade are that each student will:

(a) use observations of the sun, moon, and stars to describe patterns that can be predicted; and

(b) make observations at different times of year to relate the amount of daylight to the time of year.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE V SCIENCE CONTENT STANDARDS FOR SECOND GRADE

(1) Physical science content standards for second grade are that each student will:

- (a) plan and conduct an investigation to describe and classify various materials by their observable properties;
- (b) conduct an investigation and analyze data to determine which materials have the properties best suited for an intended purpose;
- (c) make observations to construct an evidence-based claim of how an object made of a small set of pieces can be disassembled and made into a new object; and
- (d) construct an argument with evidence that some changes caused by heating or cooling can be reversed and some cannot.

(2) Life science content standards for second grade are that each student will:

- (a) plan and conduct a cause and effect investigation to determine whether plants need sunlight and water to grow;
- (b) develop a simple model that mimics the structure and function of an animal in dispersing seeds or pollinating plants; and
- (c) make observations of plants and animals to compare and contrast the diversity of life in different habitats.

(3) Earth and space science content standards for second grade are that each student will:

- (a) use information from several sources to provide evidence that earth events can occur quickly or slowly;
- (b) construct explanations to compare multiple physical and naturally built designs which impact wind's or water's effect on the shape of the land;
- (c) develop models to represent the shapes and kinds of land and bodies of water in an area; and
- (d) obtain information to identify where water is found on earth and that water can be solid, liquid, or gas.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VI SCIENCE CONTENT STANDARDS FOR THIRD GRADE

(1) Physical science content standards for third grade are that each student will:

- (a) plan and conduct an investigation to provide evidence of the effects of balanced and unbalanced forces on the motion of an object;
- (b) observe and record qualitative and quantitative data about an object's motion to provide evidence that a pattern can be used to predict future motion;
- (c) ask questions to determine cause and effect relationships of electric or magnetic interactions between two objects not in contact with each other; and
- (d) define a simple design problem that can be solved by applying scientific ideas about magnets.

- (2) Life science content standards for third grade are that each student will:
- (a) construct an argument with evidence that in a particular habitat some organisms can survive well, some survive less well, and some cannot survive at all;
  - (b) make a claim about the effectiveness of a solution to a problem caused when the environment changes and that the types of plants and animals that live there may change;
  - (c) construct a cause and effect argument communicating some animals, including humans, form groups and communities that help members survive;
  - (d) analyze and interpret data from fossils to provide evidence of the organisms and the environments in which they lived long ago;
  - (e) develop models to describe that organisms have unique and diverse life cycles but all have in common birth, growth, reproduction, and death;
  - (f) analyze and interpret data to provide evidence that plants and animals have traits inherited from parents and that variation of these traits exists in a group of similar organisms;
  - (g) use evidence to support the explanation that traits can be influenced by the environment; and
  - (h) use evidence to construct an explanation for how the variations in characteristics among individuals of the same species may provide advantages in surviving, finding mates, and reproducing.
- (3) Earth and space science content standards for third grade are that each student will:
- (a) obtain and represent data using tables and graphical displays to describe observed and predicted weather conditions during a particular season;
  - (b) obtain and combine information to describe climate patterns in different regions of the world; and
  - (c) make a claim based on information about the merit of a design solution that reduces the impacts of a weather-related hazard.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

#### NEW RULE VII SCIENCE CONTENT STANDARDS FOR FOURTH GRADE

- (1) Physical science content standards for fourth grade are that each student will:
- (a) use evidence to describe the relationship between the speed of an object and the energy of that object;
  - (b) make observations to provide evidence of transfer of energy from place to place by sound, light, heat, and electric currents;
  - (c) ask questions and predict outcomes about the changes in energy that occur when objects collide;
  - (d) apply scientific ideas to design, test, and refine a device that converts energy from one form to another;
  - (e) develop a model of waves to describe patterns in terms of amplitude and wavelength and that waves can cause objects to move;
  - (f) develop a model communicating that light reflected from objects into the eye allows objects to be seen; and

(g) generate and compare multiple solutions that use patterns to transfer information.

(2) Life science content standards for fourth grade are that each student will:

(a) construct an argument that plants and animals have internal and external structures that function to support survival, growth, behavior, and reproduction; and  
(b) use a model to describe that animals receive different types of information through their senses, process the information in their brain, and respond to the information in different ways.

(3) Earth and space science content standards for fourth grade are that each student will:

(a) obtain and combine information from a variety of sources to communicate that energy and fuels are derived from natural resources and their uses affect the environment;

(b) identify evidence from patterns in rock formations and fossils in rock layers to support an explanation for changes in a landscape over time;

(c) make observations or measurements to provide evidence of the effects of weathering or the rate of erosion by water, ice, wind, or vegetation;

(d) analyze and interpret data from maps as evidence to make a claim about patterns of earth's features; and

(e) generate and compare multiple solutions to reduce the impacts of natural earth processes on humans.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

#### NEW RULE VIII SCIENCE CONTENT STANDARDS FOR FIFTH GRADE

(1) Physical science content standards for fifth grade are that each student will:

(a) develop a model to communicate that matter is made of particles too small to be seen;

(b) measure and graph quantities to provide evidence that the total mass of matter is conserved regardless of the type of change that occurs when heating, cooling, or mixing substances;

(c) observe and record qualitative and quantitative evidence to support identification of materials based on their properties;

(d) conduct an investigation that produces quantitative and qualitative data to analyze whether the mixing of two or more substances results in new substances;

(e) use models to describe that energy in animals' food was once energy from the sun; and

(f) support an argument that the gravitational force exerted by earth on objects is directed toward the center of the earth.

(2) Life science content standards for fifth grade are that each student will:

(a) support an argument that plants get the materials they need for growth chiefly from air and water; and

(b) develop and critique a model to describe the movement of matter among plants, animals, decomposers, and the environment.

(3) Earth and space science content standards for fifth grade are that each

student will:

- (a) develop a model using an example to describe ways the geosphere, biosphere, hydrosphere, or atmosphere interact;
- (b) graph and explain the proportion and quantities of water and fresh water in various natural and human-made reservoirs to provide evidence about the distribution of water on earth;
- (c) obtain and combine information from various sources about ways individual communities use science ideas to protect the earth's resources, environment, and systems and describe examples of how American Indians use scientific knowledge and practices to maintain relationships with the natural world;
- (d) use evidence or models to support the claim that differences in the apparent brightness of the sun compared to other stars is due to their relative distances from earth; and
- (e) graph the daily changes in the length, shape, and direction of shadows; lengths of day and night; and the seasonal appearance of select stars to communicate the patterns of the earth's movement and describe how astronomical knowledge is used by American Indians.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE IX SCIENCE CONTENT STANDARDS FOR SIXTH THROUGH EIGHTH GRADES (1) Physical science content standards for sixth through eighth grades are that each student will:

- (a) develop and critique models that describe the atomic composition of simple molecules and extended structures;
- (b) analyze and interpret data on the properties of substances before and after the substances interact to determine if a chemical reaction has occurred;
- (c) gather information to describe that synthetic materials come from natural resources and impact society;
- (d) develop a model that predicts and describes changes in particle motion, temperature, and state of a pure substance when thermal energy is added or removed;
- (e) develop, use, and critique a model to describe how the total number of atoms does not change in a chemical reaction and thus mass is conserved;
- (f) undertake a design project to construct, test, and modify a device that either releases or absorbs thermal energy by chemical processes;
- (g) apply Newton's Third Law of Motion to design a solution to a problem involving the motion of two colliding objects;
- (h) plan an investigation to provide evidence that the change in an object's motion depends on the sum of the forces on the object and the mass of the object;
- (i) ask questions about data to determine the factors affecting electric and magnetic force strengths;
- (j) construct and present arguments using evidence to support the claim that gravitational interactions are attractive and depend on the mass of interacting objects;
- (k) design and conduct an investigation to provide evidence that fields exist

between objects exerting forces on each other even though the objects are not in contact;

(l) construct and interpret graphic displays of data to describe the relationships of kinetic energy to the mass of an object and to the speed of an object;

(m) develop and critique models to describe that when the arrangement of objects interacting at a distance changes, different amounts of potential energy are stored in the system;

(n) apply scientific principles to design, construct, and test a device that minimizes or maximizes thermal energy transfer;

(o) plan an investigation to determine the relationships among the energy transferred, the type of matter, the mass, and the change in the average kinetic energy of the particles as measured by the temperature of the sample;

(p) construct, use, and present arguments to support the claim that when the kinetic energy of an object changes, energy is transferred to or from the object;

(q) use mathematical representations to describe a simple model for waves that includes how the amplitude and wavelength of a wave is related to the energy in a wave; and

(r) develop and use a model to describe that waves are reflected, absorbed, or transmitted through various materials.

(2) Life science content standards for sixth through eighth grades are that each student will:

(a) conduct an investigation to provide evidence that living things are made of cells, either one cell or many different numbers and types of cells;

(b) develop and use a model to describe the structure and function of a cell as a whole and ways parts of cells contribute to the function;

(c) use argument supported by evidence for how the body is a system of interacting subsystems composed of groups of cells;

(d) construct a scientific explanation based on evidence for the role of photosynthesis in the cycling of matter and flow of energy into and out of organisms;

(e) develop a model to describe how food is rearranged through chemical reactions forming new molecules that support growth, release energy, or both, as this matter moves through an organism;

(f) analyze and interpret data to provide evidence for the effects of resource availability on organisms and populations of organisms in an ecosystem and analyze scientific concepts used by American Indians to maintain healthy relationships with environmental sources;

(g) develop a model to describe the cycling of matter and flow of energy among living and nonliving parts of an ecosystem;

(h) construct an explanation that predicts patterns of interactions among organisms across multiple ecosystems;

(i) evaluate competing design solutions for maintaining biodiversity and ecosystem services;

(j) use argument based on empirical evidence and scientific reasoning to support an explanation for how characteristic animal behaviors and specialized plant structures affect the probability of successful reproduction of animals and plants respectively;

(k) construct a scientific explanation based on evidence for how environmental and genetic factors influence the growth and development of organisms;

(l) develop and use a model to describe why structural changes to genes, such as mutations, may affect proteins and may result in harmful, beneficial, or neutral effects to the structure and function of the organism;

(m) develop and use a model to describe why asexual reproduction results in offspring with identical genetic information and sexual reproduction results in offspring with genetic variation;

(n) gather and synthesize information about the technologies that have changed the way humans influence the inheritance of desired traits in organisms;

(o) analyze and interpret data for patterns in the fossil record that document the existence, diversity, extinction, and change of life forms throughout the history of life on earth under the assumption that natural laws operate today as in the past;

(p) apply scientific ideas to construct an explanation for the anatomical similarities and differences among modern organisms and between modern and fossil organisms to infer evolutionary relationships;

(q) analyze displays of pictorial data to compare patterns of similarities in the embryological development across multiple species to identify relationships not evident in the fully formed anatomy;

(r) construct an explanation based on evidence that describes how genetic variations of traits in a population increase some individuals' probability of surviving and reproducing in a specific environment; and

(s) use mathematical representations to support explanations of how natural selection may lead to increases and decreases of specific traits in populations over time.

(3) Earth and space science content standards for sixth through eighth grades are that students will:

(a) develop and use a model of the earth-sun-moon system to describe the cyclic patterns of lunar phases, eclipses of the sun and moon, and seasons;

(b) develop and use a model to describe the role of gravity in the motions within galaxies and the solar system;

(c) analyze and interpret data to determine scale properties of objects in the solar system;

(d) construct a scientific explanation based on evidence from rock strata for how the geologic time scale is used to organize earth's 4.6 billion-year-old history;

(e) construct an explanation based on evidence for how geoscience processes have changed earth's surface at varying time scales and spatial scales;

(f) analyze and interpret data on the distribution of fossils and rocks, continental shapes, and seafloor structures to provide evidence of the past plate motions;

(g) develop a model to describe the cycling of earth's materials and the flow of energy that drives this process;

(h) develop a model to describe the cycling of water through earth's systems driven by energy from the sun and the force of gravity;

(i) construct a scientific explanation based on evidence for how the uneven distributions of earth's mineral, energy, and groundwater resources are the result of

past and current geoscience processes;

(j) collect data to provide evidence for how the motions and complex interactions of air masses result in changes in weather conditions;

(k) develop and use a model to describe how unequal heating and rotation of the earth cause patterns of atmospheric and oceanic circulation that determine regional climates;

(l) ask questions to clarify evidence of the factors that have caused the rise in global temperatures over the past century;

(m) analyze and interpret data on natural hazards to forecast future catastrophic events and inform the development of technologies to mitigate their effects;

(n) apply scientific principles to design a method for monitoring and minimizing a human impact on the environment; and

(o) construct an argument supported by evidence for how increases in human population and per-capita consumption of natural resources impact earth's systems including indigenous populations.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE X SCIENCE CONTENT STANDARDS FOR NINTH THROUGH TWELFTH GRADES (1) Physical science content standards for ninth through twelfth grades are that each student will:

(a) use the periodic table as a model to predict the relative properties of elements based on the patterns of electrons in the outermost energy level of atoms;

(b) plan and conduct an investigation to gather evidence to compare the structure of substances at the bulk scale to infer the strength of electrical forces between particles;

(c) develop models to illustrate the changes in the composition of the nucleus of the atom and the energy released during the processes of fission, fusion, and radioactive decay;

(d) communicate through scientific and technical information roles of molecular-level structure in the functioning of designed materials;

(e) construct and revise an explanation for outcomes of simple chemical reactions based on outer electron states of atoms, trends in the periodic table, and patterns of chemical properties;

(f) develop a model to illustrate that the release or absorption of energy from chemical reactions is dependent upon changes in total bond energy;

(g) apply scientific principles and evidence to provide an explanation about the effects of changing the temperature or concentration of the reacting particles on the rate at which a reaction occurs;

(h) refine the design of a chemical system by specifying changes in conditions that would alter the amount of products at equilibrium;

(i) use mathematical representations to support the claim that atoms, and therefore mass, are conserved during a chemical reaction;

(j) analyze data to support the claim that Newton's Second Law of Motion describes the mathematical relationship among the net force on a macroscopic



object, its mass, and its acceleration;

(k) use mathematical representations to demonstrate how total momentum of a system is conserved when there is no net force on the system;

(l) apply scientific and engineering ideas to design, evaluate, and refine a device that minimizes forces on an object during collisions;

(m) use a mathematical representation of Newton's Law of Gravitation and Coulomb's Law to explain gravitational and electrostatic forces between objects;

(n) plan and conduct investigations to provide evidence that electric currents can produce magnetic fields and changing magnetic fields can produce electric currents;

(o) create a computational model to calculate the change in the energy of one component in a system when the change in energy of the other component and energy flows in and out of the system are known;

(p) develop and use models to illustrate that energy at the macroscopic scale can be accounted for as a combination of energy associated with the motions of particles and energy associated with the relative position of particles;

(q) design, build, and refine a device that works within given constraints to convert one form of energy into another form of energy;

(r) plan and conduct an investigation to provide evidence that the transfer of thermal energy when two components of different temperature are combined within a closed system results in a more uniform energy distribution among the components in the system;

(s) develop and use a model of two objects interacting through electric or magnetic fields to illustrate the forces between objects and the change in energy of the objects due to the interaction;

(t) use mathematical representations to support a claim regarding relationships among the frequency, amplitude, wavelength, and speed of waves traveling in various media;

(u) evaluate the claims, evidence, and reasoning behind the idea that electromagnetic radiation can be described either by a wave model or a particle model, and that for some situations one model is more useful than the other;

(v) evaluate the validity and reliability of claims in published materials of the effects that different frequencies of electromagnetic radiation have when absorbed by matter; and

(w) communicate technical information about how some technological devices use the principles of wave behavior and wave interactions with matter to transmit and capture information and energy.

(2) Life science content standards for ninth through twelfth grades are that each student will:

(a) construct an explanation based on evidence for how the structure of DNA determines the structure of proteins which carry out the essential functions of life through systems of specialized cells;

(b) develop and use a model to illustrate the organizational structure of interacting systems that provide specific functions within multicellular organisms;

(c) plan and conduct an investigation to provide evidence that feedback mechanisms maintain homeostasis;

(d) use a model to illustrate how photosynthesis transforms light energy into

stored chemical energy;

(e) construct an explanation based on evidence from multiple sources for how carbon, hydrogen, nitrogen, oxygen, phosphorus, and sulfur may combine with other elements to form organic macromolecules with different structures and functions;

(f) use a model to illustrate that cellular respiration is a chemical process whereby the bonds of food molecules and oxygen molecules are broken and the bonds in new compounds are formed resulting in a net transfer of energy;

(g) construct and revise an explanation based on evidence for the cycling of matter and flow of energy in aerobic and anaerobic conditions;

(h) use mathematical representations to support claims for the cycling of matter and flow of energy among organisms in an ecosystem;

(i) use mathematical or computational representations to support arguments about environmental factors that affect carrying capacity, biodiversity, and populations in ecosystems;

(j) evaluate the claims, evidence, and reasoning that the complex interactions in ecosystems maintain relatively consistent numbers and types of organisms in stable conditions, but changing conditions may result in a new ecosystem;

(k) design, evaluate, and refine a solution for reducing the direct and indirect impacts of human activities on the environment and biodiversity and analyze scientific concepts used by American Indians to maintain healthy relationships with environmental resources;

(l) construct an explanation using evidence from multiple sources to describe the role of cellular division and differentiation in producing and maintaining complex organisms;

(m) make and defend a claim based on evidence from multiple sources that inheritable genetic variations may result from:

(i) new genetic combinations through meiosis;

(ii) viable errors occurring during replication; or

(iii) mutations caused by environmental factors;

(n) apply concepts of statistics and probability to explain the variation and distribution of expressed traits in a population;

(o) evaluate and communicate scientific information about how common ancestry and biological evolution are supported by multiple lines of empirical evidence;

(p) construct an explanation based on evidence that the process of evolution by natural selection primarily results from four factors:

(i) the potential for a species to increase in number;

(ii) the heritable genetic variation of individuals in a species due to mutation and sexual reproduction;

(iii) competition for limited resources; and

(iv) the proliferation of those organisms that are better able to survive and reproduce in the environment;

(q) apply concepts of statistics and probability to support explanations that organisms with an advantageous heritable trait tend to increase in proportion to organisms lacking this trait;

(r) construct an explanation based on evidence for how natural selection

leads to adaptation of populations over time;

(s) evaluate the evidence supporting claims that changes in environmental conditions may result in:

(i) changes in the number of individuals of some species;

(ii) the emergence of new species over time; and

(iii) the extinction of other species; and

(t) investigate and explain American Indian perspectives on changes in environmental conditions and their impacts.

(3) Earth and space science content standards for ninth through twelfth grades are that students will:

(a) develop a model based on evidence to illustrate the life span of the sun and the role of nuclear fusion in the sun's core to release energy that eventually reaches earth in the form of radiation;

(b) construct an explanation of the Big Bang theory based on astronomical evidence of light spectra, motion of distant galaxies, and composition of matter in the universe;

(c) communicate scientific ideas about the way stars, over their life cycle, produce elements;

(d) use mathematical or computational representations to predict the motion of orbiting objects in the solar system;

(e) evaluate evidence of the past and current movements of continental and oceanic crust and the theory of plate tectonics to explain the ages of crustal rocks;

(f) apply scientific reasoning and evidence from ancient earth materials, meteorites, and other planetary surfaces to construct an account of earth's formation and early history;

(g) develop a model to illustrate how earth's internal and surface processes operate at different spatial and time scales to form continental and ocean-floor features;

(h) analyze geoscience data to make the claim that one change to earth's surface can create feedbacks that cause changes to other earth systems;

(i) develop a model based on evidence of earth's interior to describe the cycling of matter by thermal convection;

(j) plan and conduct an investigation of the properties of water and its effects on earth materials and surface processes;

(k) develop a quantitative model to describe the cycling of carbon among the hydrosphere, atmosphere, geosphere, and biosphere;

(l) construct an argument based on evidence about the simultaneous coevolution of earth's systems and life on earth;

(m) use a model to describe how variations in the flow of energy into and out of earth's systems result in changes in climate;

(n) analyze geoscience data and the results from global climate models to make an evidence-based forecast of the current rate of global or regional climate change and associated future impacts to earth systems;

(o) construct an explanation based on evidence for how the availability of natural resources, occurrence of natural hazards, and changes in climate have influenced human activity;

(p) evaluate competing design solutions for developing, managing, and

utilizing energy and mineral resources based on cost-benefit ratios;

(q) create a computational simulation to illustrate the relationships among management of natural resources, the sustainability of human populations, biodiversity, and investigate and explain how some American Indian tribes use scientific knowledge and practices in managing natural resources; and

(r) evaluate or refine a technological solution that reduces impacts of human activities on natural systems.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

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

10.53.101 EXPLANATION OF THE CONTENT STANDARDS (1) through (1)(b) remain the same.

(c) mathematics; ~~and~~

(d) arts;

(e) health and physical education; and

(f) science.

(2) remains the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.2501 EXPLANATION OF THE CONTENT AND PERFORMANCE STANDARDS (1) The content and performance standards shall be used by school districts to develop local curriculum and assessment in content areas including: library media; ~~science~~; social studies; technology; world languages; workplace competencies; and career and vocational/ technical education. The K-12 content standards describe what students shall know, understand, and be able to do in these content areas. Benchmarks define the expectations for students' knowledge, skills, and abilities along a developmental continuum in each content area. Progress toward meeting these standards is measured at three points along that continuum: the end of grade 4, the end of grade 8, and upon graduation. Performance standards define the quality of student performance and describe the performance to be demonstrated. Performance level descriptions provide a picture or profile of student achievement at the four performance levels: advanced, proficient, nearing proficiency, and novice.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

5. The board proposes to repeal the following rules:

10.54.5010 SCIENCE CONTENT STANDARD 1, AUTH: 20-2-114, MCA;  
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5011 BENCHMARK FOR SCIENCE CONTENT STANDARD 1 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5012 BENCHMARK FOR SCIENCE CONTENT STANDARD 1 FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5013 BENCHMARK FOR SCIENCE CONTENT STANDARD 1 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5020 SCIENCE CONTENT STANDARD 2, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5021 BENCHMARK FOR SCIENCE CONTENT STANDARD 2 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5022 BENCHMARK FOR SCIENCE CONTENT STANDARD 2 FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5023 BENCHMARK FOR SCIENCE CONTENT STANDARD 2 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5030 SCIENCE CONTENT STANDARD 3, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5031 BENCHMARK FOR SCIENCE CONTENT STANDARD 3 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5032 BENCHMARK FOR SCIENCE CONTENT STANDARD 3 FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5033 BENCHMARK FOR SCIENCE CONTENT STANDARD 3 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5040 SCIENCE CONTENT STANDARD 4, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5041 BENCHMARK FOR SCIENCE CONTENT STANDARD 4 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5042 BENCHMARK FOR SCIENCE CONTENT STANDARD 4 FOR

END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5043 BENCHMARK FOR SCIENCE CONTENT STANDARD 4 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5050 SCIENCE CONTENT STANDARD 5, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5051 BENCHMARK FOR SCIENCE CONTENT STANDARD 5 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5052 BENCHMARK FOR SCIENCE CONTENT STANDARD 5 FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5053 BENCHMARK FOR SCIENCE CONTENT STANDARD 5 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5060 SCIENCE CONTENT STANDARD 6, AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5061 BENCHMARK FOR SCIENCE CONTENT STANDARD 6 FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5062 BENCHMARK FOR SCIENCE CONTENT STANDARD 6 FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5063 BENCHMARK FOR SCIENCE CONTENT STANDARD 6 UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5087 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5088 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5089 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5090 NOVICE SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 4, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5091 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5092 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5093 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5094 NOVICE SCIENCE PERFORMANCE DESCRIPTORS FOR END OF GRADE 8, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5095 ADVANCED SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5096 PROFICIENT SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5097 NEARING-PROFICIENCY SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

10.54.5098 NOVICE SCIENCE PERFORMANCE DESCRIPTORS UPON GRADUATION, AUTH: 20-2-114, MCA; IMP: 20-1-501, 20-2-121, 20-3-106, 20-7-101, MCA

6. Statement of Reasonable Necessity: The Board of Public Education has determined it is reasonable and necessary to adopt, amend, and repeal rules relating to science content standards pursuant to ARM 10.54.2503 Standards Review Schedule and ARM 10.53.104 Standards Review Schedule. The board has determined that to stay consistent with the legislative intent of Senate Bill 152 of the 2005 Legislative Session it must review and make contemporary amendments to its standards. The Legislature recognizes the need to reassess educational needs on a cyclical basis and the board recognizes its standards represent the minimum standards. These standards are the basis upon which a quality system of education is built and maintained. The board strives to conform to a regular review cycle for every chapter of accreditation. The standards review process shall use context information, criteria, processes, and procedures identified by the Office of Public Instruction with input from representatives of accredited schools and in accordance with the requirements of 20-7-101, MCA.

Using a negotiated rulemaking process involving stakeholder groups,

Superintendent of Public Instruction Denise Juneau has developed recommendations for the revision of the Montana Science Content Standards. The current science standards were adopted in 2006. In order to benefit students, it is important to implement standards that are based on current knowledge and understanding of best practices in science. The proposed standards include three disciplines of science including physical, life, and earth and space sciences.

The board also proposes to include in the authorizing and implementing statutes a citation to its constitutional authority requiring the board "to exercise general supervision over the public school system." This inclusion would recognize the board's constitutional authority to conduct rulemaking.

7. Economic impact statement summary: The Office of Public Instruction (OPI) surveyed school districts in April-May, 2016 about the impact of the proposed standards on district resources for staffing, instructional materials, curriculum development, and professional development. Sixty-five percent of respondents indicated that their district could implement the proposed standards using existing resources. Of the remaining respondents, many of these districts face challenges in meeting the current standards. A majority of the respondents in this group indicated that they have a shortage of time and materials for curriculum development and professional development. A smaller number face challenges finding teachers endorsed in the sciences and/or finding instructional materials.

The OPI has identified \$259,330 in school year 2016-17, \$218,830 in 2017-18, and \$64,330 in 2018-19 to support the implementation of the proposed science standards. In addition to this funding, the OPI will make a legislative request of an additional \$100,000 for the 2017 biennium to support the implementation. This funding will provide for face-to-face trainings in nine regions throughout the state and online professional development opportunities with the intent of providing all teachers at all grade levels with access to professional development opportunities to support science teaching and learning. The OPI will also develop a model curriculum guide and instructional resources to assist school districts with curriculum development. For those districts that are having trouble meeting the current standards, the statewide trainings and model curriculum guide may provide more support than the districts are presently receiving. The OPI estimates that not all school districts will be able to absorb, in their existing budgets, the cost of modifying their science curriculum to align with the proposed standards.

8. The proposed effective date of these rules is July 1, 2017.

9. 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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail [pdonovan@mt.gov](mailto:pdonovan@mt.gov) and must be received no later than 5:00 p.m., September 6, 2016.



10. Peter Donovan has been designated to preside over and conduct this hearing.

11. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 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 9 above or may be made by completing a request form at any rules hearing held by the board.

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

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

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

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Sharon Carroll  
Sharon Carroll  
Board Chair  
Board of Public Education

Certified to the Secretary of State July 25, 2016.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules	)	NOTICE OF PROPOSED
I through V; transfer and amendment of	)	ADOPTION, TRANSFER AND
ARM 18.9.101, 18.9.102, 18.9.103,	)	AMENDMENT, TRANSFER, AND
18.9.104, 18.9.105, 18.9.108, 18.9.109,	)	REPEAL
18.9.111, 18.9.116, 18.9.117, 18.9.118,	)	
18.9.201, 18.9.202, 18.9.203, 18.9.204,	)	NO PUBLIC HEARING
18.9.205, 18.9.302, 18.9.303, 18.9.306,	)	CONTEMPLATED
18.9.311, 18.9.312, 18.9.321, 18.9.326,	)	
18.9.401, 18.9.403, 18.9.501, 18.9.703,	)	
18.9.705, 18.10.103, 18.10.104,	)	
18.10.105, 18.10.108, 18.10.110,	)	
18.10.111, 18.10.112, 18.10.121,	)	
18.10.124, 18.10.125, 18.10.313,	)	
18.10.314, 18.10.324, 18.10.406,	)	
18.10.407, 18.11.102, 18.11.103,	)	
18.11.104; 18.11.105, 18.11.106; transfer	)	
of ARM 18.9.603, 18.9.605, 18.9.606,	)	
18.9.607, 18.9.608, 18.9.701, 18.10.106,	)	
18.10.503, 18.10.504, 18.10.505,	)	
18.10.506, 18.10.507; and repeal of ARM	)	
18.9.112, 18.9.325, 18.9.402, 18.9.601,	)	
18.9.602, 18.9.704, 18.10.107, 18.10.201,	)	
18.10.202, 18.10.301, 18.10.302,	)	
18.10.321, 18.10.322, 18.10.323, 18.10.404,	)	
and 18.11.101 pertaining to Motor Fuels	)	
Tax	)	

TO: All Concerned Persons

1. On September 5, 2016, the Department of Transportation proposes to adopt, transfer and amend, transfer, and repeal 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 August 26, 2016, to advise us of the nature of the accommodation that you need. Please contact Tracy Halubka, Department of Transportation, Motor Fuels Section, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0806; fax (406) 444-5411; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail [thalubka@mt.gov](mailto:thalubka@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 2015 Legislature enacted Chapter 220, Laws of 2015 (House Bill 99), an act generally

revising the administration of gasoline and special fuel taxes; and combining the gasoline tax and special fuel tax into one part of law. The bill combined previously separate chapters on basic gasoline license tax and special fuel users tax to more accurately reflect their common tax methods and update tax collection methods now being done through the International Fuel Tax Agreement (IFTA) processes. The bill became effective October 1, 2015.

The department is adopting New Rules I through V and amending other existing rules to conform to the new legislative changes and implement the bill on gasoline and special fuel taxes.

Additional changes include replacing out-of-date terminology for current language and processes, repealing unnecessary or redundant rules, and amending rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for the reader. A transfer table is included to show the new organization of the rules, to better organize existing and new rules in a more logical sequence. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules, provide the complete source of the department's rulemaking authority, and delete references to repealed statutes. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

NEW RULE I DEFINITIONS The following definitions apply in this chapter:

(1) "Act" means the "Ethanol Tax Incentive and Administration Act," Title 15, chapter 70, part 5, MCA.

(2) "Automobile" is a self-propelled passenger vehicle that usually has four wheels and an internal combustion engine and is not a pick-up truck or truck. This vehicle is commonly referred to as a car or automobile.

(3) "Bulk storage" means a container or tank holding any fuels for storage, other than the supply tank of a motor vehicle or any internal combustion engine or motor fuel placed in storage at refineries or pipeline terminals.

(4) "Combination" is a motor vehicle used, designed, or maintained for transportation of persons or property and has two or more axles whose gross weight exceeds 46,000 pounds or a combination of vehicles whose combined licensed weight exceeds 46,000 pounds.

(5) "Consecutive twelve months" means state fiscal year, July 1 through June 30.

(6) "Department" means the Department of Transportation.

(7) "Division" means the administration division, Department of Transportation.

(8) "EDI" means Electronic Data Interchange.

(9) "EFT" means Electronic Funds Transfer.

(10) "Ethanol" means anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products, or from non-Montana agricultural products when Montana products are not available.

(11) "Gross earned agricultural or farm income" means all taxable income and wages, before expenses, a person or business receives from: cultivating,

operating, or managing a farm for gain or profit, either as owner or tenant; operating a livestock, dairy, poultry, fish, fur-bearing animals, or horticultural commodities business; operating a feed yard for the fattening of cattle; operating a fruit or truck farm; operating an agricultural commodities business; operating a plantation, ranch, range, nursery or orchard; and sale of crop shares if the person materially participates in producing the crop.

(12) "Gross earned income" means all taxable income and wages, before expenses, a person or business earns from: services, sale of goods, working for someone, or working in a business the person owns or operates. Examples of gross earned income generally include but are not limited to: wages, salaries, tips, and other taxable employee pay; union strike benefits; long-term disability benefits received prior to minimum retirement age; earnings from self-employment if the person owns or operates their own business; and gross income received as a statutory employee. Examples of gross income that are not considered earned include: passive income, such as interest, dividends, and capital gains; retirement income; social security; unemployment benefits; alimony; and child support.

(13) "Pick-up truck" is a vehicle licensed under a flat gross vehicle weight (GVW) fee and has a manufacturer's rated capacity of 1/4 ton, 1/2 ton, 3/4 ton, or one ton. This vehicle, regardless of how it is registered and plated, is also commonly known as a pick-up truck, van, or sport utility vehicle.

(14) "Point specified" for purposes of the starting point of the temporary special fuel agricultural permit means the point where the person first crosses the border into Montana.

(15) "Radius" for purposes of measuring the area of the temporary special fuel agricultural permit is measured in air miles.

(16) "Seizure list" means a list containing the names of companies appearing on the warning list that have been issued a notice to appear for improperly importing fuel.

(17) "Taxpayer" means "Person" as described in 15-70-401(18), MCA.

(18) "Truck" is a vehicle licensed under graduating gross vehicle weight (GVW) fees and has a manufacturer's rated capacity exceeding one ton, but not exceeding 46,000 pounds.

(19) "Warning list" means a list established and maintained by the department indicating that a warning notice has been issued to a transporter for improperly importing fuel.

(20) "Written plan" means a detailed proposed business plan providing information that allows the department to estimate the ethanol incentive tax reservation of funds.

AUTH: 15-70-104, 15-70-115, 15-70-522, MCA

IMP: 15-70-403, 15-70-419, 15-70-426, 15-70-430, 15-70-455, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

REASON: The proposed new rule is necessary to combine six existing definitional rules scattered throughout three different ARM chapters into one rule which will apply throughout the entire new Motor Fuels chapter. Three new definitions are also

being added at (8), (9), and (17) to define terms used as part of the new electronic filing and payment process.

NEW RULE II DEPARTMENT DETERMINATION OF COST

EFFECTIVENESS FOR ACCOUNT WRITE-OFF (1) The department may write-off any tax, penalty, or interest, when the department determines it is no longer cost effective to attempt further collection. The reason for the write-off must be documented in either the system notes or the hard file.

(2) The department's decision to write-off collection of accounts is based on the following:

(a) the department's inability to locate delinquent taxpayers to properly provide notification of assessments or the taxpayer's right to a hearing;

(b) the department's inability to reduce the assessment to a judgment lien by filing a warrant for distraint within a reasonable time;

(c) the anticipated cost of collection significantly exceeds the projected amount of recovery in accordance with existing department collection policies;

(d) the time period for collection provided by law has expired; or

(e) the taxpayer is deceased and the department is unable to locate either an estate or pending probate, or any property or other assets vested in the taxpayer's name.

(3) Unpaid tax obligations are not forgiven and are still payable after the department writes off the obligation and discontinues collection efforts. The department will not actively incur further expense to attempt collection on these obligations, but may resume active collection of an account if:

(a) the time period for collection of the assessment or a filed warrant for distraint has not expired; and

(b) the department receives information which significantly changes the original basis for write-off.

(4) The financial condition of a delinquent taxpayer is not considered for write-off of an obligation unless one or more of the elements set forth in (2) is present, or unless a properly completed closing agreement has been authorized.

(5) Upon the final decision of a United States bankruptcy court, barring further collection of a debt, the department shall write off the obligation and permanently discontinue collection of any tax, penalty, or interest.

AUTH: 15-70-105, MCA

IMP: 15-70-105, MCA

REASON: The proposed new rule is necessary to establish the circumstances under which it is no longer cost-effective to pursue collection of tax, penalty, or interest.

NEW RULE III COORDINATION OF TAX RETURN WITH PAYMENT OF

TAX BY EFT (1) To ensure proper receipt and credit of tax return and payment of tax, the department shall assign a unique license number to each taxpayer account based upon the taxpayer identification number provided to the department by the

taxpayer. Both the tax return and payment are credited to the specific account identified within the department's electronic file, on receipt.

AUTH: 15-70-115, MCA

IMP: 15-70-115, MCA

REASON: The proposed new rule is necessary to coordinate the filing of tax returns with the payment of taxes by electronic funds transfer and to ensure proper receipt of information and credit of payment.

NEW RULE IV ELECTRONIC FILING STANDARDS AND METHODS

(1) The department shall adopt the Federation of Tax Administrators (FTA), Motor Fuels Tax Section; Uniformity Project standards to receive electronic funds transfer messages, and electronic data interchange which allows receipt of filed tax returns and other required information for taxpayers licensed under 15-70-402, MCA. A copy of the FTA Uniformity Project standards may be obtained at [www.taxadmin.org/uniformity-project](http://www.taxadmin.org/uniformity-project).

(2) The department shall adopt Motor Fuel Licensing/Reporting Guidelines and post a copy on the department's web page. The department shall provide each taxpayer with instruction to find the guidelines. The department shall notify each licensed taxpayer of any changes prior to implementation of those changes.

(3) A taxpayer may file the required 15-70-410, MCA, monthly statement by EDI, by manually entering detailed schedule information on the department's motor fuel system's web pages, or on paper forms prescribed by the department, for a taxpayer who qualifies under these administrative rules.

(4) The department may contract with a vendor to provide an electronic filing option to taxpayers licensed under the International Fuel Tax Agreement (IFTA) pursuant to 15-70-121, MCA. The department shall provide IFTA Reporting Guidelines to a taxpayer upon licensing and shall notify a licensed taxpayer of any changes prior to implementation of these changes.

AUTH: 15-70-115, MCA

IMP: 15-70-115, MCA

REASON: The proposed new rule is necessary to coordinate the filing of tax returns with the payment of taxes by electronic funds transfer and to ensure proper receipt of information and credit of payment.

NEW RULE V ELECTRONIC FUNDS TRANSFER (1) A taxpayer licensed under 15-70-402, MCA, may pay electronically by either Automated Clearing House (ACH) credit or ACH debit, and may change methods with no restriction by the department. A taxpayer must provide the department reasonable time to initiate ACH debit by providing accurate banking information at least five days prior to the payment due date as prescribed in 15-70-113, MCA.

(2) A taxpayer licensed under 15-70-121, MCA, may pay electronically through the State of Montana contracted electronic payment process, by any method(s) offered by the contractor.

(3) An electronic funds transfer message must include the company name, account number, and tax period(s) being paid to ensure proper receipt and credit of the payment.

AUTH: 15-70-115, MCA

IMP: 15-70-115, MCA

REASON: The proposed new rule is necessary to coordinate the filing of tax returns with the payment of taxes by electronic funds transfer and to ensure proper receipt of information and credit of payment.

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

18.9.101 (18.15.201) DETERMINATION OF WHEN GASOLINE, SPECIAL FUEL, OR AVIATION FUEL DISTRIBUTED (1) through (4) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-201, 15-70-204, 15-70-301, 15-70-321~~ 15-70-401, 15-70-403,  
MCA

18.9.102 (18.15.202) DISTRIBUTOR'S BOND (1) and (2) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-202, 15-70-204, 15-70-344~~ 15-70-402, MCA

18.9.103 (18.15.203) DISTRIBUTOR'S STATEMENTS (1) Every distributor must file a monthly distributor's license tax report, on a form furnished by the department within the time prescribed by ~~15-70-205 and/or 15-70-344~~ 15-70-410, MCA. Supporting detail schedules on forms furnished by the department must accompany the distributor's license tax report, with all letters of explanation of credit deduction and the payment of the license tax due.

(2) remains the same.

(3) A licensed distributor who is subject to ~~15-70-205 and/or 15-70-344~~ 15-70-410, MCA, must file electronically in a format prescribed by the department. Licensed distributors who report a combination of 99,999 gallons or less of gasoline and/or special fuel within a year may choose to file electronically or on paper forms prescribed by the department.

(4) remains the same.

(5) The distributor must use the bill of lading number generated by the originating terminal to report each load of fuel.

AUTH: 15-70-104, 15-70-115, MCA

IMP: 15-70-112, 15-70-113, 15-70-114, 15-70-115, ~~15-70-205, 15-70-344~~ 15-70-410, MCA

REASON: The proposed amendment is necessary to clarify a consistent method of reporting each load of fuel.

18.9.104 (18.15.204) DISTRIBUTOR'S RECORDS (1) remains the same.

(2) Every refinery and terminal in the state must submit to the department monthly a copy of each bill of lading issued at the time of withdrawal, or the terminal operator report, upon request. The department may waive the hard copy in lieu of electronic filing format.

AUTH: 15-70-104, 15-70-115, MCA

IMP: 15-70-112, 15-70-113, 15-70-114, 15-70-115, ~~15-70-206, 15-70-345~~ 15-70-411, MCA

REASON: The proposed amendment is necessary to verify that all fuel claimed as exempt from tax based on terminal transfer matches the federal terminal operator report.

18.9.105 (18.15.205) DISTRIBUTOR'S INVOICE (1) and (2) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-206, 15-70-207, 15-70-345, 15-70-348~~ 15-70-411, 15-70-412, MCA

18.9.108 (18.15.210) WHOLESALE DISTRIBUTOR (1) and (1)(a) remain the same.

(b) elects to become licensed under ~~15-70-201 and 15-70-301~~ 15-70-401, MCA, to assume the Montana state gasoline, special fuel, or aviation fuel tax liability and the other obligations of a "distributor" pursuant to Title 15, chapter 70, parts ~~2 and 3~~ 4, MCA, and these rules.

(2) and (3) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-201, 15-70-301~~ 15-70-401, MCA

18.9.109 (18.15.211) WHOLESALE DISTRIBUTOR'S OBLIGATIONS (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-201, 15-70-202, 15-70-301, 15-70-341~~ 15-70-401, 15-70-402, MCA

18.9.111 (18.15.217) ETHANOL-BLENDED GASOLINE BLENDEES (1)

Pursuant to ~~15-70-201~~ 15-70-401, MCA, a person who blends ethanol with gasoline to produce ethanol-blended gasoline is a "distributor" if no tax has been paid on the ethanol or gasoline blended to produce ethanol-blended gasoline. As a distributor, the ethanol-blended gasoline blender is responsible for paying the tax on all the



ethanol and gasoline which has not been taxed and which is used to produce ethanol-blended gasoline. If the person qualifies as a distributor solely on the basis of blending ethanol and gasoline, the person is a distributor only with respect to the ethanol and gasoline used to produce ethanol-blended gasoline.

(2) The blending of ethanol with gasoline to produce ethanol-blended gasoline does not make the ethanol-blended gasoline blender a distributor for the purpose of the payment of the tax due on gasoline not blended with ethanol to produce ethanol-blended gasoline. If the ethanol-blended gasoline blender receives gasoline upon which no tax has been paid and not used to produce ethanol-blended gasoline, the blender must qualify as and meet all the requirements to be either a distributor under ~~15-70-201~~ 15-70-401, MCA, or a "wholesale distributor" under ~~15-70-201~~ 15-70-401, MCA, and pay the tax. ~~Sections 15-70-201 and 15-70-301, MCA, are the requirements for being a distributor or wholesale distributor on a basis other than being a ethanol blended gasoline blender. Only if the ethanol blended gasoline blender qualifies under these other requirements can that blender purchase gasoline without tax for resale as gasoline.~~

(3) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-201, 15-70-204, 15-70-301~~ 15-70-401, MCA

REASON: The proposed amendment is necessary to update statutory references and delete references to repealed statutes.

18.9.116 (18.15.225) INCIDENCE OF THE FUEL TAX (1) remains the same.

AUTH: ~~This rule is advisory only, but may be a correct interpretation of the law,~~ 15-70-104, MCA

IMP: ~~15-70-202, 15-70-344~~ 15-70-402, MCA

18.9.117 (18.15.226) DISTRIBUTOR - SUPPORTING DOCUMENTATION FOR BAD DEBT CREDIT (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-221, 15-70-225, 15-70-328, 15-70-364~~ 15-70-425, 15-70-432, MCA

18.9.118 (18.15.227) PREPAYMENT OF MOTOR FUEL TAXES (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-210, 15-70-352~~ 15-70-417, MCA

18.9.201 (18.15.301) INTRASTATE FUEL DELIVERIES (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-204, 15-70-343~~ 15-70-403, MCA

18.9.202 (18.15.302) EXPORT DELIVERIES (1) through (3) remain the same.

AUTH: 15-70-104, 75-11-319, MCA

IMP: ~~15-70-204, 15-70-221 15-70-356~~ 15-70-403, 15-70-425, MCA

18.9.203 (18.15.303) IMPORT DELIVERIES (1) and (2) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-204, 15-70-324~~ 15-70-403, MCA

18.9.204 (18.15.304) BLENDING STOCKS (1) Distributors may transfer casinghead or catalytic blending stocks to other licensed distributors without the payment of tax; provided these products will be used for blending purposes only and the blended product will be distributed as either gasoline or special fuel.

AUTH: 15-70-104, MCA

IMP: 15-70-201, 15-70-204, 15-70-301, 15-70-321, 15-70-401, 15-70-403,  
MCA

REASON: The proposed amendment is necessary to include blending stock used for either special fuel or gasoline in this rule.

18.9.205 (18.15.305) EXEMPTION - U.S. AND OTHER STATES (1)

Licensed distributors making sales of gasoline, special fuel, or aviation fuel, to the United States government or a state entity FOB rack for use by the purchaser out of the state of Montana must report the sale as a credit to the amount of gasoline, special fuel, or aviation fuel distributed on the distributor's monthly statement as an export required by ~~15-70-205 and 15-70-344~~ 15-70-410, MCA.

AUTH: 15-70-104, MCA

IMP: ~~15-70-204, 15-70-205, 15-70-321, 15-70-344~~ 15-70-403, 15-70-410  
MCA

18.9.302 (18.15.401) SELLER'S INVOICE (1) Any person, ~~other than a licensed distributor~~, who sells and delivers gasoline or special fuel to a purchaser on which a refund may be claimed, must issue an original invoice at the time of delivery, ~~showing the number of gallons delivered. Each invoice issued must be an original invoice.~~ Only one original invoice may be issued for each delivery. If all information is not provided on the original invoice at the time of delivery, the applicant may provide a copy of the corresponding billing statement with the original invoice that supports the missing information. ~~In addition to these requirements, each~~ Each

invoice and accompanying billing statement collectively must contain or show the following:

- (a) remains the same.
- (b) name or account number of purchaser;
- (c) through (2) remain the same.

AUTH: ~~5-70-104~~ 15-70-104, MCA

IMP: ~~15-70-206, 15-70-207, 15-70-222, 15-70-345, 15-70-348 15-70-361~~ 15-70-411, 15-70-412, 15-70-426, MCA

REASON: The proposed amendment is necessary to include licensed distributors who sell fuel on which a refund may be claimed. In addition, the proposed amendments allow the department to verify that all fuel claimed for tax refund is supported with accurate documentation without penalizing taxpayers.

18.9.303 (18.15.402) FILING INVOICES (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-222, 15-70-361~~ 15-70-426, MCA

18.9.306 (18.15.408) REFUND PERCENTAGES FOR PTO OR AUXILIARY ENGINES (1) remains the same.

(2) The following percentages are allowed for the refund of gasoline or special fuel used in operating a PTO or auxiliary engines when the above records are maintained. The amounts are specified as a percentage of the total taxable fuel used by the vehicle. Work performed in accordance with ~~15-70-324~~ 15-70-403(6) or (7), MCA, is not eligible for a refund. The percentages are:

Water and oil well drilling rigs	80%
Cement mixing/concrete pumping trucks	30%
Sanitation/garbage trucks/septic pumps	30%
Sewer cleaning/jet vactor	30%
Super suckers	30%
Fire trucks	30%
Mobile cranes	30%
Line truck with digger/aerial lift	25%
Refrigeration trucks	25%
Sweeper trucks (must be motor vehicle)	25%
Self loaders/boom truck (i.e., logging trucks)	20%
Truck with hydraulic winch	20%
Wrecker	20%
Semi-wrecker	20%
Service truck with jack hammer/drill/crane	20%
Oil and water well service trucks	20%
Bulk feed truck	20%
Dump trailer trucks	20%
Dump trucks	20%
Hot asphalt distribution truck	20%

Leaf truck	20%
Pneumatic tank truck	20%
Salt spreader on dump truck	20%
Seeder truck	20%
Snow plow	20%
Spray truck	20%
Tank transport	20%
Tank trucks	20%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
All others, including auxiliary engines under 15 horsepower	7.5%

AUTH: 15-70-104, MCA

IMP: ~~15-70-222, 15-70-364~~ 15-70-426, MCA

18.9.311 (18.15.409) LOST OR DESTROYED GASOLINE, SPECIAL FUEL, OR AVIATION FUEL (1) The department of transportation reserves the right to demand from a person claiming a refund under the provisions of ~~15-70-221 through 15-70-226, and 15-70-356 through 15-70-365~~ 15-70-425, 15-70-426, 15-70-432, or 15-70-434, MCA, that positive proof be submitted of the exact amount of the loss and facts indicating the gasoline, special fuel, or aviation fuel was never used on the highway or in the air. In offering this proof, the following procedures apply must be strictly adhered to by the person claiming the refund:

(a) through (2) remain the same.

AUTH: 15-70-104, 75-11-319, MCA

IMP: ~~15-70-222, 15-70-364~~ 15-70-425, 15-70-426, 15-70-432, 15-70-434, MCA

REASON: The proposed rule amendment is necessary to delete references to repealed statutes and clarify rule language for ease of use.

18.9.312 (18.15.410) GASOLINE, SPECIAL FUEL, OR AVIATION FUEL LOST FROM STORAGE (1) and (2) remain the same.

AUTH: 15-70-104, 75-11-319, MCA

IMP: ~~15-70-222, 15-70-364~~ 15-70-425, 15-70-426, 15-70-432, 15-70-434, MCA

18.9.321 (18.15.411) PROCESSING CLAIMS FOR REFUNDS (1) ~~Upon receipt of an application for refund of fuel tax, the department of transportation has 120 working days after receiving the claim to approve or reject it.~~

(2) ~~After approval of the claim, the department will process the refund.~~

(3)(1) ~~After rejection of the claim~~ If any claim or any part of a claim is rejected, the department may, after investigation, require the claimant to file an amended statement before action is taken. If the taxpayer submits an amended

claim, the claim is reasonable, and the taxpayer has furnished substantial proof, the department in its discretion may accept the amended claim.

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

AUTH: 15-70-104, MCA

IMP: ~~15-70-225, 15-70-226, 15-70-364, 15-70-365~~ 15-70-432, 15-70-434,  
MCA

REASON: The update is needed to remove duplicate language present in 15-70-434, MCA, and to clarify the method of amended claims.

18.9.326 (18.15.412) AGRICULTURAL USE FUEL TAX REFUND (1) and (2) remain the same.

(3) To determine an applicant's eligibility for fuel tax refund under ~~15-70-223 and 15-70-362~~, 15-70-430, MCA, the ratio between the gross earned agricultural or farm income to the total gross earned income must be determined as follows:

(a) through (4) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-223, 15-70-362~~ 15-70-430, MCA

18.9.401 (18.15.218) TREATMENT OF ETHANOL-BLENDED GASOLINE

(1) For the purposes of Title 15, chapter 70, MCA, reference to gasoline includes ethanol-blended gasoline (regardless of where produced and how produced). Gasoline and ethanol-blended gasoline are taxed at the rate specified in ~~15-70-204~~ 15-70-403, MCA.

~~(2) This rule, as amended, is effective for taxable periods beginning on and after July 1, 1983.~~

AUTH: 15-70-104, MCA

IMP: ~~15-70-201, 15-70-204~~ 15-70-401, 15-70-403, MCA

18.9.403 (18.15.219) ETHANOL CONTENT (1) remains the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-201~~ 15-70-401, MCA

18.9.501 (18.15.701) ETHANOL DISTRIBUTORS (1) It is the responsibility of the ethanol distributor, including anyone who imports ethanol, to collect and remit to the ~~Department of Transportation~~ department the tax that is due on the ethanol pursuant to ~~15-70-204~~ 15-70-403, MCA.

~~(2) This rule is effective for taxable periods beginning on and after July 1, 1983.~~

AUTH: 15-70-104, MCA

IMP: 15-70-512, 15-70-523, MCA

18.9.703 (18.15.103) PRORATION OF INTEREST AND PAYMENT

APPLICATION (1) ~~Interest charged on delinquent gasoline, special fuel, compressed natural gas and liquefied petroleum gases taxes is 12% a year or 1% a month. Partial payments for a customer's tax liability, including credits, apply as directed by the customer as to account type, period, or otherwise.~~

~~(2) Interest will be calculated daily using the rate arrived at by dividing 12% interest per year by 365 days. If customer direction is not provided, the payment is applied in full to the oldest period first in the following order:~~

~~(a) first to tax (dollar for dollar until satisfied);~~

~~(b) second to interest (if due); and~~

~~(c) third to penalty (if due).~~

~~(3) All payments for delinquent accounts, including credits, are first credited to tax, then any remaining excess credited to interest and then to penalty.~~

AUTH: 15-70-104, MCA

IMP: ~~15-70-210, 15-70-352, 15-70-353,~~ 15-70-417, 15-70-418, MCA

REASON: The rate of interest charged for each fuel tax type is already specified in law. The proposed rule is needed to authorize the customer to direct how the customer's fuel tax partial payment is applied if desired.

18.9.705 (18.15.111) LATE FILE AND PAY PENALTIES WHEN FILING

ELECTRONICALLY (1) An electronic payment is considered late and is subject to the penalties under ~~15-70-210 and 15-70-352~~ 15-70-121 and 15-70-417, MCA, when it is not received by the state's designated depository by 11:59 p.m. on the day that it is due as required under 15-70-113, MCA.

(2) If an electronic payment is initiated by the ~~Department of Transportation department~~ and it arrives late through no fault of the ~~licensed distributor licensee,~~ and there were sufficient funds to cover the ~~licensed distributor's licensee's~~ motor fuel tax liability, no penalty or interest shall be assessed.

(3) A motor fuel tax return that is submitted electronically to the ~~Department of Transportation department~~ is considered late if it is not received by 11:59 p.m. on the day it is due as required under ~~15-70-205 and 15-70-344~~ 15-70-121 and 15-70-410, MCA.

(4) When an electronic payment is received late or when a payment that is initiated by the department does not have sufficient funds in the account, interest is charged from the ~~26th of the month~~ first day after the payment due date.

AUTH: 15-70-104, 15-70-115, MCA

IMP: 15-70-113, 15-70-114, 15-70-115, ~~15-70-205, 15-70-210, 15-70-330, 15-70-334,~~ 15-70-410, 15-70-417, MCA

REASON: The proposed amendments are necessary to expand rule to include IFTA carriers.

18.10.103 (18.15.118) DETERMINATION OF PUBLIC ROADS AND

HIGHWAYS (1) Streets, roads, highways, alleys, county roads, county gravel

roads, forest service roads (except forest service development roads) and their related structures are accepted as public roads as defined in ~~15-70-301~~ 15-70-401, MCA. A public road may be under new construction, reconstruction, relocation, or repair, even though it is not recognized as part of the maintained highway system.

AUTH: 15-70-104, MCA  
IMP: ~~15-70-301~~ 15-70-401, MCA

18.10.104 (18.15.119) LIABILITY FOR USE ON GOVERNMENT MAINTAINED ROADS (1) remains the same.

AUTH: 15-70-104, MCA  
IMP: ~~15-70-301~~ 15-70-401, MCA

18.10.105 (18.15.120) WHAT CONSTITUTES SPECIAL FUEL (1) ~~Fuel taxable under the Special Fuel Tax Act includes~~ Special fuel as defined in 15-70-401, MCA, includes diesel fuel, stove oils, heating oils, burner fuels, kerosene, or any other combination of hydrocarbon fuels used for the operation of motor vehicles, except fuels subject to the gasoline license tax or to the license tax on vehicles operated by liquefied petroleum gas or compressed natural gas.

AUTH: 15-70-104, MCA  
IMP: ~~15-70-301~~ 15-70-401, MCA

REASON: The proposed change is requested to accommodate the repeal of the Special Fuel Tax Act and apply the clarification of special fuel to the Gasoline and Special Fuel Tax Act.

18.10.108 (18.15.501) ESTIMATE OF DIESEL POWERED VEHICLES SUPPLY TANKS (1) through (4) remain the same.

AUTH: 15-70-104, 61-10-155, MCA  
IMP: ~~15-70-321, 15-70-330~~ 15-70-403, 15-70-411, 61-10-141, MCA

18.10.110 (18.15.502) OFF-HIGHWAY VEHICLE/EQUIPMENT (1) through (4) remain the same.

AUTH: 15-70-104, ~~15-70-330~~, 15-70-441, MCA  
IMP: ~~15-70-330~~ 15-70-441, MCA

18.10.111 (18.15.503) DYED SPECIAL FUEL ALLOWANCE (1) remains the same.

AUTH: 15-70-104, ~~15-70-330~~, 15-70-441, MCA  
IMP: ~~15-70-301, 15-70-330~~ 15-70-401, 15-70-441, MCA

18.10.112 (18.15.504) DYED SPECIAL FUEL (1) The department has adopted the following provisions relating to dye color and concentration requirements for tax-exempt diesel fuel, excluding buses and governmental vehicles.

(a) remains the same.

(b) The special fuel will satisfy the federal dyeing requirement if it contains the dye solvent red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard solvent red 26 or contains any dye of a type and in a concentration that has been approved by the commissioner of internal revenue service. The presence of dye at a concentration of 2.0 milligrams per liter (mg/l), or greater is considered to be in violation of ~~15-70-330~~ 15-70-441, MCA.

(2) Dyed special fuel can be purchased tax free in Montana and Canada, but it is illegal to use it on the public roads, regardless of where it was purchased, except for the movement of off-road vehicles traveling from one location to another as indicated in ~~ARM 18.10.110~~ these administrative rules and any vehicles described in ~~ARM 18.10.111~~ these administrative rules.

(3) ~~Motor carrier services division officers making a routine stop of a commercial vehicle or visiting a road construction project site may take a fuel sample from bulk tanks and supply tanks of vehicles, equipment and other internal combustion engines. The sample may be analyzed for dye concentration by a laboratory selected by the Montana Department of Transportation. The department will allow a grace period of ten days from the date of a dyed fuel inspection that resulted in a violation to remove the presence of dye from a vehicle before a subsequent violation may be issued. After the grace period, the operator of the vehicle may be cited for violation of 15-70-441, MCA.~~

(4) remains the same.

(5) Contractors may not store ~~and/or or~~ use ~~dyed~~ non-taxed diesel in equipment, motor vehicles, and stationary engines used upon public roads ~~and/or or~~ within MDT any public road project limits as defined in ~~15-70-321~~ 15-70-403, MCA, unless the fuel has been declared to the department. Contractors in violation of this section are subject to penalties upon conviction as defined in ~~15-70-330~~ 15-70-443, MCA, and may be suspended for up to 6 six months from participating in future ~~MDT department~~ contracts.

(6) and (7) remain the same.

AUTH: 15-70-104, ~~15-70-330~~ 15-70-441, 60-2-201, MCA

IMP: ~~15-70-321, 15-70-330~~ 15-70-443, 60-2-111, MCA

REASON: The proposed amendments are necessary to establish a grace period allowing a vehicle owner time to clean out the fuel tanks of a vehicle after a violation has been issued.

18.10.121 (18.15.602) QUARTERLY REPORTS - TAX PAYMENT (1) Every special fuel user ~~who is subject to 15-70-302~~ licensed under the International Fuel Tax Agreement (IFTA) pursuant to 15-70-121, MCA, must file with the department of ~~transportation, on forms prescribed by the department,~~ a report showing the amount of fuel used during the calendar quarter. Calendar quarters end on the last day of March, June, September, and December. The reports are due on or before the last



day of the month following the close of a calendar quarter. Reports shall must accompany a payment to the department of transportation for the total amount due.

(2) Every special fuel user ~~who is subject to 15-70-302, MCA,~~ licensed under IFTA, must submit the quarterly tax report regardless of the fuel usage. Failure to file the quarterly tax report in the time prescribed in ~~15-70-325, MCA,~~ the IFTA Agreement is considered sufficient cause for revocation of the ~~special fuel user's permit~~ IFTA license. The department shall revoke the IFTA license if the required tax report is not submitted to the department within 60 calendar days of the due date. An IFTA license revoked in error will be reinstated.

AUTH: 15-70-104, MCA

IMP: 15-70-121, ~~15-70-306, 15-70-325, 15-70-327,~~ MCA

REASON: The proposed amendment is necessary to clarify the filing requirements and to make the rule apply specifically to IFTA carriers.

18.10.124 (18.15.603) IFTA LICENSE BOND REQUIREMENT (1) through (2)(b) remain the same.

(c) ~~the license was previously revoked, but has been reinstated and the licensee has requested reinstatement of the license.~~

(3) and (4) remain the same.

(5) The department may waive the bond requirement if it is determined that the late filing or the nonpayment was not in the control of the licensee.

AUTH: 15-70-104, MCA

IMP: 15-70-121 ~~and 15-70-304,~~ MCA

REASON: The proposed amendments are necessary to clarify the rule for the licensee who has been revoked but wants to reinstate the license, and also to provide the department discretion when noncompliance was out of the control of the licensee.

18.10.125 (18.15.604) IFTA REINSTATEMENT FEE (1) remains the same.

AUTH: 15-70-104, MCA

IMP: 15-70-121 ~~15-70-305,~~ MCA

18.10.313 (18.15.610) TERMINATION OF A SPECIAL FUEL USER'S PERMIT AN IFTA LICENSE (1) Upon ceasing operations in Montana, each special fuel user ~~subject to 15-70-302, MCA~~ licensed under IFTA, shall:

(a) Submit a final return with the original ~~vehicle permit~~ license;

(b) remains the same.

(c) Request cancellation of ~~their special fuel user's permit~~ the IFTA license.

(2) Any attempt to use a canceled ~~permit~~ license is considered a violation of ~~15-70-302~~ 15-70-121, MCA, and subjects the violator to the penalty provisions of 15-70-458, MCA.

(3) When the user's ~~permit~~ IFTA license is revoked for noncompliance, the ~~permit license shall must~~ be surrendered and returned with reports through the date of the revocation. Any attempt to use a revoked ~~permit license~~ is considered a violation of ~~15-70-302~~ 15-70-121, MCA, and subject to the penalty provisions of ~~15-70-314~~ 15-70-458, MCA.

(4) An invalid ~~permit~~ IFTA license list is maintained by the department and is distributed to all motor carrier services officers in Montana. An ~~permit~~ IFTA license on the invalid list or a reproduction of such a ~~permit license~~ is subject to confiscation by enforcement officers, and a citation may be issued.

AUTH: 15-70-104, MCA

IMP: 15-70-121 ~~15-70-306~~, MCA

REASON: The proposed amendments are necessary to clarify filing requirements and to make the rule apply specifically to IFTA carriers.

18.10.314 (18.15.611) CONFISCATION OF CERTAIN PERMIT LICENSE COPIES (1) A reproduced copy of an ~~special fuel user's permit~~ IFTA license that is not clear and legible is invalid and is subject to confiscation by motor carrier services division personnel, and authorized employees of the department. The person from whom the ~~permit license~~ is confiscated may operate the vehicle by obtaining a clear and legible copy of the ~~permit license~~ or by purchasing a temporary trip permit pursuant to ~~15-70-314~~ 15-70-455, MCA.

(2) Confiscation of a reproduced copy of a ~~fuel user's permit~~ or Montana IFTA license under this rule does not affect the validity of the original ~~permit license~~ issued by the department.

AUTH: 15-70-104, MCA

IMP: ~~15-70-302, 15-70-314~~ 15-70-121, 15-70-455, MCA

REASON: The proposed amendments are necessary to clarify filing requirements, and to make the rule apply specifically to IFTA carriers.

18.10.324 (18.15.612) FAILURE TO MAINTAIN RECORDS (1) ~~The Department of Transportation considers the failure~~ Failure of a special fuel user, ~~who is subject to 15-70-302, MCA, licensed under IFTA to retain records as specified in 15-70-323, MCA, the IFTA Agreement to shall~~ constitute reasonable cause for the revocation of the IFTA License ~~special fuel user's permit under the provisions of 15-70-306, MCA. Records to be kept must~~ include special fuel purchase invoices, bills of lading, and trip records.

(2) ~~The Department of Transportation will, in the event~~ If a special fuel user, ~~who is subject to 15-70-302, MCA licensed under IFTA,~~ fails to retain the required records, the department shall estimate the miles traveled, special fuel purchases, and average miles per gallon to determine the special fuel permit holder's tax liability. ~~These~~ The estimates ~~will be are~~ based, ~~whenever possible,~~ on records for a portion of the operations of the special fuel user's vehicles consuming special fuels or other available information indicating fuel usage by the vehicles for which reports

are being made. ~~In those cases where~~ Where the records are not adequate to verify the average miles per gallon (ampg) reported, and the average cannot be estimated, an ampg specified in (4) will be used.

(3) If, within 30 days of the date the department issues an assessment based on the ampg, the special fuel user ~~who is subject to 15-70-302, MCA,~~ licensed under IFTA provides the department with adequate records to verify or estimate special fuel usage for the user's vehicles, the department ~~will~~ may review the records and adjust the assessment ~~to the extent necessary~~.

(4) ~~The Department of Transportation will,~~ In the event a special fuel user fails to retain the required records for fuel used in internal combustion engines to produce materials used on taxable projects, the department shall use the industry standard or other available information for special fuel usage by the internal combustion engines to calculate the formula for which reports are being made. In the event no industry standards are available, the following ampg standards will be used:

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

AUTH: 15-70-104, MCA

IMP: 15-70-121, ~~15-70-306, 15-70-323~~ 15-70-403, MCA

REASON: The proposed amendments are necessary to clarify the department's determination of highway use specifically for IFTA licensees when no records are available.

18.10.406 (18.15.418) CARDTROL COMPLIANCE AND ADMINISTRATION

(1) A special fuel seller is responsible for payment of the tax on dyed special fuel dispensed through a cardtrol, keylock, or similar device from an unattended pump or dispensing unit if the seller knows the fuel is sold to a customer who places the fuel directly into the supply tank of a vehicle not defined as or considered an off-road vehicle as in ~~ARM 18.10.110~~ defined in these administrative rules.

AUTH: 15-70-104, MCA

IMP: ~~15-70-321~~ 15-70-441, MCA

18.10.407 (18.15.419) STATEMENT FOR KEYLOCK CARDTROL REPORTING

(1) Any seller who sells gasoline or special fuel to a purchaser through a keylock or cardtrol on which a refund may be claimed in accordance with ~~15-70-223 and 15-70-362~~ 15-70-430, MCA, shall provide the purchaser with a statement of fuel purchased. The statement may be prepared as frequently as deemed necessary, but one statement must be issued at least every 30 days. To support the accuracy of the statement, the seller shall list or attach a list supporting all information used in the statement.

AUTH: 15-70-104, MCA

IMP: ~~15-70-223 and 15-70-362~~ 15-70-430, MCA

18.11.102 (18.15.126) SEIZING IMPROPERLY IMPORTED FUELS (1) If an MCS officer determines that ~~neither~~ the transporter, consignor, ~~nor or~~ consignee is not a licensed fuel distributor in the state of Montana, ~~and any one of the~~ transporters, consignors, or consignees is listed on the warning list ~~defined above~~, the MCS officer shall issue a notice to appear to the transporter, consignor, ~~and or~~ consignee for violation of ~~15-70-233 or 15-70-357~~ 15-70-402, MCA, for improperly importing fuel. Upon conviction, the company's name must be placed on the seizure list.

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

(c) Chief of the compliance bureau, Motor Carrier Services Division; or

(d) Area captain, Motor Carrier Services Division; ~~or~~

~~(e) Manager, FTMA unit.~~

(3) Upon obtaining approval to seize a load of fuel, an MCS officer shall escort the load to ~~a licensed fuel distributor in the state of Montana that is under contract with the department to receive and purchase seized fuel. The seized fuel must be escorted to the nearest licensed bulk distributor that indicates it can accept the entire load of fuel into bulk storage within 12 hours from the time approval to seize the load of fuel is received by the seizing officer~~ the nearest location designated by the department official authorizing seizure.

(4) and (4)(a) remain the same.

(b) Request that a towing company tow the entire tanker to the towing company's location to be impounded at the towing company's lot by the MCS officer. ~~In this case the transport company shall pay any towing and impoundment charges.~~

AUTH: 15-70-104, MCA

IMP: ~~15-70-233, 15-70-357~~ 15-70-419, MCA

REASON: The proposed amendments are necessary to clarify which department officials have authority to seize improperly imported fuel, and to better follow intent of statute.

18.11.103 (18.15.127) NOTIFICATION OF SEIZURE OF FUEL (1) and (2) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-233, 15-70-357~~ 15-70-419, MCA

18.11.104 (18.15.128) CONDUCT OF HEARING FOR CLAIM OR TITLE TO SEIZED FUEL (1) Upon receipt of a timely filed claim or request for hearing, the department shall schedule a hearing at department headquarters in Helena, Montana, or to be held by telephone, within 5 five working days of the receipt of the claim or request. ~~The hearing may be scheduled by telephone, but all interested~~ All proper parties shall be notified of the hearing date in writing, by certified mail, within 2 two working days from the of the hearing date the meeting was scheduled.

(2) The hearing ~~shall be~~ is conducted by a hearing examiner designated by the department's chief of staff who shall serve as the hearings officer. ~~If the chief of staff is unable to serve as the hearings officer, he shall select as an alternate a~~

~~division administrator from within the department who was not involved in the decision to seize the fuel in question. The hearing may include representation by the department's legal unit and FTMA unit for the purpose of legal and technical consultation only.~~

~~(3) The hearing may include all parties claiming interest or title to the seized fuel and their legal representatives.~~

~~(4) Upon the conclusion of the hearing, the hearings officer shall determine that either:~~

~~(a) The parties claiming interest or title to the fuel shall forfeit title and interest in the fuel and the department shall deposit the proceeds from the sale of the fuel into the general fund of the state of Montana within 5 working days less tax, penalty, transportation cost and administrative costs; or~~

~~(b) The department shall reimburse those claiming interest or title in the fuel the wholesale price of the fuel on the day it was seized, less tax and penalty owed to the state of Montana, within 10 working days from the date of final determination by the department.~~

~~(5) The department shall provide written notice of the determination of the hearings officer to those persons claiming interest or title to the seized fuel within 2 working days after the date of the hearing.~~

(3) The hearing must be conducted, a determination as to interest or title to the fuel made, and disposition of the seized fuel completed under 15-70-419, MCA.

AUTH: 15-70-104, MCA

IMP: ~~15-70-233, 15-70-357~~ 15-70-419, MCA

REASON: The proposed amendments are necessary to set forth the process for conducting a hearing for fuel seized by a peace officer is consistent with 15-70-419, MCA. The rule may not unnecessarily repeat statutory language.

18.11.105 (18.15.129) DETERMINATION OF WHOLESALE PRICE OF FUEL (1) through (3) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-233, 15-70-357~~ 15-70-419, MCA

18.11.106 (18.15.130) CONTRACTING FOR PURCHASE OF SEIZED FUEL (1) and (2) remain the same.

AUTH: 15-70-104, MCA

IMP: ~~15-70-233, 15-70-357~~ 15-70-419, MCA

6. The department proposes to transfer the following rules:

<u>OLD</u>	<u>NEW</u>	
18.9.603	18.15.702	AUTH: 15-70-104, 15-70-522, MCA; IMP: 15-70-522, MCA
18.9.605	18.15.703	AUTH: 15-70-104, MCA; IMP: 15-70-523, MCA

18.9.606	18.15.710	AUTH: 15-70-104, 15-70-522, MCA; IMP: 15-70-512, 15-70-522, MCA
18.9.607	18.15.711	AUTH: 15-70-104, 15-70-522, MCA; IMP: 15-70-511, 15-70-522, MCA
18.9.608	18.15.712	AUTH: 15-70-522, MCA; IMP: 15-70-522, MCA
18.9.701	18.15.102	AUTH: 15-70-104, MCA; IMP: 15-70-210, 15-70-352, MCA
18.10.106	18.15.601	AUTH: 15-70-104, 15-70-121, MCA; IMP: 15-70-121, MCA
18.10.503	18.15.801	AUTH: 15-70-104, MCA; IMP: 15-70-702, 15-70-703, 15-70-705, 15-70-706, 15-70-713, MCA
18.10.504	18.15.802	AUTH: 15-70-104, MCA; IMP: 15-70-706, 15-70-713, 15-70-714, MCA
18.10.505	18.15.803	AUTH: 15-70-104, MCA; IMP: 15-70-712, 15-70-713, MCA
18.10.506	18.15.804	AUTH: 15-70-104, MCA; IMP: 15-70-712, 15-70-713, MCA
18.10.507	18.15.805	AUTH: 15-70-104, MCA; IMP: 15-70-704, MCA

7. The department proposes to repeal the following rules:

18.9.112 DEFINITIONS

AUTH: 15-70-104, 15-70-522, MCA  
IMP: 15-70-201, 15-70-205, 15-70-301, 15-70-344, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

18.9.325 DEFINITIONS

AUTH: 15-70-104, MCA  
IMP: 15-70-223, 15-70-362, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

18.9.402 AGRICULTURAL PRODUCTS

AUTH: 15-70-104, MCA  
IMP: 15-70-201, MCA

REASON: The rule is proposed for repeal because a 1985 legislative amendment inserted "including Montana wood or wood products" to 15-70-522, MCA, making the rule unnecessary.

18.9.601 INTENT

AUTH: 15-70-104, MCA

IMP: 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

REASON: The rule is proposed for repeal because it contains archaic language and is obsolete.

18.9.602 DEFINITIONS

AUTH: 15-70-104, 15-70-522, MCA

IMP: 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

18.9.704 DEFINITIONS

AUTH: 15-70-104, MCA

IMP: 15-70-201, 15-70-204, 15-70-301, 15-70-311, 15-70-321, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

18.10.107 DEFINITIONS

AUTH: 15-70-104, MCA

IMP: 15-70-321, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

18.10.201 CERTAIN FEDERALLY OWNED ROADS

AUTH: 15-70-104, MCA

IMP: 15-70-301, 15-70-321, MCA

REASON: The rule is proposed for repeal because there is no law to support this rule. All roads dedicated to public use are taxable under 15-70-401, MCA, the definition of public road.

#### 18.10.202 OFF-ROAD USAGE

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-301, 15-70-302, 15-70-321, 15-70-323, MCA

REASON: The rule is proposed for repeal because it is unnecessary with 15-70-425, MCA, in place covering refund or credit authorized. Passage of SB116 in 2013 and HB99 in 2015 have made this rule obsolete.

#### 18.10.301 PERMIT REQUIRED

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-302, 15-70-303, MCA

REASON: The rule is proposed for repeal because SB116 of the 2013 Legislative Session repealed the requirement of a Montana resident user of special fuel to obtain a permit.

#### 18.10.302 PERMIT DETAILS

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-302, 15-70-303, MCA

REASON: The rule is proposed for repeal because duration of license is covered in IFTA, R600. Definitions of short and long term leases and terms are defined in IFTA R500, making the rule unnecessary.

#### 18.10.321 REQUIRED RECORDS – AUDITS

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-323, 15-70-324, MCA

REASON: The rule is proposed for repeal because 15-70-323, MCA, was repealed upon passage of SB116 in the 2013 Legislative Session. HB 99 in the 2015 Legislative Session enacted 15-70-415, MCA, which allows the department to examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel. IFTA carriers are required to keep records and the statute of limitations is defined in the IFTA Agreement. This rule duplicates the laws already in place.

#### 18.10.322 RECORDS WHEN BULK STORAGE INVOLVED

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-302, 15-70-323, MCA

REASON: The rule is proposed for repeal because requirement for IFTA recordkeeping of bulk fuel is covered in IFTA P570, making the rule unnecessary.



18.10.323 TRIP AND FUEL CONSUMPTION RECORDS

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-302, 15-70-323, MCA

REASON: The rule is proposed for repeal because requirement for Trip and Fuel Consumption Records is covered in IFTA P540, making the rule unnecessary.

18.10.404 SELLER INVOICES

AUTH: 15-70-104, MCA

IMP: 15-70-121, 15-70-306, 15-70-323, MCA

REASON: The rule is proposed for repeal because this rule duplicates proposed amendments to ARM 18.9.302. In addition, the requirement for fuel records for IFTA carriers is covered in IFTA P560, making the rule unnecessary.

18.11.101 DEFINITIONS

AUTH: 15-70-104, MCA

IMP: 15-70-233, 15-70-357, MCA

REASON: The rule is proposed for repeal because all relevant definitions have been moved to New Rule I, to consolidate numerous definitional rules into one rule for better organization and ease of use.

8. The department proposes to reorganize the above-stated rules as follows:

<u>OLD</u>	<u>NEW</u>	
	Chapter 15	MOTOR FUELS TAX
	Subchapter 1	Administration
NEW RULE I	18.15.101	DEFINITIONS
18.9.701	18.15.102	WAIVER OF MOTOR FUEL PENALTIES
18.9.703	18.15.103	PAYMENT APPLICATION
NEW RULE III	18.15.108	COORDINATION OF TAX RETURN
		WITH PAYMENT OF TAX BY EFT
NEW RULE IV	18.15.109	ELECTRONIC FILING STANDARDS
		AND METHODS
NEW RULE V	18.15.110	ELECTRONIC FUNDS TRANSFER
18.9.705	18.15.111	LATE FILE AND PAY PENALTIES
		WHEN FILING ELECTRONICALLY
NEW RULE II	18.15.117	DEPARTMENT DETERMINATION FOR
		COST EFFECTIVENESS AND
18.10.103	18.15.118	SUBSEQUENT ACCOUNT WRITE-OFF
		DETERMINATION OF PUBLIC ROADS

18.10.104	18.15.119	AND HIGHWAYS LIABILITY FOR USE ON GOVERNMENT MAINTAINED ROADS
18.10.105	18.15.120	WHAT CONSTITUTES SPECIAL FUEL
18.11.102	18.15.126	SEIZING IMPROPERLY IMPORTED FUEL
18.11.103	18.15.127	NOTIFICATION OF SEIZURE OF FUEL
18.11.104	18.15.128	CONDUCT OF HEARING FOR CLAIM OR TITLE TO SEIZED FUEL
18.11.105	18.15.129	DETERMINATION OF WHOLESALE PRICE OF FUEL
18.11.106	18.15.130	CONTRACTING FOR PURCHASE OF SEIZED FUEL
18.9.101	Subchapter 2 18.15.201	Distributor's License Tax DETERMINATION OF WHEN GASOLINE, SPECIAL FUEL, OR AVIATION FUEL DISTRIBUTED
18.9.102	18.15.202	DISTRIBUTOR'S BOND
18.9.103	18.15.203	DISTRIBUTOR'S STATEMENTS
18.9.104	18.15.204	DISTRIBUTOR'S RECORDS
18.9.105	18.15.205	DISTRIBUTOR'S INVOICE
18.9.108	18.15.210	WHOLESALE DISTRIBUTOR
18.9.109	18.15.211	WHOLESALE DISTRIBUTOR'S OBLIGATIONS
18.9.111	18.15.217	ETHANOL-BLENDED GASOLINE BLENDEES
18.9.401	18.15.218	TREATMENT OF ETHANOL-BLENDED GASOLINE
18.9.403	18.15.219	ETHANOL CONTENT
18.9.116	18.15.225	INCIDENCE OF THE FUEL TAX
18.9.117	18.15.226	DISTRIBUTOR-SUPPORTING DOCUMENTATION FOR BAD DEBT CREDIT
18.9.118	18.15.227	PREPAYMENT OF MOTOR FUEL TAXES
18.9.201	Subchapter 3 18.15.301	Exemptions from Distributor's License Tax
18.9.202	18.15.302	INTRASTATE FUEL DELIVERIES
18.9.203	18.15.303	EXPORT DELIVERIES
18.9.204	18.15.304	IMPORT DELIVERIES
18.9.205	18.15.305	BLENDING STOCKS
18.9.302	Subchapter 4 18.15.401	EXEMPTION – U.S. AND OTHER STATES Refunds of Gasoline and Special Fuel Tax
18.9.303	18.15.402	SELLER'S INVOICE
18.9.306	18.15.408	FILING INVOICES
18.9.311	18.15.409	REFUND PERCENTAGES FOR PTO OR AUXILIARY ENGINES
		LOST OR DESTROYED GASOLINE, SPECIAL FUEL OR AVIATION FUEL

18.9.312	18.15.410	GASOLINE, SPECIAL FUEL OR AVIATION FUEL LOST FROM STORAGE
18.9.321	18.15.411	PROCESSING CLAIMS FOR REFUND
18.9.326	18.15.412	AGRICULTURAL USE FUEL TAX REFUND
18.10.406	18.15.418	CARDTROL COMPLIANCE AND ADMINISTRATION
18.10.407	18.15.419	STATEMENT FOR KEYLOCK CARDTROL REPORTING
	Subchapter 5	Dyed Fuel
18.10.108	18.15.501	ESTIMATE OF DIESEL POWERED VEHICLES SUPPLY TANKS
18.10.110	18.15.502	OFF-HIGHWAY VEHICLE/EQUIPMENT
18.10.111	18.15.503	DYED SPECIAL FUEL ALLOWANCE
18.10.112	18.15.504	DYED SPECIAL FUEL
	Subchapter 6	International Fuel Tax Agreement
18.10.106	18.15.601	IFTA AGREEMENT
18.10.121	18.15.602	QUARTERLY REPORTS – TAX PAYMENT
18.10.124	18.15.603	IFTA LICENSE BOND REQUIREMENT
18.10.125	18.15.604	IFTA REINSTATEMENT FEE
18.10.313	18.15.610	TERMINATION OF AN IFTA LICENSE
18.10.314	18.15.611	CONFISCATION OF CERTAIN LICENSE COPIES
18.10.324	18.15.612	FAILURE TO MAINTAIN RECORDS
	Subchapter 7	Ethanol Tax Incentive
18.9.501	18.15.701	ETHANOL DISTRIBUTORS
18.9.603	18.15.702	PROCESSING OF THE TAX INCENTIVE PAYMENT
18.9.605	18.15.703	OFFSETS
18.9.606	18.15.710	QUARTERLY REPORTS
18.9.607	18.15.711	CANCELLATION OR DENIAL OF LICENSE
18.9.608	18.15.712	USE OF MONTANA PRODUCTS
	Subchapter 8	Alternative Fuels
18.10.503	18.15.801	CNG AND LPG DEALER LICENSE
18.10.504	18.15.802	QUARTERLY TAX RETURNS
18.10.505	18.15.803	DEALER RECORDS – AUDIT
18.10.506	18.15.804	DEALER INVOICES
18.10.507	18.15.805	CNG OR LPG DEALER'S BOND

9. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Tracy Halubka, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0806; fax (406) 444-5411; or e-mail [thalubka@mt.gov](mailto:thalubka@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

10. 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 Tracy Halubka at the above address no later than 5:00 p.m., September 2, 2016.

11. 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 593 persons based on 135 licensed fuel tax distributors, 1795 licensed IFTA carriers, and 4000 recipients of motor fuel tax refund in Montana in FY 2016.

12. 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 9 above or may be made by completing a request form at any rules hearing held by the department.

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

14. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by U.S. mail on June 10, 2016.

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

16. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption, transfer, amendment, and repeal 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 July 25, 2016.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.174.501 examination for ) PROPOSED AMENDMENT  
licensure as a registered pharmacist )

TO: All Concerned Persons

1. On August 26, 2016, at 10:00 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 of the above-stated rule.

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 Pharmacy (board) no later than 5:00 p.m., on August 19, 2016, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; or dlibsdpba@mt.gov (board's e-mail).

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

24.174.501 EXAMINATION FOR LICENSURE AS A REGISTERED  
PHARMACIST (1) through (3) remain the same.

- (a) ~~a successful~~ an interview before the Board of Pharmacy or its designee;
- (b) ~~the Foreign Pharmacy Graduate Equivalency Examination (FPGEE);~~
- (c) remains the same but is renumbered (b).
- (c) receive a Foreign Pharmacy Graduate Examination Committee (FPGEC)

Certification from NABP, which includes the following:

- (i) Foreign Pharmacy Graduate Equivalency Examination (FPGEE);
- (d) ~~(ii) the Test of Spoken English (TSE); and one of the following:~~
- (i) ~~(iii) the computer-based Test of English as a Foreign Language (TOEFL);~~
- (ii) ~~the paper-based TOEFL;~~
- (iii) ~~the internet-based TOEFL.~~
- (4) ~~The board may waive the provisions of (3)(d) upon request of the applicant, if the board determines the applicant is able to communicate in the English language.~~
- (5) remains the same but is renumbered (4).

AUTH: 37-1-131, 37-7-201, MCA

IMP: 37-1-131, 37-7-201, 37-7-302, MCA

REASON: The board determined it is reasonably necessary to clarify the requirements for foreign pharmacy graduates applying for licensure in Montana. Currently, the board requires applicants to take the Test of Spoken English (TSE) and the Test of English as a Foreign Language (TOEFL), but does not require specific passing scores. Therefore, the board is amending this rule to require that applicants obtain the Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification from the National Association of Boards of Pharmacy (NABP). FPGEC Certification requires foreign pharmacy graduates to take the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), TSE, and TOEFL, as the board currently requires, but also requires applicants to achieve specific minimum scores on these examinations.

The board uses NABP's services for other pharmacist licensing functions, including use of the NAPLEX and MPJE exams, as well as verification of licensure in other jurisdictions. The board notes that adopting the FPGEC Certification process is consistent with the board's other pharmacist licensing practices, and FPGEC Certification process is also required by a majority of state boards of pharmacy. Further, the amendment to require its foreign pharmacy graduates to obtain FPGEC Certification, where minimum TSE and TOEFL scores are stated and required, alleviates the board's need to independently evaluate the applicant's proficiency in English, as (4) currently articulates.

The board is maintaining the requirement for foreign pharmacy graduates to complete an interview as part of the application process, but is deleting the word "successful" because that term is not defined.

4. 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to [dlibsdp@mt.gov](mailto:dlibsdp@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

5. An electronic copy of this notice of public hearing is available at [www.pharmacy.mt.gov](http://www.pharmacy.mt.gov) (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to [dlibsdpba@mt.gov](mailto:dlibsdpba@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.174.501 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to [dlibsdpba@mt.gov](mailto:dlibsdpba@mt.gov).

9. Marcie Bough, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY  
STARLA BLANK, RPh  
PRESIDENT

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

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

Certified to the Secretary of State July 25, 2016



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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.189.401 fee schedule,	)	PROPOSED AMENDMENT AND
24.189.601 application procedures,	)	REPEAL
24.189.604 minimum standards,	)	
24.189.610 work samples-	)	
examination, and 24.189.633	)	
temporary permit, and the repeal of	)	
ARM 24.189.404 license preparation,	)	
24.189.407 renewals, and	)	
24.189.2401 complaint procedure	)	

TO: All Concerned Persons

1. On August 29, 2016, at 10:00 a.m., a public hearing will be held in the large 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 Psychologists (board) no later than 5:00 p.m., on August 22, 2016, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Psychologists, 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) 841-2005; e-mail dlibspsy@mt.gov (board's e-mail).

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

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) through (c) remain the same.

~~(d) Certificate fee~~ \_\_\_\_\_ 25

(e) and (f) remain the same but are renumbered (d) and (e).

(2) remains the same.

AUTH: 37-1-134, 37-17-202, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, MCA

REASON: The board is amending this rule to align with current, standardized department processes, as the department no longer provides wall certificates. The

board estimates that this fee elimination will affect ten new licensees and will reduce annual board revenue by approximately \$250.

24.189.601 APPLICATION PROCEDURES (1) through (2)(e) remain the same.

(f) completed reference forms from a minimum of ~~five~~ three references attesting to the applicant's good moral character; and

(g) remains the same.

(3) Reference forms must be from people familiar with the quality of the applicant's education and work experience. ~~At least three of the~~ The references must be licensed psychologists ~~and may be members of the American Psychological Association.~~

(4) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-302, MCA

REASON: The board is amending this rule to reduce the number of required references from five to three. The board concluded that requiring three references will simplify the process for applicants while ensuring the public's protection through the licensure of qualified individuals. The board is removing the unnecessary language regarding members of the American Psychological Association as anyone familiar with an applicant can be a reference.

24.189.604 MINIMUM STANDARDS (1) A doctoral degree qualifies under 37-17-302(3)(c), MCA, if it is obtained from a school psychology program that is approved by the American Psychological Association.

(2) A doctoral degree qualifies under 37-17-302(3)(c), MCA, if it is obtained from a counseling psychology program that is approved by the American Psychological Association.

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

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-17-302, MCA

REASON: The board recently reviewed psychologist licensure applications from applicants with doctoral degrees from American Psychological Association (APA) approved doctoral programs in school psychology and counseling psychology. The board determined these programs meet the board's minimum standards as set forth in this rule. Additionally, the board's designated application reviewer, the Association of State and Provincial Psychology Boards (ASPPB), also reviewed these programs and came to the same conclusion with respect to the minimum standards. The board further concluded this will be the predictably consistent result whenever the board reviews curricula from APA approved programs. Therefore, the board is amending this rule to no longer subject APA approved doctoral level programs in counseling psychology and school psychology to a curriculum review by either the ASPPB or the board. This change will save time and money for both the

board and the applicants, and will increase the collective expertise of licensed psychologists who are providing psychological services to Montanans.

24.189.610 WORK SAMPLES - EXAMINATION (1) ~~Once the licensing application is approved by the board, the applicant must submit three work samples for board approval.~~ In addition to an approved license application, each applicant for licensure shall submit three work samples, at least two of which must be complete psychological evaluations, all from work performed with respect to three different individuals within two years of the application date. Collectively, these are referred to as work samples in these rules.

(a) ~~Work samples must be written examples of recent work (within two years of the application date), at least two of which must be psychological evaluations.~~ Each of the two psychological evaluations must include a demonstration of competence in:

(i) the integration and interpretation of:

(A) remains the same.

(B) intelligence testing utilizing comprehensive current norms; and

(C) remains the same.

(ii) the formulation of appropriate diagnoses using the ~~five axes specified in current version of~~ the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(iii) remains the same.

(b) Work samples do not include newspaper or other similar articles or publications. Tests utilized must be those widely recognized and respected in the practice of psychology. All identifying information must be removed, as specified on the application form, from work samples submitted to the board. Questions regarding the work samples ~~may~~ will be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board concluded it is reasonably necessary to amend this rule to simplify and clarify the application process and address questions from applicants and licensing staff. The board concluded that the amendments will clarify the board's expectations regarding work samples, and provide more uniform application submissions. Although the board is not changing requirements or timing in the current application process, it is necessary to clearly set forth the requirements for submission of work samples and psychological evaluations.

The board is amending (1)(a)(i)(B) to clarify for applicants the board's expectation that the demonstrated competency in intelligence testing is always based upon the current norms at the time of submission. As well, the board is amending (1)(a)(ii) to clarify for applicants that diagnoses used in the submitted psychological evaluations must conform to the current version of the DSM, i.e., those used at the time of application.

24.189.633 TEMPORARY PERMIT (1) through (10) remain the same.

~~(11) A person who has held a temporary permit in the past may be granted another temporary permit only upon a justifiable excuse and when good cause appears, and then only if it is shown that the refusal of a temporary permit would preclude the person from licensure, because, without it, the person would be unable to obtain the necessary work samples for the oral examination. A temporary practice permit holder must use reasonable diligence to obtain the necessary work samples for purposes of gaining licensure. Regardless of whether work samples are submitted to or approved by the board, a temporary practice permit shall terminate no later than two years following issuance.~~

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: The board is amending (11) to place a cap on the duration of a temporary license. Following input by licensing and legal staff regarding potential abuse of the temporary permit process, the board determined this change will provide clarification to applicants and enable the board to address abuses through the disciplinary process.

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

24.189.404 PREPARATION OF LICENSES

AUTH: 37-17-202, MCA

IMP: 37-17-305, MCA

REASON: The board is repealing this rule as unnecessary since the department issues all licenses using a standardized process for all professional and occupational boards.

24.189.407 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-17-202, MCA

IMP: 37-1-141, MCA

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

24.189.2401 COMPLAINT PROCEDURE

AUTH: 37-17-202, MCA

IMP: 37-1-308, 37-1-309, MCA

REASON: The board is repealing this unnecessary rule because the complaint procedure is adequately addressed in statute and should not be unnecessarily repeated in rule per the Montana Administrative Procedure Act.

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2005, or by e-mail to [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2005; e-mailed to [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov); or 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. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.401, 24.189.601, 24.189.604, 24.189.610, and 24.189.633 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.189.404, 24.189.407, and 24.189.2401 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513,

Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2005; or e-mail dlibsdp@mt.gov.

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

BOARD OF PSYCHOLOGISTS  
JAMES MURPHEY, PH.D, CHAIRPERSON

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

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

Certified to the Secretary of State July 25, 2016

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.34.3005 and 37.86.3607	)	PROPOSED AMENDMENT
pertaining to the reimbursement of	)	
services provided to persons who are	)	
recipients of developmental	)	
disabilities services funded by	)	
Medicaid	)	

TO: All Concerned Persons

1. On August 25, 2016, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 17, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208, 4037, and 0667 Waiver Programs, effective ~~July 1, 2015~~ July 1, 2016. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-2-201, 53-6-402, MCA

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2015~~ July 1, 2016.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2015~~ July 1, 2016. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.34.3005 and 37.86.3607. These two rules pertain to the reimbursement of services provided to persons who are recipients of developmental disabilities services funded by the State of Montana with Medicaid monies. These proposed amendments are necessary to increase the reimbursement rates to incorporate state fiscal year (SFY) 2017 additional funding appropriated through House Bill 2 (HB2) of the 64th Montana State Legislature. These proposed amendments also are necessary to implement needed changes in the texts of the two manuals that are incorporated by reference in these rules.

#### ARM 37.34.3005

The proposed rule amendments have two purposes listed below.

1. The first purpose is to change the title of the manual referenced within the rule to the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue the 1037 waiver effective September 30, 2015, and CMS's subsequent approval of the discontinuation of that waiver option. The 1037 Supports for Community Working and Living waiver provided day habilitation, homemaker, live-in caregiver, personal



care, residential hab, respite, supported employment, personal supports, supports brokerage, adult companion, educational services, environmental mods/adaptive equipment/specialized medical equipment and supplies, health/health maintenance/safety supports, individual goods and services, PERS, private duty nursing, social/leisure and recreational supports, and transportation for individuals w/MR/DD ages 18 - no max age. The department chose to discontinue this waiver and move the recipients of the waiver into the 0208 comprehensive waiver. The termination of the waiver was due to under-utilization of the waiver. The 0208 waiver provides all the same services as the 1037 waiver, and persons transferred to the 0208 waiver experienced no changes or losses in services.

2. The second purpose is to incorporate into the rule this new edition of the manual, to be dated July 1, 2016, which includes changes in the rates of reimbursement and in certain textual provisions that are necessitated by additional legislative appropriations for the reimbursement of the Medicaid funded home and community services and by changes in the waivers available for delivery of the Medicaid funded home and community services entered into with the federal Centers for Medicare and Medicaid Services (CMS).

#### ARM 37.86.3607

The purpose of this proposed amendment is to incorporate into the rule a new edition of the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, to be dated July 1, 2016. The proposed amendments include a change in the rate of reimbursement that is necessitated by additional legislative appropriations for the reimbursement of the Medicaid funded case management services. This proposed change in reimbursement is only applicable to the provision of case management services that are contracted for by the department and is not applicable to the reimbursement of case management services delivered by state employees.

#### Amendments to Manuals

##### "Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208, 1037, and 0667 Waiver Programs"

1. The department is proposing to remove references of the 1037 waiver within this manual, per notice given to the Centers for Medicare and Medicaid (CMS) of the program's intent to discontinue that waiver effective September 30, 2015, and CMS's subsequent approval of the discontinuation of that waiver option. This includes removing reference of the 1037 waiver in the name of the manual to the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs.

2. The proposed effective date of the revised manual is July 1, 2016.
3. The proposed reimbursement fees include the amount appropriated by the 64th Montana State Legislature for provider rate increases.

"Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home"

1. The proposed effective date of the revised manual is July 1, 2016.
2. The proposed reimbursement fee includes the amount appropriated by the 64th Montana State Legislature for provider rate increases.

Fiscal Impact

The fiscal impact of the proposed changes to ARM 37.34.3005, implementing provider rate increases for DD providers will increase total expenditures to providers for state fiscal year 2016 by the sum of \$3,694,445. These increased rates affect approximately 70 corporate providers of services.

The fiscal impact of the proposed change to ARM 37.86.3607, implementing provider rate increases for contracted providers of developmental disabilities case management services will increase total expenditures to those providers for state fiscal year 2017 by the sum of \$127,464 in expenditures. These increased rates affect approximately 4 contracted agencies.

5. The department intends to apply these rule amendments retroactively to July 1, 2016. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Cary B. Lund  
Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State July 25, 2016.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I, the amendment of ARM	)	PROPOSED ADOPTION,
37.80.101, 37.80.102, 37.80.201,	)	AMENDMENT, AND REPEAL
37.80.202, 37.80.205, 37.80.206, and	)	
37.80.301, and the repeal of ARM	)	
37.80.305 and 37.80.306 pertaining	)	
to child care assistance provided	)	
through the Best Beginnings Child	)	
Care Scholarship (BBCS) Program	)	

TO: All Concerned Persons

1. On August 25, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, 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 August 17, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) The applicant and all adults who reside in the applicant's home must provide authorization for criminal, FBI, state and national sexual/violent offender registry, and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday.

(2) If the background checks reveal any of the following, the application will be denied:

(a) Child Protective Services (CPS) substantiation against the applicant or other adult in the household, or an open CPS case against the applicant or adult in the household;

(b) conviction of a crime involving sex;

(c) conviction of a crime involving violence;

(d) conviction of a crime involving drugs;

- (e) conviction of driving under the influence (DUI) within three years of the application date (applies only to the applicant, not the other adults in the household);
  - (f) conviction of child endangerment;
  - (g) conviction of a crime involving a weapon, including firearms or knives;
  - (h) conviction of any crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children; and
  - (i) pending charges by a law enforcement agency for a crime that would otherwise be a disqualifying record, if convicted.
- (3) An application will also be denied for the following reasons:
- (a) applicant fails to provide all necessary documentation needed to determine eligibility within the 30-day time limit;
  - (b) parent and provider reside at the same residence and the proposed caregiver is not an approved relative caregiver;
  - (c) applicant's statement of health form reveals the applicant or other adult in the household has an ongoing illness that bears upon the applicant's ability to have responsibility for the safety and well-being of children;
  - (d) applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, or national origin of the parent or the child; or
  - (e) the background check process has exceeded 90 days.
- (4) Legally certified providers must also meet the following requirements to be certified under this chapter:
- (a) be 18 years of age or older;
  - (b) within 60 calendar days of approval, attend a training or orientation session provided or approved by the department that includes health and safety issues;
  - (c) limit the care they provide to a period less than 24 hours in any day;
  - (d) care for no more than two children at a time, unless the children are from the same household. If the children are from separate households, then a legally certified provider may care for no more than two children;
  - (e) must provide appropriate verification of the attestations and other requirements in this rule upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children; and
  - (f) only legally certified providers may transport children while in their care.
- (5) Legally certified providers are not eligible to be reimbursed for child care services provided while home schooling.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain the same.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) the requirements of federal law governing the Child Care and Development Block Grant Act of 1990, ~~section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508 as amended and 2014~~, codified at 42 USC 9858 et seq.), and 45 CFR parts 98 and 99, child care and development fund, adopted July 24, 1998; and

(b) ~~The~~ the Montana Child Care Manual, dated ~~April 9, 2016~~ September 30, 2016, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the ~~Montana Child Care Manual~~ manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at [www.childcare.mt.gov](http://www.childcare.mt.gov).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Absent days" means a payment to assist households when a child care provider requires payment for a child's absence.

~~(4)~~ (2) "Authorization of ~~S~~services" means the span of time, number of hours per week, and schedule that an eligible child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility. The authorization of services is used to create the certification plan.

~~(2)~~ (3) "Certification ~~P~~plan" means the document prepared by the department, or its agent, that states the amount of child care assistance to be paid and includes any additional information required by the department. This document is generated after the authorization of services has been created.

(3) through (10) remain the same, but are renumbered (4) through (11).

~~(44)~~ (12) "Federal poverty guidelines (FPG)" or "Federal ~~P~~poverty ~~L~~level (FPL)" means the poverty guidelines published by the U.S. Department of Health and Human Services based on information compiled by the U.S. Bureau of the Census. Upon request, a copy of the guidelines is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202952, Helena, MT 59620-2925.

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

(15) "Graduated eligibility" means graduated phaseout as that term is used in the Child Care and Development Block Grant Act of 2014 at 42 USC 9858c(c)(2)(N)(iv).

(14) and (15) remain the same, but are renumbered (16) and (17).

~~(16) (18) "Legally certified provider" means a person providing child care under this chapter, who qualifies to receive child care assistance without meeting the requirement of ARM Title 37, chapter 95. A legally certified provider may care for up to two children or all the children from the same household, and may provide child care in the home of the parents an individual certified under ARM Title 37, chapter 95 and selected by a parent or guardian to receive payment for child care for no more than two children unless all the children are from the same household.~~

~~(17) through (22) remain the same, but are renumbered (19) through (24).~~

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following nonfinancial requirements must be met in order for payments under this chapter to be made:

(a) remains the same.

(b) The monthly minimum hourly work requirement does not apply to:

(i) through (v) remain the same.

(vi) a parent, in a two-parent household, who is severely disabled and unable to care for their child; ~~and~~

(vii) parents who are homeless; and

(vii) remains the same, but is renumbered (viii).

(2) ~~A Households~~ household which ~~are~~ is not receiving cash assistance funded by TANF may be eligible for child care assistance under this chapter while a parent is participating in education or training reasonably expected to lead to gainful employment if:

(a) and (b) remain the same.

(3) Child care assistance under this chapter for parents who are pursuing training or education is subject to the following limitations and requirements:

(a) through (4) remain the same.

~~(5) The parents may apply for authorization/reauthorization under this chapter at a child care resource and referral agency.~~

~~(6) (5)~~ Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits ~~will be~~ are determined as follows:

(a) remains the same.

(b) ~~A Households~~ household containing a child with special needs ~~are~~ is guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502.

(c) ~~A Households~~ household headed by a teen parent ~~are~~ is guaranteed child care when otherwise eligible for child care assistance under ~~subchapters 2, 3, and 5~~ ARM 37.80.201 through 37.80.502.

(d) and (e) remain the same.

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

(11) A household experiencing homelessness may have child care benefits continued for 90 calendar days following the reported homeless status if the department has sufficient funds to provide extended child care benefits.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) Financial eligibility for child care assistance is based on ~~the~~ a household's monthly income as defined in ARM 37.80.102. ~~A Households household~~ whose income ~~exceeds~~ is below 150% of the Federal Poverty Guideline (FPG) for a household of ~~their~~ that size ~~are not~~ is eligible for child care assistance.

(2) At annual redetermination, a household not receiving temporary assistance for needy families (TANF), whose income exceeds 150% and is below 185% of the FPG for a household of its size is eligible for child care assistance under graduated eligibility. To qualify for graduated eligibility, the following apply:

(a) eligibility is limited to one six-month eligibility period; and

(b) all other non-TANF eligibility requirements must be met.

~~(2) (3) A Households household that are~~ is not receiving temporary assistance for needy families (TANF) ~~TANF are~~ is presumed eligible to receive child care assistance for 30 calendar days while application information is verified.

~~(a) and (b) remain the same.~~

~~(3) (4) Assets owned by the members of the household are not considered in determining whether a household is eligible for child care assistance. A household with assets exceeding the threshold identified in 42 USC 9858n (4)(B) (2016) is not eligible for child care assistance.~~

~~(4) (5) Parents eligible for assistance are responsible for paying a monthly copayment in the amount specified in the sliding fee scale table.~~

~~(a) In general, the~~ a household's copayment is a percentage of the household's gross monthly income, based on the household's gross monthly income as compared to the FPG for a household of that size. Generally, households with income which is a higher percentage of the FPG are required to pay a higher percentage of their gross monthly income as a copayment than households whose income is a smaller percentage of the FPG. All parents receiving TANF-funded cash assistance must pay the \$10 minimum copayment amount as specified in the sliding fee scale, regardless of household size or income.

~~(b) In the event that the actual cost of child care for the month is less than the required copayment the parent will be~~ is required to pay the actual cost of care rather than the specified copayment.

~~(c) Parents are solely responsible for paying the copayment to the child care provider. Parents who fail to make the required payment or make arrangements satisfactory to the provider will be~~ are ineligible for child care assistance until the amount due has been paid or arrangements satisfactory to the provider have been made.

~~(d) remains the same.~~



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

~~(7)~~ (8) In computing ~~the a~~ a household's income for purposes of determining eligibility and the parent's copayment, the income of all persons counted in computing household size must be counted.

~~(8)~~ (9) In determining ~~the a~~ a household's need for child care assistance, the work hours, school schedules, and ability to care for the child or children of each adult included in calculating household size ~~will be~~ are considered. The work hours and ability to care for the child or children of adults excluded in calculating household size ~~will~~ are not ~~be~~ considered.

~~(9)~~ (10) Persons providing child care services subsidized under this chapter ~~will be~~ are paid at the lesser of the provider's usual and customary rate or the rates specified in ARM 37.80.205. This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter. The portion of the total monthly payment that the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

~~(10)~~ (11) Eligible households may receive child care assistance for each child in the household who ~~meet~~ meets the age requirement for child care contained in ARM 37.80.102 and whose care meets all other requirements of this chapter for payment.

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

~~(13)~~ (14) Benefits ~~will~~ are only ~~be~~ paid for actual care provided during the authorization and corresponding certification period, except as provided in ARM 37.80.205 and 37.80.206.

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

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

#### 37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) through (3) remain the same.

~~(4) Child care providers are entitled to payment only when care is actually provided to the child, except that a household may use the child care subsidy program to pay for days when care is not actually provided to the child in accordance with the requirements for the certified enrollment program as specified in ARM 37.80.206. Providers are paid for child care provided when the child is present. Payment for child care when the child is absent is only allowed as described in ARM 37.80.206.~~

(5) through (8) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.206 CERTIFIED ENROLLMENT ABSENT DAYS ~~(1) Certified enrollment is intended to assist households to pay child care facilities requiring payment when a child is temporarily absent.~~

~~(2) (1)~~ The following requirements must be met ~~in order~~ for a provider to be paid ~~under certified enrollment~~ for absent days:

(a) ~~Certified enrollment is~~ Absent days are available only for children receiving full-time child care. It is not available if the child is receiving care on a part-time basis.

(b) remains the same.

(c) ~~Certified enrollment~~ Absent days may not be used for more than ~~70 certified enrollment hours~~ 24 days in a state fiscal year per child.

~~(3) (2)~~ Child care providers may not charge for children ~~under certified enrollment~~ for absent days if the parent has not indicated an intent to return the child to the facility for additional child care services. The intent to return a child may be manifested either:

(a) through (c) remain the same.

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

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) and (2) remain the same.

(3) Child care ~~facilities~~ providers must be certified or recognized by the department or its designated agent as eligible to receive payment under this chapter. All applicable forms must be completed and submitted for approval. Registered and licensed facilities and legally certified providers are approved by the Child Care Licensing Bureau of the department's Quality Assurance Division. ~~Legally certified providers are certified by the Early Childhood Services Bureau.~~ Facilities licensed or registered by other entities must be recognized by the Child Care Licensing Bureau of the department's Quality Assurance Division.

(4) and (5) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

5. The department proposes to repeal the following rules:

37.80.305 LEGALLY CERTIFIED PROVIDERS: INTRODUCTION found on page 37-17845 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES found on page 37-17846 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

## 6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rule I, amend ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.206, and 37.80.301, and repeal ARM 37.80.305 and 37.80.306 pertaining to child care assistance.

The Best Beginnings Child Care Scholarship (BBCCS) Program is administered by the department and funded by federal funds through the Child Care Development Fund with some matching state general fund monies. BBCCS provides assistance paying for child care to families referred by Temporary Assistance for Needy Families (TANF) and children with Child Protective Services (CPS). The BBCCS program also offers child care assistance for low-income households with parents attending school or working. This is referred to as the non-TANF program. Eligibility for the non-TANF program is determined through Child Care Resource and Referral (CCR&R) agencies.

The proposed rule changes are necessary to conform the department's rules for the administration of the program in Montana to the federal Child Care and Development Block Grant Act of 2014 (CCDBG Act of 2014). The proposed rule amendments would increase the income level for continued child care assistance, reduce barriers for the participation of homeless families, and move policies toward being both family and provider friendly. Other minor amendments to these rules are proposed to clarify rule language and provide consistency in department references.

### New Rule I

The department is transferring duties related to the category of child care providers known as "legally certified providers" from the Early Childhood Services Bureau (ECSB) to the Licensing Bureau of the department's Quality Assurance Division (QAD). The department is not making any substantive changes to requirements for legally certified providers at this time. To implement the transfer of functions from ECSB to QAD, the department is repealing ARM 37.80.305 and 37.80.306 and making language changes to the definition of "legally certified provider" in ARM 37.80.102 and to a cross reference in ARM 37.80.301.

### ARM 37.80.101

The department proposes to make revisions to the current Child Care Policy Manual (manual), which is adopted and incorporated by reference in ARM 37.80.101. The

revised edition of the manual would become effective September 30, 2016. The proposed amendment is necessary to adopt the prospective version of the manual into the Administrative Rules of Montana. The following constitute the department's proposed revisions to the manual:

The department is proposing throughout the manual to remove the term "Certified Enrollment" and replace it with "Absent Days." Certified Enrollment is not the correct term to characterize allowed payments for a child's temporary absence. Absent Days is a more appropriate term to describe the daily payment for a child's temporary absence.

#### Policy Section 1-3: Overview-Best Beginnings Child Care Scholarship-Definitions

The definition for "Absent Days" is being added, and the definition for "Certified Enrollment" is being removed.

The CCDBG Act of 2014 at 42 USC 9858c(c)(2)(N)(iv) requires graduated phase out for working parents whose income has increased slightly. The BBCCS program refers to the requirement as the "Graduated Eligibility program." Because the federal government uses the term "Graduated Phaseout," the department proposes adding a definition of the term "Graduated Eligibility" in the manual to provide consistency between the manual and federal requirements.

The CCDBG Act of 2014 includes requirements for homeless children and families. For consistency with reporting and eligibility requirements, the department proposes adding to the manual the definition of "Homeless" that is used in the yearly federal report of child care assistance demographics, the ACF-801.

#### Policy Section 1-4: Overview-Best Beginnings Child Care Scholarship-Scholarship Rates

The General Rule subsection is being proposed for revision because of a previous policy revision to Policy Section 2-3: Non-TANF Activity Requirements, effective April 9, 2016. A parent who attends school full-time does not have a work requirement.

The current version of the Child Care Provider Market Rate Survey subsection provides that a market child care provider rate survey is to be conducted annually. The Child Care and Development Fund State Plan requires that the survey be conducted every three years. The CCDBG Act of 2014 does not require an annual survey. The department therefore proposes revising the Child Care Provider Market Rate Survey subsection to require that the market child care provider rate survey be conducted every three years.

The department proposes removing language referring to data from the Child Care Under the Big Sky (CCUBS) computer system because that data does not satisfy new requirements that the market rate survey be conducted in a statistically reliable

and valid manner. The rates of child care providers who do not participate in the BBCCS program are not included in CCUBS data.

The department proposes removing language describing times of the year when the market rate is conducted and is effective because the market rate survey does not have to be completed yearly.

The department proposes revising the subsection entitled ECSB Pays the Lower Rate because the ECSB now serves Child Care Resource and Referral (CCR&R) regions, rather than districts.

The department proposes removing the statement about child care providers reporting a current rate because that information is already included in the "Provider Shall Report Rate Changes" subsection.

The name of the manual was changed to ECSB Procedure Handbook when the manual was updated effective April 9, 2016.

The department proposes revising language about copayments for child care to make it clear that providers may charge copayments for child care that exceed the reimbursement rate, and that if this occurs, parents are responsible for paying the amount that exceeds the reimbursement rate.

The department proposes revising the "Provider Must Report Rates and Associated Changes" subsection to clarify that a child care provider must report to the CCR&R changes the provider makes in rates and billing to a parent. The department proposes revising manual language regarding licensure because the license the department issues does not result in a change in the provider's rate.

The department proposes adding language that would allow providers to request exceptions to the effective rate change date and, if providers present a reasonable reason for doing so, allow ECSB to make exceptions.

#### Policy Section 2-2: Non-TANF Child Care Eligibility-Household Requirements

The federal Child Care and Development Block Grant Act of 2014 codified at 42 USC 9858c(c)(2)(I)(i)(I), requires that homeless children receive child care assistance during a grace period while their families are taking necessary actions to comply with federal health and safety requirements, including immunization requirements. The department proposes including language in the Homelessness subsection which complies with these federal requirements for such a grace period.

#### Policy Section 2-4: Non-TANF Child Care Eligibility-Household Income

The CCDBG Act of 2014 at 42 USC 9858n(4)(B), establishes a resource test for eligibility. The department proposes adding language to the General Rule subsection consistent with this requirement.

#### Policy Section 2-7: Non-TANF Child Care Eligibility-Redetermination

The department proposes adding a new subsection entitled "Graduated Eligibility" to comply with the requirements of the CCDBG Act of 2014 at 42 USC 9858c(c)(2)(N)(iv). This section of the act requires child care assistance to continue for a period of time for children of parents who are working or attending job training or educational programs and whose family income exceeds the non-TANF income limits but does not exceed 85% of the state median income for a family of the same size.

#### Policy Section 6-1: Serving the Family-Child Care Referrals

The department proposes changing the references throughout Policy Section 6-1 from "Child Care Resource and Referral (CCR&R) centralized" to "regional CCR&R" agencies. On July 1, 2016, child care referral services contracts changed from a centralized CCR&R agency to regional CCR&R agencies so that parents and child care providers would have more access to child care referrals at a local level.

#### Policy Sections 6-2 and 6-2a

These sections are being deleted because the subject matter relates to legally certified providers.

#### Policy Section 6-6: Absent Days & Continuity of Care

The program proposes changing the name of the "Certified Enrollment" subsection to "Absent Days" to comply with the CCDBG Act of 2014 at 42 USC 9858c(c)(2)(S)(ii), which requires payment practices "that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness."

The program proposes two changes to fulfill the federal requirement: (1) an increase in the number of Absent Days available and (2) language about how Absent Days are claimed or not claimed for payment purposes.

The program proposes a clarification about how the Child Care Under the Big Sky (CCUBS) computer system determines a full day of child care services.

The program proposes adding language to the Grace Period subsection specifying that a grace period is available during Graduated Eligibility in order to comply with a requirement of the CCDBG Act of 2014 at 42 USC 9858c(c)(2)(N)(iv).

The same benefits should be applied to Graduated Eligibility because Graduated Eligibility must meet all non-TANF eligibility requirements other than the income cap.

A grace period is an appropriate benefit that provides continuity of care when a parent loses a job.

#### ARM 37.80.102

The department proposes amending ARM 37.80.102 to add definitions for the terms "absent days" and "graduated eligibility." Both terms are used in rule changes the department is proposing to implement the CCDBG Act of 2014. "Absent days" is explained at ARM 37.80.206. "Graduated eligibility" is explained at ARM 37.80.202. Adding definitions for these new terms makes the administrative rules easier to use and understand.

#### ARM 37.80.201

The department proposes amending ARM 37.80.201 to provide that a monthly minimum hourly work requirement does not apply to a homeless parent in a household. The department proposes this amendment to comply with the CCDBG Act of 2014, codified at 42 USC 9858c(c)(2)(I)(i)(I), which requires a grace period during which the parent of a homeless child does not have to meet a monthly minimum hourly work requirement. This will allow the family child care while the parent seeks work and long term shelter. The department considers 90 days an appropriate amount of time for homeless children to meet immunization requirements and their parents to meet eligibility requirements.

#### ARM 37.80.202

The CCDBG Act of 2014 at 42 USC 9858c (c)(2)(N)(iv), requires a graduated phaseout period during which children are allowed continued child care assistance when the family income exceeds program eligibility. The department proposes amending the rule to add the criteria for graduated eligibility to comply with this federal requirement. A household is eligible for the non-TANF eligibility program if household income is below 150% of the Federal Poverty Guideline (FPG). The proposed Graduated Eligibility program allows households with increases in income between 150% and 185% of FPG to remain in the program for six months.

The department proposes amending the rule to include language consistent with 42 USC 9858n(4)(B).

#### ARM 37.80.205

The department proposes amending ARM 37.80.205 to consistently use the term "absent days" instead of "certified enrollment." ARM 37.80.205 cross references ARM 37.80.206, which the department is proposing to amend to change the process for reimbursing a provider when an eligible child is not present. The department is proposing to use an absent days method instead of a certified enrollment method. The reason for this change is explained at ARM 37.80.206.

ARM 37.80.206

The CCDBG Act of 2014 at 42 USC 9858c (c)(2)(S)(ii) requires payment practices "that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness." To comply with this requirement, the department proposes changing the name of the current "Certified Enrollment" section to "Absent Days" and increasing the number of days a child care provider may be reimbursed for a child's temporary absences. This increase in allowed absent days will result in an increased payment for the fixed costs of making child care available to the parent.

ARM 37.80.301

The department is transferring duties related to the category of child care providers known as "legally certified providers" from the Early Childhood Services Bureau (ECSB) to the Licensing Bureau of the department's Quality Assurance Division (QAD). This proposed rule change is necessary to implement that change. See explanation at New Rule I.

ARM 37.80.305 and 37.80.306

The department is transferring duties related to the category of child care providers known as "legally certified providers" from the Early Childhood Services Bureau (ECSB) to the Licensing Bureau of the department's Quality Assurance Division (QAD). This proposed rule change is necessary to implement that change. See explanation at New Rule I.

Fiscal Impact

The department expects the proposed rules will not have a fiscal impact. All proposed rules will be funded within the current budget of the Best Beginnings Child Care Scholarship program.

As of March 2016, there were 2,085 Non-TANF families, 338 TANF families, and 737 children with CPS receiving child care assistance. A total of 4,691 unduplicated children were receiving child care assistance.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

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



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

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

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

12. 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.

13. The requirements of 53-6-196, MCA, do not apply because child-care assistance is not a Medicaid service.

/s/ Geralyn Driscoll  
Geraldyn Driscoll, Attorney  
Rule Reviewer

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

Certified to the Secretary of State July 25, 2016.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.86.1005 pertaining to the ) PROPOSED AMENDMENT  
removal of dental orthodontia service )  
lifetime limits in Medicaid dental )  
services )

TO: All Concerned Persons

1. On August 25, 2016, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 17, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) through (5) remain the same.

~~(6) Payment for orthodontia is limited to an overall lifetime cap of \$7,000 for interceptive and full band orthodontia phases unless otherwise provided by these rules. Services included in the separate phases including monthly visits, are as listed in the department's orthodontic coverage and reimbursement guidelines. Surgeries are not included in this lifetime cap.~~

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.86.1005(6) regarding the removal of dental orthodontia service lifetime limits. This rule is being updated to match the guidelines for children under the Early Periodic Screening Diagnostic and Treatment (EPSDT) services

program guidelines. It is necessary for the department to provide this update to the rule by removing language informing members there is not an overall lifetime cap.

ARM 37.86.1005

This proposed amendment removes language that limits payment for orthodontia services to an overall lifetime cap of \$7,000 for interceptive and full band orthodontia phases. All orthodontia service requests require prior authorization for medical necessity. When medical necessity criteria are met, as per EPSDT guidelines, all services are provided. These proposed changes are necessary to provide clarity to providers and members in regards to program benefits and rules. The department has noted an inconsistency with regard to limits placed on EPSDT services. This simple rule change corrects and clarifies this administrative rule.

Fiscal Impact

No fiscal impact is anticipated due to this rulemaking.

5. The department intends to apply this rule amendment retroactively to July 1, 2016. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 2, 2016.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

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

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

Certified to the Secretary of State July 25, 2016.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARINGS ON  
ARM 42.2.705 pertaining to ) PROPOSED AMENDMENT  
alternative business office hours in )  
qualified county offices )

TO: All Concerned Persons

1. On the following dates, at the time and location listed, the Department of Revenue will hold public hearings to consider the proposed amendment of the above-stated rule:

August 29, 2016, at 11 a.m., in the Carter County Courthouse, located at 214 Park Street, Ekalaka, Montana; and

August 30, 2016, at 10 a.m., in the Wheatland County Courthouse, located at 201 A Avenue, NW, Harlowton, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 15, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.2.705 ALTERNATIVE COUNTY BUSINESS OFFICE HOURS

(1) and (2) remain the same.

(3) Counties that meet the conditions provided for in statute are listed below, along with their established alternative business office hours:

(a) and (b) remain the same.

(c) Carter County business office hours 8 a.m. to 5 p.m. Monday ~~through~~ and Wednesday;

(d) through (f) remain the same.

~~(g) Granite County business office hours 8 a.m. to 5 p.m. Monday, Tuesday, and Thursday;~~

(h) through (q) remain the same, but are renumbered (g) through (p).

~~(r)(q) Wheatland County business office hours 8 a.m. to 5 p.m. Monday, Tuesday, and Friday~~ through Wednesday.

(4) remains the same.

AUTH: 2-16-117, 15-1-201, MCA

IMP: 2-16-117, MCA

REASON: The department proposes amending ARM 42.2.705 to correct an error in the hours listed for Carter County; to change the business office hours in Wheatland County; and to remove Granite County from the rule. Details are as follows.

The department proposes amending (3)(c) to align the hours published in the rule with the actual hours of operation in the Carter County business office as established in 2013. The business office hours are listed in the rule as Monday through Wednesday, but should be listed as Monday and Wednesday. This language error occurred when the rule was adopted in 2013, but was not realized until recently. The department is holding a public hearing in the county seat to consider the proposed change in this rule language.

The department proposes changing the established business office days in Wheatland County, in newly numbered (3)(q), from Monday, Tuesday, and Friday to Monday, Tuesday, and Wednesday. The number of in-office days is not being reduced. Rather, by changing the third business office day in Wheatland County from Friday to Wednesday, but leaving the third business office day in nearby Golden Valley County on Friday, the staff in these two neighboring counties will be better able to provide crossover phone coverage on the days when the other county office is closed. The proposed change will provide for better phone coverage in both offices without compromising the ability of the staff from the two counties to continue to coordinate their field work together on Thursdays, the established weekly field day, for efficiency and safety. The department is holding a public hearing in the county seat to consider this proposed change in the business office hours.

The department further proposes removing Granite County, in (3)(g), from the rule because the office now has a staffing level commensurate with the workload in the county and is therefore able to be open during traditional business office hours. Alternative business office hours are no longer necessary for Granite County.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearings. 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](mailto:lalogan@mt.gov) and must be received no later than September 16, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct these hearings.

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](http://revenue.mt.gov/rules). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 4.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State July 25, 2016.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.19.401, 42.19.402, and	)	PROPOSED AMENDMENT AND
42.19.405 and the transfer and	)	TRANSFER AND AMENDMENT
amendment of ARM 42.19.501 and	)	
42.19.503 pertaining to property tax	)	
assistance programs	)	

TO: All Concerned Persons

1. On September 6, 2016, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and transfer and 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 August 22, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP) (1) The property owner of record or the property owner's agent must make application to the local department office to receive the PTAP benefit provided for in ~~15-6-302~~ 15-6-305, MCA.

(2) The benefit is administered through a reduced property tax rate that applies to the first \$200,000 or less of the appraised value of the applicant's residential real property.

(a) The reduced property tax rate does not apply to separately described or assessed parcels of land that do not support the primary residential improvements, regardless of whether those parcels of land are contiguous with or adjacent to the primary residential property.

(b) Eligible property may include a mobile or manufactured home and the separately assessed land upon which the mobile or manufactured home is located only if the mobile or manufactured home and land are both owned by the applicant. To be eligible, the

The property must be:

(i) owned by the applicant; or ~~be~~



(ii) under contract for deed; and be

(iii) used as the applicant's primary residence.

(3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence:

(a) must be the only residence for which the taxpayer claims property tax assistance; and in a given tax year. If the taxpayer owns and lives in one Montana dwelling

~~(b) may include more than one Montana dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and in another Montana dwelling for less than 7 months of the same tax year, and the total between the two dwellings is at least 7 months of that year~~ the time in both dwellings can be combined to meet the 7-month requirement. In addressing such situations:

~~(i)(a)~~ (a) the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed; and

~~(ii)(b)~~ (b) when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home.

(4) through (10) remain the same.

~~(11) In non-reappraisal years, the April 15 application deadline is waived if a first-time applicant forwards an application to the department postmarked before July 4.~~

(12) remains the same, but is renumbered (11).

~~(13)~~ (12) The department shall may coordinate with the Social Security Administration and the Veterans Affairs Administration ~~in developing its process for verifying to verify~~ the income and eligibility of applicants and participants.

(14) through (16) remain the same, but are renumbered (13) through (15).

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-302, 15-6-305, MCA

REASON: The department proposes amending ARM 42.19.401 to update the rule language to correct a previous amendment to the rule and better clarify how the department administers PTAP benefits, as follows.

Section (1) is proposed to be amended to correct a statute citation error.

Section (2) is proposed to be amended to restore language that was inadvertently removed from the rule when it was amended in 2015, in MAR notice number 42-2-936, as part of the implementation of Senate Bill (SB) 157, L. 2015 which generally revised tax reappraisal laws. Specifically, the language concerning separately described or assessed parcels, as was located in (3) of the rule prior to the 2015 amendment, should have remained in the rule when the department removed the 5-acre land limitation to correspond with that change in the law. The department believes it is important to restore the language concerning separately described or assessed parcels of land for two reasons. First, 15-6-301(7), MCA, only allows the benefit for the land and improvements of a taxpayer's primary residence. The department interprets the language in the statute as appropriately

excluding separately described or assessed parcels of land that do not support the primary residential improvements. Second, the department believes it is important to clearly state that such an exclusion does not apply to mobile or manufactured homes and the separately assessed land upon which the mobile or manufactured home is located if they are both owned by the applicant.

Section (3) is proposed to be amended to make it easier to understand how the situation will be administered when an applicant sells one home and purchases another home in the same year. Section (11) is proposed to be deleted because the property owner may receive a waiver of the April 15 deadline in any year, not only a non-reappraisal year. Section (13) is proposed to be amended to replace the word "shall" with "may" due to the Social Security Administration and Veterans Affairs Administration inability to verify income in every instance; and to strike outdated language referring to the department's further development of a verification process because that process has since been developed.

42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM (PTAP) (1) and (2) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-191, 15-6-301, 15-6-305, MCA

REASON: The department proposes amending ARM 42.19.402 to add the acronym PTAP to the rule title for format consistency with the titles for other property tax assistance program rules in this subchapter. No changes are proposed for the rule content.

42.19.405 DEFINITIONS The following definitions apply to rules found in this ~~chapter~~ subchapter.

(1) remains the same.

(2) "Percentage reduction" means the amount by which the property tax rate is reduced based on the income schedule found in:

(a) remains the same.

(b) ~~ARM 42.19.503~~ 42.19.404 for the Montana disabled veteran (MDV) property tax assistance program.

(3) "Qualifying income" means the federal adjusted gross income of an applicant and an applicant's spouse, excluding capital and income losses as they appear on their Montana income tax return for the prior tax year.

(a) If the applicant did not file a Montana income tax return for the applicable year, qualifying income means the federal adjusted gross income of the applicant and the applicant's spouse, excluding capital income losses as they appear on their federal income tax return, for the applicable year.

(b) If the applicant does not have an income tax filing requirement, the applicant's qualifying income is considered to be zero.

(4) remains the same.

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-134, 15-6-301, 15-6-305, 15-6-311, 15-30-2101, MCA

REASON: The department proposes amending ARM 42.19.405 to update a rule number reference in (2) and to expand the definition of "qualifying income" in (3) to set forth how the department determines qualifying income for an applicant that doesn't file a Montana tax return or doesn't have an income tax filing requirement at all. The amendment will allow the department to verify income for residents moving into the state who did not file a Montana tax return in the prior year and provide the department with the ability to verify the property owner's income using their federal income tax return.

The department further proposes amending the lead-in statement for the rule to change the word "chapter" to "subchapter" to more specifically identify the location of the terms defined in the rule.

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

42.19.501 (42.19.403) MONTANA DISABLED VETERAN (MDV)  
PROPERTY TAX EXEMPTION ASSISTANCE PROGRAM FOR QUALIFIED  
DISABLED VETERANS

(1) The property owner of record or the property owner's agent must make application to the local department office to ~~obtain a property tax exemption under the Montana Disabled Veteran (MDV) program for property tax assistance~~ receive the MDV benefit provided for in 15-6-311, MCA.

(2) The ~~exemption benefit~~ benefit applies to the residential real property of a qualified veteran or qualified veteran's surviving spouse that is owned or under contract for deed and used by a veteran or a qualified veteran's surviving spouse as a primary residence as provided for in 15-6-301 and 15-6-311, MCA.

(3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence:

(a) ~~must be the only residence for which the taxpayer claims property tax assistance; and~~ in a given tax year. If the taxpayer owns and lives in one Montana dwelling

~~(b) may include more than one Montana dwelling when the taxpayer resides in one dwelling for less than 7 months during the tax year and in another Montana dwelling for less than 7 months of the same tax year, and the total between the two dwellings is at least 7 months of that year~~ the time in both dwellings can be combined to meet the 7-month requirement. In addressing such situations:

(i)(a) the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed; and

(ii)(b) when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home.

(4) remains the same.

(5) A temporary stay in a nursing home or similar facility will not change an applicant's primary residence for the purposes of the MDV program.

(a) The primary residence does not include separately described or assessed

parcels of land that do not support the primary residential improvements, regardless of whether those parcels of land are contiguous with or adjacent to the primary residential property.

(b) If the primary residence is a mobile or manufactured home that is assessed separately from the land upon which it is located, both the mobile or manufactured home and the land upon which it is located may qualify for the benefit only if they are both owned by the applicant. If the land is not owned by the applicant, the benefit applies only to the mobile or manufactured home.

(6) through (10) remain the same.

~~(11) In non-reappraisal years, the April 15 deadline is waived if a first time applicant forwards an application to the department postmarked before July 1.~~

(12) remains the same, but is renumbered (11).

~~(13)~~(12) The department shall may coordinate with the Social Security Administration and the Veterans Affairs Administration ~~in developing its process for verifying to verify~~ the income and eligibility of applicants and participants.

(14) through (16) remain the same, but are renumbered (13) through (15).

AUTH: 15-1-201, 15-6-302, MCA

IMP: 15-6-301, 15-6-311, MCA

REASON: The department proposes amending ARM 42.19.501 to update the rule language to clarify how the department administers the Montana Disabled Veteran (MDV) property tax assistance program benefits.

Sections (1) and (2) are proposed to be amended to remove the term "exemption" to correspond with a change that occurred with the 2015 Legislature's repeal of 15-6-211, MCA, pertaining to property tax exemptions, and relocation of the MDV program to 15-6-311, MCA, pertaining to property tax assistance.

Section (3) is proposed to be amended to allow the property owner to combine the time lived in primary residences to meet the 7-month occupancy requirement when one residence is sold and another is purchased in the same tax year.

Section (5) is proposed to be amended to restore language that was inadvertently removed from the rule when it was amended in 2015, in MAR notice number 42-2-936, as part of the implementation of Senate Bill (SB) 157, L. 2015 which generally revised tax reappraisal laws. Specifically, the language concerning separately described or assessed parcels, as was located in (3) of the rule prior to the 2015 amendment, should have remained in the rule when the department removed the 5-acre land limitation to correspond with that change in the law. The department believes it is important to restore the language concerning separately described or assessed parcels of land for two reasons. First, 15-6-301(7), MCA, only allows the benefit for the land and improvements of a taxpayer's primary residence. The department interprets the language in the statute as appropriately excluding separately described or assessed parcels of land that do not support the primary residential improvements. Second, the department believes it is important to clearly state that such an exclusion does not apply to mobile or manufactured homes and the separately assessed land upon which the mobile or manufactured home is located if they are both owned by the applicant.

Section (11) is proposed to be deleted because the property owner may receive a waiver of the April 15 deadline in any year, not only a non-reappraisal year. Section (13) is proposed to be amended to replace the word "shall" with "may" due to the Social Security Administration and Veterans Affairs Administration inability to verify income in every instance; and to strike outdated language referring to the department's further development of a verification process which is now in place.

The department also proposes amending the rule title to change the word "exemption" to "assistance," in keeping with the SB 157, L. 2015 statutory change and to include the full program name and acronym MDV in the title for format consistency with the titles of other property tax assistance rules.

The department further proposes transferring the rule to ARM Title 42, chapter 19, subchapter 4, to provide the information in the rule together with the department's other property tax assistance rules to make it easier for property taxpayers to locate the information. Subchapter 4 will be renamed "property tax assistance programs" to encompass all of the subject matter in that location.

42.19.503 (42.19.404) INFLATION ADJUSTMENT FOR QUALIFIED MONTANA DISABLED VETERAN (MDV) PROPERTY TAX EXEMPTION ASSISTANCE PROGRAM (1) Sections 15-6-301 and 15-6-311, MCA, provide a for property tax exemption or partial-exemption assistance to qualified disabled veterans. Sections 15-6-301 and 15-6-311, MCA, also require the department to annually adjust the income schedules used to determine the eligibility and the amount of exemption to account for the effects of inflation.

(2) remains the same.

AUTH: 15-1-201, MCA

IMP: 15-6-301, 15-6-311, MCA

REASON: The department proposes amending ARM 42.19.503 to update (1) and the rule title by replacing the word "exemption" with "assistance," in keeping with a statutory change that occurred with the enactment of Senate Bill 157, L. 2015, which relocated the primary statute governing the disabled veteran assistance program from Title 15, chapter 6, part 2, Tax-Exempt Property to Title 15, chapter 6, part 3, Property Tax Assistance. The department also proposes adding the full program name and acronym MDV to the rule title for format consistency with the titles of the other property tax assistance rules.

The department further proposes transferring the rule to ARM Title 42, chapter 19, subchapter 4, to provide the information in the rule together with the department's other property tax assistance rules to make it easier for property taxpayers to locate. Subchapter 4 will be renamed "property tax assistance programs" to encompass all of the subject matter in that location of ARM Title 42.

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 September 20, 2016.

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](http://revenue.mt.gov/rules). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 157, L. 2015, Senator Bruce Tutvedt, was contacted by letter on July 16, 2015, and subsequently contacted by e-mail on July 13, 2016.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and transfer and 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](http://revenue.mt.gov/rules) or upon request from the person in 6.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Gene Walborn acting for  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State July 25, 2016.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rule I pertaining to the administration     )  
of the 2016 and 2017 Program Year     )  
Community Development Block Grant     )  
(CDBG) Program – Affordable     )  
Housing Development Projects     )

TO: All Concerned Persons

1. On June 3, 2016, the Department of Commerce published MAR Notice No. 8-94-147 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 932 of the 2016 Montana Administrative Register, Issue Number 11.

2. No comments or testimony were received.

3. The department has adopted NEW RULE I (ARM 8.94.3730) as proposed.

/s/ KELLY A. LYNCH  
KELLY A. LYNCH  
Rule Reviewer

/s/ MEG O'LEARY  
MEG O'LEARY  
Director  
Department of Commerce

Certified to the Secretary of State July 25, 2016.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULES I through IX, the amendment	)	AMENDMENT, AND REPEAL
of ARM 10.53.101 through 10.53.103	)	
and 10.54.2501, and the repeal of	)	
ARM 10.54.2810 through 10.54.2813,	)	
10.54.2820 through 10.54.2823,	)	
10.54.2830 through 10.54.2833,	)	
10.54.2840 through 10.54.2843,	)	
10.54.2850 through 10.54.2853,	)	
10.54.2860 through 10.54.2863, and	)	
10.54.2887 through 10.54.2898	)	
pertaining to K-12 arts content	)	
standards	)	

TO: All Concerned Persons

1. On June 3, 2016, the Board of Public Education published MAR Notice No. 10-53-275 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 938 of the 2016 Montana Administrative Register, Issue Number 11.

2. The board has adopted the following new rules:

NEW RULE I	ARM 10.53.601	ARTS CONTENT STANDARDS
NEW RULE II	ARM 10.53.602	ARTS CONTENT STANDARDS FOR KINDERGARTEN
NEW RULE III	ARM 10.53.603	ARTS CONTENT STANDARDS FOR FIRST GRADE
NEW RULE IV	ARM 10.53.604	ARTS CONTENT STANDARDS FOR SECOND GRADE
NEW RULE V	ARM 10.53.605	ARTS CONTENT STANDARDS FOR THIRD GRADE
NEW RULE VI	ARM 10.53.606	ARTS CONTENT STANDARDS FOR FOURTH GRADE
NEW RULE VII	ARM 10.53.607	ARTS CONTENT STANDARDS FOR FIFTH GRADE
NEW RULE VIII	ARM 10.53.608	ARTS CONTENT STANDARDS FOR SIXTH THROUGH EIGHTH GRADES
NEW RULE IX	ARM 10.53.609	ARTS CONTENT STANDARDS FOR NINTH THROUGH TWELFTH GRADES

3. The board has amended ARM 10.53.101 through 10.53.103 and 10.54.2501 as proposed.



4. The board has repealed 10.54.2810 through 10.54.2813, 10.54.2820 through 10.54.2823, 10.54.2830 through 10.54.2833, 10.54.2840 through 10.54.2843, 10.54.2850 through 10.54.2853, 10.58.2860 through 10.54.2863, and 10.54.2887 through 10.54.2898 as proposed.

5. The effective date of these rules is July 1, 2017.

6. The following comments were received.

COMMENT 1: Mr. Pat Audet, Associate Director, School Administrators of Montana, stated that SAM supports the new art standards. He recognized that wonderful minds were together to create these standards and having artists in his family he sees the importance of the arts in education. These standards give students a vast array of exposure to a variety of the arts.

RESPONSE: The Board of Public Education thanks the commenter for his comments.

COMMENT 2: Ms. Emily Kohring, Director of Arts Education for the Montana Arts Council, submitted written comments in support of the arts standards. She stated they are a great leap forward from the previous, outdated set of standards. She acknowledged the hard work and dedication of the people involved with writing and reviewing the standards. She feels these standards will result in a higher quality of teaching and a much deeper and richer experience in arts learning for all of Montana's K-12 students.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Sharon Carroll  
Sharon Carroll, Chair  
Board of Public Education

Certified to the Secretary of State July 25, 2016.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULES I through XIX and repeal of	)	REPEAL
ARM 10.54.7010 through 10.54.7013,	)	
10.54.7020 through 10.54.7023,	)	
10.54.7030 through 10.54.7033,	)	
10.54.7040 through 10.54.7043,	)	
10.54.7050 through 10.54.7053,	)	
10.54.7060 through 10.54.7063,	)	
10.54.7070 through 10.54.7073,	)	
10.54.7087 through 10.54.7098	)	
pertaining to K-12 health and physical	)	
education content standards	)	

TO: All Concerned Persons

1. On June 3, 2016, the Board of Public Education published MAR Notice No. 10-53-276 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 961 of the 2016 Montana Administrative Register, Issue Number 11.

2. The board has adopted the following new rules:

NEW RULE I	ARM 10.53.701	HEALTH CONTENT STANDARDS
NEW RULE II	ARM 10.53.702	HEALTH STANDARDS FOR KINDERGARTEN
NEW RULE III	ARM 10.53.703	HEALTH STANDARDS FOR FIRST GRADE
NEW RULE IV	ARM 10.53.704	HEALTH STANDARDS FOR SECOND GRADE
NEW RULE V	ARM 10.53.705	HEALTH STANDARDS FOR THIRD GRADE
NEW RULE VI	ARM 10.53.706	HEALTH STANDARDS FOR FOURTH GRADE
NEW RULE VII	ARM 10.53.707	HEALTH STANDARDS FOR FIFTH GRADE
NEW RULE VIII	ARM 10.53.708	HEALTH STANDARDS FOR SIXTH THROUGH EIGHTH GRADES
NEW RULE IX	ARM 10.53.709	HEALTH STANDARDS FOR NINTH THROUGH TWELFTH GRADES
NEW RULE X	ARM 10.53.710	CONTENT STANDARDS FOR PHYSICAL EDUCATION
NEW RULE XI	ARM 10.53.711	DEFINITIONS
NEW RULE XII	ARM 10.53.712	PHYSICAL EDUCATION STANDARDS FOR KINDERGARTEN

NEW RULE XIII	ARM 10.53.713	PHYSICAL EDUCATION STANDARDS FOR FIRST GRADE
NEW RULE XIV	ARM 10.53.714	PHYSICAL EDUCATION STANDARDS FOR SECOND GRADE
NEW RULE XV	ARM 10.53.715	PHYSICAL EDUCATION STANDARDS FOR THIRD GRADE
NEW RULE XVI	ARM 10.53.716	PHYSICAL EDUCATION STANDARDS FOR FOURTH GRADE
NEW RULE XVII	ARM 10.53.717	PHYSICAL EDUCATION STANDARDS FOR FIFTH GRADE
NEW RULE XVIII	ARM 10.53.718	PHYSICAL EDUCATION STANDARDS FOR SIXTH THROUGH EIGHTH GRADES
NEW RULE XIX	ARM 10.53.719	PHYSICAL EDUCATION STANDARDS FOR NINTH THROUGH TWELFTH GRADES

3. The board has repealed ARM 10.54.7010 through 10.54.7013, 10.54.7020 through 10.54.7023, 10.54.7030 through 10.54.7033, 10.54.7040 through 10.54.7043, 10.54.7050 through 10.54.7053, 10.54.7060 through 10.54.7063, 10.54.7070 through 10.54.7073, and 10.54.7087 through 10.54.7098 as proposed.

4. The effective date of these rules is July 1, 2017.

5. The following comments were received.

COMMENT 1: Mr. Pat Audet, Associate Director, School Administrators of Montana, stated that SAM had reviewed the standards and is in full support. As a former health enhancement teacher he feels the standards support successful learning.

RESPONSE: The Board of Public Education thanks the commenter for his comments.

COMMENT 2: Ms. Nancy Stock, Executive Director of SHAPE Montana and a health education teacher in Florence, Montana, stated this was the first time health education was written into federal standards and is now considered to be part of a well-rounded education, allowing for more funding and diverse programs.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

COMMENT 3: Ms. Marti Edgemond, a health K-6 teacher in Billings and a board member of SHAPE Montana, stated her support for the rules and that she appreciates the learner outcomes at each grade level and separate standards for each grade level.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

COMMENT 4: Ms. Teri Wilkinson, a health teacher in Noxon, Montana and secretary of SHAPE Montana, stated her support for the rules and appreciates how adaptable the standards are for small and large schools.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

COMMENT 5: Ms. Michelle Peterson, K-6 health teacher for Great Falls and a director of SHAPE Montana, stated the standards allow adaptability across schools so students can transfer seamlessly. She appreciates the grade level banding and how the health and physical education standards are separate.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

COMMENT 6: Ms. Carrie Ashe, Director of the Montana State University Extension Nutrition Education, submitted testimony in support of the new health and physical education standards. She stated her belief that the standards will provide a framework for educator's efforts to ensure K-12 students in Montana have the knowledge and skills necessary for both health and physical education.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

COMMENT 7: Ms. Patti Steinmuller, MS, RD, CSSD, a sports dietitian, submitted testimony in support of the new rules. She stated that the topics covered in the standards are important to address in aiding children and young adults in becoming competent in using nutrition and physical activities to maintain and improve their physical and mental health. She suggested introducing relationships between nutrition and physical activity earlier than grade 4 since the earlier they are discussed the more familiar and meaningful they become. She also suggested addressing energy balance directly starting at grade 3-4 so youth know ways in which nutrition and physical activity can interact to achieve healthy body weights and compositions.

RESPONSE: The Board of Public Education thanks the commenter for her comments.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Sharon Carroll  
Sharon Carroll, Chair  
Board of Public Education

Certified to the Secretary of State July 25, 2016.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 10.56.101 pertaining to student        )  
assessment                                        )

TO: All Concerned Persons

1. On June 3, 2016, the Board of Public Education published MAR Notice No. 10-56-271 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 991 of the 2016 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

/s/ Sharon Carroll  
Sharon Carroll, Chair  
Board of Public Education

Certified to the Secretary of State July 25, 2016.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.87.903 pertaining to                )  
Children's Mental Health Bureau            )  
Medicaid Services Policy Manual           )  
Revisions                                        )

TO: All Concerned Persons

1. On May 6, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-751 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 817 of the 2016 Montana Administrative Register, Issue Number 9.

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:

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH,  
AUTHORIZATION REQUIREMENTS (1) through (6) remain as proposed.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Bureau, Medicaid Services Provider Manual (Manual), dated ~~July 15, 2016~~ August 6, 2016, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated ~~July 15, 2016~~ August 6, 2016. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx>.

(8) and (9) remain as proposed.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 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: A commenter expressed gratitude for the opportunity to participate in the policy process. In addition, the commenter stated they are supportive of the discharge notification requirement and is open to the addition of a prior authorization requirement for Home Support Services (HSS) and advocated for the continued involvement of providers and families in the development of the utilization review

process. The commenter also stated they support the removal of the five-day requirement for Home Support Services continued stay requests.

RESPONSE #1: The department appreciates the commenter's support and will continue to solicit feedback from providers and families in regards to the development of new policies pertaining to utilization review of Medicaid services.

COMMENT #2: One commenter expressed concerns with the addition of the diagnosis severity modifiers moderate or severe to Serious Emotionally Disturbed (SED) criteria and requested the state remove the language regarding severity modifiers. The commenter requests that providers and families are included in discussions regarding substantive changes to the SED criteria and that the department engage qualified professionals in the development of proposed changes.

RESPONSE #2: The severity modifiers of moderate to severe were not an addition to the criteria and there were no substantive changes to the SED criteria, the language was amended to clarify the criteria for youth under six as well as clarifying the annual requirement for reassessment. If the department were to amend the SED criteria, the department would utilize the three full-time licensed clinicians as well as a clinical supervisor on staff to assist with, and provide clinical insight into, the development of the utilization review process and the continued use of the serious emotional disturbance criteria. The department would then solicit feedback from additional qualified professionals and families prior to making substantive changes to the SED criteria.

COMMENT #3: One commenter requests that utilization review contractor staff be familiar with the youth receiving HSS and their families.

RESPONSE #3: The federal government, through the Centers for Medicare and Medicaid Services (CMS), requires all agencies serving a Medicaid population and receiving Medicaid funds to have a utilization management program in place to monitor the medical need for a service before payment for the intended service is authorized. The purpose of utilization review is to ensure that requested services are appropriate to address the mental health needs of the youth, as documented by the requestor, according to established clinical guidelines. Utilization review allows for a review from perspectives of medical necessity, quality of care, appropriateness, place of service, and length of stay based on the documented mental health needs of the youth. The utilization review process requires the reviewer to be unbiased, making determinations based solely on the documentation provided.

COMMENT #4: One commenter stated they believed the current behavioral criteria for determining SED status for youth under six is appropriate and that mental health diagnosis will often follow youth throughout their lifespan.

RESPONSE #4: It was not the intent of the department to amend the SED status criteria for youth under the age of six. The department has made language revisions in the manual based upon this comment in order to maintain the original intent of

SED status for youth under the age of six. Due to this revision to the manual, the department is changing the effective date in ARM 37.87.903 to August 6, 2016.

/s/ Cary B. Lund

Cary B. Lund, Attorney  
Rule Reviewer

/s/ Richard H. Opper

Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State July 25, 2016



## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

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

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

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

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

### Definitions:

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

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

### Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2016, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2016 Montana Administrative Register.

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