

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ENVIRONMENTAL QUALITY, Department of, Title 17

17-372 (Board of Environmental Review) (Air Quality) Notice of Proposed Adoption - Clean Air Act. No Public Hearing Contemplated. 1092-1095

TRANSPORTATION, Department of, Title 18

18-156 Notice of Proposed Amendment - Motor Carrier Services Out-of-Service Criteria. No Public Hearing Contemplated. 1096-1098

LABOR AND INDUSTRY, Department of, Title 24

24-138-71 (Board of Dentistry) Notice of Public Hearing on Proposed Amendment and Repeal - Dental Auxiliaries Functions - Dentist Licensure by Credentials - Dentist Licensure by Credentials for Specialists - Dental Hygiene Limited Access Permit - Denturist Intern - Converting Inactive License to Active - Reactivation of an Expired License - Military Training or Experience - Continuing Education - Screening Panel - Continuing Education in Anesthesia - Introduction. 1099-1107

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-181 Notice of Public Hearing on Proposed Amendment and Repeal - Water Reservation Rules. 1108-1126

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-720 Notice of Public Hearing on Proposed Amendment - Revision of Exceptions for Passport to Health Services Referrals. 1127-1129

37-721 Notice of Proposed Amendment - Updating Federal Poverty Guidelines to 2015 Levels and to Align Children's Special Health Services (CSHS) With the Healthy Montana Kids (HMK) Financial Assistance Eligibility Criteria. No Public Hearing Contemplated. 1130-1133

PUBLIC SERVICE REGULATION, Department of, Title 38

38-5-231 Notice of Public Hearing on Proposed Amendment - Operator Service Provider Allowable Rates. 1134-1135

REVENUE, Department of, Title 42

42-2-932 Notice of Proposed Amendment - Review of Centrally Assessed Property Appraisals - Removing an Outdated Reference to a Form Number. No Public Hearing Contemplated. 1136-1137

SECRETARY OF STATE, Office of, Title 44

44-2-207 (Commissioner of Political Practices) Notice of Public Hearing on Proposed Adoption, Transfer, Transfer and Amendment, and Repeal - Campaign Finance Reporting, Disclosure, and Practices. 1138-1192

RULE ADOPTION SECTION

COMMERCE, Department of, Title 8

8-99-133 Notice of Amendment - Administration of the Big Sky Economic Development Trust Program. 1193

ENVIRONMENTAL QUALITY, Department of, Title 17

17-368 (Hazardous Waste) Notice of Amendment - Registration and Registration Maintenance Fees: Fee Assessment. 1194-1196

JUSTICE, Department of, Title 23

23-16-242 Notice of Amendment - Conduct of Sports Tab Games - The Award of Sports Tab Game Prizes - Sports Tab Games Record Keeping Requirements. 1197

LABOR AND INDUSTRY, Department of, Title 24

24-121-12 (Board of Barbers and Cosmetologists) Notice of Amendment and Adoption - Definitions - General Requirements - Licensure by Examination - Out-of-State Applicants - Postsecondary School Licensure - Examination Requirements and Process - School Requirements - School Operating Standards - School Curricula - Student Withdrawal, Transfer, or Graduating - Instructor Requirements - Teacher-Training Curriculum - Salons/Booth Rental - Implements, Instruments, Supplies, and Equipment - Salon Preparation Storage and Handling - Continuing Education - Unprofessional Conduct - Nonroutine Application - Granting Exception - Licensure Equivalency - Credited Hours for Montana-Licensed Individuals - Inactive Instructor License - Licensee and Applicant Contact Information. 1198-1200

24-213-19 (Board of Respiratory Care Practitioners) Notice of Repeal - Renewals - Board Seal. 1201

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-186 (Board of Oil and Gas Conservation and the Department) Notice of Adoption of Temporary Rule - Certifying Carbon Sequestration Equipment Placed in Service After January 1, 2014, and Certified by the Department of Environmental Quality Prior to October 1, 2015. 1202

PUBLIC SERVICE REGULATION, Department of, Title 38

38-5-228 Notice of Amendment and Repeal - Telephone Extended Area Service. 1203-1204

REVENUE, Department of, Title 42

42-2-928 Notice of Adoption, Amendment, and Repeal - Responsible Alcohol Sales and Service Act Server Training Programs. 1205

SPECIAL NOTICE AND TABLE SECTION

| | |
|---|-----------|
| Function of Administrative Rule Review Committee. | 1206-1207 |
| How to Use ARM and MAR. | 1208 |
| Accumulative Table. | 1209-1219 |

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|--------------------|
| In the matter of the adoption of New |) | NOTICE OF PROPOSED |
| Rules I through III pertaining to the |) | ADOPTION |
| Clean Air Act |) | |
| |) | (AIR QUALITY) |
| |) | |
| |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Concerned Persons

1. On October 16, 2015, the Board of Environmental Review proposes to adopt the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., August 24, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For purposes of this subchapter, the following terms have the following meanings:

- (1) "Board" means the Board of Environmental Review provided for in 2-15-3502, MCA.
- (2) "Potential conflict of interest" means:
 - (a) any income from a regulated person; or
 - (b) any interest or relationship that would preclude the individual having the interest or relationship from being considered one who represents the public interest.
- (3) "Regulated person" means:
 - (a) a person, other than a department or agency of a state, local, or regional government, who is subject to a permit or an enforcement order that implements the federal Clean Air Act; or
 - (b) any trade or business association of which a person described in (3)(a) is a member.
- (4) "Represent the public interest" means that the person does not:
 - (a) own a controlling interest in or have five percent or more of his or her capital invested in a regulated person;
 - (b) serve as attorney for, act as consultant for, or serve as an officer or director of a regulated person; or
 - (c) hold any other official or contractual relationship with a regulated person.
- (5) "Significant portion of income" means ten percent or more of gross

personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. For purposes of this section, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under the Clean Air Act.

AUTH: 75-2-111, MCA
IMP: 75-2-111, MCA

NEW RULE II BOARD ACTION (1) The board may not take action on any contested case matter that arises under the Clean Air Act of Montana unless a majority of members of the board at the time of the action:

- (a) represent the public interest; and
- (b) do not derive a significant portion of income from a regulated person.

AUTH: 75-2-111, MCA
IMP: 75-2-111, MCA

NEW RULE III REPORTING (1) At the first meeting each calendar year and prior to the first meeting following a change in the board's membership, each board member who represents the public interest and does not derive a significant portion of income from regulated persons shall file with the board secretary a written certification of this status.

(2) If, subsequent to making a certification under (1), a board member no longer represents the public interest or has begun to derive a significant portion of income from regulated persons, the member shall file with the board a written withdrawal of certification.

(3) Whenever the board is prohibited by [New Rule II] from taking action, the chairman shall notify the Governor of this fact in writing and shall in the notice list the members of the board who do not represent the public interest or who derive a significant portion of income from regulated persons.

(4) Each board member who has a potential conflict of interest shall file with the board a written disclosure of the interest that creates the potential conflict.

AUTH: 75-2-111, MCA
IMP: 75-2-111, MCA

REASON: Section 110 of the federal Clean Air Act (CAA) (42 USC 7410) requires a state seeking primacy for the implementation and enforcement of the CAA to develop a state implementation plan (SIP) that outlines how the state will attain and maintain compliance with the National Ambient Air Quality Standards (NAAQS). Montana's SIP was initially submitted to the Environmental Protection Agency (EPA) in 1972. As a SIP-approved state, Montana must satisfy all of the applicable

requirements of the CAA in order to maintain an EPA-approved air quality program and retain program primacy.

In 2013, the EPA identified a problem with Montana's SIP specific to the requirements of Section 128 of the Clean Air Act (42 USC 7428). In relevant part, Section 128 provides that a SIP must contain the following requirements:

- "(1) any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act; and
- (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed."

Because the Board of Environmental Review has such authority, compliance with Section 128 of the CAA is required.

The proposed new rules include definitions, conflict of interest requirements for members of the board, and the process by which the board members will report any possible conflicts of interest. These rules would impose on the board the substantive prohibition contained in section 128(1), the disclosure requirement contained in section 128(2), and definitions that provide for reasonable implementation of these requirements. The definitions are patterned after EPA's "Guidance to States Meeting Conflict of Interest Requirements of Section 128." The EPA has been consulted and has indicated that adoption of these rules into Montana's SIP would be sufficient for Montana to make that SIP compliant with section 128 and allow Montana to retain primacy under the CAA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than September 10, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than September 10, 2015.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be 180 based on the approximately 1800 permit holders.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed new rules will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Joan Miles

JOAN MILES, CHAIRMAN

Certified to the Secretary of State, August 3, 2015.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

| | | |
|--|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 18.8.1505, pertaining to Motor |) | AMENDMENT |
| Carrier Services out-of-service criteria |) | |
| |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Concerned Persons

1. On September 14, 2015, the Department of Transportation proposes to amend the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on September 3, 2015, to advise us of the nature of the accommodation that you need. Please contact Dan Moore, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dmoore@mt.gov.

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

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (April 1, ~~2014~~ 2015), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or on the internet at www.cvsa.org.

(3) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-154, MCA

REASON: The proposed amendment is necessary to adopt the most current Commercial Vehicle Safety Alliance (CVSA) North American Uniform "Out-of-Service" criteria. The CVSA North American out-of-service criteria is a standard used by all CVSA-certified safety inspectors in the U.S., Canada, and Mexico to inspect commercial vehicles and drivers.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Moore, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dmoore@mt.gov, and must be received no later than 5:00 p.m., September 10, 2015.

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 Dan Moore at the above address no later than 5:00 p.m., September 10, 2015.

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 483 persons based on the 48,297 of Montana-based registered and permitted vehicles in the 2014 calendar year.

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/ 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 August 3, 2015.

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

| | | |
|--------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.138.406 dental auxiliaries |) | PROPOSED AMENDMENT AND |
| functions, 24.138.505 dentist |) | REPEAL |
| licensure by credentials, 24.138.507 |) | |
| dentist licensure by credentials for |) | |
| specialists, 24.138.509 dental |) | |
| hygiene limited access permit, |) | |
| 24.138.512 denturist intern, |) | |
| 24.138.514 converting inactive |) | |
| license to active, 24.138.525 |) | |
| reactivation of an expired license, |) | |
| 24.138.540 military training or |) | |
| experience, 24.138.2101, |) | |
| 24.138.2102, 24.138.2104, |) | |
| 24.138.2105, and 24.138.2106 |) | |
| continuing education, 24.138.2402 |) | |
| screening panel, 24.138.3229 |) | |
| continuing education in anesthesia, |) | |
| and the repeal of ARM 24.138.401 |) | |
| introduction |) | |

TO: All Concerned Persons

1. On September 3, 2015, at 9:00 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 Dentistry (board) no later than 5:00 p.m., on August 28, 2015, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) through (8)(a) remain the same.

~~(b) has been certified in dental radiology in another state; or~~

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

(d) For dental auxiliaries beginning work in Montana after January 1, 2016, radiology certification from other states will no longer be accepted, with the exception of a board-approved written examination. Dental auxiliaries who acquired radiology certification in other states and were employed as dental auxiliaries in Montana prior to January 1, 2016, will be grandfathered.

(9) and (10) remain the same.

AUTH: 37-4-205, 37-4-408, MCA

IMP: 37-4-408, MCA

REASON: Following lengthy consideration and discussion, the board is amending this rule to address the board's concerns about the dental radiology qualifications of dental auxiliaries that are practicing in Montana with dental radiology credentials or certification granted by other states. In the interest of patient safety, the board determined there is no reasonable expectation for supervising dentists to know the current or past radiology certification requirements of other states, or whether those requirements meet the board's standards and qualifications. The board also agreed it is reasonably necessary to grandfather those dental auxiliaries who received their out-of-state certification prior to January 1, 2016, to give reasonable notice of the change to supervising dentists, dental auxiliaries, and the public.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) through (1)(f) remain the same.

(g) submits evidence certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 24.138.2102 and pursuant to ARM 24.138.2105(2);

(h) through (2) remain the same

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: The board is amending this rule and ARM 24.138.507, 24.138.509, 24.138.514, 24.138.525, and 24.138.3229 to clarify that proof of continuing education submitted to the board must meet the requirements of ARM 24.138.2105(2) as proposed in this notice. The board found some submissions required by these rules were unclear or unable to be verified. Standardizing the submission requirements will clarify what is expected from the applicant or licensee and simplify the licensure process for board staff.

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

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

(f) submits evidence certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a Montana license. Courses

submitted must meet continuing education requirements as defined in board rule and pursuant to ARM 24.138.2105(2);

(g) through (2) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through (1)(d) remain the same.

(e) provides ~~evidence~~ certificates of attendance of completion of 12 additional continuing education credits for the three-year cycle immediately preceding LAP application pursuant to ARM 24.138.2105(2); and

(f) through (5) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-405, MCA

IMP: 37-4-405, ~~37-4-406~~, MCA

REASON: Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.512 DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303(1), MCA.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-29-201, ~~37-29-303~~, MCA

IMP: 37-1-131, 37-29-303, MCA

REASON: To address questions from license application staff and avoid any perceived conflict with 37-29-303, MCA, the board is amending this rule to reference the specific section of statute that contains the pre-internship requirements for dentist applicants.

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

24.138.514 APPLICATION TO CONVERT AN CONVERTING FROM INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (3)(c) remain the same.

(d) ~~evidence~~ certificates of attendance of continuing education pursuant to ARM 24.138.2105(2) as follows:

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

(c) ~~evidence~~ certificates of attendance of continuing education pursuant to ARM 24.138.2105(2) as follows:

(i) 60 hours of continuing education for a dentist for the three most current renewal years;

- (ii) 36 hours of continuing education for a dental hygienist for the three most current renewal years; or
 - (iii) 36 hours of continuing education for a dentist for the three most current renewal years.
- (d) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: The board is amending (4)(c) to clarify the renewal cycle is based on three renewal years not calendar years to be consistent with provisions of (3)(c) within this rule.

The board is further simplifying the title/catchphrase for clarity.

24.138.525 REACTIVATION OF AN EXPIRED LICENSE (1) through (1)(b) remain the same.

(c) proof of CE pursuant to ARM 24.138.2105(2) as follows:

- (i) a dentist shall submit certificates of attendance of 60 hours of CE obtained in the most recent three years;
- (ii) a dental hygienist shall submit certificates of attendance of 36 hours of CE obtained in the most recent three years; and
- (iii) a dentist shall submit certificates of attendance of 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-141, MCA

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

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

- (a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);
- (b) through (4) remain the same.

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

REASON: It has come to the board's attention that certain military personnel (Reservists and National Guardsmen who have never been activated) in fact do not receive a DD 214 form upon their discharge from the military. Because the rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending this rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.138.2101 DEFINITION OF CONTINUING EDUCATION (1) and (2) remain the same.

(3) Residency programs accredited by the Commission on Dental Accreditation or its successor may be submitted for continuing education credit.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205, 37-29-306~~, MCA

REASON: The board is amending this rule to further define acceptable continuing education in response to applicant and staff questions. Following questions from licensing staff, particularly regarding credentialing applicants, the board concluded that residency programs fulfill the intent and criteria for acceptable continuing education.

The board has determined it is reasonably necessary to amend the implementation citations to accurately reflect all statutes implemented through the rule.

24.138.2102 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) through (1)(a)(xv) remain the same.

(xvi) management of medical emergencies; ~~and~~

(xvii) practice management; and

(xviii) dental anesthesiology.

(b) through (d) remain the same.

AUTH: 37-1-319, 37-4-205, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205~~, MCA

REASON: The board is amending this rule to add dental anesthesiology to the continuing education (CE) subject matters acceptable to fulfill board requirements. Noting that dentists holding anesthesia permits must complete CE hours in anesthesiology, the board concluded it is reasonable to make this addition and allow dentists to obtain CE in dental anesthesia prior to completing the total hours necessary to receive their anesthesia permits.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) Licensees Starting April 15, 2015, licensees shall have completed complete, within a three-year renewal cycle, the following minimum number of continuing education credits of instruction in acceptable courses of ~~continued~~ continuing education:

(a) through (6) remain the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205, 37-29-306~~, MCA

REASON: The board determined it is reasonably necessary to establish a start date for the continuing education cycle so licensees have a reasonable expectation of when the random audit will take place, which will be after April 15, 2018.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2105 REPORTING PROCEDURES (1) remains the same.

(2) Licensees are required to keep a certificate of attendance of continuing education completed and make this available to the board if so requested. The certificate of attendance shall include at a minimum:

- (a) licensee name;
- (b) course title;
- (c) course date;
- (d) presenter or sponsor; and
- (e) number of credit hours earned.

(3) and (4) remain the same.

(5) A The department will conduct a random audit of the licensees will be conducted in every three-year cycle. The audit shall include ten percent of active dentists, ten percent of active dental hygienists, and ten percent of active denturists.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-131, 37-1-306, 37-4-205, MCA

REASON: The board is amending this rule to address questions from staff, licensees, and applicants as to acceptable information in a continuing education document and the percentage of licensees in each profession to be selected for random audit in each three-year audit cycle.

It is reasonably necessary to amend the authority and implementation citations to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.2106 EXEMPTIONS AND EXCEPTIONS (1) and (2) remain the same.

(3) Inactive licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with ARM 24.138.514. An inactive license, when activated, will begin a new three-year cycle.

(4) remains the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

REASON: The board is amending (3) to align with the new three-year audit cycle and April 15, 2015, start date, and the elimination of the rolling three-year audit cycles.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2402 SCREENING PANEL (1) The screening panel shall consist of three dentists, one dental hygienist, one public member, and one dentist. The ~~presiding officer of the screening panel~~ board president may reappoint or replace screening panel members as necessary at the ~~presiding officer's~~ board president's discretion.

(2) remains the same.

AUTH: 37-4-205, 37-29-201, MCA

IMP: 37-1-307, 37-4-201, 37-29-105, MCA

REASON: Following a review of the board's rules and upon department recommendation, the board determined it is reasonably necessary to amend this rule so that final decisions regarding screening panel reappointment and replacement are under the authority of the board president. Board chairs generally appoint board panel members, and this amendment will align this board's procedures with the other professional and occupational licensing boards that are administratively attached to the department.

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

24.138.3229 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide deep sedation/general anesthesia must submit ~~evidence~~ certificates of attendance of having attended a minimum of 20 hours of continuing education every three-~~year~~ years cycle pursuant to ARM 24.138.2105(2).

(2) All dentists holding permits to provide moderate sedation must submit ~~evidence~~ certificates of attendance of having attended a minimum of 12 hours of continuing education every three-~~year~~ years cycle pursuant to ARM 24.138.2105(2).

(3) through (6) remain the same

(7) A random audit of licensees ~~may~~ will be conducted in every three-year cycle.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-4-101~~, ~~37-4-511~~, MCA

REASON: See REASON for ARM 24.138.505. Further, the board is amending (7) to clarify that the department does and will continue to conduct random CE audits on all active licensees, including those with anesthesia permits, every three years.

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

4. The rule proposed to be repealed is as follows:

24.138.401 INTRODUCTION found at ARM page 24-12017.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-4-101, 37-4-401, 37-29-102, MCA

REASON: Following a review of the rules, the board determined it is reasonably necessary to repeal this rule as unnecessary and unenforceable.

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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., September 11, 2015.

6. An electronic copy of this notice of public hearing is available at www.dentistry.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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.406, 24.138.505, 24.138.507, 24.138.509, 24.138.512, 24.138.514, 24.138.525, 24.138.540, 24.138.2101, 24.138.2102, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2402, and 24.138.3229, 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 24.138.401 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdden@mt.gov.

10. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
DR. AIMEE AMELINE, D.D.S., 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 August 3, 2015

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

| | | |
|-----------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 36.16.101 through 36.16.104, |) | PROPOSED AMENDMENT AND |
| 36.16.105B, 36.16.106 through |) | REPEAL |
| 36.16.107A, 36.16.110, 36.16.113, |) | |
| 36.16.114, 36.16.118 through |) | |
| 36.16.120, and the repeal of ARM |) | |
| 36.16.107B, 36.16.117, 36.16.121, |) | |
| and 36.16.122 regarding water |) | |
| reservation rules |) | |

To: All Concerned Persons

1. On September 10, 2015, at 10:30 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 3, 2015, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.16.101 POLICY AND PURPOSE OF RULES (1) As provided by ~~85-2-204~~ 85-2-101, MCA: "It is the policy of this state... to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems." While it is the policy of this state to recognize and confirm all existing rights to the beneficial use of any waters of the state, Montana must be responsive to the need for establishing options for future diversionary uses of Montana's water resource and for maintaining stream flows for the protection of existing water rights, aquatic life, and water quality.

(2) The water reservation process, as provided by 85-2-316 and 85-2-331, MCA, is a means ~~whereby~~ by which this policy can be implemented. ~~This law~~ The statute provides for the establishment of reservations of water by governmental entities for beneficial uses that are necessary and shown to be in the public interest.

(3) The purpose of these rules is to provide guidelines and procedures for the preparation and processing of correct and complete water reservation applications

and for the adoption and implementation of ~~board orders~~ reserving water reservations in order to ~~assure~~ ensure, to the fullest extent possible, that the proposed use of reserved water is not speculative.

(4) The water reservations are intended to be administered in accordance with the above policy and as provided in 85-2-316 and 85-2-331, MCA. These rules are intended to be implemented ~~so as~~ to provide reservants reasonable time for compliance with department ~~board~~ orders.

AUTH: 85-2-113, MCA

IMP: 85-2-101, 85-2-316, 85-2-331, 85-2-605, MCA

36.16.102 DEFINITIONS Unless the context requires otherwise, in these rules:

(1) "Act" means the Montana Water Use Act, Title 85, chapter 2, parts 1-through 4, MCA.

(2) and (3) remain the same.

(4) ~~"Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. For the purpose of these rules, the term beneficial use includes the maintenance of a minimum flow, level, or quality of water.~~

(5) ~~"Board" means the board of natural resources and conservation provided for in 2-15-3302, MCA.~~

(6) ~~"Board order" means an order issued by the board granting, denying, modifying, subordinating, revoking, extending, changing, transferring, reallocating or otherwise amending a water reservation under 85-2-316 and 85-2-331, MCA.~~

(7) ~~"Change" means to change the point of diversion, place of use, purpose of use, or place of storage of a water reservation granted under 85-2-316 and 85-2-331, MCA.~~

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

(95) "Direct benefits" means all benefits to the reservant derived from applying reserved water to the use for which it is granted.

(406) "Direct costs" means all costs to the reservant resulting from applying reserved water to beneficial use for the purpose granted.

(11) and (12) remain the same but are renumbered (7) and (8)

(439) "Entity" means the state, any political subdivision or agency of the state, or the United States or any agency of the United States ~~or any political subdivision or agency thereof or the United States or any agency thereof~~ that is qualified to reserve water pursuant to 85-2-316 and 85-2-331, MCA.

(4410) "Financial feasibility" means that financing for a water reservation project can be secured and that project costs will be recovered:

(a) from project revenues generated over the project life, ~~or;~~

(b) through available subsidies, ~~;~~ or

(c) from any combination of (a) and (b) ~~thereof~~.

(4511) "Firm yield" means the volume of water, including reasonable carry-over storage, that will be available from a storage facility during a specified critical dry period to meet water needs under a predetermined demand schedule.

Reasonable carry-over storage is determined on a case-by-case basis by considering such factors as type of beneficial use; relation of amount of the carry-over storage to project size; the impacts of water shortage on project operation; and other demands on the water resource.

~~(4612)~~ "Indirect benefits" means the benefits of applying reserved water to beneficial use that accrue to other uses or to parties other than the reservant.

~~(4713)~~ "Indirect costs" means the costs of applying reserved water to beneficial use that accrue to other uses or to parties other than the reservant.

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

~~(2417)~~ "Modify" means to alter a term or condition of the an order of the board establishing a water reservations issued pursuant to 85-2-316 and 85-2-331, MCA.

~~(2218)~~ "Net benefits" means indirect and direct benefits less indirect and direct costs.

~~(2319)~~ "Objective" means the purpose, the need, the amount, and the public interest of a water reservation granted by the board.

(24) remains the same but is renumbered (20).

~~(2521)~~ "Periodic review" means the department board review required to determine whether the objectives of a reservation are being met.

~~(26)~~ "Permit" means the permit to appropriate water issued by the department under 85-2-301 through 85-2-314, MCA.

~~(2722)~~ "Project" means any water storage and/or diversion facility, or a combination thereof, Water storage and/or diversion facilities including include, but are not limited to:

(a) dams;

(b) water spreading systems;

(c) diversion canals;

(d) laterals;

(e) waste and drainage canals;

(f) dikes;

(g) wells;

(h) pumping units;

(i) mains;

(j) pipelines;

(k) power generators; and

(l) waterworks systems needed for application of reserved water to beneficial use.

(28) remains the same but is renumbered (23).

~~(29)~~ "Rate" means a volume of water measured during a specified time interval, expressed in cubic feet per second (cfs) or gallons per minute (gpm).

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

~~(31)~~ "Reasonable diligence" means a fair, honest, and proper degree of activity or attention under the circumstances to perfect the reservation, as would be expected from a person exercising ordinary prudence.

(32) remains the same but is renumbered (25).

~~(33) "Reservation" means a water appropriation for existing or future beneficial uses approved by the board pursuant to 85-2-316 and 85-2-331, MCA, and these rules.~~

~~(3426) "Reservation term" means the period of years established by an ordered by the board during which reserved waters must be applied to beneficial use.~~

~~(35) through (37) remain the same but are renumbered (27) through (29).~~

~~(3830) "Transfer" means for a reservant to voluntarily relinquish convey ownership of all reservation or any part of a reservation thereof, and convey it to a qualified reservant.~~

~~(39) remains the same but is renumbered (31).~~

~~(40) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-316, 85-2-331, 85-2-605, MCA

36.16.103 FORMS (1) The necessary forms for the administration of these rules are available from the Water Resources Division of the department, P.O. Box 201601 1520 East Sixth Avenue, Helena, Montana 59620-1601 2304. The following forms hereinafter listed must be used in the administration of these rules:

(a) Form No. 600, Application for Beneficial Water Use Permit; ;

(b) Form No. 606, Application for Change of Appropriation Water Right; ;

(c) Form No. 608, Water Right Transfer Certificate, or other ownership update form provided by the department; ;

(d) Form No. 610A, Application for Reservation of Water–Diversiory Uses; and

(e) Form No. 610B, Application for Reservation of Water–Instream Uses.

~~(f) Form No. 623, Notice of Beneficial Use of Reserved Waters.~~

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.104 APPLICATIONS - GENERAL (1) Each application for reservation of water shall be accompanied by a completed Form 610A or 610B, ~~available from the department, and shall be submitted to the board through the Water Resources Division of the department, 1520 East Sixth Avenue, Helena, Montana 59620-2304.~~ A fee of ~~\$400~~ \$1500 shall be submitted with the application.

~~(2) The applicant shall submit the original and four copies of an application at the time of filing with the board. Oversized maps and design plans need only accompany the original.~~

~~(3) The application must be typed, printed, or otherwise legibly reproduced on 8½" x 11" paper, or as otherwise approved in writing by the department.~~

~~(4) The application must be submitted in a looseleaf format to facilitate the addition of updated material, except for oversized material such as maps and overlays which must be presented as attachments.~~

~~(5) The text and appendices must be consecutively numbered in a manner that provides each page in the application with a unique page number.~~

~~(6) An application must contain a list of persons involved in developing information used in preparing the application, including those involved in field investigations and professional consultations.~~

~~(7) The application must be organized in the following order:~~

~~(a) table of contents;~~

~~(b) summary, as required in ARM 36.16.105(1);~~

~~(c) a description of the purpose, as required in ARM 36.16.105(2);~~

~~(d) an analysis of need, as required in ARM 36.16.105A;~~

~~(e) an analysis of the amount of water requested and water availability, as required in ARM 36.16.105B;~~

~~(f) information to support that the reservation is in the public interest, as required in ARM 36.16.105C;~~

~~(g) a management plan, as required in ARM 36.16.106; and~~

~~(h) a bibliography, appendices, and attachments, where appropriate.~~

~~(8) The department shall return an incorrect or incomplete application to the applicant for correction or completion as required in ARM 36.16.107(2). An application will not be considered and acted upon by the board until the filing fee has been submitted and the application is found to be correct, complete, and in compliance with the act and these rules.~~

~~(9) An applicant may request the department to provide assistance in preparing a reservation application. Department assistance in the preparation of reservation applications shall not require the department to support such applications in making any recommendations to the board for findings pursuant to ARM 36.16.107B 36.16.107A.~~

~~(10) Prior to submitting a final application, an applicant may request that the board waive any application content requirements of ARM 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C, and 36.16.106 that may not be required by statute. The board may grant the waiver if the applicant shows good cause and the board determines that the waiver will not seriously impair its ability to fulfill its responsibilities under ARM 36.16.107A and 107B.~~

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.105B APPLICATION CONTENT - DETERMINATION OF AMOUNT

(1) through (1)(a)(iv) remain the same.

(b) The amount of water for future full-service and supplemental irrigation uses must be determined on the basis of monthly crop irrigation requirements, conveyance and on-farm delivery system efficiencies, and the acreage of irrigable land to be served.

(i) Irrigable lands shall include those lands as defined in ARM 36.16.102(4~~8~~15) for which landowners have expressed an interest in developing new or supplemental irrigation.

(ii) Interest may be determined from a survey of all potential irrigators in the area that would be affected by the proposed reservation; or by other methods acceptable to the department.

~~(iii) Lands for which no survey of landowners was taken or no response to the survey or a negative response to the survey was received may be included in an application only if an explanation of how landowner interest in developing irrigation on these lands was determined is included in use application. The following lands may only be included in an application if the application also includes an explanation as to how landowner interest in developing irrigation on these lands was determined:~~

~~(A) lands for which no survey of landowners was taken;~~

~~(B) lands to which no response to the survey was received; and/or~~

~~(C) lands to which a negative response to the survey was received.~~

(c) The amount of water for future industrial uses must be determined on the basis of estimated water requirements for the proposed industrial process as reflected by the preliminary design plans required in ARM 36.16.106;

(d) through (2) remain the same.

(a) For gaged streams where there is a record sufficient to identify long-term hydrologic conditions, the physical availability of flows on a monthly basis must be demonstrated using available water resources data. Statistical information on streamflows must include monthly means and 20th, 50th, and 80th percentile exceedance frequency flows. ~~The applicant must consult with the department to assure that the period of record selected allows for comparison of water availability statistics between any competing applicants.~~ Consideration shall be given to the need for adjusting flows to a prescribed level of development.

(b) For drainages in which gaging records are not sufficient or available, monthly flows must be calculated, ~~unless otherwise waived by the department,~~ using a flow estimation technique approved by the department.

(c) For applications involving the use of ground water, estimates of aquifer supplies must be based on information collected from the aquifer(s) involved.

(i) Where available, descriptions and maps of pertinent hydrologic information, including but not limited to aquifer extent, stratigraphic relationships, and aquifer transmission capability shall be presented.

(ii) Where this information is not available, a study plan must be presented in the application showing steps that will be taken to develop the information.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.106 APPLICATION CONTENT - MANAGEMENT PLANS (1) through (1)(b) remain the same.

(c) For applications involving irrigation, the following must be clearly identified: ~~proposed water distribution systems, drainage systems, places of use, and types of irrigation systems shall be delineated, after consultation with the department, on 7.5 minute U.S. geological survey topographic maps, if available. If not available, other maps with a scale acceptable to the department may be used. This base map shall be accompanied by the following overlays:~~

(i) north arrow;

- (ii) scale bar;
- (iii) section corners and numbers;
- (iv) township and range numbers;
- (v) all proposed points of diversion;
- (vi) all proposed places of use;
- (vii) proposed reservoir locations;
- (viii) proposed water distribution systems;
- (ix) proposed drainage systems;
- (ix) a transparent overlay to the same scale as the base map that

~~delineates~~ the location of irrigated and irrigable lands in the project areas. For irrigable lands, the map this overlay shall delineate soil classifications using the U.S. ~~Soil~~ Conservation Service's soil mapping units, the department's land classification standards, or other methods acceptable to the department. A narrative describing the criteria used for selecting irrigable lands shall be included in the application. Soil suitability for irrigation must be based on standards acceptable to the department; and

~~(ix)~~ a transparent overlay showing the ownership of land proposed to be irrigated with reserved water and lands underlying project of facilities. A table that lists ownership locations may be substituted for this requirement. Additional maps must be submitted if the information on one map cannot convey the required information clearly and must be of the same scale so that they can be overlain.

(d) through (f) remain the same.

(2) A management plan shall accompany all reservation applications for instream use(s), as defined in ARM 36.16.102(4914), and shall include an explanation of how reserved instream flows will be protected from future depletions by later priority users.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.107 CORRECT AND COMPLETE PROCESSING APPLICATIONS AND MONITORING RESERVATIONS - DEPARTMENT RESPONSIBILITIES

(1) The department will, upon request, assist the applicant by responding to questions regarding the interpretation and requirements of these rules. The department may review draft applications prior to final submittal. The department shall provide access to and assistance in the interpretation of water rights records, water availability information, or other needed data maintained by the department.

(2) The department shall determine if an application is correct and complete within 180 90 days after an application has been submitted along with the required application fee. ~~To be determined as correct and complete, a water reservation application shall meet all requirements of ARM 36.16.104, 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C and 36.16.106. A water reservation application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.16.104, 36.16.105, 36.16.105A, 36.16.105B, 36.16.105C, and 36.16.106, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required addendums, have been filled in with the required information. A~~

determination that an application is correct and complete is in no way a judgment on the part of the department on the merits of the reservation proposal. The department must notify the applicant in writing of any deficiencies. ~~Unless otherwise provided in ARM 36.16.117, an application returned to an applicant as not being correct or complete must be resubmitted to the department within 60 days of its return to the applicant or it will be terminated, unless the applicant requests and receives written approval from the department for an extension of time. All department staff who provided technical assistance in the preparation of the application or participated in the review shall be listed in a memorandum to be attached to the application file.~~

(a) The department shall determine whether an application for a water reservation is correct and complete by reviewing:

(i) information that is publicly available within its expertise; and

(ii) that information which is submitted in the application.

(b) If the department determines the application does not contain the information required in ARM 36.16.104 through 36.16.106, the applicant will be notified in one deficiency letter of any defects and the administrative rule(s) not met will be identified in the letter.

(c) The priority date on a water reservation application will not be changed if:

(i) all of the requested information in the deficiency letter is postmarked and submitted to the department within 30 days of the date of the deficiency; or

(ii) within 45 days of the date of the deficiency letter if the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.

(d) The water reservation application priority date will be changed to the date when the department receives all of the requested information if:

(i) all of the requested information in the deficiency letter is postmarked and submitted between 31 and 90 days of the date of the deficiency letter; or

(ii) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.

(e) If all of the requested information in the deficiency letter is not postmarked or submitted within 90 days of the date of the deficiency letter, the water reservation application will be terminated and the application fee will not be refunded.

(3) An application deemed correct and complete can advance to the next stage of the application process.

(a) An application deemed correct and complete does not entitle an applicant to a water reservation.

(b) Providing correct and complete information is not the same as meeting the statutory requirements.

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

~~(5) The department may evaluate applications and perform analyses necessary to make recommendations to the board for findings pursuant to ARM 36.16.107B and for any other analysis requested by the board.~~

~~(6) The department may evaluate annual reports submitted by reservants regarding progress in applying reserved water to beneficial use. On the basis of such evaluations, the department shall prepare a report to the board regarding any needed action.~~

~~(7) The department shall review all change and transfer proceedings required in ARM 36.16.118 and provide information and options to the board for action on changes or transfers.~~

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.107A ACTION ON APPLICATIONS AND MONITORING RESERVATIONS – BOARD RESPONSIBILITIES

~~(1) The department board may approve, deny, or condition any the requested reservation subject to such terms it considers appropriate. The department board may grant a reservation for less than the amount of water requested in an application, but in no case may it grant a reservation for more water than is requested.~~

~~(2) If an order reserving water is issued by the board with conditions, the department board shall allow the applicant a prescribed period of time to revise its management plan in response to those board conditions.~~

~~(3) When several applications are being considered concurrently within the same drainage basin, the board shall establish the priority of granted reservations by the chronological order in which the reservations are adopted pursuant to 85-2-316(9), MCA, or by the order of the board for reservations within the Missouri Basin or Little Missouri Basin pursuant to 85-2-331, MCA. Such priorities will be established only after a consideration of the positive as well as detrimental effects of establishing such priorities on applicants.~~

~~(4) The board may subordinate a water reservation to a permit issued if the permit application was accepted by the department before the date of the board order granting the reservation. The board may provide for subordination only if it finds that such permits would not substantially interfere with the purpose of a reservation. The board may consider subordination after issuing its order reserving water. The hearing convened in the matter of objections to the reservations may be separated into two proceedings to consider the establishment of the water reservations and the subordination of those reservations independently. A request to subordinate a water reservation to a permit may be initiated by the board, the department, or by petition of an affected permittee. The record of evidence and testimony presented at the hearing establishing the reservations will be considered part of the record in the hearing on subordination. Additional evidence and testimony limited to the matter of subordination may be presented. The person seeking the subordination has the burden to prove by preponderance of evidence the criteria in 85-2-316(9)(d), MCA. Notice of the hearing shall be provided to all affected permittees, permit applicants, reservants, and all parties who participated in the hearing on the matter of establishing the reservations. A separate final order may then be issued by the board on the matter of subordination.~~

~~(5) A permit does not substantially interfere with the purpose of a reservation if the reservation is not significantly diminished in value as defined in ARM 36.16.105A through 36.16.105C from water use under the permit.~~

~~(6) Substantial interference with the purpose of a reservation may result from water use under an individual permit or from the cumulative effect of water use under two or more permits. The board may subordinate a reservation to water use~~

~~under only those permits, in order of priority, which cumulatively would not result in substantial interference.~~

~~(7) If a reservation is subordinated to one or more permits, and that reservation is senior in priority to one or more reservations in the same water course, all junior reservations granted pursuant to 85-2-331, MCA, shall also be subordinate to the same permit or permits.~~

~~(8) The board shall periodically, but at least once every 10 years, review reservations pursuant to 85-2-316(10), MCA and ARM 36.16.120. Where the objectives of the reservation are not being met, the board may extend the term of, revoke, or modify the reservation after the reservant has been granted an opportunity to be heard by the board.~~

~~(9) The board shall act on requests for changes or transfers of reserved water, in accordance with ARM 36.16.118.~~

~~(3) The applicant must prove, by a preponderance of the evidence, that:~~

~~(a) the purpose of the reservation is a beneficial use as defined in 85-2-102(4), MCA; and~~

~~(b) the reservation is needed, as required in 85-2-316(4)(a)(ii), MCA, through evidence that:~~

~~(i) there is a reasonable likelihood that future instate or out-of-state competing water uses would consume, degrade, or otherwise affect the water available for the purpose of the reservation; or~~

~~(ii) if information regarding the effect of future water uses on a proposed reservation is not available;~~

~~(A) the applicant is not eligible to apply for a water use permit and water resource values warrant reserving water for the requested purpose; or~~

~~(B) the applicant would be eligible for a permit, but that there are constraints that would restrict the applicant from perfecting a water permit for the intended purpose of the reservation; or~~

~~(c) the amount requested is needed to fulfill the purpose of the reservation, as required in 85-2-316(4)(a)(iii), MCA, through evidence that:~~

~~(i) the methodologies and assumptions used to determine the requested amount are accurate and suitable;~~

~~(ii) water-use efficiencies associated with diversionary uses are reasonable, and there are no other reasonable cost-effective measures that could be taken within the reservation term to increase the use efficiency and lessen the amount of water required for the purpose of the reservation; and~~

~~(iii) for instream flow purposes on gaged streams, the amount does not exceed the limit provided by 85-2-316(6), MCA; and~~

~~(d) the reservation is in the public interest, as required in 85-2-316(4)(a)(iv), MCA, based on evidence and analysis of each of the following factors:~~

~~(i) whether the expected benefits of water to beneficial use are reasonably likely to exceed the costs where:~~

~~(A) benefits include all direct and indirect benefits where any non-market benefits are quantified and valued to the extent reasonably possible;~~

~~(B) costs include all direct and indirect costs where any non-market costs are quantified and valued to the extent reasonably possible; and~~

~~(C) benefits and costs that may not be reasonably quantified are considered;~~

(ii) whether the net benefits associated with granting a reservation exceed the net benefits of not granting the reservation;

(iii) whether there are no reasonable alternatives to the proposed reservation that have greater net benefits;

(iv) whether failure to reserve the water will or is likely to result in an irretrievable loss of a natural resource or an irretrievable loss of a resource development opportunity;

(v) whether there are no significant adverse impacts to public health, welfare, and safety; and

(vi) any other relevant considerations based on the evidence.

(4) If the purpose of the reservation proposes the withdrawal and transport of water for use outside the state, in addition to (3), the applicant must prove by clear and convincing evidence that the proposed out-of-state use of water is not contrary to water conservation in Montana and is not detrimental to the public welfare of citizens of Montana by considering the following factors:

(a) whether there are present or projected water shortages within the state of Montana;

(b) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(c) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(d) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(5) A department order reserving water must make findings regarding the applicant's proof regarding the applicable factors of (3) and (4). A department order reserving water must also find:

(a) the applicant is qualified to reserve water pursuant to 85-2-316, MCA;

(b) the reservation, as proposed for adoption, will not adversely affect existing water rights, including reservations; and

(c) the applicant is capable of exercising reasonable diligence toward financing projects contemplated in the application and applying the reserved water to beneficial use in accordance with a management plan as required in ARM 36.16.106(1).

(6) If the purpose of the reservation requires the diversion of water from one of the basins designated in 85-2-316(2)(a), MCA, for use in another of the designated basins, a department order reserving water must find that stored water under the water leasing program is not reasonably available for the proposed use because the applicant(s) project does not meet the statutory terms, conditions, or requirements of a lease under 85-2-141, MCA.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.110 WATER USE UNDER A RESERVATION - RESERVANT RESPONSIBILITIES (1) A reservant may use water in accordance with the board order granting the reservation and the administrative procedures developed in ARM 36.16.106(1)(f) as approved or amended by the department board. A reservant

~~holding a reservation for a diversionary use shall, upon applying water to a beneficial use, file form No. 623, notice of beneficial use of reserved waters, with the department.~~

(2) remains the same.

(3) A reservant must file an annual report with the department that summarizes the progress made in complying with provisions of the ~~board~~ order reserving water, except where otherwise required by law ~~board order~~.

(4) and (5) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.113 ENVIRONMENTAL IMPACT STATEMENT (EIS) (1) The necessity for an EIS must be evaluated for each reservation application as required by the Montana Environmental Policy Act (Title 75, chapter 1, MCA), the Montana Water Use Act (Title 85, chapter 2, MCA), and ~~board~~ and department rules (ARM Title 36, chapter 2, subchapters 5 and 6).

~~(2) If several applications are received or expected to be filed in a common drainage basin, the department may choose to prepare one EIS that addresses all applications.~~

(32) An EIS, if required, shall be prepared by the department sufficiently in advance of any ~~board~~ action on the reservation application to allow for full public review and comment. If necessary, the department may require the applicant to submit information needed to assess the impacts of the proposed reservation.

AUTH: 85-2-113, MCA

IMP: 85-2-124, 85-2-316, 85-2-331, 85-2-605, MCA

36.16.114 FEES AND COSTS (1) As required by ARM 36.16.104, a ~~\$400~~ \$1500 fee must be paid to the department when filing an application for reservation of water.

(2) In addition to the ~~\$400~~ \$1500 fee, as required by 85-2-316, MCA, the following must be paid by the applicant, excepting the cost of department personnel's salaries: department's cost of giving notice; holding the hearing; conducting investigations; and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. The applicant is also required to pay a reasonable portion of the department's costs for EIS preparation ~~unless waived by the department upon a showing of good cause by the applicant.~~

(a) An applicant shall consult with the department prior to submitting an application to develop a preliminary estimate of department costs that must be paid by the applicant pursuant to 85-2-316(3), MCA of acting upon such application. Within 30 days of a correct and complete determination by the department, the applicant must pay the department ten percent of the preliminary estimate to prepare a scope of work for completing any EIS and any other detailed work plans required in acting upon the applications. Where more than one application is expected to be filed for a common drainage basin, the department may

~~meet with all the applicants in order to determine an appropriate allocation of costs among the applicants that is based on the relative amount of work to process each application. Within a reasonable time after filing an application, the applicant must pay the department 10 percent of the preliminary estimate or, where more than one application is expected to be filed for a common drainage basin, 10 percent of the applicant's share of the preliminary estimate of the total cost, to prepare a scope of work for completing any EIS and any other detailed work plans required in acting upon the applications.~~

(b) After a scope of work for the EIS and any other detailed plans for acting upon the application have been completed, the department will notify applicants of the maximum cost they will be individually assessed to process their applications.

(i) Applicants shall be notified of the maximum cost within 90 days of the department's receipt of the final application.

(ii) The estimated ten ~~40~~ percent prepayment will be included in this amount and deducted from each applicant's future obligations.

(iii) The terms of payment for such fees will be negotiated and set forth in a contract between each applicant and the department.

(iv) For applications involving the construction of diversion facilities, the costs attributable to EIS preparation shall not exceed the limits provided in 85-2-124, MCA.

(c) An applicant may appeal to the department ~~board~~ to have its fees reduced.

(d) Any payments made to the department in excess of what is actually expended shall be remitted to the applicant ~~within a reasonable time after the date of the board order reserving water.~~

(3) The reservant or applicant shall be required to pay the notice costs ~~When the department board provides notice of a proposed department board action on an existing water reservation, by first class mail and publication in a newspaper of general circulation, the reservant or applicant shall be required to pay the notice costs.~~

AUTH: 85-2-113, MCA

IMP: 85-2-124, 85-2-316, 85-2-331, 85-2-605, MCA

36.16.118 CHANGES AND TRANSFERS ~~(1) Points of diversion, places of use, place of storage, and purpose of use not indicated in the original public notice of the reservation, and otherwise not the subject of proceedings authorized in 85-2-316(10) and (11), MCA, may be included in the reservation at a later date if approved by the board.~~

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

(43) The department shall process the application for change pursuant to 85-2-402 and 85-2-316, MCA. ~~If the department approves the change it shall give notice to the board on action taken on the application.~~

(5) ~~The board shall set a date for hearing and direct the applicant to establish at a show cause hearing conducted under the contested case provisions of the Administrative Procedure Act, that the reservation criteria will be met under the approved change. The board shall provide notice of the hearing date by first class~~

~~mail on persons who according to the department's notice list as determined under ARM 36.16.122 have an interest in the reservation and shall publish such notice at least once in a newspaper of general circulation in each county as determined by the board within the basin 60 days prior to board action.~~

~~(6) A person wishing to intervene in the show cause hearing must file a notice with the board 30 days prior to board action.~~

~~(7) The applicant shall pay for notice and publication of hearing under this rule as required under ARM 36.16.114.~~

~~(8) remains the same but is renumbered (4).~~

~~(95) A reservant may voluntarily transfer all or any portion of its reservation to a transferee without loss of priority if the transfer is approved by the department board.~~

~~(10) remains the same but is renumbered (6).~~

~~(447) The transfer certificate shall include an affidavit from the entity receiving the water reservation that:~~

~~(a) the entity qualifies to reserve water under 85-2-316(1), MCA, ;~~

~~(b) the entity agrees to comply with the requirements of 85-2-316, MCA, and the conditions of the water reservation, ; and~~

~~(c) the entity can meet the objectives of the reservation as granted or will be able to meet the objectives under an authorized change in the water reservation.~~

~~(428) An Application for Change of Appropriation Water Right must be filed in accordance with (1) through (6) if a Ttransfers of water reservations which involves a change in the original reservations' criteria under 85-2-316(4), MCA, shall file an Application for Change of Appropriation Water Right according to subsections (2) through (8) above.~~

~~(439) All decisions regarding changes and transfers shall reflect a consideration of the decision criteria listed in 85-2-316(4), MCA, and ARM 36.16.107B 36.16.107A.~~

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.119 REALLOCATION OF INSTREAM RESERVATIONS (1) Except as provided in 85-20-1401, MCA, the department board may:

(a) modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water; and

(b) reallocate the a water reservation, or a portion of the reservation, to an applicant that is for instream flows, or a portion thereof, to a qualified reservant,

(c) The department may not reallocate reserved water on any stream or river more than once every five years.

(2) A qualified reservant shall apply to the department board for a reallocation by filing a petition on a form prescribed by the department board. The petition must include the information required under ARM 36.16.104 through 36.16.106 and the following:

(a) and (b) remain the same.

(3) Upon receipt of a petition the department board shall notify the original reservant for instream flows that a petition for reallocation has been filed.

The department board may require the original reservant to submit appropriate information in accordance with ARM 36.16.105, 36.16.105A, 36.16.105B, and 36.16.105C, such as whether the amount of water needed for the instream flow reservation has changed due to new or refined methodologies for determining flow needs. The department board may require the reservant to submit revised estimates of instream flow needs based on these new or refined methodologies.

(4) The department board shall set a date for a hearing and direct the petitioner to establish ~~at a show cause hearing~~ that the reservation criteria under 85-2-316(4), MCA, the reallocation criteria under 85-2-316(11), MCA, and the requirements of this rule will be met under a reallocation of reserved water. The department board shall:

(a) provide notice by first class mail on persons who, according to the records of the department's notice list as determined under ARM 36.16.122, may be affected by the proposed reallocation have an interest in the reservation; and shall

(b) publish such notice at least once in a newspaper of general circulation in each county ~~as determined by the board~~ within the basin 60 days prior to the hearing.

(5) A person wishing to intervene in the ~~show cause~~ hearing must file a notice with the department board 30 days prior to the hearing board action.

(6) remains the same.

(7) To reallocate an instream reservation the department board must find that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the petitioner to outweigh the need shown by the original reservant. In making such determinations, the department board must follow the criteria defined under ARM ~~36.16.107B~~ 36.16.107A.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.120 BOARD DEPARTMENT PERIODIC REVIEW OF RESERVATION OBJECTIVES (1) Except for reservations for the purposes of maintaining a minimum flow, level, or quality of water or a reservation provided in 85-20-1401, MCA,

~~t~~The department board shall review water reservations at least once every ~~ten~~ 40 years to determine if the objectives of the reservation are being met.

(2) The department board shall issue an order for the review, including which includes the information which that must be submitted by the reservant and the deadline for its submittal.

(3) All reservants shall submit a report reviewing the objectives of the reservation and how they are being met, including but not limited to the following:

(a) a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology originally used to determine the amount. ~~;~~ ~~For instream flow reservants, if there are new or refined methodologies for quantifying instream flow amounts, the reservant is required to discuss the appropriateness and feasibility of reviewing the granted instream flows in light of the new or refined methodologies.~~

(b) whether the purpose remains the same as identified in the application and ~~board~~ order; ~~;~~

(c) whether the need still exists as identified in the application and ~~board~~ order; ~~;~~

(d) whether the amount is still appropriate in accordance with the application and ~~board~~ order; ~~;~~ and

(e) whether the reservation remains in the public interest as identified in the application and ~~board~~ order.

(4) All reservants shall provide information evidencing compliance with the ~~board's~~ order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

(5) If a diversionary reservation has not reached the development level projected, the reservant shall provide information explaining:

(a) what factors have deterred the progress towards perfecting the water reservation; and

(b) what actions will the reservant take to ~~insure~~ ensure perfection of the reservation.

~~(6) Instream use reservations shall include information showing how they are protecting the reservation from adverse affect by junior water users and where appropriate, that they are in compliance with their management plan under ARM 36.16.106 and any other conditions required by the board.~~

(7) The ~~department~~ board shall consider the following when determining whether the objectives are being met:

(a) all information above and as ordered, by the ~~department~~ board; ~~;~~

(b) the period of time which has elapsed since the date of the order granting the reservations and whether the reservant's actions reflect reasonable diligence in the perfection of the water reservation; ~~;~~

(c) new or changed circumstances, information, or values; ~~;~~ and

(d) any other considerations set out in the ~~board~~ order granting the reservation.

(8) Reasonable diligence is demonstrated by actions of the reservant in investment of time and money in the perfection of the reservation, including but not limited to:

(a) partial development of water reservation; ~~;~~ and

(b) completion of additional studies, project design plans, promotional efforts, or environmental assessments.

(i) Upon review of a water reservation, if the department determines the objectives of the reservation are not being met the department may:

(A) extend the time period to complete the appropriation of water;

(B) modify the reservation; or

(C) revoke the reservation.

(9) If the ~~department~~ board determines ~~that~~ the objectives of a reservation are not being met; or at the request of the entity holding the water reservation, it shall:

(a) set a date for hearing and require the reservant to show cause why the proposed ~~department~~ board action should not be taken; ~~;~~ The board shall

(b) provide notice of the proposed action by first class mail on persons who according to the records of the department's notice list ~~may~~ have an interest in the reservation ~~as determined under ARM 36.16.122;~~ and shall

(c) publish such notice at least once in a newspaper of general circulation in each county ~~as determined by the board~~ within the basin 60 days prior to the hearing ~~board action~~.

(409) Any person wishing to intervene in the ~~show cause~~ hearing must file a notice with the department board 30 days prior to the hearing date.

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

(4211) Reasons a water reservation may be modified or revoked include but are not limited to:

(a) a reservant is unable to meet the objectives of the water reservation or show reasonable diligence in perfecting the water reservation as determined under ARM 36.16.120(98); ;

(b) a reservant relinquishes all or a portion of its water reservation; ; or

(c) failure of the reservant to comply with the ~~board's~~ order granting the reservation.

(4312) A reservation term may be extended for a reasonable period of time to enable the reservant to meet the objectives of the reservation. An extension may be considered at the request of the reservant or on the department's ~~board's~~ own motion.

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

4. The department proposes to repeal the following rules:

36.16.107B ACTION ON APPLICATIONS - BOARD DECISION CRITERIA

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.117 APPLICATIONS IN MISSOURI RIVER BASIN AND THE LITTLE MISSOURI RIVER BASIN

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, MCA

36.16.121 PERMIT FOR RESERVED WATER

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

36.16.122 NOTICE LIST FOR BOARD ACTIONS

AUTH: 85-2-113, MCA

IMP: 85-2-316, 85-2-331, 85-2-605, MCA

5. REASONABLE NECESSITY: The amendments to ARM 36.16.101 through 36.16.104, 36.16.105B, 36.16.106 through 36.16.107A, 36.16.110, 36.16.113, 36.16.114, and 36.16.118 through 36.16.120, and the repeal of ARM 36.16.107B, 36.16.117, 36.16.121, and 36.16.122 are reasonably necessary to clarify the procedure for water reservation applications.

The department's water reservation rules were originally adopted in 1994. In 1995, the Board of Conservation and Natural Resources was eliminated and the former duties of the board under 85-2-316, MCA, were assigned to the department. In 2007, statutory changes eliminated the department's ability to issue new permits for waters already reserved under a state water reservation; changed the way priorities of reservations are established; and, eliminated the ability of the department to subordinate reservations to permits. Further statutory amendments were made in 2015 (SB 330) with regard to the department review process of water reservations. The amendments and the repeal of ARM 36.16.107B, 36.16.117, 36.16.121, and 36.16.122 provide clarification and guidance regarding water reservation applications and actions on those applications based upon the changes discussed above. They also correct minor grammatical and formatting errors and remove obsolete language.

The financial impact of the increased application fee in ARM 36.16.104 from \$100 to \$1500 will likely be negligible. In the last ten years, the department has received zero applications under ARM 36.16.104. The fee of \$1500 is comparable to existing petitions to the department, such as petitions for closure of a highly appropriated basin and petitions for a controlled groundwater area (ARM 36.12.103).

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on September 10, 2015.

7. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public 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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax

(406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 29, 2015.

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

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Brian Bramblett
BRIAN BRAMBLETT
Rule Reviewer

Certified to the Secretary of State on August 3, 2015

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 37.86.5110 pertaining to the) PROPOSED AMENDMENT
revision of exceptions for Passport to)
Health services referrals)

TO: All Concerned Persons

1. On September 2, 2015, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated 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 26, 2015, 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:

37.86.5110 PASSPORT TO HEALTH PROGRAM: SERVICES (1)
An ~~enrollee~~ member must obtain services directly from, or through, a Passport referral by the ~~enrollee's member's~~ primary care provider except for:
(a) through (h) remain the same.
(i) dental, vision, ~~and hearing,~~ and EPSDT screening and preventive services portion of the screening services for children;
(j) school-based health services as defined in ARM 37.86.2230;
(k) through (ad) remain the same.
(ae) skilled care facility services as defined in ARM ~~37.50.105~~ 37.40.105;
(af) through (al) remain the same.
(am) therapeutic youth group home or ~~therapeutic youth family care home~~ support and therapeutic foster care services under the EPSDT program; and
(an) hospice as defined in ARM 37.40.801 and 37.40.806-; and
(ao) professional inpatient services.
(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-116, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) has been granted the authority to establish a primary care case management (PCCM) program for Medicaid members by the United States Department of Health and Human Services (HHS), as provided in 42 U.S.C. 1396n(b). The department refers to its PCCM program as the "Passport to Health Program" (Passport).

The department proposes to amend ARM 37.86.5110 to streamline the Passport referral process for inpatient hospital stays and, as a result, decrease the regulatory requirements on providers. The current rule requires providers to make additional referrals for inpatient professional services related to the reason for the referral for the inpatient admission. The department has determined that these additional referrals create unnecessary effort for services related to the need for the inpatient stay.

The department has further determined that additional rule amendments are necessary to update (i) Medicaid references from enrollees to members; (ii) titles of services to align with other Medicaid programs; and (iii) correct cross-references to other administrative rules. These changes are consistent with departmental goals for clear rule writing and providing consistency between department rules and the Code of Federal Regulations.

Fiscal Impact

The department anticipates no fiscal impact from the proposed rule amendments.

5. The department intends to apply these rule amendments retroactively to September 1, 2015. 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, and must be received no later than 5:00 p.m., September 10, 2015.

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. With regard to the requirement of Chapter 453(1), Session Laws of Montana (2015), the department has determined that the proposed amendments are not amenable to performance-based measures.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State August 3, 2015.

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

| | | |
|--|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 37.57.102 and 37.57.106 |) | AMENDMENT |
| pertaining to updating federal poverty |) | |
| guidelines to 2015 levels and to align |) | NO PUBLIC HEARING |
| Children's Special Health Services |) | CONTEMPLATED |
| (CSHS) with the Healthy Montana |) | |
| Kids (HMK) financial assistance |) | |
| eligibility criteria |) | |

TO: All Concerned Persons

1. On September 12, 2015, the Department of Public Health and Human Services proposes to amend 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 September 3, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Poverty income guidelines" means the poverty income guidelines published in ~~2014~~ 2015 in the Federal Register by the U.S. Department of Health and Human Services. The department adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services and that are published in the February ~~2014~~ 2015, Federal Register. A copy of the ~~2014~~ 2015 poverty guidelines may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Children's Special Health Services Program, 1400 Broadway, Rm A-116, Helena, MT 59620, telephone (406) 444-3617.

(18) through (23) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.57.106 ELIGIBILITY FOR CSHS FINANCIAL ASSISTANCE (1) remains the same.

(2) Family income must be verified to determine eligibility. The department will request documentation of income from the applicant.

(a) remains the same.

(b) Family income does not include:

(i) and (ii) remain the same.

(iii) the first \$2,000 of an enrolled tribal member's per capita payment; or

(iv) the first \$2,000 of an enrolled tribal member's tribal land income; ;

~~(v) the interest earned on (4)(a), (4)(b), or (4)(c);~~

~~(vi) dependent care expenses which are deducted from income under the HMK Plus coverage group;~~

~~(vii) foster care income for any children unless the only children in the family are foster care; or~~

~~(viii) income of any individual with whom a child resides who has no legal obligation to support the child.~~

(c) ~~Income information will be used by the department to project the family's income.~~ The following disregards are subtracted from the family's gross earned annual income:

(i) \$1,440 per year for each family member whose earned income is counted;

(ii) \$2,400 per year, regardless of the actual expense amount, for each individual for whom dependent care is paid out-of-pocket and the care is provided so a parent can work, look for work, or attend school; and

(iii) out-of-pocket expenses for health insurance premiums.

(d) ~~A member of a family whose income, less any out-of-pocket expenses for health insurance premiums, care expenses for children, disabled or elderly adults while adults are working, and earned income disregards is at or less than 250%~~ 261% of the federal poverty income guidelines and one of the following:

(i) through (5) remain the same.

~~(6) CSHS financial eligibility will be determined in accordance with the financial eligibility guidelines contained in HMK's ARM 37.79.201, with the following exceptions:~~

~~(a) children may have health care coverage and the out-of-pocket expenses for health insurance premiums are deducted from household income; and~~

~~(b) CSHS financial eligibility is at or below 250% of the federal poverty income guidelines.~~

~~(7)~~ (6) A CYSHCN attending an interdisciplinary team pediatric specialty clinic does not need to apply for financial assistance to cover the cost of clinic visits.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes amendments to ARM 37.57.102 and ARM 37.57.106 pertaining to Children's Special Health Services Program (CSHS). CSHS is located in the Family and Community Health Bureau of the department and is charged by the Federal Maternal Child Health Block Grant to "support development and implementation of comprehensive, culturally competent, coordinated systems of care for children and youth who have or are at risk for chronic physical, developmental, behavioral or emotional condition and who require health and related services of a type or amount beyond that required by children generally."

ARM 37.57.102

This proposed amendment is needed to update the current poverty income guidelines published in 2014 to the 2015 poverty income guidelines published in the Federal Register by the U.S. Department of Health and Human Services. Each year the U.S. Department of Health and Human Services revises and publishes the new poverty income guidelines. The federal poverty income guidelines are the resource used to confirm that the family income falls within the CSHS rules.

ARM 37.57.106

This proposed amendment reflects the increased federal poverty level guideline used by CSHS from 250% to 261% to enable CSHS to enhance the HMK program and to clarify the intent of the rule and to remove redundant wording. The potential impact of this proposed amendment is not expected to exceed two children.

Fiscal Impact:

The department does not anticipate any fiscal impact related to these proposed amendments.

5. The department intends to apply these rule amendments retroactively to April 1, 2015. 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 concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 10, 2015. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., September 10, 2015.

8. 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 .2 persons based on the potential impact of these proposed amendments is not expected to exceed two children.

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 6 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 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.

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 amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State August 3, 2015.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 38.5.3403 pertaining to operator) PROPOSED AMENDMENT
service provider allowable rates)

TO: All Concerned Persons

1. On September 8, 2015, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Service Regulation 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 Service Regulation no later than 5:00 p.m. on September 1, 2015, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail asolem@mt.gov.

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

38.5.3403 ALLOWABLE RATE (1) remains the same.

(2) Except for cost-based allowable rates provided in ARM 38.5.3404 the allowable rate for each category and type of service provided by operator service providers will be established by the commission annually. The allowable rate for each category and type of service will be the average of the intrastate rates charged for each category and type of operator service provider service by AT&T, MCI, ~~sprint~~, and ~~US west~~ CenturyLink, plus 50%.

(3) and (4) remain the same.

AUTH: 69-3-103, 69-3-1103, MCA

IMP: 69-3-201, 69-3-1101, 69-3-1102, 69-3-1105, MCA

REASON: The amendment of ARM 38.5.3403 is necessary to update the operator service provider rate calculation formula to reflect the three current major carriers that provide these services. Sprint no longer provides these services. U.S. West no longer exists and CenturyLink, the successor, will replace them in the calculation.

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: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax

(406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., September 11, 2015.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 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 amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State August 3, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|-----------------------------------|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 42.2.511 Review of Centrally |) | AMENDMENT |
| Assessed Property Appraisals, to |) | |
| remove an outdated reference to a |) | NO PUBLIC HEARING |
| form number |) | CONTEMPLATED |

TO: All Concerned Persons

1. On September 14, 2015, the Department of Revenue proposes to amend the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 24, 2015. 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:

42.2.511 REVIEW OF CENTRALLY ASSESSED PROPERTY APPRAISALS

(1) and (2) remain the same.

(3) remains the same.

~~(a) Objections may be submitted using the APLS102F or by a detailed letter.~~

(b) remains the same, but is renumbered (a).

(4) through (9) remain the same.

AUTH: 15-1-201, 15-1-211, 15-23-108, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.2.511 to strike an outdated reference to a form number. The language in (3)(a) was inadvertently left intact when the rule was amended in 2014. The correct reference to Form CAB-8 is currently provided in (2). Removing the outdated language from (3) is necessary to eliminate confusion. No substantive changes to the rule language are being proposed at this time.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 11, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laurie Logan at the above address no later than 5 p.m., September 11, 2015.

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 13 persons based on 125 centrally assessed companies in Montana.

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, which 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.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

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

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 3, 2015

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

| | | |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of New |) | NOTICE OF PUBLIC HEARING ON |
| Rules I through XII; the transfer of |) | PROPOSED ADOPTION, |
| ARM 44.10.309, 44.10.311, |) | TRANSFER, TRANSFER AND |
| 44.10.505, 44.10.538, and 44.10.543; |) | AMENDMENT, AND REPEAL |
| the transfer and amendment of ARM |) | |
| 44.10.101, 44.10.201, 44.10.301, |) | |
| 44.10.303, 44.10.305, 44.10.307, |) | |
| 44.10.321, 44.10.323, 44.10.327, |) | |
| 44.10.329, 44.10.330, 44.10.331, |) | |
| 44.10.333, 44.10.334, 44.10.335, |) | |
| 44.10.336, 44.10.337, 44.10.338, |) | |
| 44.10.401, 44.10.403, 44.10.405, |) | |
| 44.10.407, 44.10.409, 44.10.413, |) | |
| 44.10.501, 44.10.503, 44.10.511, |) | |
| 44.10.513, 44.10.515, 44.10.517, |) | |
| 44.10.519, 44.10.521, 44.10.525, |) | |
| 44.10.531, 44.10.533, 44.10.535, |) | |
| 44.10.536, 44.10.537, 44.10.539, |) | |
| 44.10.540, 44.10.541, 44.10.542, and |) | |
| 44.10.544; and the repeal of ARM |) | |
| 44.10.325, 44.10.332, 44.10.411, |) | |
| 44.10.507, and 44.10.523 pertaining |) | |
| to campaign finance reporting, |) | |
| disclosure, and practices |) | |

TO: All Concerned Persons

1. On September 2, 2015, from 9:00 a.m. until 4:00 p.m., and on September 3, 2015, from 9:00 a.m. until 4:00 p.m., the Office of the Commissioner of Political Practices will hold a public hearing in Room 303, the Old Supreme Court Chambers of the Capitol Building, 1301 East 6th Avenue, Helena, Montana, to consider the proposed adoption, transfer, transfer and amendment, and repeal of the above-stated rules. The COPP intends to have the public hearings live broadcast on the Legislature's web site, <http://leg.mt.gov/>, under the current streaming schedule of video and audio on the days of the hearings.

2. The Office of the Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Commissioner of Political Practices no later than 5:00 p.m. on August 26, 2015, to advise us of the nature of the accommodation that you need. Please contact Jaime MacNaughton or Anne Sherwood, Office of the Commissioner of Political Practices, P.O. Box 202401,

Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY

The COPP has statutory authority to establish rules that implement the Montana Campaign Practices and Finance Act as enacted and amended by the Legislature. These rules set forth minimum disclosure and reporting standards which are important elements in providing for the public disclosure of funds used in campaigns for elected office or ballot issues. These rules provide clarity to candidates and political committees to facilitate the ability to achieve the Act's purpose of keeping the public's trust, fulfilling their public duty of reporting and disclosure, and promoting the public's right to know.

In 1976 the Office of the Commissioner of Political Practices (COPP) enacted its first set of administrative rules. The last major re-write of the rules occurred in 2001. In an effort to organize the current COPP rules to follow the logical flow of a campaign, the commissioner has determined that we will retire the old campaign finance reporting and disclosure rule numbers, from ARM Title 44, chapter 10, subchapters 1 through 5 to Title 44, chapter 11, subchapters 1 through 7.

The COPP proposes the transfer, amendment, adoption, and repeal of current COPP rules to conform to current law, including *Citizens United*, and to clarify application of the Montana Campaign Practices and Finance Act to candidates and political committees. Further, the 2015 Legislature passed SB 89, SB 151, and SB 289, all of which are effective October 1, 2015, and the amendment, adoption, and repeal of COPP rules are necessary to define and clarify compliance standards in accord with these new laws.

The COPP recognizes and commends James Scheier, Bureau Chief for Agency Legal Services, for his assistance, guidance, and commitment over the previous 28 years working with the commissioners and staff of the COPP and to the benefit of the people of Montana. This commendation includes gratitude for Mr. Scheier's assistance in formulating these rules.

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

NEW RULE I PRIMARY PURPOSE (1) The term "primary purpose" refers to a major, principal, or important goal, function, or reason for existence for a committee.

(2) The commissioner may determine that a primary purpose of a committee is to support or oppose candidates or ballot issues based upon any one or more of the following criteria:

- (a) allocation and source of budget;
- (b) staff or members' activity, both during an election and otherwise;
- (c) the statement of purpose, articles of incorporation, bylaws, or goals;
- (d) election activity;

- (e) the history of the committee and the number of elections in which it has participated or registered;
- (f) receipt of contributions in response to an appeal or that are designated for a specified candidate, ballot issue, petition, or election activity;
- (g) the number and cost of reportable election expenditures made;
- (h) coordination with any candidates or other political committees;
- (i) ordinary business actually conducted;
- (j) if a corporation, whether it was created and maintained as provided by law; or
- (k) the date of founding, incorporation, or organization.

(3) If the commissioner finds, pursuant to ARM 44.11.204 and based on his or her analysis of the information provided on the committee's statement of organization (Form C-2), or any other information known or provided to the commissioner's office, that an organization's primary purpose is to support or oppose a candidate or ballot issue, then that organization shall file and report as an independent committee, ballot issue committee, or political party committee, pursuant to these rules, and not as an incidental committee.

AUTH: 13-37-114, MCA

IMP: 13-37-226, 13-37-232, MCA

REASON: The COPP is including the adoption of this rule into the subchapter specific to political committees to make the rules easier to navigate and more user-friendly. The primary purpose rule defines an independent committee, as opposed to an incidental committee.

The COPP considered alternative methods for the criteria used in (2) of this rule. Those alternatives included using percentages or a "totality of the circumstances" balancing test to determine primary purpose. The COPP chose the alternative in this proposed rule because election activity varies from cycle to cycle and is infinitely varied over time.

The COPP considered establishing a rebuttable presumption that any corporation, entity, or organization that was formed in the six months prior to an election in which it solicits contributions for or made a reportable election expenditure would have been established for the purpose of supporting or opposing candidates or issues (an independent, party, or ballot issue committee).

The method chosen for the COPP's proposed rule reflects a balancing of the people's informational interest in disclosure with an entity's associational privacy. Montanans' right to evaluate different speakers and messages participating in an election is dependent not upon an organization's overall conduct, but upon the organization's conduct in and around Montanans' elections. The COPP is further adopting this rule to satisfy public need, clarify the statutory requirements, increase transparency, and identify the minimum reporting and disclosure baseline consistent with the law.

NEW RULE II STATEMENT OF CANDIDACY (1) "Candidate" is defined in 13-1-101, MCA.

(2) A candidate, whether or not the office for which the individual will seek nomination or election is known, shall file certification with the commissioner pursuant to 13-37-201, MCA, within five business days of becoming a candidate as defined by 13-1-101, MCA.

(3) A statement of candidacy shall include, but not be limited to:

(a) the complete name, office sought, and party affiliation (if applicable) of the candidate; and

(b) the complete name and address of the candidate's campaign treasurer and campaign depository, and the complete name and address of his or her deputy campaign treasurer and secondary campaign depository, if any.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-201, 13-37-202, 13-37-205, MCA

REASON: The COPP is adopting this rule to clarify the candidate-specific statutory requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

NEW RULE III BUSINESS DISCLOSURE (1) For purposes of this rule, "state officer" means elected officials, candidates for statewide or state district offices, state district court candidates, Supreme Court candidates, department directors, or anyone appointed to fill any of these offices.

(2) All state officers must file a business disclosure statement, as provided in 2-2-106, MCA.

(a) Each candidate for a statewide election or a state office elected from a district must file a business disclosure statement within five days of the time that the candidate files for office.

(3) For additional rule requirements, see ARM 44.10.621.

AUTH: 13-37-114, MCA

IMP: 13-2-2-106, MCA

REASON: The COPP is adopting this rule to clarify the candidate specific statutory requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

NEW RULE IV CONSEQUENCES FOR FAILURE TO FILE REQUIRED STATEMENTS, REPORTS, OR DISCLOSURES (1) The commissioner, following inspection of the candidate or committee's required statements, disclosures, or reports or lack thereof, may take actions, including but not limited to any of the following:

(a) declare the statement, disclosure, or report to be incomplete or inadequate and require the preparation of a new statement, disclosure, or report, as provided in 13-37-121 and 13-37-123, MCA;

- (b) require the production of a candidate or committee's campaign records, accounts, books, correspondence, memoranda, bank account statements, or any other information as provided in 13-37-111 and 13-37-123, MCA;
- (c) reclassify a political committee as provided in 13-37-226, MCA;
- (d) issue an order of noncompliance as provided in 13-37-121, MCA;
- (e) provide notice to the Secretary of State or other election administrator that a candidate's name should be withheld from a primary election ballot as provided in 13-37-126, MCA;
- (f) provide notice to the Secretary of State or other election administrator that a certificate of nomination or election should be withheld following the general election as provided in 13-37-127, MCA;
- (g) issue a finding of sufficient evidence of violation of Montana's Campaign Practice and Finance laws as provided by 13-37-111 and 13-37-123, MCA;
- (h) initiate a civil or criminal court action to enforce Montana's Campaign Practice and Finance laws as provided by 13-37-128, MCA;
- (i) request the District Court to remove an elected official from office, if the official is found by the court to have violated the laws as provided in 13-35-106, MCA;
- (j) request that the District Court void an election pursuant to 13-35-107, MCA; or
- (k) any other action allowed by statute to carry out the purposes of Montana's 1975 Campaign Finance and Candidate Disclosure Act as provided by sec. 1, Ch. 480, L. 1975.

(2) This rule is not intended to limit the powers of others to enforce the laws of Title 13, chapters 35 and 37, MCA, where allowed by law, nor to encompass all potential legal consequences for actions outside the jurisdiction of the commissioner.

AUTH: 13-37-114, MCA

IMP: 13-35-106, 13-35-107, 13-37-111, 13-37-121, 13-37-123, 13-37-126, 13-37-127, 13-37-128, MCA and Sec. 1, Ch. 480, L. 1975

REASON: The COPP is proposing adoption of this rule to clarify the authority of the commissioner to regulate and enforce Montana's Campaign Practice and Finance laws. The commissioner's authority is spread throughout Title 13, chapters 35 and 37, MCA, and the purpose of this rule is to reduce confusion and enhance understanding of the COPP.

NEW RULE V ELECTRONIC CONTRIBUTIONS, REPORTING (1) A candidate or political committee may accept electronic contributions from online payment service providers and payment gateways as contributions.

(a) A contribution made through a payment gateway, such as Bitcoin or other electronic peer-to-peer systems, shall be converted to U.S. dollars at the prevailing rate within twenty-four hours of receipt.

(b) A contribution made through an online service provider, such as Paypal or Google Wallet, shall be deposited in the campaign account.

(c) Any electronic contribution must be deposited in the designated campaign account within five business days of actual receipt or conversion.

(2) All electronic contributions shall be reported according to the requirements for contributions set out in these rules.

(a) An electronic contribution shall be reported as received on the day the electronic contribution is made to the online service provider or payment gateway, regardless of whether the contribution has actually been received.

(b) The full value of the contribution shall be reported as received from the contributor, not the amount as received from the service.

(c) Each service charge or conversion fee incurred or discounted by the payment service provider shall be reported as a campaign expenditure in accordance with these rules.

(3) Anonymous contributions shall never be accepted.

(4) If the electronic contribution amount exceeds the candidate contribution limit, the contributor must be issued a refund for the excess funds via check or through an online payment system from the campaign account. If it is not possible to return only a portion of the funds, the entire contribution must be returned.

(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.

AUTH: 13-37-114, MCA

IMP: 13-37-207, 13-37-229, MCA

REASON: The COPP is proposing the adoption of this rule to address the current digital nature of campaign fundraising and to reduce confusion from candidates and committees on how to report them. The rule provides specific instructions on how to handle the receipt and reporting of electronic contributions. See also the reason for ARM 44.10.511 (44.11.402).

NEW RULE VI ATTRIBUTION ON ELECTION MATERIAL (1) Pursuant to 13-35-225, MCA, election communications, electioneering communications, and independent expenditures (referred to collectively herein as "election materials") must disclose the person who paid for the election materials, by including the appropriate attribution language set out in (2).

(2) All attributions must include the words "paid for by" followed by the appropriate identifying information. For election materials financed by:

(a) a candidate or a candidate's campaign, the attribution must include either:

(i) the name and address of the candidate; or

(ii) the name and address of the candidate's campaign.

(A) An attribution using the name of the candidate's campaign must include the first and last name of the candidate if the name of the campaign does not include at least the candidate's last name.

(B) Additional information, such as the name of the campaign treasurer, may be included within the attribution language, but it is not required.

(iii) Examples of an appropriate attribution for a candidate are:

Paid for by John Smith
P.O. Box 10000

Helena, MT 59605

or

Paid for by Smith for Senate
P.O. Box 20000
Helena, MT 59605

(b) a political committee, the attribution must include:

(i) the name of the committee, the name of the committee treasurer, and the address of either the committee or its treasurer.

(ii) An example of an appropriate attribution for a political committee is:

Paid for by Support Our Schools
Sarah Jones, Treasurer
P.O. Box 30000
Helena, MT 59605

(c) a political committee that is a corporation or union, the attribution must include:

(i) the name of the corporation or union, its chief executive officer or equivalent, and the physical address of the corporation or union's principal place of business.

(ii) Examples of an appropriate attribution for a political committee that is a corporation or union are:

Corporation:
Paid for by Pretty Good Manufacturing Co.
Susan Smith, CEO
1000 Industry Drive
Helena, MT 59605

Union:
Paid for by Montana Grocery Workers Union
James Miller, President
2000 Shopping Cart Avenue
Helena, MT 59605

(d) For election materials funded or facilitated solely by an individual acting on his or her own behalf, the attribution must include the name and address of the individual who paid for the materials.

(3) All election materials are required by 13-35-225, MCA, to clearly and conspicuously include the appropriate attribution language. To ensure compliance with this statutory directive, the commissioner establishes the following requirements and specifications:

(a) for written election materials, including but not limited to those published, broadcast, or otherwise disseminated through print media or digital media, as defined in these rules:

(i) the reader or observer should have no difficulty locating and reading the attribution language;

(ii) the attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication;

(iii) the language should be contained in a printed area or segment set apart from the other contents of the election materials;

(iv) the language should be printed with a reasonable degree of color contrast between the background and the printed statement; and

(v) in the case of yard signs or other campaign signs, the attribution language should appear on the side of the sign that contains the campaign message.

(b) for broadcast election materials, including but not limited to those published, broadcast, or otherwise disseminated through broadcast media or digital media, as defined by these rules:

(i) the attribution language for broadcast election communications containing audio content shall be spoken in the communication;

(ii) the attribution language for broadcast election materials containing visual content shall be displayed in the communication. The language may simultaneously be spoken, but it is not required.

(4) In partisan candidate elections, election communications and electioneering communications financed by a candidate or a political committee organized on the candidate's behalf must state either the candidate's party affiliation or include the candidate's party symbol.

(a) To meet the party affiliation disclosure requirement, election materials should state the name or a reasonable and comprehensible abbreviation of the name of one of the qualified political parties in Montana: "Democrat," "Libertarian," or "Republican."

(b) To meet the party symbol disclosure requirement, election materials should include either the symbol for one of the qualified political parties in Montana or the capitalized first letter of one of the parties. Acceptable symbol designations are:

(i) Democrat: the donkey symbol or "D";

(ii) Libertarian: the Statue of Liberty symbol or "L"; or

(iii) Republican: the elephant symbol or "R."

(c) The commissioner may determine that other language or a symbol included within a particular election material complies with the statutory directive, as long as there is some objective basis for the use of the language or symbol and the identity of the party is readily discernable.

(d) The party affiliation or symbol may appear with the attribution language, or within the body of the message content in the election materials.

(5) Printed election material that contains information about another candidate's voting record must include all the information specified in 13-35-225, MCA. The signed statement referred to in the statute may consist of a facsimile of an actual hand signature or an electronic signature. An acceptable electronic signature will be in the following format: "/s/ John Smith." An electronic signature

that appears on written election materials shall have the same effect as an actual hand signature or a facsimile of a hand signature.

(6) Election materials consisting of documents or other articles of campaign advertising that are too small for the inclusion of the attribution language and other information required by 13-35-225, MCA, need not include the information; however, the person who financed the election material must file a copy of the material with the commissioner, together with the information required by the statute, at the time of its public distribution. For purposes of this rule, "at the time" means at or before the earliest date and time the election material is scheduled to be published, broadcast, or disseminated to the public.

(7) If information required by 13-35-225, MCA, is omitted from election materials, or if information required by (6) is not filed with the commissioner, the person who is responsible for or who financed the material shall, upon discovering the deficiency:

(a) file notification of the deficiency with the commissioner within two business days of discovery;

(b) bring the election material into compliance or file the information required by (6); and

(c) withdraw any noncompliant material from circulation as soon as possible.

(8) If notification required by (7)(a) is not provided and the commissioner becomes aware of the existence of election material that does not comply with 13-35-225, MCA, whether by complaint or otherwise, the commissioner will contact the person who is responsible for or financed the material and provide notice of the deficiency.

(a) The notice will require that the material be brought into compliance within the time limits provided in 13-35-225, MCA.

(b) The notice will state that failure to bring the material into compliance will subject the person who financed the election materials to a civil penalty action pursuant to 13-37-128, MCA.

(c) The noncompliant election material must not be disseminated or broadcast until it has been corrected and brought into compliance.

(9) The office of the commissioner, when notified, will work informally with candidates, political committees, and others to ensure compliance with the requirements of 13-35-225, MCA, and to promptly bring deficient election materials into compliance.

AUTH: 13-37-114, MCA

IMP: 13-35-225, MCA

REASON: The COPP is proposing adoption of this rule to satisfy public need, set forth the procedural requirement for attribution on campaign materials, to provide clarification and consistency throughout these rules, and to provide uniformity with the statutes.

NEW RULE VII COORDINATION (1) A "coordinated expenditure" means any election communication, electioneering communication, or election activity that is:

- (a) funded or facilitated by:
 - (i) an expenditure as defined in 13-1-101, MCA, and further defined in ARM 44.11.501;
 - (ii) a payment of money by any person; or
 - (iii) a purchase, distribution, loan, advance, promise, pledge, gift, or provision of anything of value by any person.
- (b) in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.
- (c) The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, such as content, price, or timing, but only requires one of those elements to be met as a fact of a coordinated expenditure.
- (2) Whether an election communication, electioneering communication, or election activity may constitute a "coordinated expenditure" depends upon conduct, communications, or relationships involving a person and a candidate or political committee or an agent of a candidate or political committee, or involving an individual who acted within the previous twelve months as a paid agent or consultant to the candidate or a political committee supporting the candidate.
- (3) A "coordinated expenditure" does not mean any election communication, electioneering communication, or election activity consisting of:
 - (a) an independent expenditure or an independent election activity funded or facilitated by a person;
 - (b) services, food, or lodging provided in a manner that they are not contributions by a person within the meaning of contribution as defined by 13-1-101, MCA, or these rules;
 - (c) the cost funded or facilitated by a person for any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical of general circulation;
 - (d) activity by an individual acting solely on his or her own behalf independently of any candidate or political committee; or
 - (e) the independent use of statements, images, or other information that is appropriated from a public source.
- (4) A "coordinated expenditure" does not exist solely because:
 - (a) the person funding or facilitating the activity has previously made a contribution to the candidate;
 - (b) after publication or distribution, the person funding or facilitating the activity informs the candidate or an agent of the candidate that the person has made an expenditure or funded the activity, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure or funding the activity; or
 - (c) the funding or facilitating of the activity is made at the request or suggestion of a candidate or an agent of a candidate for the benefit of another candidate or political committee where the other potentially benefitted candidate or political committee has no involvement.

(5) There shall be a rebuttable presumption that any funding or facilitating of an election activity is not independent of the candidate on whose behalf, or for whose benefit, the activity is conducted, when:

(a) it is based on information that is provided by the candidate or an agent of the candidate directly or indirectly to the person funding or facilitating the activity;

(b) it is made by or through any candidate's agent in the course of the agent's involvement in the current campaign;

(c) the person funding or facilitating the activity retains the services of a person who consults with or provides services benefitting the candidate related to campaign activity or fundraising strategy for that same election, except as provided in (6);

(d) the activity replicates, reproduces, republishes, or disseminates, in whole or in substantial part, any material designed, produced, paid for, or distributed by the candidate;

(e) the candidate or political committee or an agent of a candidate or political committee has made or participated in any discussion or in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of any communication broadcast or conveyed as part of the activity;

(f) the person funding or facilitating the activity has an employee or agent who is also involved in activities described in (5)(a) through (e) on behalf of the candidate; or

(g) the candidate, during the twelve months prior to the election, raised money for election activity for the person funding or facilitating the election activity.

(6) There shall also be a rebuttable presumption that any funding or facilitating of an election activity is not independent of the candidate on whose behalf, or for whose benefit, the activity is conducted, when a person involved in funding or facilitating the activity also acted within the previous twelve months as a paid agent, consultant, employee, or vendor to the candidate or political committee supporting the candidate where there is no contemporaneous writing creating a documented firewall signed by the person and filed with the commissioner stating that the person is not involved with activity described in (1) through (5) with respect to the candidate. A vendor engaging only in arms-length transactions as a third-party supplier or service provider to candidate(s) or political committee(s) may satisfy this requirement by signing and filing a single written firewall statement for any applicable twelve-month election cycle.

(7) A "coordinated expenditure" shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in the election communication, electioneering communication, or election activity. Both the candidate and the committee shall report the coordinated expenditure and/or in-kind contribution as the case may be.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

REASON: The COPP is proposing adoption of this rule to follow the directives of SB 289, to satisfy public need, and to set forth the procedural requirements for reporting coordinated expenditures and contributions.

Montana's history of actual and perceived corruption in elections prompted citizens to pass by initiative the 1912 Corrupt Practices Act. Undisclosed coordination threatens the integrity of the people's election reporting and disclosure laws that Montanans have traditionally and repeatedly upheld. Based on past experience, coordination carries a consequence for the people of Montana, candidates, and committees.

The COPP considered a 24-month rebuttable presumption of coordination when a person was involved in various election activities, and later associated with or made a reportable election activity expenditure or solicited contributions for a candidate. Given the population size of Montana and relationships that exist between Montanans, the COPP has proposed the adoption of a lessor 12-month time frame for the rebuttable presumption to attach.

In order to document a person's awareness of the obligation to avoid coordinated election activity, when necessary, the COPP proposes the adoption of a contemporaneous statement to be filed with the COPP which acknowledges and establishes a firewall in (6) of this rule. The firewall statements are not required, but will allow persons and vendors who regularly participate or provide services in Montana's elections to create a rebuttable presumption that the election activity they intend to participate in is not and will not be coordinated.

The COPP's proposed rule balances competing interests by creating rebuttable presumptions and allowing the public filing of firewall statements to protect all participants in our electoral system. The COPP is further adopting this rule to clarify statutory requirements, increase transparency, and to identify the minimum disclosure baseline consistent with the law.

NEW RULE VIII DE MINIMIS (1) A "de minimis act" is defined in 13-1-101, MCA. The commissioner may consider the following factors in determining whether specific acts, contributions, or expenditures are de minimis and therefore do not trigger registration, reporting, attribution, or disclosure requirements, or warrant enforcement as a campaign practices violation:

- (a) whether the act, contribution, or expenditure has an ascertainable fair market value, and if so the amount of that value;
- (b) in the case of an act that results in the provision of services, whether the act results in either a detriment to the provider of the services, such as an out-of-pocket expense or the preclusion of other activities;
- (c) whether the act, contribution, or expenditure at issue is a single, one-time event or occurrence or multiple events or occurrences;
- (d) the extent to which a particular campaign practices violation deprives the public of disclosure;

(e) other factors and circumstances the commissioner determines are relevant.

(2) These criteria will be considered and applied on a case-by-case basis.

(3) Acts, contributions, or expenditures that may, depending on the circumstances, be considered de minimis include, but are not limited to:

(a) the creation of electronic or written communications or digital photos or video, on a voluntary (unpaid) basis by an individual, including the creation and outgoing content development and delivery of social media on the internet or by telephone;

(b) the provision by an individual or political committee of personal property, food, or services with a cumulative fair market value of less than \$35 in the aggregate for any single election;

(c) the location value of the display of lawn or yard signs on real property, but only if the property owner does not normally and does not in fact charge a fee for display of signs;

(d) any value attributable to the display of campaign bumper stickers or signs on a vehicle, but only if the vehicle owner does not normally and does not in fact charge a fee for display of bumper stickers or signs;

(e) typographical errors or incomplete or erroneous information on a campaign finance report that is determined not to be misleading or that does not substantially affect disclosure;

(f) any failure to comply with the attribution requirements of 13-35-225, MCA, that is determined to nevertheless provide sufficient disclosure regarding who made or financed the communication;

(g) expenses associated with volunteer services or efforts, including but not limited to the cost of gas, parking, and meals.

(4) Fair market value will be determined according to the description of the term in ARM 44.11.403 and 44.11.503.

AUTH: 13-37-114, MCA

IMP: 13-1-101, MCA

REASON: The COPP is proposing adoption of this rule to follow the directive of SB 289, to satisfy public need, and to set forth the types of campaign activity which the commissioner may consider de minimis actions. The COPP is further adopting this rule to provide guidance to candidates and campaigns on campaign actions which have been determined to be de minimis in the past, which have not triggered reporting and disclosure obligations.

NEW RULE IX ELECTION COMMUNICATION (1) An election communication is a communication, made in media as defined in these rules, that is made to support or oppose a candidate or ballot issue, as those terms are defined in 13-1-101, MCA.

(2) An election communication means:

(a) a paid advertisement broadcast over radio, television, cable, or satellite;

(b) paid placement of content on the internet or other electronic communication network;

(c) a paid advertisement published in a newspaper or periodical or on a billboard;

(d) a mailing; or

(e) printed materials.

(3) An election communication does not mean any communication that is excluded from the definition of the term in 13-1-101, MCA.

(4) A person who makes an election communication is subject to the reporting and disclosure requirements of Title 13, chapters 35 and 37, MCA, and these rules.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

REASON: The COPP is proposing adoption of this rule to follow the directives of SB 289, to satisfy public need, and to clarify statutory requirements specific to election communications in comparison to electioneering communications. The two types of communications have separate and distinct statutory reporting and disclosure obligations. The rule is proposed to prevent confusion of candidates or committees on the similarly named communication types, for clarification and consistency throughout these rules, and to provide uniformity with the statutes.

NEW RULE X ELECTIONEERING COMMUNICATION (1) An electioneering communication is a paid communication that:

(a) is publicly distributed by one or more of the modes of communication listed in the statute;

(b) is made within 60 days of the initiation of voting in an election;

(c) does not support or oppose a candidate or ballot issue, as "support or oppose" is defined in 13-1-101, MCA;

(d) can be received by more than 100 recipients in the district voting on the candidate or ballot issue;

(e) meets one or more of the following criteria:

(i) refers to one or more clearly identified candidates in the election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in the election; or

(iii) refers to a political party, ballot issue, or other question submitted to the voters in the election; and

(f) may also include an independent expenditure.

(2) In (1)(b) the phrase "made within 60 days of the initiation of voting in an election" shall mean the following:

(a) in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to 13-19-206, MCA;

(b) in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to 13-13-214, MCA.

(3) An electioneering communication does not mean any communication that is excluded from the definition of the term in 13-1-101, MCA. In addition, an electioneering communication does not mean:

- (a) a communication that refers to or depicts the name, image, likeness, or voice of one or more clearly identified candidates, but that is susceptible to no reasonable interpretation other than as unrelated to the candidacy or the election;
 - (b) a communication that refers to a political party, ballot issue, or other question submitted to the voters at an election, but that is susceptible to no reasonable interpretation other than as unrelated to the issue or the election;
 - (c) the voter information pamphlet prepared and distributed by the Secretary of State; or
 - (d) any other communication by a local government or a state agency that only includes non-election information about a candidate, ballot issue, or election. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.
- (4) The determination whether a particular communication is an electioneering communication or is excluded from the definition of the term will be based on the purpose, timing, and distribution of the communication, as well as the facts and circumstances surrounding its creation and distribution.
- (5) Upon request, the commissioner may issue a letter to a group or person reporting the cost of electioneering communications under these rules. The letter may state that the reporting and disclosure required for an electioneering communication does not mean or imply that an express advocacy determination was made as to the communication that is covered by the cost reported.
- (6) A person who makes an electioneering communication is subject to the reporting and disclosure requirements of Title 13, chapters 35 and 37, MCA, and these rules.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

REASON: The COPP is proposing adoption of this rule to follow the directives of SB 289, to satisfy public need, and to clarify statutory requirements specific to electioneering communications in comparison to election communications. The two types of communications have separate and distinct statutory reporting and disclosure obligations. The rule is proposed to prevent confusion of candidates or committees on the similarly named communication types, for clarification and consistency throughout these rules, and to provide uniformity with the statutes. The COPP added (5) to this rule to allow entities or organizations to request a letter from the COPP in instances where reporting and disclosure of electioneering communications are required by law, but no administrative determination has been made by the commissioner.

NEW RULE XI FAIR NOTICE PERIOD BEFORE ELECTION (1) For purposes of this rule, "campaign advertising" refers to reportable election activity, as defined in ARM 44.11.103.

(2) The "fair notice requirement" is described in 13-35-402, MCA. For the purpose of that section, the date used to determine the date "intended for public distribution" for material distributed by:

- (a) print media is the date of the postmark.

(i) If no postmark is provided on the mailing, the date the mailing is mailed or "dropped," as reported by the mail distributor, is the equivalent of the postmark date.

(b) broadcast media, digital media, or published material is "at the time" the material is published or broadcast or disseminated to the public.

(i) "At the time" means at or before the earliest date and time the message is scheduled to be published, broadcast, or disseminated to the public.

(c) hand dissemination, see 13-35-402, MCA.

AUTH: 13-37-114, MCA

IMP: 13-35-402, MCA

REASON: The COPP is including the adoption of this rule into this subchapter on general campaign practices to make the rules easier to navigate and more user-friendly. The COPP is further adopting this rule to satisfy public need, clarify the application of key terms and phrases in the statute, increase transparency and promote fair play in the electoral process, and to identify the minimum disclosure baseline consistent with the law.

NEW RULE XII PERSONAL USE OF CAMPAIGN FUNDS (1) Except as provided in (4), no goods, services, funds, property, or other contributions received by a candidate or political committee may be used for the personal use or expense of any candidate, immediate family of a candidate, or staff of a candidate's campaign.

(2) Expenditures for personal use are those that have no direct connection with, or effect upon, expenditures to support or oppose candidates or issues, and those that would exist irrespective of a candidate's campaign or an individual's involvement in a candidate's campaign. Campaign expenditures are those that serve to support or oppose a candidate or issue. An expenditure for personal use or expense occurs when, for example, the expenditure:

(a) covers normal living needs of the candidate, the candidate's immediate family, or any other individual;

(b) covers food or clothing that are not specially required by or related to a campaign activity;

(c) covers the cost of travel, lodging, food, and registration, including attendance at any conference or event, that does not serve a campaign interest.

(3) A candidate or candidate's campaign may purchase goods or services and lease personal and real property that provide a mixed benefit to the candidate provided:

(a) the amount attributed to an individual's personal use or expense shall be determined in writing and reimbursed by the individual to the campaign, unless the personal benefit is de minimis;

(b) a mixed benefit to the candidate means use of goods, services, or property for personal use or expense as well as to support or oppose candidates or issues; or

(c) the personal benefit is de minimis as determined according to ARM [NEW RULE VIII].

(4) The prohibition of this rule is not applicable to:

- (a) reimbursements to a candidate, or staff or volunteers of a candidate's campaign, for goods and services purchased for campaign expenditures;
 - (b) gifts or bonuses of less than \$250 in a calendar year to campaign staff; or
 - (c) expenditures expressly authorized elsewhere in these rules.
- (5) Prior to filing a closing report of a candidate's campaign:
- (a) any personal and real property purchased with campaign funds that has a residual fair market value of \$50 or more may be disposed of by one of the following methods:
 - (i) sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds and disposed of according to ARM 44.11.702 regarding surplus campaign funds. If campaign property is sold to the candidate, a member of the candidate's immediate family, or paid campaign staff, the campaign must receive at least 75 percent of the original purchase price or value of the in-kind contribution as determined per ARM 44.11.403; or
 - (ii) donation of the property under one of the options set out in ARM 44.11.702 pertaining to disposal of surplus campaign funds.
 - (b) the disposition of all campaign property under this rule must be reported on the closing report required by ARM 44.11.306, including the method of disposition (sale or donation), the complete date of the disposition, the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sale price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.
 - (c) for purposes of this rule, the "residual" fair market value is based upon the value of the property at the time it is sold or donated, accounting for items of similar description, age, and condition. The sale of property through an online commercial auction shall be considered as a favorable factor in determining that the sale price received was the fair market value of the property sold.
 - (d) any personal or real property purchased with campaign funds that is not disposed of under this rule, shall be disposed of according to ARM 44.11.702.
 - (6) Whether an expenditure of campaign funds is to be considered a personal use or expense, and therefore prohibited, is a factual determination to be made by the commissioner.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-229, 13-37-240, MCA

REASON: The COPP is adopting this rule to satisfy public need and to explain statutory requirements regarding the use of campaign funds for campaign purposes. A "contribution" is "anything of value to support or oppose a candidate or ballot issue," 13-1-101, MCA. In turn, an "expenditure" is made by a candidate or political committee "to support or oppose a candidate or ballot issue," id. The receipt of contributions from the public involves an obligation to expend the funds for the purpose which the contributions were given and in a manner that supports the public trust, 2-3-103, MCA. This obligation is reflected in the statutory definition of "expenditure" itself: "'Expenditure' does not mean:...payments by a candidate for a

filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family," 13-1-101(17)(b)(ii), MCA.

The use of campaign funds for personal expenditures such as meals, lodging, and utilities does enable a candidate of lesser means to be able to take time off of their primary job and campaign for public office. This alternative has been thoroughly considered, but was ultimately rejected based on the requirements of the statute and in the face of the larger public trust obligation of expending campaign funds in a manner that supports the candidacy, rather than the candidate. In order to protect the public trust in making contributions, the COPP proposes the above rule. The COPP believes such a rule is needed to clarify existing responsibilities and obligations of candidates and committees in regards to use of campaign funds, which will increase transparency and trust in the electoral process.

5. The department proposes to transfer the following rules:

| | | |
|------------|------------|---------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 44.10.309 | 44.11.107 | COPYING OF PUBLIC RECORDS |

AUTH: 13-37-114, MCA
IMP: 13-37-119(1), MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter.

| | | |
|------------|------------|----------------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 44.10.311 | 44.11.606 | ELECTIONEERING-INTERPRETIVE RULE |

AUTH: 13-37-114, MCA
IMP: 13-35-211, MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter.

| | | |
|------------|------------|----------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 44.10.505 | 44.11.407 | CASH CONTRIBUTION, RECEIPT |

AUTH: 13-37-114, MCA
IMP: 13-37-207, MCA

REASON: See the reason for ARM 44.10.511 (44.11.402).

| | | |
|------------|------------|----------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 44.10.538 | 44.11.705 | ELIGIBLE ELECTED OFFICIALS |

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: See reason for ARM 44.10.536 (44.11.701).

| | | |
|------------|------------|---------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 44.10.543 | 44.11.710 | INTEREST PAID ON ACCOUNTS |

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: See reason for ARM 44.10.536 (44.11.701).

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

44.10.101 (44.11.101) ORGANIZATIONAL RULE (1) Organization of the Office of the Commissioner of Political Practices (COPP).

(a) History. The position of the Commissioner of Political Practices (commissioner) was created by the Legislature in 1975.

(b) remains the same.

(c) Commissioner. The commissioner of Political Practices is appointed for a term of six years and may be removed pursuant to 13-37-102~~(2)~~ and 13-37-105, MCA.

(2) Functions of the commissioner:

(a) The the commissioner of Political Practices is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana ~~to support or oppose elections regarding~~ candidates, political committees, or issues, and in conjunction with the county attorneys, to enforce the election and campaign finance laws as specified in Title 13, chapters 35 and 37, MCA. The powers and duties of the commissioner are provided in Title 13, chapter 37, part 1, MCA.

(b) through (c) remain the same.

(3) Personnel Roster. Commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, Montana 59620-2401, <http://www.politicalpractices.mt.gov/default.mcp.x>.

(4) All forms referenced in these rules are available for download on the COPP's web site.

AUTH: 13-37-114, MCA
IMP: 2-4-201, MCA

REASON: The COPP is transferring this rule for intelligibility, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules.

44.10.201 (44.11.102) ADVISORY OPINIONS AND SELECTED INCORPORATION OF CERTAIN ATTORNEY GENERAL MODEL RULES, IN PART REGARDING DECLARATORY RULINGS AND RULEMAKING (1) ~~The In~~

cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM 1.3.226, the commissioner of political practices herein adopts and incorporates by reference the Attorney General's Model Organizational and Procedural Rules Introduction through rule 7 by reference to such rules as stated in ARM 1.3.101 through 1.3.210 and the Attorney General's Model Procedural Rules 22 through 24 by reference to such as stated in ARM 1.3.227 through 1.3.229 in cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM 1.3.226 ARM 1.3.227 through 1.3.229 effective August 15, 2008.

(2) In all other cases, the commissioner will issue "advisory opinions" under the following procedure:

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

(b) The commissioner may request a memorandum of authority containing basic research and points of law bearing on the request. The memorandum should include the requesting party's own conclusion on the question presented.

(c) Within a reasonable time after the receipt of a request for an advisory opinion, the commissioner shall consider the request and, based upon the facts presented in the request, prepare an opinion in writing, except as provided in (b)(i). The commissioner may seek public comment prior to issuing an advisory opinion, depending on the particular question presented for an opinion.

(i) The commissioner will not issue an advisory opinion, but will notify the inquirer of the determination, when:

(A) and (B) remain the same.

(C) The facts are inadequate for a determination, or the request requires resolution of a factual dispute.

(D) The issue involves wholly abstract or hypothetical factual situations.

(e) (d) An advisory opinion will be rendered upon the facts submitted in the request and over the signature of the commissioner. A copy of the opinion will be mailed to the inquirer and published in a manner which will provide wide public dissemination. The commissioner will maintain an index of all opinions and will make an opinion available upon request.

(d) (e) An advisory opinion rendered in accordance with this rule is binding between the commissioner and the inquirer on the statement of facts alleged in the written request. An advisory opinion is not subject to judicial review. A person desiring judicial review of an advisory opinion shall file a formal petition for declaratory ruling, pursuant to 2-4-501, MCA, and (1) of this rule.

(e) (f) A later advisory opinion or declaratory ruling overrules an earlier advisory opinion or declaratory ruling with which it is necessarily in conflict.

(f) (g) A request for a declaratory ruling or an advisory opinion shall have no effect on the commissioner's investigation of and disposition of a formal complaint on the same issue or a related dispute filed pursuant to ARM 44.10.307 44.11.106.

(3) In cases when the COPP engages in agency rulemaking, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.201, 1.3.202, and 1.3.304 through 1.3.313 effective August 15, 2008.

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

REASON: The COPP is transferring this rule to place it at the beginning of the rules to make the rules easier to navigate and more user-friendly. The COPP is proposing amendment of this rule for brevity, clarification, and consistency throughout these rules.

44.10.301 (44.11.103) TERMS AND REFERENCES INTRODUCTION AND DEFINITIONS (1) All statutory references in these rules refer to the Montana Code Annotated, unless otherwise indicated.

~~(1)~~ (2) Terms used in these rules shall be construed, unless the meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the intent of the law, to mean the following:

- (a) The statutory election definitions as set forth in Title 13, MCA; and
- (b) ethics definitions as set forth in Title 2, MCA;
- (c) lobbying definitions as set forth in Title 5, MCA; and
- ~~(b)~~ (d) the definitions as set forth in these rules.

~~(2) All statutory references in these rules refer to the Montana Code Annotated, unless otherwise indicated.~~

(3) "Attribution" is described in 13-35-225, MCA, and is further explained by ARM [NEW RULE VI].

(4) "Ballot Committee" is a political committee specifically organized to support or oppose a ballot issue as defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(5) "Campaign Account" is as referred to in 13-37-205, MCA, and further defined in ARM 44.11.409.

(6) "Candidate" is as defined in 13-1-101, MCA, and as applied to contribution limits in 13-37-216 and 13-37-218, MCA.

(7) "Commissioner" means the Commissioner of Political Practices as created under 2-15-411 and 13-37-102, MCA.

(8) "Complainant" means any person that files a complaint with the commissioner alleging a violation of the statutes or rules within the commissioner's jurisdiction.

(9) "Contested Primary" is defined in ARM 44.11.222.

(10) "Contribution" is defined in 13-1-101, MCA, and further defined in ARM 44.11.401.

(11) "Coordinated" is defined in 13-1-101, MCA, and further defined in ARM 44.11.602.

(12) "De Minimis" is defined in 13-1-101, MCA, and further defined in ARM 44.11.603.

(13) "Earmarked Contribution" is as described in 13-37-217, MCA, and defined in ARM 44.11.404.

(14) "Election" is defined in 13-1-101, MCA.

(15) "Election Activity" means any action by any person, candidate, or political committee that concerns, relates to, or could be reasonably interpreted as an attempt to influence or affect an election or that supports or opposes a candidate or ballot issue. Election activity includes reportable election activity.

(16) "Election Communication" is defined in 13-1-101, MCA, and further defined in ARM 44.11.604.

(17) "Electioneering" is defined in 13-1-101, MCA, and further defined in ARM 44.11.606.

(18) "Electioneering Communication" is defined in 13-1-101, MCA, and further defined in ARM 44.11.605.

(19) "Ethics Code" means the code of ethics, Title 2, chapter 2, part 1, MCA.

(20) "Expenditure" is defined in 13-1-101, MCA, and further defined in ARM 44.11.501.

(21) "Fair market value" means the retail price of such services, property, or rights in the market from which it ordinarily would have been either purchased by the expendeo at the time of its expenditure, or purchased or sold by the contributor at the time of its contribution.

(22) "Immediate Family" is defined in 2-2-302, MCA, and further defined in ARM 44.11.608 and 44.11.703.

(23) "Incidental Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(24) "Independent Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(25) "Independent Expenditure" is defined in 13-1-101, MCA.

(26) "In-kind" is defined in ARM 44.11.403, 44.11.503, and 44.11.701.

(27) "Media" includes three subtypes which are subject to all restrictions, definitions, requirements, and limitations on communications found in these rules:

(a) print media includes physical editions of newspapers, magazines, journals, periodicals, newsletters, books, flyers, brochures, posters, direct mail pieces, letters, postcards, billboards, and other similar media;

(b) broadcast media includes television, radio, cable, satellite, and other similar media; and

(c) digital media includes content on the internet, electronic files, including digital versions of print media and broadcast media, and other similar media.

(28) "Periodical publication" is one that publishes at regular daily, weekly, monthly, or quarterly intervals year round.

(29) "Political Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(30) "Political Party Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(31) "Reportable Election Activity" includes but is not limited to accepting a contribution, a contribution in response to an appeal, or a designated contribution, or making an expenditure, a coordinated expenditure, an independent expenditure, or an in-kind contribution or expenditure, or making an election communication or electioneering communication.

(32) "Respondent" means any person against whom a complaint is filed with the commissioner.

(33) "Support or Oppose" is defined in 13-1-101, MCA.

AUTH: 13-37-114, MCA

IMP: 13-1-101, MCA

REASON: This definition rule is newly expanded in these rules. The alternative considered was to list the definition multiple times by repeating the definition within each applicable rule. That alternative was rejected because the rules are easier to understand if a single definition rule is used. The COPP is transferring this rule to place it at the beginning of the COPP rules to make them easier to navigate and more user-friendly. The COPP is proposing amendment of this rule for consistency of terminology used throughout these rules.

44.10.303 (44.11.104) CONSTRUCTION OF REGULATIONS RULES

(1) These rules shall be interpreted and applied to permit the commissioner to discharge the statutory functions of the office and to secure a just and speedy determination of all matters before the commissioner.

AUTH: 13-37-114, MCA

IMP: Sec. 1, Ch. 480, Laws of 1975

REASON: The COPP is transferring this rule to place it at the beginning of the COPP rules to make the rules easier to navigate and more user-friendly. The COPP is proposing amendment of the title of this rule to make a grammatical change.

44.10.305 (44.11.105) PRACTICE WHERE REGULATIONS DO NOT GOVERN REGARDING APPLICATION OF RULES

(1) In any matter not specifically governed addressed by these regulations rules, the commissioner shall exercise discretion so as to execute the purposes of the act applicable law, without exceeding the statutory authority of the act identified in ARM 44.11.101.

AUTH: 13-37-114, MCA

IMP: Sec. 1, Ch. 480, Laws of 1975

REASON: The COPP is transferring this rule to place it at the beginning of the COPP rules to make the rules easier to navigate and more user-friendly. The COPP is also proposing amendment of this rule to make grammatical changes.

44.10.307 (44.11.106) COMPLAINTS OF VIOLATIONS (1) A person An individual who believes a violation of a provision of Title 13, chapters 35 or 37, MCA, or a rule or regulation implementing one or more of those statutory provisions has occurred may file a written complaint in person or by ~~certified~~ mail with the commissioner. ~~When a complaint is received, it shall be marked to show the date of receipt. Unless the complaint is determined to be insufficient pursuant to (3)(a) of A~~ complaint may be filed on a form available from the COPP. Except as provided in this rule, within five business days after receipt of a complaint, the commissioner shall, by certified mail, acknowledge its receipt and transmit a copy to the alleged violator. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(2) A Whether submitted on the form available from the COPP or otherwise, a complaint shall:

(a) be typewritten or legibly handwritten in ink; and
(b) contain the following information:
(i) The complete name and mailing address of the complainant;
(ii) the complete name and mailing address of the alleged violator, if known or readily discoverable;
(iii) a detailed description of the alleged violation, including citation to each statute and/or rule that is alleged to have been violated;
(iv) any evidentiary material; and
(c) person filing the complaint shall be typewritten or legibly hand printed on the complaint; and the complaint shall be signed and verified by the oath of affirmation of the complainant such person, taken before any officer authorized to administer oaths. A complaint shall name the alleged violator, and should include the complete mailing address of the alleged violator, if known or readily discoverable. The complaint shall describe in detail the alleged violation, and cite each statute and/or rule that is alleged to have been violated. The complaint shall be filed together with any evidentiary material. A complaint may be filed on a form available on request from the commissioner's office.

(3) Upon receipt of a complaint, the commissioner shall investigate, except as provided in (3)(a) of this rule, the alleged violation. The commissioner, upon completion of the investigation, shall prepare a written summary of facts and statement of findings, upon completion of the investigation, which shall be sent to the complainant and the alleged violator. Following the issuance of a summary of facts and statement of findings, the commissioner may take other appropriate action.

(4) No investigation shall be required and a complaint may be dismissed if a the complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, does not cite the statute or rule that is alleged to have been violated, is unsigned, or is not verified by the oath of affirmation of such person, taken before any officer authorized to administer oaths. In addition, no investigation shall be required and may be dismissed if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction. The commissioner may request additional information from the complainant or the alleged violator prior to making a determination whether to proceed with a full investigation and whether to dismiss a complaint under this rule.

(5) With the exception of any material that the commissioner determines is subject to protection from disclosure based on constitutional or statutory law, a filed complaint and the summary of facts and statement of findings shall be public record.

(6) All documents provided to and all communications with the COPP are public records as provided by 13-37-118 and 13-37-119, MCA. The Montana Constitution Article II, Sections 9 and 10 require the commissioner to balance the public's right to know with an individual's privacy rights on documents that are filed with the COPP office. The COPP has a detailed privacy policy available on the commissioner's web site.

AUTH: 13-37-114, MCA

IMP: 13-37-111(2), MCA

REASON: The COPP is transferring this rule to place it at the beginning of the COPP rules to make the rules easier to navigate and more user-friendly. The COPP is proposing amendment of this rule, primarily calling attention to the COPP policy on privacy protection in regard to complaint information, to make grammatical changes, to remove the requirement of certified mail for filing a complaint, to explain confidentiality of public records, and to clarify the requirements in filing a complaint.

44.10.321 (44.11.401) CONTRIBUTION – DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "contribution" as defined in 13-1-101, MCA, includes, but is not limited to:

- (a) each contribution as ~~listed~~ described in 13-37-229, MCA;
- (b) remains the same.
- (c) a candidate's own money used on behalf of his or her candidacy, except as provided in 13-1-101(6)(b)(iv) and (10)(b)(ii), MCA; and
- (d) an in-kind contribution, as defined in ~~(2) of this rule~~ ARM 44.11.403 and 44.11.503; and
- (e) a coordinated expenditure, as defined in ARM 44.11.501 and [NEW RULE VII].

~~(2) The term "in-kind contribution" means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee, except as provided in 13-1-101(6)(a)(iii) and (6)(b)(i), MCA. For the purposes of determining compliance with political party contribution limits established pursuant to 13-37-216, MCA, a "contribution" does not include a coordinated expenditure made solely by a political party committee in the form of provision of personal services by paid staff of the political party that benefit the associational interest of the political party but also constitute election activity benefitting a particular candidate of the same political party.~~

- (a) An "in-kind contribution", includes, but is not limited to:
 - (i) ~~Forgiveness of any loan to or debt of a candidate or political committee;~~
 - (ii) ~~Payment of a loan or other debt by a third person;~~
 - (iii) ~~An expenditure made at the behest of a candidate or political committee as specified in ARM 44.10.517;~~
 - (iv) ~~A "coordinated expenditure" as defined in ARM 44.10.323(4); and~~
 - (v) ~~The cost of distributing, republishing or reproducing campaign material (print or broadcast) produced or prepared by a candidate or political committee unless the distribution, republication or reproduction costs are a communication by a membership organization or corporation under 13-1-101(6)(b)(iii) or (10)(b)(iv), MCA.~~

(3) For the purposes of determining compliance with contribution reporting required by 13-37-225 through 13-37-229, MCA, any coordinated expenditure not counted toward contribution limits pursuant to (2) must be reported as a contribution and shall be reported based upon the actual cost for such paid staff including, but not limited to, total compensation in the form of any salaries, wages, bonuses,

benefits, expense reimbursement, or other supplemental payments, and a pro rata share of any taxes, fees, or assessments paid by the political party committee for each staff person.

(4) The fact that the public office being sought by the individual is not known by the contributor or has not yet been Whether or not the candidate has determined the office sought or the political committee has determined what election activity it will participate in at the time the contribution is received by the potential candidate at the time that the contribution is made or the fact that a candidate and/or issue being supported or opposed by a political committee is not known by the contributor or has not yet been determined by a political committee at the time that the contribution is made has no effect on the determination or reporting of that contribution responsibility to report the contribution, and any such contribution shall also be subject to the limitations of 13-37-219, MCA.

AUTH: 13-37-114, MCA

IMP: 13-1-101(3), 13-37-219, 13-37-225, 13-37-229, MCA

REASON: This rule consolidates contribution rules and includes in rule the commissioner's determination of an exception from applicable aggregate contribution limits for political party in-kind contributions spent for paid personal services provided by the political party committee to a candidate. This determination is set out in the COPP's Advisory Opinion COPP-AO-2014-009. The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules. The COPP is also amending this rule to provide clarity on the application of 13-37-216, MCA, to political party committees and to facilitate increased transparency in the disclosure of funds used in elections.

44.10.323 (44.11.501) EXPENDITURE – DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "expenditure" as defined in 13-1-101, MCA, includes, but is not limited to:

(a) each expenditure as ~~listed~~ described in 13-37-230 13-37-229 and 13-37-232, MCA;

(b) expenses incurred by a candidate or political committee with respect to polls, surveys, and the solicitation of funds for election activity;

(c) expenses incurred in ~~support of or opposition to~~ the drafting, printing, distribution, and collection of signatures for any petition for nomination or a ~~statewide~~ ballot issue;

(d) a candidate's own expense, except as provided in 13-1-101(6)(b)(iv) and ~~(10)(b)(ii)~~, MCA, and as further explained in (4);

(e) payment of interest on a loan or other credit received;

(f) an in-kind expenditure, as defined in (2) ~~of this rule;~~

(g) an independent expenditure, as defined in (3); and

(h) a coordinated expenditure, as defined in (4).

(2) The term "in-kind expenditure" means a third party reportable election activity expenditure, such as payment for goods or services, that does not go through the campaign depository. In the event that the third party election activity

involves the furnishing of services, property, or rights without charge or at a charge which that is less than fair market value to a person, candidate, or political committee for the purpose of supporting or opposing any person, candidate, ballot issue or political committee, except as provided in 13-1-101(6)(a)(iii) and (6)(b)(i), MCA. in a manner that creates a reportable election expense, then the difference between the amount charged and the fair market value must be reported as an in-kind expenditure.

(a) An "in-kind contribution expenditure" includes, but is not limited to, the forgiveness of any loan or debt owed to by a candidate or political committee.

(3) The term "independent expenditure" means an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. An independent expenditure shall be reported as provided in ARM 44.10.531. has the meaning set out in 13-1-101, MCA.

(4) The term "coordinated expenditure" means an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee. A coordinated expenditure shall be reported as an in-kind contribution as provided in ARM 44.10.511 and 44.10.513. is an expenditure that is "coordinated" as defined in 13-1-101, MCA, or involves "coordination" as defined in ARM [NEW RULE VII].

(a) A campaign expense paid personally by an individual in his or her own campaign is always coordinated with and is a campaign expense under (1)(d) that must be reported and disclosed with the same information as an expense by the campaign in the same manner as an expense paid through the campaign depository account.

(b) The candidate must balance his or her campaign finance report by reporting the amount of the expense as an in-kind contribution and/or loan by the candidate sufficient to balance the total amount of campaign expenses personally paid by the candidate.

(i) Any such candidate personal expenditure repaid by the candidate's campaign shall be disclosed and reported both as a campaign expenditure and as a repaid loan, even if both events take place in a single reporting period.

(ii) Any such candidate personal expenditure that is not repaid by the candidate's campaign shall be disclosed and reported both as a candidate contribution and as a campaign expenditure.

(5) An expenditure does not include election activity carried out solely by one individual that is not coordinated with any candidate, ballot issue, or political committee.

AUTH: 13-37-114, MCA

IMP: 13-1-101(7), 13-37-129, 13-37-232, MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, proposing amendment of this rule for brevity, clarification, and consistency throughout the rules, and to provide uniformity with the

statutes. This rule consolidates expenditure rules, including expenditures created by coordination. This rule is further amended to reflect the repeal of 13-37-230, MCA, and the proposed adoption of a rule defining the distinction between coordinated and independent expenditures.

44.10.327 (44.11.202) POLITICAL COMMITTEE, DEFINITION AND TYPES

~~(1) A political committee has the meaning as defined in 13-1-101, MCA. For purposes of A political committee exists under Title 13, chapters 35 and 37, MCA, and these rules, political committees shall be one of three types: by virtue of its receipt of contributions or through making expenditures. A political committee, including each incidental or independent committee, must register with the commissioner at the time and in the manner set out in these rules, see ARM 44.11.201 and 44.11.302.~~

~~(2) There are four types of political committees:~~

~~(a) principle campaign committee; a ballot issue committee as defined in 13-1-101, MCA;~~

~~(b) independent committee; and a political party committee as defined in 13-1-101, MCA;~~

~~(c) an incidental committee as defined in 13-1-101, MCA; and~~

~~(d) an independent committee as defined in 13-1-101, MCA.~~

~~(3) A political committee is not formed by the following:~~

~~(a) by an individual who makes an independent expenditure solely with his or her own funds and by his or her own actions;~~

~~(b) by a \$250 or less expenditure as defined by "political committee" in 13-1-101, MCA;~~

~~(c) by a de minimis activity, as defined in these rules;~~

~~(d) by an individual who is married making a contribution through his or her joint checking account; or~~

~~(e) by a candidate and his or her campaign treasurer(s) making an expenditure or accepting a contribution in the candidate's campaign.~~

~~(2) These types of political committees are defined as follows:~~

~~(a) a principle campaign committee is a political committee that is specifically organized to support or oppose a particular candidate or issue. There are three types of principal campaign committees:~~

~~(i) (4) A ballot issue committee is a political committee specifically organized to support or oppose a ballot issue, as defined in. A "ballot issue" is defined by 13-1-101, MCA.~~

~~(ii) A particular candidate committee is specifically organized to support or oppose a particular candidate. A particular candidate committee is not the same as a candidate's own campaign organization, which according to ARM 44.10.325(2) is not a political committee.~~

~~(iii) a leadership political committee is defined in ARM 44.10.332(1).~~

~~(5) A political party committee is a political committee formed by a political party organization. A political party organization is defined by 13-1-101, MCA. A political party committee includes a county central committee, city central committee, clubs, and any other political committee that was formed by a political party organization.~~

(6) An incidental committee is a political committee that does not have the primary purpose of supporting or opposing candidates or ballot issues. Incidental committee election activity may consist of:

- (a) making one or more expenditures;
- (b) accepting one or more designated contributions; or
- (c) accepting one or more contributions in response to an appeal.

~~(b) (7) An independent committee is a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for~~ has the primary purpose of supporting or opposing various candidates and/or ballot issues but is neither a ballot issue nor a political party political committee. ~~There are two types of independent committees: Independent committee activity may consist of:~~

- (a) making one or more expenditures;
- (b) accepting one or more contributions.

~~(i) A political action committee ("PAC") is a committee composed of individuals who contribute their money for the purpose of supporting or opposing candidates or issue upon which the committee agrees.~~

~~(ii) A political party committee is a committee formed by a political party organization, as that term is defined in 13-37-216, MCA. Examples of political party committees are listed in ARM 44.10.333(1).~~

~~(c) An incidental committee is a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.~~

(8) Provided its election activity is all within a single reporting period, a political committee may file a single report of its election expenditures or contributions, identifying the report as an opening and closing report.

~~(3) (9) "Primary purpose" shall be determined based upon such criteria as allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person. The primary purpose standard is defined in ARM 44.11.203.~~

(10) The commissioner may classify each political committee in the manner defined in these rules, see ARM 44.11.204.

(a) Subunits of a main political committee, such as county committees or other divisions, that have authority to receive contributions and make expenditures independent of a parent political committee are a separate political committee.

(b) Subunits within those entities defined under "person" in these rules that have authority to receive contributions and make expenditures independent of the corporation or other entity are a separate political committee.

AUTH: 13-37-114, MCA

IMP: 13-1-101(12), 13-37-225, 13-37-226(4) and (5), 13-37-229, 13-37-231, 13-37-232, MCA

REASON: See the reason for ARM 44.10.405 (44.11.201). This rule adjusts the types of political committees to comply with the directives of SB 289. It also gathers political committee descriptions from several prior rules and places them into one

rule. The rule also deals with "subunits" of political committees and other entities. The alternative considered was to refer the reader to statutory language. That alternative was rejected in favor of the information conveyed by the rule language. The COPP is amending this rule to satisfy public need, clarify the statutory requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

44.10.329 (44.11.204) POLITICAL COMMITTEE, CLASSIFICATION

(1) The commissioner shall classify a political committee upon the basis of information provided, including ~~on~~ the statement of organization as defined in these rules, which is set forth in ARM 44.10.405 and which is required to be filed by a political committee pursuant to 13-37-201, MCA. The commissioner shall notify, ~~in writing,~~ a political committee of its classification.

(2) The political committee shall be classified as one of the types of political committee specified in ARM ~~44.10.327~~ 44.11.202.

(3) The commissioner may, ~~in writing,~~ reclassify a political committee if the status of that committee should change pursuant to ARM ~~44.10.403(2),~~ 44.11.204 or pursuant to ~~(5) of this rule.~~

(4) If the commissioner, based upon the information provided on the statement of organization, is unable to classify a political committee, additional information may be requested by the commissioner. If additional information is requested, a political committee shall provide the requested information within 10 business days after its receipt of the request. ~~Saturdays, Sundays, and holidays shall be excluded in the calculation of the 10-day period.~~

(5) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-226(4) and (5), MCA

REASON: See the reason for ARM 44.10.405 (44.11.201). The COPP is proposing amendment of this rule for clarification, and to make grammatical and rule reference changes.

44.10.330 (44.11.224) DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) Aggregate contributions for each election in a campaign are limited according to 13-37-216 and 13-37-218, MCA, and as explained by ARM 44.11.222. An "election" in a campaign, ~~for the purposes of 13-37-216, MCA,~~ is defined as either a primary election or a general election.

(2) For purposes of applying aggregate contribution limits per election the following apply:

(a) aggregate contribution limits for each election, as set forth in 13-37-216 and 13-37-218, MCA, apply to a primary election and to a general election as defined in ARM ~~44.10.334~~ 44.11.222;

(b) remains the same.

(c) general election contributions received prior to the day of the primary election must be maintained in a separate account and shall not be used until after the day of the primary election;

(d) and (e) remain the same.

(3) If a candidate receives contributions designated for the general election prior to the primary, and does not proceed to the general election, the candidate must return the contributions to the donors. These funds are not "surplus campaign funds:" as defined in ARM 44.11.702.

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is proposing amendment of this rule to make grammatical and rule reference changes. See also the reason for ARM 44.10.337 (44.11.223).

44.10.331 (44.11.226) LIMITATIONS LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES (1) ~~Pursuant to the operation~~ Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to ~~legislative candidates for the state legislature~~ are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~\$1650~~ \$1,700;

(b) a candidate for the state senate may receive no more than ~~\$2750~~ \$2,800.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2014~~ 2016.

(3) remains the same.

AUTH: 13-37-114, ~~13-37-218~~ MCA

IMP: 13-37-218, ~~15-30-101(8)~~ MCA

REASON: The COPP is transferring the rules regarding requirements specific to candidates into one subchapter of the rules to make the rules easier to navigate and more user-friendly. The COPP is amending this rule to reflect the change in contribution limits for candidates from political committees for the 2015-16 election cycle.

44.10.333 (44.11.225) LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES (1) Political committees formed by "political party organizations", as that ~~term phrase~~ is defined in 13-37-216 13-1-101, MCA, are subject to the aggregate contribution limits, which include in-kind contributions and expenditures, established in 13-37-216~~(3)~~, MCA. Such committees are "political party committees", and include all county central committees, city central committees, ~~women's clubs~~, and other committees, that fit within the definition of "political committee" in 13-1-101~~(48)~~, MCA, and were formed by a political party organization.

(2) Candidates ~~will~~ shall be responsible for monitoring contributions from political party committees to ensure that the contribution limits are not exceeded.

AUTH: 13-37-114, MCA

IMP: 13-37-216, MCA

REASON: See the reason for ARM 44.10.337 (44.11.223).

44.10.334 (44.11.222) ELECTIONS TO WHICH AGGREGATE CONTRIBUTION LIMITS APPLY (1) ~~For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216(5), MCA. The term "aggregate contributions" means the total of all of the following contributions made by or received from a person for all elections in a campaign:~~

~~(a) all contributions, as defined in 13-1-101, MCA, and further defined in ARM 44.11.401;~~

~~(b) all earmarked contributions, as defined in ARM 44.11.404;~~

~~(c) all expenditures encouraged in order to avoid a contribution, as specified in ARM 44.11.504; and~~

~~(d) all contributions that are coordinated as defined in 13-1-101, MCA, and further explained in ARM 44.11.501 and [NEW RULE VII].~~

(2) The term "contested primary", as used in 13-37-216(5), MCA, means a primary election in which two or more candidates compete for the same nomination. An election is not contested when, due to the number of candidates, the candidate automatically advances to the general election or position. For example:

~~(a) in partisan primary elections, if two or more candidates compete for one party's nomination, but only one candidate seeks a different party's nomination, it is a "contested primary", resulting in two elections to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply only with respect to the primary for which two or more candidates compete for the party's nomination. For example, if For the two candidates seek seeking Party A's nomination in the primary election for a public office, it is a contested primary with respect to Party A's nomination; or~~

~~(b) if only one candidate seeks Party B's nomination for the same public office, it is not a contested primary with respect to Party B's nomination, and there is only one election to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply; or~~

~~(c) in judicial and other nonpartisan primary elections, if a nonpartisan candidate automatically advances from the primary election to the general election pursuant to 13-14-117, MCA, it is not a contested primary election; or~~

~~(d) when an incumbent judicial officer is the only candidate who files a declaration for nomination in the primary election, and subsequently faces a vote, pursuant to 13-14-212, MCA, for or against retention in the general election, there is no "contested primary", and there is only one election to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply.~~

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is transferring the rules regarding requirements specific to candidates into one subchapter of the rules to make the rules easier to navigate and more user-friendly. The COPP is amending this rule to incorporate ARM 44.10.523, and further amending this rule to clarify the candidate specific statutory

requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

44.10.335 (44.11.702) DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY (1) remains the same.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished, the provisions of ARM [NEW RULE XII] are followed, and no further contributions or expenditures will be received or made which relate to the campaign.

(b) remains the same.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, pursuant to ARM [NEW RULE XII], no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment or donation of the item of property is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds or property. Payment of surplus campaign funds or property shall be evidenced by a receipt from the recipient containing the following information:

(a) the full name and mailing address of the recipient;

(b) the date the funds or property were received;

(c) the full name of the candidate from whose campaign the funds or property were received; and;

(d) the exact amount of funds or fair market value of the property received.

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds or property. The report shall be accompanied by copies of all receipts required by (4) ~~of this rule~~. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ~~ARM 44.10.336~~ 44.11.703, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds and personal or real property set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240~~(2)~~, MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303~~(4)~~, MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds and personal or real property set forth in 13-37-240, MCA, "campaign" means any effort to support or oppose the nomination or election of a candidate for public office, or to support or oppose passage of a ballot issue.

(c) Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in ARM ~~44.10.543~~ 44.11.710, may only be disbursed as follows:

(i) return the funds to the contributors, so long as the refund to contributors will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM ~~44.10.336~~ 44.11.703, or the rules in this chapter;

(ii) donate the funds and personal or real property to any organization or entity, so long as the use of the funds and personal or real property will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM ~~44.10.336~~ 44.11.703, or the rules in this chapter;

(iii) remains the same.

(iv) an eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter;

(v) an eligible elected official may retain the personal or real property of the campaign to serve constituents as provided in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, ~~including a leadership political committee maintained by a political officeholder~~. However, nothing in this section shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-240, 13-37-402, MCA

REASON: The COPP is transferring the rules regarding the conclusion of a campaign to the end of the rules to make the rules easier to navigate and more user-friendly. The COPP is proposing amendment of this rule to clarify the procedure for disposing of property and to make grammatical and rule reference changes.

44.10.336 (44.11.703) PERSONAL BENEFIT (1) remains the same.

(2) Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization;

(b) the candidate, an eligible elected official, or a member of the candidate's or ~~the~~ an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) remains the same.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM ~~44.10.335(6)(c)(ii)~~ 44.11.702, even if the

candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) remains the same.

(b) the candidate, an eligible elected official, or a member of the candidate's or ~~the~~ an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

REASON: See the reason for ARM 44.10.536 (44.11.701).

44.10.337 (44.11.223) AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) ~~For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216, MCA, and the term "candidate" is defined in 13-1-101, MCA. Pursuant to 13-10-211, MCA, a write-in candidate must file a declaration of intent. A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the aggregate contribution limits for both the primary election and the general election must file a declaration of intent pursuant to 13-10-211, MCA.~~

(2) The write-in candidate must close his or her primary election account, and follow the procedures to dispose of the funds according to ARM 44.11.701 and 44.11.702.

(3) The write-in candidate shall not use any primary election funds for his or her general write-in election campaign.

(4) The write-in candidate shall file a new statement of candidate and, if required, a business disclosure statement, and comply with the aggregate contribution limits for the general election.

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is transferring the rules regarding requirements specific to candidates into one subchapter of the rules to make the rules easier to navigate and more user-friendly. The COPP is amending this rule to clarify statutory requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

44.10.338 (44.11.227) LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the ~~operation~~ calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individuals to candidates are as follows:

- (a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$650~~ \$660;
 - (b) a candidate for other statewide office may receive no more than ~~\$320~~ \$330;
 - (c) a candidate for all other public offices may receive no more than \$170.
- (2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:
- (a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$23,350~~ \$23,850;
 - (b) a candidate for other statewide offices may receive no more than ~~\$8450~~ \$8,600;
 - (c) a candidate for Public Service Commission may receive no more than ~~\$3350~~ \$3,450;
 - (d) a candidate for senate may receive no more than ~~\$1350~~ \$1,400;
 - (e) a candidate for all other public offices may receive no more than \$850.
- (3) Pursuant to 13-37-216 and 13-37-218, MCA, ~~in-kind~~ all contributions must be included in computing these limitation totals.
- (4) A candidate may make unlimited contributions to his or her own campaign, but shall report and disclose each contribution and expenditure according to these rules.

AUTH: ~~13-37-216, 13-37-114~~, MCA
IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is transferring the rules regarding requirements specific to candidates into one subchapter of the rules to make the rules easier to navigate and more user-friendly. The COPP is amending this rule to clarify that candidates can make unlimited contributions to their own campaigns and to reflect the changes in contribution limit for candidates from individuals or political parties for the 2015-16 election cycle.

44.10.401 (44.11.302) STATEMENTS AND REPORTS, FILING (1) Except as provided in this rule, each statement and report required by Title 13, chapters 35 and 37, MCA, and these rules shall be filed on forms prescribed by the commissioner. The forms may be obtained without cost and upon request from the commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942. The forms may also be downloaded from the office's web site at <http://www.politicalpractices.mt.gov>.

- (a) Pursuant to 13-37-226, MCA, candidates for a state office filled by a statewide vote of all the electors of Montana and political committees organized to support or oppose a statewide candidate, incidental committees, independent committees, and statewide ballot issue committees shall file all reports electronically.
- (b) Political party committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue shall file all reports electronically in accordance with the procedure described in this rule.

(c) Except as provided in (1)(d) and (2), the following candidates shall also file all reports electronically:

(i) candidates for the legislature;

(ii) candidates for the public service commission; and

(iii) candidates for district court judge.

(d) Candidates listed in (c) shall file all reports electronically only if the total amount of contributions received or the total amount of expenditures made exceeds \$500, for all elections in a campaign, excluding the filing fee paid by a candidate.

(2) Pursuant to 13-37-226, MCA, electronic filing is mandatory for those candidates and committees listed in (1) except for those qualifying under (1)(d). Candidates listed in (1)(c) may submit a written request for a waiver from the requirement that reports be filed electronically. The commissioner may provide a waiver if the candidate or committee establishes that they cannot file electronically for reasons such as they do not have reasonable access to the technology necessary to file electronically.

(a) (3) A report is filed "electronically," as provided in 13-37-226, MCA, by providing the required information to the commissioner of Political Practices through the office's web site by using the "Campaign Tracker" icon "Campaign Electronic Reporting System (CERS)" link to electronically input the information. The commissioner's office will make training available for all users of the electronic filing system.

(2) (4) All statements and reports required by Title 13, chapters 35 and 37, MCA, and these rules are shall be filed with the commissioner and, where required by statute, with the appropriate county election administrator, as specified in 13-37-225, MCA, and this rule.

(a) remains the same.

(b) A statement or report is filed if it is submitted electronically or delivered to the commissioner and, if required, delivered to the appropriate county election administrator before 5:00 p.m. on the prescribed filing date, or if it is deposited in an established U.S. post office, postage prepaid, no later than 5:00 p.m. three days before the prescribed filing date.

(c) A faxed report is timely filed if the original of the report is filed within five days after the fax transmission. If the candidate or committee fails to file the original report with the COPP, the candidate or committee thereby acknowledges the signature on the fax has the same force and effect as the original signature on the report or statement. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(i) (d) A The commissioner's office shall acknowledge receipt of a delivered statement or report shall be acknowledged by a dated receipt.

AUTH: 13-37-114, MCA

IMP: 13-37-117(4), 13-37-225(4), 13-37-226, 13-37-231(4), MCA

REASON: The Disclose Act, SB 289's purpose is to provide information on the participants to Montanans in the timeliest manner possible. Electronic filing of campaign finance reports and statements provides immediate and searchable reporting and disclosure to Montanans. Further the CERS system alerts candidates

and committees to some potential errors in their report prior to submitting the information to the COPP, allowing them to avoid some potential campaign practice violations. This rule implements SB 289's authority provided the commissioner to require electronic filing beyond the statewide candidate filing currently required.

One alternative considered was to require no additional candidates to file electronically, which was rejected because it did not serve the transparency interests sought by SB 289. The second alternative the COPP considered was requiring all state district candidates to file electronically unless they established that they did not have reasonable access to technology. The COPP instead proposes allowing state district candidates to apply for a waiver of the electronic filing requirement directly from the COPP by establishing a reasonable cause for inability to file electronically. This proposed rule amendment balances Montanans' right to access the campaign finance reports immediately, while also providing for a waiver of the requirement under certain circumstances.

The proposed rule language clarifies the electronic reporting requirements for candidates and committees and also makes grammatical changes. See also the reason for ARM 44.10.501 (44.11.301).

44.10.403 (44.11.303) AMENDMENTS TO STATEMENTS AND REPORTS

(1) Amendments correcting a report filed pursuant to 13-37-225 and 13-37-226, MCA, for a previous reporting period shall be filed ~~with the next report~~ as soon as possible following the date upon which the person filing the report became aware of the inaccuracy. The correction shall identify the date of the report and schedule containing the information to be corrected and the reason for the correction.

(2) Any material change in information previously submitted in a statement of candidate or statement of organization filed pursuant to 13-37-201 or 13-37-205, MCA, and ARM ~~44.10.405~~ 44.11.201 and 44.11.220 shall be reported by filing an amended statement with the ~~appropriate filing officers~~ commissioner within five business days after the change.

(3) Candidates and committees who electronically file with the commissioner using the CERS system may use the "Update or Amend Report" button to immediately submit a correction to a previous report.

AUTH: 13-37-114, MCA

IMP: 13-37-201, 13-37-205, 13-37-225, 13-37-226, 13-37-229(10), 13-37-230(7), 13-37-232, MCA

REASON: The proposed rule language clarifies the available electronic amendment capability for candidates and committees and makes grammatical changes. See also the reason for ARM 44.10.501 (44.11.301).

44.10.405 (44.11.201) STATEMENT OF ORGANIZATION - POLITICAL COMMITTEE, INFORMATION REQUIRED

(1) A statement of organization required to be filed pursuant to 13-37-201 and 13-37-205, MCA, shall include, but not be limited to:

(a) through (e) remain the same.

(f) The name, office sought, and party affiliation (if any) of each candidate ~~whom a committee is supporting or opposing; on whom the committee makes a reportable election expenditure, or~~ if a committee is supporting the entire ticket of any party, the name of the party.

(g) Ballot issue or issues concerned, if any, and whether a committee is in favor of or ~~opposition to~~ opposes such issue or issues.

AUTH: 13-37-114, MCA

IMP: 13-37-117~~(1)~~, 13-37-201, 13-37-202~~(1)~~, 13-37-205, MCA

REASON: The COPP is transferring the rules regarding requirements specific to political committees into one subchapter of the rules to make the rules easier to navigate and more user-friendly. The COPP is amending this rule to remove former statutory language and clarify reporting requirements for all political committees.

44.10.407 (44.11.304) AFFIDAVIT BY LOCAL CANDIDATE CANDIDATES OR AND POLITICAL COMMITTEE COMMITTEES NOT ANTICIPATING CONTRIBUTIONS OR EXPENDITURES IN EXCESS OF \$500 RECEIVING OR EXPENDING LESS THAN \$500

(1) If a local candidate or a political committee which is specifically organized to support or oppose a particular local candidate or local issue anticipates receiving contributions in a total amount of less than \$500 and anticipates ~~expending funds~~ making expenditures in a total amount of less than \$500 for all elections in a campaign, the candidate or an officer of the political committee shall file an affidavit of such intent at the same time the statement of candidate or statement of organization is filed as required by 13-37-201 and 13-37-205, MCA.

(2) If a local candidate or an officer of a local political committee files an affidavit pursuant to ~~(1)~~ of this rule and subsequently receives contributions in a total amount or makes expenditures in a total amount in excess of \$500 for all elections in a campaign, such candidate or officer shall, within five business days of the date when such expenditures or contributions exceed \$500, file an initial report disclosing all contributions and expenditures to that date and shall file all future reports required by 13-37-226~~(2)~~, MCA.

AUTH: 13-37-114, MCA

IMP: 13-37-226~~(3)~~, MCA

REASON: The proposed rule amendment makes grammatical and stylistic changes. See also the reason for ARM 44.10.501 (44.11.301).

44.10.409 (44.11.306) COMMITTEE SEMIANNUAL AND CLOSING REPORTS ~~INDEPENDENT COMMITTEES~~

(1) Except as provided in (2) ~~below~~, independent, incidental, ballot issue, and political party committees which are not incidental committees that are not required to file semiannual reports in March and September shall file a year-end closing report pursuant to 13-37-226~~(5)(e)~~, MCA. The closing date of books for the report is December 31 and the report shall be filed with the ~~appropriate filing officers~~ commissioner no later than January 31.

(a) and (b) remain the same.

(2) No committee shall be required to file the report required by (1) if the committee was required to file a post-election report pursuant to 13-37-226(5)(b), MCA, during the second half of a calendar year and no further contributions have been received or expenditures to support or oppose a candidate or ballot issue have been made by it between the closing date of books for the post-election report and December 31. The post-election report shall be considered as its closing report and the closing date of books for that report shall be used as the cutoff date for the purpose of aggregating contributions and expenditures for future reports.

(3) ~~An independent~~ A committee ~~which that~~ will not participate in future elections and ~~which that~~ wishes to end its status as a ~~reporting~~ committee may file a statement of termination with its closing report. Any further activity by a terminated committee will require a new statement of organization.

(4) A committee may file its closing report at any time prior to the date prescribed by statute once it has finished making contributions and expenditures during an election cycle.

AUTH: 13-37-114, MCA

IMP: 13-37-226(4)(e), 13-37-228, MCA

REASON: The proposed rule amendment makes grammatical and stylistic changes. See also the reason for ARM 44.10.501 (44.11.301).

44.10.413 (44.11.305) NONRESIDENT AND FEDERALLY FILING

COMMITTEES, REPORTS (1) As used in this rule, "federally filing committee" means ~~a state party central committee, a qualified multi-candidate committee under 2 U.S.C. Sec. 441(a)(4), or any other committee which that~~ files reports with the federal election commission on a monthly or quarterly basis pursuant to the Federal Election Campaign Act of 1971, as amended.

(a) If a federally filing committee's reports filed with the federal election commission fully disclose the source and disposition of all ~~funds~~ contributions and expenditures used ~~to influence in~~ elections in Montana, the commissioner shall accept copies of such reports in lieu of the periodic reports prescribed by the Campaign Finances and Practices Act. Such reports need to be filed with the commissioner only for periods in which a federally filing committee receives contributions from Montana sources or ~~expends funds to influence~~ makes expenditures in elections in Montana. A copy of a statement of organization (FEC Form 1) shall accompany the first report, and copies of any amendments thereto shall be filed with the commissioner.

(b) This rule does not affect the duty of any such committee under ~~2 U.S.C. Sec. 439~~ 52 USCS Sec. 30113 to file copies of reports with the Montana Secretary of State.

(c) If a federally filing committee cannot satisfy the requirements set forth in these rules, it shall file reports on the COPP's forms for the periods in which the committee makes expenditures and contributions in elections in Montana. Such reports shall contain the information required by 13-37-229, MCA, and these rules.

(2) Committees headquartered outside the state of Montana ~~which that~~ are not federally filing committees and ~~which expend funds to influence that make~~ expenditures and contributions in elections in Montana may satisfy the requirements of the Montana Campaign Practices Act in one of two ways:

(a) if the committee files reports with a state officer in its home state, the commissioner may accept copies of such reports in satisfaction of the requirements of the Montana Campaign Finances and Practices Act if those reports fully disclose the source and disposition of all funds expenditures and contributions used to ~~influence in~~ elections in Montana. Such reports need to be filed only for periods in which the committee ~~expend funds to influence~~ makes expenditures and contributions in elections in Montana. A copy of a statement of organization or equivalent statement shall accompany the first such report, and copies of any amendments thereto shall be filed with the commissioner as they occur.

(b) if a nonresident committee cannot satisfy the requirements set forth in (a) ~~the preceding subsection~~, it shall file reports on Montana forms for the periods in which the committee ~~expend funds to influence~~ makes expenditures and contributions in elections in Montana. Such reports shall contain the information required by 13-37-229 and ~~13-37-230~~, MCA, and these rules.

~~(3) A copy of a report or statement filed pursuant to this rule need not be filed with a county election administrator in Montana.~~

AUTH: 13-37-114, ~~13-37-227~~, MCA

IMP: 13-37-227, MCA

REASON: The proposed rule amendment makes grammatical and stylistic changes. See also the reason for ARM 44.10.501 (44.11.301).

44.10.501 (44.11.301) UNIFORM SYSTEM OF ACCOUNTS (1) Each person required to file reports pursuant to Title 13, chapter 37, MCA, and these rules, shall maintain a system of accounts as prescribed and published in manual form by the commissioner. The manual may be obtained without cost and upon request from the commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942, or online at www.politicalpractices.mt.gov.

(2) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-117~~(2)~~, MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules.

44.10.503 (44.11.409) MONETARY DEPOSITS AND EXPENDITURES, ONLY BY CAMPAIGN TREASURER, THROUGH DEPOSITORY (1) Any candidate or agent of any candidate or political committee who receives a contribution on behalf of a candidate or political committee shall, before the end of

the fifth business day, transfer it to the campaign treasurer with full disclosure of the source, as required by 13-37-229, MCA, and ARM 44.11.404 and 44.11.407.

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

~~(3) (4) Except as stated in (5), All all expenditures, except expenditures from the petty cash fund, shall be made by check drawn on the designated campaign depository by check, debit card, wire transfer, or other electronic means that clearly identifies the person receiving the payment, and no check or other withdrawal shall be drawn payable to the order of cash.~~

~~(a) (5) Expenditures from the petty cash fund shall be documented by a receipt voucher designating the date the monies were withdrawn, the exact amount of the withdrawal and by whom the monies were withdrawn, the name of the person or vendor to whom the monies were paid, and the purpose for which the monies were used. The receipt vouchers shall be attached to the cancelled check or other withdrawal receipt which provided the monies for the petty cash fund for the period and shall be maintained as a permanent record of the treasurer.~~

~~(b) No check shall be drawn payable to the order of cash, except that the withdrawal of monies for the purpose of providing a petty cash fund shall be by check drawn on the primary depository and payable to the order of cash.~~

~~(6) All records shall be kept current and available for inspection as provided in 13-37-111, 13-37-208, and 13-37-209, MCA.~~

AUTH: 13-37-114, MCA

IMP: 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, 13-37-215, 13-37-226(6), 13-37-229, 13-37-231, MCA

REASON: The COPP is amending this rule to incorporate ARM 44.10.507. See also the reason for ARM 44.10.511 (44.11.402).

44.10.511 (44.11.402) CONTRIBUTIONS, REPORTING (1) through (4) remain the same.

(5) For the purposes of 13-37-226(1)(b), ~~(2)(d), and (3)(a)~~, MCA, the report required to be filed within ~~24 or 48 hours~~ two business days shall be filed as follows:

(a) it shall be delivered within ~~24 or 48 hours, as appropriate,~~ two business days after the receipt thereof, ~~Saturdays, Sundays and holidays excepted,~~ to the commissioner's office and the appropriate county election administrator; or

(b) ~~It shall be faxed to the commissioner's office and the appropriate county election administrator, provided the original of the report is received by the commissioner and the appropriate election administrator within five days after the fax transmission. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period. if the candidate or committee fails to file the original report with the COPP, the candidate or committee thereby acknowledges the signature on the fax has the same force and effect as the original signature on the report or statement.~~

(c) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-226(1)(a) and (2)(a), 13-37-229, 13-37-232, MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules, and to provide uniformity with the statutes.

44.10.513 (44.11.403) IN-KIND CONTRIBUTION, REPORTING AND VALUATION ~~(1) For the purposes of Title 13, chapter 37, MCA, and these rules, an in-kind contribution shall be reported as follows:~~

~~(a) (1) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and, in addition to shall describe what was received consistent with the reporting requirements specified in ARM 44.10.511, shall identify it as to its nature 44.11.402.~~

~~(2) A candidate who makes personal expenditures benefitting his or her campaign, shall also report and disclose the expenditures as in-kind contributions or loans to the campaign, see ARM 44.11.501.~~

~~(i) (3) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.~~

~~(b) (4) The value of an in-kind contribution shall be determined as follows:~~

~~(i) (a) it shall be reported at as its fair market value at the time of the contribution; or~~

~~(ii) (b) it shall be reported at as the difference between the fair market value at the time of the contribution and the amount charged the contributee; or~~

~~(iii) (c) it shall be reported at as the actual monetary value or worth at the time of the contribution; or~~

~~(iv) (d) if due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.~~

~~(e) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the contributee at the time of its contribution.~~

(5) Upon receiving or making an in-kind contribution, its value shall be calculated and reduced to writing reflecting the calculation method used under (4) and the writing shall be retained by the treasurer and available for inspection as provided by 13-37-111, 13-37-208, and 13-37-209, MCA. The value shall also be reported consistent with ARM 44.11.502.

AUTH: 13-37-114, MCA

IMP: 13-37-208, 13-37-209, 13-37-211, 13-37-229(40), MCA

REASON: The COPP is amending this rule to clarify statutory requirements for records, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law. See also the reason for ARM 44.10.511 (44.11.402).

44.10.515 (44.11.405) LOANS AS CONTRIBUTIONS, REPORTING

(1) Loans to a candidate are subject to the same limits as contributions and are aggregated into a candidate's total contributions pursuant to 13-37-216 and 13-37-218, MCA; except limits do not apply to contributions or a loan made by a candidate to his or her own campaign.

(2) For the purposes of Title 13, chapter 37, MCA, and these rules, a loan shall be reported as follows:

(a) a candidate or political committee shall report a loan on the appropriate reporting schedule and, in addition to the reporting requirements specified in ARM ~~44.10.511~~ 44.11.402, shall identify it as to its nature purpose.

(i) The terms and conditions of all loans, including an oral agreement to lend money, shall be reduced to writing and the terms and conditions of the loan included in the documents to be retained and made available for inspection.

(ii) Any loan agreement must be signed by the candidate or political committee and the person or entity making the loan at the time the loan is made, or, if the initial agreement is an oral agreement, within five business days thereafter.

(iii) A written loan agreement must be signed prior to any transfer of funds.

(b) and (c) remain the same.

(3) A loan made to a candidate or political committee that is not repaid by the candidate or committee, including the forgiveness of any loan, becomes an in-kind contribution to the candidate or committee, see ARM 44.11.501.

AUTH: 13-37-114, MCA

IMP: 13-37-111, 13-37-217, 13-37-229(5) and (10), MCA

REASON: The COPP is amending this rule to clarify statutory requirements for records, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law. See also the reason for ARM 44.10.511 (44.11.402).

44.10.517 (44.11.504) EXPENDITURE ENCOURAGED TO AVOID CONTRIBUTION, REPORTING (1) remains the same.

(2) Such contributions shall be reported pursuant to the provisions of ARM ~~44.10.513~~ 44.11.403.

AUTH: 13-37-114, MCA

IMP: 13-37-229~~(10)~~, MCA

REASON: The COPP is proposing amendment of this rule to make a stylistic change. See also the reason for ARM 44.10.531 (44.11.502).

44.10.519 (44.11.404) EARMARKED CONTRIBUTION, REPORTING

(1) For the purposes of 13-37-217 and 13-37-229, MCA, and these rules, an "earmarked contribution" is a contribution made with the ~~direction~~, express, or implied, oral, written, direct, or indirect designation or instruction, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue committee, political party committee, independent committee, or petition for nomination.

- ~~(a) A contribution is not earmarked when the initial recipient is:~~
 - ~~(i) The candidate for the benefit of whom it is to be expended;~~
 - ~~(ii) A political committee which supports a single candidate for the benefit of whom it is to be expended;~~
 - ~~(iii) A political committee which supports or opposes a single ballot issue or petition for nomination for the benefit of which it is to be expended; or~~
 - ~~(iv) A political committee which supports or opposes more than one candidate and/or issue or petition for nomination and there is no direction, express or implied, that all or part of the contribution will be expended for the benefit of a specified candidate and/or issue or petition for nomination.~~

(2) A contribution is not earmarked when it is to be used solely at the discretion of the initial recipient.

~~(2)~~ (3) An earmarked contribution shall be reported as follows:

(a) the intermediary candidate or political committee receiving an earmarked contribution shall report it pursuant to the provisions of ARM 44.10.511 44.11.402 and, in addition, shall:

- (i) report it as an "earmarked contribution"; and
- (ii) report the name and address of the candidate or political committee for which the earmarked contribution is ultimately intended; and
- (iii) inform the candidate or political committee ultimately receiving the transfer of the earmarked contribution of the full name and mailing address (and occupation and principal place of business, if any) of the original contributor.

~~(b) The intermediary candidate or political committee, when transferring an earmarked contribution or thing of value received, shall report it pursuant to the provisions of ARM 44.10.531 and, in addition, shall:~~

- ~~(i) Report it as an "earmarked contribution";~~
- ~~(ii) Inform the candidate or political committee ultimately receiving the transfer of the earmarked contribution of the full name and mailing address (occupation and principal place of business, if any) of the original contributor.~~

~~(c)~~ (b) the candidate or political committee ultimately receiving an earmarked contribution shall report it pursuant to the provisions of ARM 44.10.511 44.11.402 and, in addition, shall:

- (i) report it as an "earmarked contribution"; and
- (ii) report it as a contribution in the name of the original contributor, disclosing the full name, mailing address (and occupation and principal place of business, if any); and
- (iii) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-217, 13-37-229(4) and (10), 13-37-230(4), MCA

REASON: See the reason for ARM 44.10.511 (44.11.402).

44.10.521 (44.11.406) MASS COLLECTIONS AT FUND-RAISING EVENTS-ITEMIZED ACCOUNT OF PROCEEDS, REPORTING (1) For the purposes of 13-37-229(8), MCA:

(a) "Mass collections" made at a fund-raising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fund-raising event. ~~Provided, provided~~ that mass collections do not include the proceeds of purchases of \$35 or more for any candidate or political committee.

(b) and (2) remain the same.

AUTH: 13-37-114 MCA

IMP: 13-37-207, 13-37-229~~(7)~~ and ~~(10)~~, MCA

REASON: The proposed rule amendment makes grammatical and stylistic changes. See also the reason for ARM 44.10.511 (44.11.402).

44.10.525 (44.11.505) DEBTS AND OBLIGATIONS OWED TO A CANDIDATE OR POLITICAL COMMITTEE, REPORTING (1) Pursuant to 13-37-229~~(7)~~, MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed to a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A ~~reporting~~ candidate or political committee shall report the full name and mailing address (and occupation and principal place of business, if any) of each person who owes a debt or obligation to the candidate or political committee at the end of a reporting period, including the amount, date contracted, and ~~nature~~ purpose of each debt and obligation owed by each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported, and the basis for the estimated amount shall be reduced to writing and retained for inspection.

(3) All invoices or billing statements must be maintained and available for inspection.

(4) If the debt or obligation is an oral agreement for services, the agreement must be contemporaneously reduced to writing at the time it is made, and must be signed by the parties and retained for inspection.

AUTH: 13-37-114, MCA

IMP: 13-37-229~~(6)~~, MCA

REASON: See the reason for ARM 44.10.531 (44.11.502).

44.10.531 (44.11.502) EXPENDITURES, REPORTING (1) A campaign expense paid personally by an individual in his or her own campaign is always coordinated with, and is a campaign expense of, the campaign that must be reported and disclosed as an expense by the campaign in the same manner as an expense paid through the campaign depository account.

(2) An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure.

(3) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

~~(2)~~ (4) An expenditure shall be reported on the date and for the reporting period during which it is made.

~~(3)~~ (5) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503 44.11.409.

(6) All expenditures must be supported by a contemporaneous written agreement, invoice, billing statement, or similar documentation appropriate to the transaction that describes the services provided, the billing period identifying the specific dates on which services were provided, an itemized basis for the payments made, and other pertinent information.

(7) For purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the "purpose" of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes. For example, two expenditures for direct mail advertisements should not both be reported as "Flyers."

~~(4)~~ (8) Reporting independent expenditures:

~~(a)~~ Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures.;

~~(b)~~ In addition, a person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent.; and

~~(c)~~ the candidate or political committee benefiting from the independent expenditure does not have to report the expenditure.

(9) For the purposes of 13-37-226, MCA:

~~(a)~~ the reports required to be filed within two business days shall be filed electronically, pursuant to ARM 44.11.302;

~~(b)~~ independent, political party, and incidental committees shall, within two business days of making an expenditure of \$500 or more for a reportable election activity, file a Form C-7E if the expenditure is made between the 17th day before the election and the day of the election; and

~~(c)~~ all expenditures reported under (b) shall also be included on the post-election report.

AUTH: 13-37-114, MCA

IMP: 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-230(7), 13-37-232, MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules, and to provide uniformity with the statutes. The COPP is further amending this rule to clarify statutory requirements for records, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

44.10.533 (44.11.503) IN-KIND EXPENDITURE, REPORTING AND VALUATION (1) ~~For the purposes of Title 13, chapter 37, MCA, and these rules, an in-kind expenditure shall be reported as follows:~~

(a) ~~(1)~~ A candidate or political committee shall report an in-kind expenditure on the appropriate reporting schedule and, ~~in addition to shall describe what was received consistent with the reporting requirements specified in ARM 44.10.531,~~ shall identify it as to its nature 44.11.502.

(2) The total value of the services, property, or rights expended in-kind shall be deemed to have been consumed in the reporting period in which expended.

~~(b) (3)~~ The value of an in-kind expenditure shall be determined as follows:

(i) ~~(a)~~ it shall be reported at as its fair market value at the time of the expenditure; or

(ii) ~~(b)~~ it shall be reported at as the difference between the fair market value at the time of the expenditure and the amount charged the expende; or

(iii) ~~(c)~~ it shall be reported at as the actual monetary value or worth at the time of the expenditure; or

(iv) ~~(d)~~ if due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind expenditure as made.

~~(e) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the expende at the time of its expenditure.~~

(4) Upon making an in-kind expenditure, its value shall be calculated and reduced to writing. The value shall be reported consistent with ARM 44.11.502. The writing must reflect the calculation method used under (3) and the writing shall be retained by the treasurer and available for inspection as provided in 13-37-111, 13-37-208, and 13-37-209, MCA.

AUTH: 13-37-114, MCA

IMP: 13-37-208, 13-37-209, 13-37-211, 13-37-229, 13-37-230(7), MCA

REASON: See the reason for ARM 44.10.531 (44.11.502).

44.10.535 (44.11.506) DEBTS AND OBLIGATIONS OWED BY A CANDIDATE OR POLITICAL COMMITTEE, REPORTING (1) Pursuant to ~~13-37-230(6)~~ 13-37-229, MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A ~~reporting~~ candidate or political committee shall report the full name and mailing address (and occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and ~~nature~~ purpose of each debt and obligation owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported, and the basis for the estimated amount shall be reduced to writing and retained for inspection.

(3) All invoices or billing statements must be maintained and available for inspection.

(4) If the debt or obligation is an oral agreement for services, the agreement must be contemporaneously reduced to writing at the time it is made, and must be signed by the parties and retained for inspection.

(5) A loan made to a candidate or political committee that is not repaid by the candidate or committee, including the forgiveness of any loan, becomes an in-kind contribution to the candidate or committee, see ARM 44.11.401.

AUTH: 13-37-114, MCA

IMP: 13-37-229, ~~13-37-230(6)~~, MCA

REASON: See the reason for ARM 44.10.531 (44.11.502).

44.10.536 (44.11.701) DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this subchapter:

(1) and (2) remain the same.

(3) "Constituent services" has the meaning generally defined in 13-37-401(4), MCA, and more specifically defined in ARM ~~44.10.540~~ 44.11.707.

(4) through (8) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

REASON: The COPP is transferring the rules regarding the conclusion of a campaign to the end of the rules to make them easier to navigate and more user-friendly. The COPP is proposing amendment of this rule to make grammatical and rule reference changes.

44.10.537 (44.10.704) APPLICABILITY OF RULES (1) remains the same.

(2) The rules in this chapter do not apply to the constituent services stipend and reimbursement provided by the state of Montana to a legislator, starting July 1, 2017, pursuant to 5-2-204, MCA, which is administered by Legislative Services.

~~(2)~~ (3) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and ARM ~~44.10.539(1)(b), (1)(d), (1)(f), 44.10.335, and 44.10.336~~ 44.11.702, 44.11.703, and 44.11.706 apply to:

(a) remains the same.

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in ARM ~~44.10.538~~ 44.11.705 and surplus campaign funds have been deposited in the account; or

(c) remains the same.

~~(3)~~ (4) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) remains the same.

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate and union contributions to candidates;

(c) and (d) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-35-227, 13-37-401, 13-37-402, MCA

REASON: The COPP is proposing amendment of this rule to clarify that constituent account services stipend and reimbursement monies received by state legislators from the state of Montana are not overseen by the COPP. See also the reason for ARM 44.10.536 (44.11.701).

44.10.539 (44.11.706) PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM ~~44.10.335~~ 44.11.702 and ~~44.10.336~~ 44.11.703, and the rules in this chapter:

(a) remains the same.

(b) Only surplus campaign funds as defined in ARM ~~44.10.335(2)~~ 44.11.702 may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM ~~44.10.543~~ 44.11.710. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, ~~including funds in a leadership political committee account~~, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) through (c) remain the same.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM ~~44.10.335~~ 44.11.702, and ~~44.10.336~~ 44.11.703, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM ~~44.10.542~~ 44.11.709.

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

(b) the expenditure of surplus campaign funds by any elected official described in ARM ~~44.10.537(2)(b)~~ 44.11.704.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

REASON: See reason for ARM 44.10.536 (44.11.701).

44.10.540 (44.11.707) AUTHORIZED EXPENDITURES (1) and (2) remain the same.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM ~~44.10.335(6)(c)~~ 44.11.702.

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM ~~44.10.542~~ 44.11.709. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in ARM ~~44.10.539, 44.10.335 and 44.10.336~~ 44.11.702, 44.11.703, and 44.11.706, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) through (6)(c) remain the same.

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101~~(7)~~, MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101~~(7)~~, MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) through (h) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

REASON: See reason for ARM 44.10.536 (44.11.701).

44.10.541 (44.11.708) OPENING AN ACCOUNT (1) through (1)(h) remain the same.

(i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM ~~44.10.335(6)(c)(ii)~~ 44.11.702; and

(j) remains the same.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(4), MCA.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

REASON: See reason for ARM 44.10.536 (44.11.701).

44.10.542 (44.11.709) RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM ~~44.10.544~~ 44.11.711. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

(a) the amount of money in the account at the beginning of the reporting period;

(b) the amount and rate of interest paid on money in the account during the reporting period pursuant to ARM ~~44.10.543~~ 44.11.710;

(c) for each expenditure made during the reporting period:

(i) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures ~~have been~~ were made; ~~during the reporting period, including and~~

(ii) the amount, date, and general statement describing the constituent services that were the basis for ~~the~~ each expenditure; and

(iii) the total amount of expenditures made to each person; and

~~(d)~~ (iv) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as written by 13-37-231(4), MCA.

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

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, ~~such reimbursement it must be based on~~ supported by receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, ~~such expenditures it must be based on~~ supported by receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established. An eligible elected official may only have one constituent services account open at a time, and while a campaign account is open no expenditures shall be made from the constituent services account established pursuant to 13-37-401 and 13-37-402, MCA.

(6) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: See the reason for ARM 44.10.536 (44.11.701).

44.10.544 (44.11.711) CLOSING AN ACCOUNT–DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in ARM ~~44.10.536(7)~~ 44.11.701. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM ~~44.10.335(6)(c)(ii)~~ 44.11.702. The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: See the reason for ARM 44.10.536 (44.11.701).

7. The department proposes to repeal the following rules:

44.10.325 POLITICAL COMMITTEE–DEFINITION

AUTH: 13-37-114, MCA
IMP: 13-1-101(12), MCA

REASON: The COPP is repealing this rule because it duplicates information found in ARM 44.10.405, and is incorporated for clarity in proposed ARM 44.11.201.

44.10.332 LEADERSHIP POLITICAL COMMITTEES

AUTH: 13-37-114, MCA
IMP: 13-37-216, MCA

REASON: The COPP is repealing this rule consistent with current statute, and to avoid confusion on the type of political committees allowed under 13-1-101 and 13-37-216, MCA.

44.10.411 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE

AUTH: 13-37-114, 13-37-226(5), MCA
IMP: 13-37-226(5), MCA

REASON: Previously 13-37-226, MCA, required that the COPP establish by rule a reporting and disclosure schedule for incidental committees. The current statute

sets out a reporting schedule in statute for incidental committees; therefore, this rule is duplicative and repealed for clarity and consistency.

44.10.507 TRANSFER OF CONTRIBUTION TO CAMPAIGN TREASURER

AUTH: 13-37-114, MCA

IMP: 13-37-207, 13-37-229, MCA

REASON: The COPP is repealing this rule because it duplicates information found in ARM 44.10.503, and is incorporated for clarity in proposed ARM 44.11.409.

44.10.523 AGGREGATE CONTRIBUTIONS—DEFINITION, REPORTING

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-229(2) and (10), MCA

REASON: The COPP is repealing this rule because it duplicates information found in ARM 44.10.334, and is incorporated for clarity in proposed ARM 44.11.222.

8. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jaime MacNaughton, Office of the Commissioner of Political Practices, 1209 Eighth Ave., P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov, and must be received no later than 5:00 p.m., September 10, 2015.

9. Jaime MacNaughton, Office of the Commissioner of Political Practices, has been designated to preside over and conduct these hearings.

10. The COPP 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 8 above or may be made by completing a request form at any rules hearing held by the COPP.

11. 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.

12. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. On May 14, 2015, Jonathan Motl spoke on the phone with Sen. Ankney regarding SB 289. On July 2, 2015, Sen. Kary was contacted by e-mail by Jaime MacNaughton regarding SB 151. On July 2, 2015, Sen. Brenden was contacted by e-mail, on July 6, 2015, sent a letter by U.S. mail, and finally contacted by phone on July 13, 2015, by Jaime MacNaughton regarding SB 89. None of the proposed rules are contrary to the respective primary sponsor's comments as received by the COPP pursuant to 2-4-110(2)(e), MCA.

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

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jonathan Motl
Jonathan Motl
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State July 22, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.918 pertaining to the)
administration of the Big Sky)
Economic Development Trust)
Program)

TO: All Concerned Persons

1. On June 25, 2015, the Department of Commerce published MAR Notice No. 8-99-133 pertaining to the proposed amendment of the above-stated rule at page 789 of the 2015 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

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

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

Certified to the Secretary of State August 3, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.53.113 pertaining to registration and)
registration maintenance fees: fee) (HAZARDOUS WASTE)
assessment)

TO: All Concerned Persons

1. On February 12, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 101, 2015 Montana Administrative Register, Issue Number 3. On March 26, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of extension of comment period on proposed amendment of the above-stated rule at page 298, 2015 Montana Administrative Register, Issue Number 6.

2. The department has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.53.113 REGISTRATION AND REGISTRATION MAINTENANCE FEES: FEE ASSESSMENT (1) For the purposes of this rule, "as-generated waste" means hazardous waste generated from tanks, containers, and other process units in the course of regular, ongoing, ~~and closure of~~ commercial, production, or other industrial activities. "Remediation waste" means all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup. Hazardous waste generated at, and as a result of, final closure of the entire facility is remediation waste.

(2) and (3) remain the same.

(4) The annual registration maintenance fee for a calendar year is \$200 plus a per-ton fee for all regulated hazardous waste generated during the previous calendar year of:

(a) \$15 per ton for all regulated remediation waste generated during the 2014 calendar year and each year thereafter, subject to an annual cap of \$25,000; and

(b) \$20 per ton for all regulated as-generated waste generated during the 2014 calendar year and each year thereafter;

~~(c) \$ 25 per ton for all regulated as-generated waste generated during the 2015 calendar year; and~~

~~(d) \$ 30 per ton for all regulated as-generated waste generated during the 2016 calendar year and each year thereafter.~~

~~(5) The total of the fees assessed pursuant to (4)(a) for a calendar year must not exceed twice the appropriated amount for the special revenue account as provided in 75-10-434, MCA, for that calendar year. The department shall refund, on a pro rata basis, the amount of the fees collected under (4)(a) that exceed twice the appropriated amount for the special revenue account for a calendar year to the persons who generated remediation waste during that calendar year.~~

(6) through (11) remain as proposed, but are renumbered (5) through (10).

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The proposed rule conflicts with the newly enacted statute (Senate Bill 136), Mont. Code Ann. 75-10-405 (2015) because it conflicts with the statute's \$25,000 cap per facility for remediation fees.

RESPONSE: The department agrees. Section (5) has been deleted and the \$25,000 cap from Chapter 360, Laws of 2015 (SB 136) has been added to (4)(a).

COMMENT NO. 2: The definition of "as-generated" and "remediation waste" should be coordinated with the newly enacted statute (Senate Bill 136), Mont. Code Ann. 75-10-405 (2015) to provide consistency. The term "and closure of" should be eliminated from the definition of "as-generated waste," because wastes encountered in closure more properly fit under "remediation."

RESPONSE: The department agrees and has amended (1) to treat facility closure waste as "remediation waste." The department has also corrected a grammatical error in the rule.

COMMENT NO. 3: Justification is needed as to why it is necessary to increase the per ton rates 50 percent in light of the increases totaling 2000% in the last six years.

RESPONSE: In the rule amendments adopted in this notice, the department has not increased the rate for as-generated waste and has reduced the rate for remediation waste from \$20/ton to \$15/ton.

COMMENT NO. 4: One commenter stated the proposed rule is unfair because as-generated waste would be responsible for an unbalanced share of the hazardous waste program costs.

RESPONSE: In Chapter 360, the Legislature has instituted a mandatory cap on the fee for remediation waste. The department has not adopted the proposed increase on the fee for as-generated waste.

COMMENT NO. 5: One commenter stated that, in light of declining hazardous waste generation rates and a decline in the number of large quantity generators, the program must reduce its operating expenses in proportion to hazardous waste generation rates.

RESPONSE: The department notes that the number of large quantity generators and small quantity generators are the highest they have been in a decade. The department also notes that waste generation rates can vary greatly annually. For example, in the 33-year history of the program, the annual waste generation rate has exceeded 20 tons in ten, or nearly one-third of the time, of those years, but in other years the amount of waste generated is only five tons. The department does not believe it must reduce its operating budget. The department reduced program staff to its current level ten years ago. The department has determined that this staffing level is necessary to operate an effective hazardous

waste program.

COMMENT NO. 6: One commenter stated that a different funding mechanism is needed.

RESPONSE: In order to implement the cap on remediation waste fees contained in Chapter 360 and to eliminate the increase in the as-generated fee, the department has secured other funding for a portion of the program.

COMMENT NO. 7: The incentive to reduce waste generation is significantly reduced when the department increases fees.

RESPONSE: The department understands the comment. With Chapter 360 and the amendment to ARM 17.53.113(4)(a) in this notice, any disincentive has been eliminated or significantly reduced.

COMMENT NO. 8: The reason for the proposal -- that per ton fees are decreasing -- is faulty.

RESPONSE: This rationale was limited to remediation waste and referred to the lower per ton rate and the cap that the proposed rule provided for remediation waste.

COMMENT NO. 9: The definitions of "as-generated waste" and "remediation waste" should be coordinated with Senate Bill 136. The commenter also stated that the fee increases for "as-generated" and "remediation waste" conflict with the fee cap in SB 136.

RESPONSE: The department agrees that the definitions should be coordinated with Senate Bill 136 and has done so with the amendments to ARM 17.53.113(1) it has adopted. The fee cap in SB 136 applies only to remediation wastes. The cap has been inserted in ARM 17.53.113(4)(a). In the rule amendments adopted today, fees for remediation waste have been reduced and the proposed increase in fees for as-generated waste have not been adopted.

COMMENT NO. 10: In light of Senate Bill 136 and the large fee increase proposed, the amendment should not be promulgated.

RESPONSE: The department agrees. However, it is necessary to amend the rule to conform to Chapter 360. Those amendments have been made.

4. No other comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Tom Livers

TOM LIVERS, DIRECTOR

Certified to the Secretary of State, August 3, 2015.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 23.16.1712, 23.16.1714, and)
23.16.1715 pertaining to the conduct)
of sports tab games, the award of)
sports tab game prizes, and sports)
tab game record keeping)
requirements)

TO: All Concerned Persons

1. On June 25, 2015, the Department of Justice published MAR Notice No. 23-16-242 regarding the public hearing on the proposed amendment of the above-stated rules at page 793, 2015 Montana Administrative Register, Issue Number 12.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State August 3, 2015.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.121.301 definitions,)
24.121.403 general requirements,)
24.121.601 licensure by examination,)
24.121.603 out-of-state applicants,)
24.121.605 postsecondary school)
licensure, 24.121.611 examination)
requirements and process,)
24.121.803 school requirements,)
24.121.805 school operating)
standards, 24.121.807 school)
curricula, 24.121.809 student)
withdrawal, transfer, or graduating,)
24.121.1103 instructor requirements,)
24.121.1105 teacher-training)
curriculum, 24.121.1301 salons/booth)
rental, 24.121.1509 implements,)
instruments, supplies, and)
equipment, 24.121.1517 salon)
preparation storage and handling,)
24.121.2101 continuing education,)
24.121.2301 unprofessional conduct,)
and the adoption of NEW RULES I)
nonroutine application, II granting)
exception, III licensure equivalency,)
IV credited hours for Montana-)
licensed individuals, V inactive)
instructor license, and VI licensee)
and applicant contact information)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On June 11, 2015, the Board of Barbers and Cosmetologists (board) published MAR Notice No. 24-121-12 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 705 of the 2015 Montana Administrative Register, Issue No. 11.

2. On July 2, 2015, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the July 10, 2015, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: One commenter asked the board to amend ARM 24.121.601 to define the term "approved school," since the board does not approve schools outside of Montana, and it is not known what is meant by the term regarding schools not licensed by the board.

RESPONSE 1: The term "approved school" is not new. While the board appreciates the problem noted by this commenter and agrees that the solution is to define the term, the board concluded it is not necessary to delay the current rules project just to insert such a definition. Additionally, because a new definition would be outside the scope of this adoption notice, the board will consider defining the term in a future rules project.

COMMENT 2: A commenter suggested, in relation to the proposed amendments to ARM 24.121.601, the board not require proof of a high school diploma or its equivalent of applicants who completed their formal training at a Montana-licensed school, since Montana's licensed schools now qualify as "post-secondary" schools that may already address this requirement.

RESPONSE 2: The board concluded that staff must document the high school completion requirement as part of the licensing process, as post-secondary schools may admit a percentage of students based on age, without respect to completion of high school or of a high school equivalent.

COMMENT 3: One commenter noted an incorrect reference to "electrology" training in ARM 24.121.603(4)(e), and suggested the rule should instead refer to "esthetician" training.

RESPONSE 3: The board agrees with the commenter and is amending the rule accordingly.

COMMENT 4: A commenter stated that ARM 24.121.611(1)(b) improperly requires an examination candidate to submit a photo ID at the time of examination, since the examination administrator is in control of that process. The commenter also suggested the board would not want to continually amend its rules to keep up with an examination administrator's requirements.

RESPONSE 4: The board understands that examination administrators provide services to the board pursuant to contract, and such services may not necessarily be immediately impacted by this rule amendment. However, the board is amending this rule exactly as proposed because the board intends to require this same provision in contract.

COMMENT 5: One commenter suggested that ARM 24.121.1301 be amended so that a change of status imposed against a personal license in the disciplinary process also be, as an operation of law, imposed against a booth renter license held by the same licensee.

RESPONSE 5: While this suggestion is appealing to the board, the board concluded it is not necessary to make the suggested change immediately. To avoid delaying the implementation of the proposed rule changes, the board is amending the rule exactly as proposed and will consider the commenter's suggestions in a subsequent rules project.

4. The board has amended ARM 24.121.301, 24.121.403, 24.121.601, 24.121.605, 24.121.611, 24.121.803, 24.121.805, 24.121.807, 24.121.809, 24.121.1103, 24.121.1105, 24.121.1301, 24.121.1509, 24.121.1517, 24.121.2101, and 24.121.2301 exactly as proposed.

5. The board has adopted NEW RULES I (24.121.406), II (24.121.610), III (24.121.604), IV (24.121.808), V (24.121.608), and VI (24.121.612) exactly as proposed.

6. The board has amended ARM 24.121.603 with the following changes, stricken matter interlined, new matter underlined:

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE LICENSE (1) through (4)(d) remain as proposed.

(e) To qualify for an esthetician license the applicant must possess a license type in good standing that includes the scope of training and practice equal to [New Rule III(5)] and either have completed at least 400 hours of electrology esthetician training in a school or attest to at least 750 hours of work experience as a licensed esthetician.

(f) through (9) remain as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, 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 August 3, 2015

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

In the matter of the repeal of ARM) NOTICE OF REPEAL
24.213.412 renewals, and 24.213.421)
board seal)

TO: All Concerned Persons

1. On March 12, 2015, the Board of Respiratory Care Practitioners (board) published MAR Notice No. 24-213-19 regarding the proposed repeal of the above-stated rules, at page 259 of the 2015 Montana Administrative Register, Issue No. 5.

2. On August 7, 2015, the board proposed to repeal the above-stated rules in Helena. No comments were received by the April 10, 2015 deadline.

3. The board has repealed ARM 24.213.412 and 24.213.421 exactly as proposed.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
MARIA CLEMONS, PRESIDING OFFICER

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

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

Certified to the Secretary of State August 3, 2015

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposal of)
Temporary Rule I to certify carbon) NOTICE OF ADOPTION OF
sequestration equipment placed in) TEMPORARY RULE
service after January 1, 2014, and)
certified by the Department of)
Environmental Quality prior to)
October 1, 2015)

TO: All Concerned Persons

1. On June 25, 2015, the Department of Natural Resources and Conservation Montana Board of Oil and Gas Conservation published MAR Notice No. 36-22-186 pertaining to the proposed adoption of the above-stated temporary rule at page 798 of the 2015 Montana Administrative Register, Issue Number 12.

2. The department has adopted the following temporary rule as proposed: Rule I.

3. No comments or testimony pertaining to the temporary rulemaking were received.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

/s/ Linda Nelson
LINDA NELSON
Board Chair
Montana Board of Oil Gas and Conservation

Certified to the Secretary of State July 27, 2015.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 38.5.1307 and the repeal of) REPEAL
ARM 38.5.1305, 38.5.1309,)
38.5.1311, 38.5.1313, and 38.5.1315)
pertaining to Telephone Extended)
Area Service)

TO: All Concerned Persons

1. On March 12, 2015, the Department of Public Service Regulation published MAR Notice No. 38-5-228 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 265 of the 2015 Montana Administrative Register, Issue Number 5.

2. The department has repealed the above-stated rules as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.5.1307 EAS -- GENERAL (1) The repeal of these rules does not affect the status of any existing EAS ~~program~~ arrangement.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: A commenter suggested that ARM 38.5.1307 be amended to provide a savings clause, specifically that the language should read, "the repeal of these rules shall not negate, invalidate, amend, or otherwise revoke, cancel or alter any existing EAS arrangements or call transport and termination agreements or Commission orders."

RESPONSE 1: The commission appreciates the suggestion, but feels that the proposed language is unnecessary and potentially confusing.

COMMENT 2: A commenter agreed with the first comment that ARM 38.5.1307 should be amended to provide a savings clause.

RESPONSE 2: The commission reiterates its response to comment 1.

COMMENT 3: A commenter explained the current calling situation in Montana and the need to repeal the existing EAS rules. The commenter further explained that the existing rules are obsolete and contribute to an unlevel playing field. The

commenter believes the language proposed by the commission is adequate and that technically even the proposed language is unnecessary since it is legally presumed that prior commission orders remain valid and binding since they were adopted by rules in place at the time. The commenter stated they would not object to replacing "program" with "arrangement" in the commission's proposed language, as long as it is understood that "reciprocal compensation arrangements" (as that term is used in 47 U.S.C. §251(b)(5)) is a different type of agreement, legally distinct from "EAS agreements." The commenter stated they believe that the rest of the additional language proposed by other commenters is unnecessary and potentially confusing. The commenter argues that the terms "Call transport and termination agreements" and "Commission Orders" are broad and undefined, and could cause confusion. "Transport and termination agreements" could refer to Interconnection Agreements per 47 U.S.C. §251(c); and "Commission orders" are not necessarily limited to "EAS Orders."

The commenter also noted that it is their interpretation of this proposed rule, that it would not prevent the expansion of EAS calling regions by mutual (formal or informal) consent of two or more carriers, regardless of prior commission orders. They also emphasized that telephone companies will remain free to unilaterally implement any type EAS arrangement they choose, without agreements or commission approval, if the company chooses to continue to pay existing tariffed switched access charges for "long distance" traffic.

The commenter requested that the commission repeal the existing EAS rules. They state the language of ARM 38.5.1307 proposed by the commission is unnecessary, but not harmful if interpreted correctly.

RESPONSE 3: The commission agrees that the proposed language from other commenters is unnecessary and could be confusing. The commission also agrees that the word "program" should be changed to "arrangement" and will amend the rule.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State August 3, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------|
| In the matter of the adoption of New |) | NOTICE OF ADOPTION, |
| Rules I through IV, the amendment of |) | AMENDMENT, AND REPEAL |
| ARM 42.13.902 and 42.13.904, and |) | |
| the repeal of ARM 42.13.903 |) | |
| pertaining to the Responsible Alcohol |) | |
| Sales and Service Act server training |) | |
| programs |) | |

TO: All Concerned Persons

1. On June 11, 2015, the Department of Revenue published MAR Notice No. 42-2-928 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 732 of the 2015 Montana Administrative Register, Issue Number 11.

2. The department has adopted New Rule I (42.13.901), New Rule II (42.13.905), New Rule III (42.13.906), and New Rule IV (42.13.907), amended ARM 42.13.902 and 42.13.904, and repealed ARM 42.13.903 exactly as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 3, 2015.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2015. This table includes those rules adopted during the period April 1, 2015, through June 30, 2015, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2015, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2015 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

| | |
|-----------|--|
| I | Annual Report by Consumer Loan Licensees, p. 2061, 2827 |
| I-VII | Requiring Deferred Deposit Loan Applicants to Use the Nationwide Multistate Licensing System for All Future Licensing, p. 1654, 2449, 369 |
| I-VIII | Transitioning Existing Sales Finance Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1633, 2446, 366 |
| I-VIII | Transitioning Existing Consumer Loan Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1640, 2447, 367 |
| I-VIII | Transitioning Existing Escrow Business Company Licenses to the Nationwide Multistate Licensing System - Use of the System for All Future Licensing, p. 1647, 2448, 368 |
| 2.4.402 | Single Audit Act Reporting Fees for Local Governments, p. 781 |
| 2.59.104 | Semiannual Assessment for Banks, p. 351, 748 |
| 2.59.127 | and other rules - Derivatives and Securities Financing Transactions as They Relate to Lending Limits and Credit Exposures, p. 390, 814 |
| 2.59.1502 | and other rule - Annual Report by Deferred Deposit Loan Licensees, p. 2058, 2826 |
| 2.59.1716 | and other rules - Recovery of the Costs in Bringing an Administrative Action - Treatment of Initial License Applications Submitted Near Year-End - Abandonment of Initial License Applications - Mortgage Licensees, p. 499, 923 |

2.59.1738 Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 959

(Public Employees' Retirement Board)

2.43.3505 Establishment of Long-Term Disability Trust Fund, p. 348, 812

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 2904, 141

AGRICULTURE, Department of, Title 4

4.5.206 and other rules - State Noxious Weed List - Regulated Plant List, p. 612, 1042

4.5.308 and other rule - Noxious Weed Seed Free Forage Fees, p. 784

4.12.113 Apiary Registration Fees, p. 45, 299

4.12.1405 Nursery Fees, p. 47, 300

4.17.105 and other rules - Organic Application Procedures and Fees - Fees for Services - Annual Report and Assessment Fees, p. 602, 1041

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

I Patient-Centered Medical Homes, p. 1863, 3045

I-III Fire Tax, p. 394, 1043

I-VII Network Adequacy, p. 3017, 565

6.6.507B and other rules - Medicare Supplements, p. 689, 1049

6.6.3104A and other rule - Long-Term Care, p. 398, 1046

6.6.3504 Annual Audited Reports and Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 256, 925

6.6.4902 and other rules - Patient-Centered Medical Homes, p. 2702, 3051

6.10.209 and other rule - Offerings, p. 962

COMMERCE, Department of, Title 8

I Actions That Qualify as Categorical Exclusions Under the Montana Environmental Policy Act, p. 966

8.94.3708 and other rules - Administration of the CDBG Program, p. 3026, 142

8.94.3727 Administration of the 2015-2016 Federal Community Development Block Grant (CDBG) Program, p. 98, 301

8.94.3727 Administration of the 2015-2016 Federal Community Development Block Grant (CDBG) Program, p. 402, 750

8.94.3816 Administration of the 2017 Biennium Treasure State Endowment Program—Emergency Grants, p. 969

8.94.3817 Administration of the 2017 Biennium Treasure State Endowment Program – Planning Grants, p. 355, 749

8.99.806 Administration of the Business Workforce Training Grant, p. 971

- 8.99.918 Administration of the Big Sky Economic Development Trust Program, p. 789
- 8.99.1001 and other rules - Implementation of the Montana Indian Language Preservation Pilot Program, p. 504, 815
- 8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 288, 753

EDUCATION, Department of, Title 10

(Board of Public Education)

- I-XV Preschool Programming for Public Schools, p. 2318, 2943
- 10.57.101 and other rules - K-12 Educator/Specialist Licensing, p. 2211, 2930
- 10.57.102 and other rules - Educator Licensure, p. 698, 1051
- 10.58.102 and other rules - Educator Preparation Programs, p. 2250, 2936
- 10.63.108 Preschool Hours, p. 616, 1055

(State Library)

- 10.101.101 Agency Organization, p. 166, 444, 816

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.9.804 and other rules - Game Damage Hunts, p. 875

(Fish and Wildlife Commission)

- I Apprentice Hunter Certificate, p. 791
- 12.6.2204 and other rules - Exotic Species Classification, p. 618
- 12.7.807 Fishing Contests, p. 295, 929
- 12.9.206 McLean Game Preserve, p. 2907, 268
- 12.11.501 and other rule - Recreational Use on Silver Lake in Deer Lodge County, p. 50, 583
- 12.11.501 and other rule - Recreational Use on Silver Lake in Deer Lodge County, p. 507
- 12.11.501 and other rules - Recreational Use on the Blackfoot River Recreation Corridor, p. 292, 926
- 12.11.645 Whitefish River, p. 434, 1460, 3053

(State Parks and Recreation Board)

- 12.14.120 Payment of Fees for Outfitting Services, p. 2707, 18

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-IX Vessel Pumpout Facilities, p. 881
- 17.53.113 Hazardous Waste - Registration and Registration Maintenance Fees - Fee Assessment, p. 101, 298

(Board of Environmental Review)

- 17.8.101 and other rules - Definitions - Incorporation by Reference - Availability of Referenced Documents - Ambient Air Monitoring - Fluoride in Forage - Methods and Data, p. 3031, 370
- 17.8.102 and other rule - Air Quality - Incorporation by Reference--Publication Dates - Availability of Referenced Documents, p. 104, 817
- 17.30.1101 and other rules - Montana Pollutant Discharge Elimination System (MPDES) Permits - Purpose and Scope - Definitions - Permit Requirements - Exclusions - Designation Procedures: Small Municipal Separate Storm Sewer Systems (MS4s) - Application Procedures - General Permits - Conditions Applicable to All Permits - Application Procedures: General - Notice of Intent Procedures - Transfer of Permit Coverage Pertaining to Storm Water Discharges, p. 1667, 3056
- 17.74.359 and other rules - Annual Asbestos Project Permits - Training Provider Requirements - Permit Fees - Accreditation and Accreditation Renewal Fees - Course Approval and Renewal Fees - Course Audit Fees, p. 974

TRANSPORTATION, Department of, Title 18

- 18.2.261 Montana Environmental Policy Act Categorical Exclusions, p. 2492, 2950
- 18.6.202 and other rules - Outdoor Advertising Control, p. 2909, 21
- 18.7.102 and other rules - Highway Right-of-Way Encroachment Permits, p. 2329, 2828

JUSTICE, Department of, Title 23

- 23.12.407 House Number Height for Day Care Centers, p. 621, 931
- 23.16.1712 and other rules - Conduct of Sports Tab Games - The Award of Sports Tab Game Prizes - Sports Tab Games Record Keeping Requirements, p. 793

(Public Safety Officer Standards and Training Council)

- 23.13.101 and other rules - Certification of Public Safety Officers, p. 1698, 2951

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- 24.11.101 and other rules - Requests for Information - Unemployment Insurance, p. 357, 510, 932
- 24.16.101 and other rules - Workplace Safety - Wage Protection - Workforce Services, p. 107, 1056

- 24.17.101 and other rules - Prevailing Wage Rates for Public Works Projects, p. 2499, 3058
- 24.21.415 and other rule - Apprenticeship Training Ratios, p. 2920, 374
- 24.21.1003 Apprenticeship Training Ratios, p. 363, 405, 754
- 24.29.1433 and other rules - Workers' Compensation Medical Service Fee Schedules - Utilization and Review of Medical Services, p. 406, 818
- 24.117.101 and other rules - Board Organization - General Information - Club Boxing - Kickboxing - Wrestling - Australian Tag Team Wrestling - Mixed Martial Arts - License Suspension and Revocation, p. 2339, 2954
- 24.131.301 and other rules - Construction Blasters - Crane and Hoisting Operating Engineers - Elevator Licensing Program Renewals, p. 2924, 64

(Workers' Compensation Court)

- 24.5.301 and other rules - Amended Petition - Computation of Time - Joinder and Service of Alleged Uninsured Employers - Recusal, p. 1021, 2829

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - General Requirements - Licensure by Examination - Out-of-State Applicants - Postsecondary School Licensure - Examination Requirements and Process - School Requirements - School Operating Standards - School Curricula - Student Withdrawal, Transfer, or Graduating - Instructor Requirements - Teacher-Training Curriculum - Salons/Booth Rental - Implements, Instruments, Supplies, and Equipment - Salon Preparation Storage and Handling - Continuing Education - Unprofessional Conduct - Nonroutine Application - Granting Exception - Licensure Equivalency - Credited Hours for Montana-Licensed Individuals - Inactive Instructor License - Licensee and Applicant Contact Information, p. 705

(Board of Dentistry)

- 24.138.402 Fee Schedule, p. 2346, 2710, 3062

(Board of Hearing Aid Dispensers)

- 24.150.401 and other rules - Fees - Examination - Renewals, p. 412, 1057

(Board of Medical Examiners)

- 24.156.508 and other rules - Approved Residency - Examination - Graduate Training Requirements - Occasional Case Exemption - Unprofessional Conduct - Definitions - Initial License - Professional Conduct and Standards - Physician Assistant License Renewal - Podiatry Postgraduate Training, p. 1474, 2833
- 24.156.601 and other rules - Fees - Continuing Education - Definitions - Obligation to Report to Board - ECP Licenses - Medical Direction - Initial ECP Course Requirements - ECP Clinical Requirements - Procedures for Board-Approved ECP Curriculum - Scope of Practice, p. 169, 820

(Board of Nursing)

- 24.159.401 and other rules - Fees - Nonroutine Applications - Medication Aide II Training Program Curriculum - Licensed Practical Nurses - Registered Nurses - Initial APRN License - Alternative Monitoring Track Admission Criteria - Inactive Status Licensure - Supervision of Probationary Licensees - APRN Educational Requirements and Qualifications, p. 115, 642
- 24.159.604 and other rules - Nursing Education Programs - Waiver of Faculty Qualifications, p. 186, 644
- 24.159.1010 and other rules - Standards Related to Intravenous (IV) Therapy - Nurse Licensure Compact, p. 516

(Board of Occupational Therapy Practice)

- 24.165.401 and other rules - Fees - Applications for Licensure - Examinations - Supervision—General Statement - Supervision—Methods - Standards of Practice - Documentation of Instruction and Training - Qualifications to Apply Topical Medications—Clinician Defined - Inactive Status - Continuing Education - Continuing Education—Waiver - Definitions - Deep Modality Endorsement, p. 1883, 56

(Board of Optometry)

- 24.168.2301 and other rules - Unprofessional Conduct - Nonroutine Applications - Renewals, p. 2350, 143

(Board of Outfitters)

- 24.171.401 and other rules - Fees - Inspection - Outfitter Records - Safety Provisions - Watercraft Identification - Application for Outfitter License - Outfitter Qualifications - Successorship - Outfitter Examination - Amendment to Operations Plan - Guide Qualifications - Guide License - NCHU Categories, Transfers, and Records - Renewals - Unprofessional Conduct - Booking Agents and Advertising - Outfitter Assistants - Nonroutine Applications - Effect of Fee for Expansion of Net Client Hunter Use - Outfitter Application, p. 2354, 58, 269
- 24.171.502 Outfitter Qualifications, p. 521, 624

(Board of Pharmacy)

- 24.174.301 and other rules - Definitions - Pharmacist Meal/Rest Breaks - Internship Requirements - Registration Requirements - Patient Counseling - Personnel - Drug Distribution and Control - Use of Contingency Kits - Requirements for Submitting Prescription Registry Information - Legal Suspension or Revocation - Prescription Requirements - Sterile Products - Quality Assurance Program Requirements, p. 2508, 302
- 24.174.503 and other rules - Administration of Vaccines - Additions, Deletions, and Rescheduling of Dangerous Drugs - Scheduling of Dangerous Drugs, p. 524

(Board of Physical Therapy Examiners)

- 24.177.501 and other rules - Examinations - Licensure of Out-of-State Applicants - Dry Needling - Renewals - Complaint Procedure, p. 531
24.177.2105 Continuing Education, p. 1057, 2835

(Board of Professional Engineers and Professional Land Surveyors)

- 24.101.413 and other rules - Renewal Dates and Requirements - Definition of Responsible Charge - Board Meetings - Fee Schedule - Approval of Schools - Application References - Examination Procedures - Grant and Issue Licenses - Comity - Classification of Experience - Form of Corner Records - Uniform Standards for Monumentation - Uniform Standards for Final Subdivision Plats - Remonumentation and Rehabilitation - Architectural Services Incidental to Engineering - Exhibits of Land Surveying Projects - Unprofessional Conduct - Introduction - Performance of Services - Conflicts of Interest - Avoidance of Improper Solicitation - Issuance of Public Statements, p. 1339, 2840

(Board of Public Accountants)

- 24.101.413 and other rules - Renewal Dates and Requirements - Public Participation - Definitions - Board Meetings - Fee Schedule - Use of CPA/LPA Designation - Licensing and Examinations - Acts - Professional Conduct Rules - Peer Review Enrollment - Alternatives and Exemptions - Renewal and Continuing Education - Anonymous Complaints - Exercise of Practice Privilege - Enforcement Against Licensees - Applicant by Exam - Examination Credits - Requirements for Previously Held Certificates - Who Must Comply - Nonresident Holders - Standards for CPE Program Development - Enforcement Procedures, p. 1734, 2849

(Board of Real Estate Appraisers)

- 24.207.401 and other rules - Fees - Regulatory Reviews - Appraisal Review - Definitions - Military Training or Experience - Examination - Application Requirements - Experience—Number of Hours Required - Qualifying Education Course Requirements - Ad Valorem Tax Appraisal Experience - Qualifying Experience - Scope of Practice - Trainee Requirements - Mentor Requirements - Appraisal Management Record Keeping - AMC Audit Requirements - Continuing Education - Continuing Education Noncompliance - Unprofessional Conduct, p. 2714, 3064

(Board of Realty Regulation)

- 24.210.625 and other rules - Inactive to Active License Status - New Licensee Mandatory Continuing Education - Continuing Real Estate Education - Inactive to Active Status—Property Management - Continuing Property Management Education, p. 416, 933

(Board of Respiratory Care Practitioners)

- 24.213.301 and other rules - Definitions - Application for Licensure - Examination - Inactive Status - Authorization to Perform Testing - Continuing Education Requirements - Traditional Education by Organizations - Teaching—Category III - Papers, Publications, Journals, and Course Work - Unprofessional Conduct - Training—Conscious Sedation - Institutional Guidelines Concerning Education and Certification, p. 1960, 22
- 24.213.412 and other rule - Renewals - Board Seal, p. 259

(Board of Sanitarians)

- 24.216.402 - Fee Schedule, p. 262, 584

(Board of Speech-Language Pathologists and Audiologists)

- 24.222.401 Fees, p. 2736, 3066

LIVESTOCK, Department of, Title 32

- 32.2.401 and other rules - Department Fees, p. 216, 376
- 32.2.405 Miscellaneous Fees, p. 2739, 3073
- 32.3.139 and other rules - Appointment as Deputy State Veterinarian - Requirements for Importation - Official Health Certificate - Permits - Brands and Earmarks - Permit Required for Livestock, Game, Furbearing Animals, Wild Animals, Embryos, and Semen, p. 208, 423, 936
- 32.3.212 and other rule - Additional Requirements for Cattle - Brucellosis Vaccination of Imported Cattle Under Four Months of Age, p. 2067, 3069
- 32.3.212 Additional Requirements for Cattle, p. 213, 445
- 32.3.221 and other rules - Special Requirements for Alternative Livestock as Defined in 87-4-406, MCA - Elephants - Change of Ownership Test - Handling of Live Animals - Handling of Carcasses and Carcass Parts of Anthrax-Infected Animals, p. 2376, 2955
- 32.3.502 Official Trichomoniasis Testing and Certification Requirements, p. 2928, 271
- 32.23.301 Licensee Assessments, p. 132, 305

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Conservation Strategies on Forested State Trust Lands, p. 53
- 36.12.101 and other rules - Definitions - Procedural Rules for Hearings, p. 2525, 2956

(Board of Oil and Gas Conservation)

- I Certify Carbon Sequestration Equipment Placed in Service After January 1, 2014, and Certified by the Department of Environmental Quality Prior to October 1, 2015, p. 798

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-XI Production and Sale of Cottage Food Products, p. 1008
- I-XVI Implementing the New Program Community First Choice Services, p. 2381, 3075
- 37.5.118 and other rules - Substantiations of Child Abuse and Neglect - Background Checks for Placement and Licensing, p. 1, 306
- 37.8.107 and other rules - Update of Vital Records to Reflect Current Practices, p. 891
- 37.12.401 and other rule - Laboratory Fees for Analysis - Newborn Screening for Severe Combined Immunodeficiency Disease (SCID), p. 561, 828
- 37.34.3005 and other rule - Increase of Reimbursement Rates - Clarification of Language in the Developmental Disabilities Manual, p. 556, 827
- 37.36.604 Updating the Annual Poverty Guidelines for the Montana Telecommunications Access Program, p. 888
- 37.40.307 and other rules - Nursing Facility Reimbursement, p. 550, 824
- 37.40.402 and other rules - Updating the Hospital Swing-Bed Direct Care Wage to the Current Fiscal Year, p. 2548, 3085
- 37.40.830 Updating Hospice Reimbursement Fee Schedules to Reflect New Federal Rates, p. 2812, 144
- 37.40.1026 and other rules - Revision of Fee Schedules for Medicaid Provider Rates, p. 536, 822
- 37.40.1101 and other rules - Establishment of Regulations for the Personal Assistance Services Program, p. 2552, 3086
- 37.50.315 Addition of a New Supervision Level Within the Foster Care Classification Model System, p. 1772, 24
- 37.79.304 Updating the HMK Evidence of Coverage Document, p. 429, 762
- 37.81.304 Big Sky Rx Prescription Drug Premium Changes, p. 2573, 3093
- 37.85.104 and other rule - Updating the Fee Schedules for Adult and Children's Mental Health Fee Schedules, p. 1018
- 37.85.105 Revision of Fee Schedules for Medicaid Provider Rates, p. 2544, 26
- 37.85.403 and other rule - Date Changes to ICD CM and PCS Services-ICD-10, p. 1778, 3074
- 37.86.101 and other rules - Extension of Enhanced Reimbursements for Primary Providers, p. 3041, 145
- 37.86.1103 Addition of Definitions to the Outpatient Drugs, Fraud, Waste, and Abuse Rules, p. 2576, 3094
- 37.86.1802 Coverage Codes for Durable Medical Equipment, p. 2579, 3095
- 37.86.2402 and other rules - Medicaid Transportation - Personal Per Diem - Ambulance Services, p. 433, 825
- 37.86.2901 and other rules - Changes to Medicaid Inpatient Hospital Services, p. 2742, 3096
- 37.86.4401 and other rule - Federally Qualified Health Centers and Rural Health Clinics, p. 425, 761
- 37.87.102 and other rules - Revision of Authorization Requirements for Medicaid Mental Health Services for Youth, p. 1023

- 37.87.807 and other rule - Revision of Fee Schedules for Medicaid Provider Rates, p. 1911, 2858
- 37.87.1201 and other rules - Provider Participation - Program Requirements - Reimbursement Procedures for Psychiatric Residential Treatment Facility (PRTF) Services, p. 985
- 37.87.2203 and other rules - Non-Medicaid Respite Care Services for Youth With Serious Emotional Disturbance, p. 801
- 37.88.205 and other rules - Updating the Date of the Current Procedural Terminology (CPT) Codes, p. 1906, 2857
- 37.97.102 and other rules - Updating Rules for Youth Care Facilities, p. 12, 756
- 37.106.514 Removal of References to Anesthesiologist Assistants in Outpatient Centers for Surgical Services, p. 1572, 2974
- 37.110.201 and other rules - Updating the Montana Retail Food Establishment Rules, p. 1364, 2957
- 37.114.701 and other rules - Implementation of HB 158 (2015) Regarding the Modernization of Immunization Laws Related to School, p. 999

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.104 and other rules - Motor Carriers, p. 628
- 38.5.1307 and other rules - Telephone Extended Area Service, p. 265
- 38.5.2102 Utility Electricity Voltage, p. 138, 309
- 38.5.2202 and other rule - Pipeline Safety, p. 135, 308

REVENUE, Department of, Title 42

- I Filing Requirements for Pass-Through Entities With More Than 100 Partners, p. 2410, 2979
- I Value Before Reappraisal for Agricultural Land, p. 2768, 3097
- 42.3.101 and other rules - 2009 Recodification of Statutes in Title 15, Chapter 30, MCA, p. 439, 763
- 42.12.101 and other rules - Liquor Licenses and Permits - Fees - Regulation of Licensees, p. 2413, 2980
- 42.13.902 and other rules - Responsible Alcohol Sales and Service Act Server Training Programs, p. 732
- 42.15.108 and other rules - Fiduciaries, Estates, and Trusts, p. 897
- 42.15.109 and other rules - Montana Family Education Savings Program - Income Tax General Provisions - Tax Returns, p. 2403, 2976
- 42.17.101 and other rules - Withholding and Estimated Tax Payments—General Withholding and Mineral Royalty Withholding, p. 2815, 27
- 42.18.121 and other rules - The Montana Reappraisal Plan, p. 2582, 2990
- 42.19.401 Targeted Economic Development Districts, p. 806
- 42.20.102 and other rules - Valuation and Classification of Real Property, p. 2612, 2994
- 42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 2589, 2991

SECRETARY OF STATE, Office of, Title 44

- 44.3.110 and other rules - Voting Accessibility for Electors With Disabilities - Montana Absent Uniformed Services and Overseas Voter Act, p. 915
- 44.5.122 and other rule - Fees Charged by the Secretary of State, p. 1038
- 44.6.110 and other rules - Secretary of State's Electronic Filing System - Filing of a Title 71 Lien - Requirements for Filing UCC Amendments With the Business Services Division, p. 743
- 44.14.202 Retention of Local Government Electronic Long-Term Records, p. 920

(Commissioner of Political Practices)

- 44.12.204 Payment Threshold--Inflation Adjustment for Lobbyists, p. 2823, 28