

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 18.2.261 pertaining to Montana	)	AMENDMENT
Environmental Policy Act categorical)	
exclusions	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 23, 2014, 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 Department of Transportation no later than 5:00 p.m. on November 13, 2014, to advise us of the nature of the accommodation that you need. Please contact Tom Martin, Department of Transportation, Environmental Services Bureau, P. O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0879; fax (406) 444-7671; TDD/Montana Relay Service/etc. (406) 444-7696 or 800-335-7592; or e-mail tomartin@mt.gov.

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

18.2.261 ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION

(1) ~~The following~~ Categorical exclusions (CE) are types of actions which do not individually, collectively, or cumulatively require the preparation of an environment assessment or an environmental impact statement unless the action involves one or more of the extraordinary circumstances stated in ~~(2)(5)~~ below.

~~(a) Approval of utility installations, road approaches, and railroad crossings.~~

~~(b) Construction or improvement of bicycle and pedestrian lanes, paths and facilities and facilities for access for the handicapped.~~

~~(c) The installation of noise barriers, landscaping, fencing, signs, pavement markings, traffic signals, and railroad warning devices.~~

~~(d) Construction of, reconstruction of, or improvements to rest areas and truck weigh stations.~~

~~(e) Modernization of an existing highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes for parking, turning or climbing.~~

~~(f) Highway safety or traffic operations improvement projects.~~

~~(g) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separations.~~

~~(h) Changes in access control.~~

~~(i) Alterations to existing buildings.~~

~~(j) Emergency replacement or reconstruction of a highway facility after a natural disaster or catastrophic failure in order to restore the highway for the welfare and safety of the public.~~

~~(2) The preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following extraordinary circumstances:~~

~~(a) Significant impact on publicly owned parklands, recreation areas, wildlife or waterfowl refuges or any significant historic site.~~

~~(b) Significant impact on wetlands or prime farmlands.~~

~~(c) Significant impact on the human environment that may result from large acquisitions of right-of-way, relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes.~~

~~(d) Significant impact on air, noise, or water quality.~~

~~(e) Substantial controversy on environmental grounds.~~

~~(f) Any other kind of significant environmental impact.~~

(2) The following actions meet the criteria for categorical exclusions and normally do not require further approvals by the Federal Highway Administration (FHWA) when a federal action occurs:

(a) activities which do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and federal-aid system revisions which establish classes of highways on the federal-aid highway system;

(b) approval of utility installations along or across a transportation facility;

(c) construction of bicycle and pedestrian lanes, paths, and facilities;

(d) activities included in the state's highway safety plan under 23 U.S.C. 402;

(e) transfer of federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under the National Environmental Policy Act;

(f) the installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction;

(g) landscaping;

(h) installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur;

(i) the following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of Montana and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) emergency repairs under 23 U.S.C. 125; and

(ii) the repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) is commenced within a two-year period beginning on the date of the declaration;

(j) acquisition of scenic easements;

(k) determination of payback under 23 U.S.C. 156 for property previously acquired with federal-aid participation;

(l) improvements to existing rest areas and truck weigh stations;

(m) ridesharing activities;

(n) bus and rail car rehabilitation;

(o) alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons;

(p) program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand;

(q) the purchase of vehicles by a federal transit fund applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE;

(r) track and railbed maintenance and improvements when carried out within the existing right-of-way;

(s) purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site;

(t) promulgation of rules, regulations, and directives;

(u) deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses;

(v) projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of

the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way;

(w) federally funded projects;

(i) that receive less than \$5,000,000 of federal funds; or

(ii) with a total estimated cost of not more than \$30,000,000 and federal funds comprising less than 15 percent of the total estimated project cost;

(x) localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment of similar survey; and wetland surveys;

(y) environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet federal and state requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation;

(z) modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in (4);

(aa) highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in (4);

(ab) bridge rehabilitation, reconstruction, or replacement, or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in (4);

(ac) purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE; or

(ad) rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(3) Additional actions which meet the criteria for a CE may be designated as CEs only after the FHWA approval when a federal action occurs. Documentation must be submitted to FHWA for approval when a federal action occurs which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(a) transportation corridor fringe parking facilities;

(b) construction of new truck weigh stations or rest areas;

(c) approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts;

(d) approvals for changes in access control;

(e) construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic;

(f) rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users;

(g) construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic;

(h) construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community;

(i) acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the MEPA process. No project development on such land may proceed until the MEPA process has been completed;

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others;

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project; or

(i) actions described in (2)(z), (2)(aa), and (2)(ab) that do not meet the constraints in (4).

(4) Actions described in (2)(z), (2)(aa), and (2)(ab) may not be processed as CEs under (2) if they involve:

(a) an acquisition of more than a minor amount of right-of-way or that would result in any residential or nonresidential displacements;

(b) an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(c) a finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(d) construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

(e) changes in access control; or

(f) a floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across, or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

~~(2)~~(5) The preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following extraordinary circumstances:

(a) significant impact on publicly owned parklands, recreation areas, wildlife or waterfowl refuges, or any significant historic site;

(b) significant impact on wetlands or prime farmlands;

(c) significant impact on the human environment that may result from large acquisitions of right-of-way, relocations of persons or businesses, changes in traffic patterns, changes in grade, or other types of changes;

(d) significant impact on air, noise, or water quality;

(e) substantial controversy on environmental grounds; or

(f) any other kind of significant environmental impact.

AUTH: 75-1-103, 75-1-201, MCA

IMP: 75-1-103, 75-1-201, MCA

REASON: The proposed rule amendments are necessary because the department's rules on categorical exclusions must mirror the federal rules that accompany federal funding for the state of Montana road construction programs. The federal rules were amended on June 20, 2014, and October 6, 2014, in response to the federal Moving Ahead for Progress in the 21st Century Act (MAP-21), P.L. 112-141. MAP-21 funds national surface transportation programs, including road construction and other transportation projects in Montana. The department must update its administrative rules to be consistent with the federal regulations found at 23 CFR 771.117.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Tom Martin, Department of Transportation, Environmental Services Bureau, P. O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0879; fax (406) 444-7671; or e-mail tomartin@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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 Tom Martin at the above address no later than 5:00 p.m., November 20, 2014.

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 over 25, based on the population of the state of Montana as affected persons.

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. An Administrative Rules Notice Interested Person's List Request Form is located at the Department of Transportation's web site at the following address:
http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

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 October 14, 2014.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.17.103, 24.17.119,	)	PROPOSED AMENDMENT AND
24.17.120, 24.17.121, 24.17.122,	)	REPEAL
24.17.127, 24.17.321, and 24.17.821,)	
and the repeal of ARM 24.17.101,)	
pertaining to prevailing wage rates for)	
public works projects)	

TO: All Concerned Persons

1. On November 21, 2014, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect 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 public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 17, 2014, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail msmith3@mt.gov.

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

24.17.103 DEFINITIONS As used in this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) through (10) remain the same.

(11) "Dispatch city" is the courthouse in the city from the following list which is closest to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, and Missoula.

(11) through (16) remain the same, but are renumbered (12) through (17).

(18) "Per diem" typically covers costs associated with board and lodging expenses. Per diem is paid when an employee is required to work at a location outside the daily commuting distance and is required to stay at that location overnight or longer.

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

(22) "Travel pay," also referred to as "travel allowance," is and must be paid for travel both to and from the job site, except those with special provisions listed under the classification. The rate is determined by measuring the road miles one direction over the shortest practical maintained route from the dispatch city or the employee's home, whichever is closer, to the center of the job.

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

(24) "Zone pay" is an amount added to the base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on the project. Zone pay must be determined by measuring the road miles one way over the shortest practical maintained route from the dispatch city to the center of the job.

AUTH: 18-2-409, 18-2-431, 39-3-202, MCA

IMP: 18-2-402, 18-2-403, 18-2-422, 39-3-201, 39-3-202, 39-3-203, 39-3-204, 39-3-205, 39-3-206, 39-3-207, 39-3-208, 39-3-209, 39-3-210, 39-3-211, 39-3-212, 39-3-213, 39-3-214, 39-3-215, 39-3-216, MCA

REASON: Reasonable necessity exists to provide these several definitions to provide clarity and consistency in the prevailing wage process. Definitions of these terms were previously included in the rate schedule adopted by reference. By including them within this rule, the department hopes to clarify the definitions and permit easier use during implementation, and avoid confusion that some users have recently complained of experiencing.

24.17.119 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – BUILDING CONSTRUCTION SERVICES

(1) and (2) remain the same.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Where a wage rate is adopted from a collective bargaining agreement, applicable zone pay or travel pay, if any, shall be adopted from that same agreement. If the wage rate is adopted from collective bargaining agreements which have equal wage rates and different zone pay or travel pay, the zone pay or travel pay shall be adopted from the agreement covering more employees. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) through (f) remain the same.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. Where a fringe benefit is adopted from a collective bargaining agreement, applicable per diem, if any, must be adopted from that same agreement. If the fringe benefit is adopted from collective bargaining agreements which have equal fringe benefits and different per diem, the per diem shall be adopted from the agreement covering more employees. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) through (f) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, ~~P.O. Box 1728, Helena, Montana 59624-1728~~ P.O. Box 201503, Helena, Montana 59620-1503, within the time set by the commissioner.

(b) through (7) remain the same.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-413, 18-2-419, MCA

REASON: Reasonable necessity exists to modify this rule to clarify how zone pay, travel pay, and per diem are calculated. In particular, these amendments permit greater predictability for the public, and provide the department a definitive answer with regard to these pay add-ons. In addition, there is reasonable necessity to update the address used by the department for prevailing wage matters while the rule is otherwise being amended.

24.17.120 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – HEAVY CONSTRUCTION SERVICES

(1) and (2) remain the same.

(3) Based on survey data collected by the department statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Where a wage rate is adopted from a collective bargaining agreement, applicable zone pay or travel pay, if any, must be adopted from that same agreement. If the wage rate is adopted from collective bargaining agreements which have equal wage rates and different zone pay or travel pay, the zone pay or travel pay must be adopted from the agreement covering more employees. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) through (e) remain the same.

(4) Based on survey data collected by the department statewide, the commissioner will compile fringe benefit information for a given occupation statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. Where a fringe benefit is adopted from a collective bargaining agreement, applicable per diem, if any, must be adopted from that same agreement. If the fringe benefit is adopted from collective bargaining agreements which have equal fringe benefits and different per diem, the per diem must be adopted from the agreement covering more employees. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) through (e) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, ~~P.O. Box 1728, Helena, Montana 59624-1728~~ P.O. Box 201503, Helena, Montana 59620-1503, within the time set by the commissioner.

(b) through (7) remain the same.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, 18-2-419, MCA

REASON: Reasonable necessity exists to modify this rule to clarify how zone pay, travel pay, and per diem are calculated. In particular, these amendments permit greater predictability for the public, and provide the department a definitive answer with regard to these pay add-ons. In addition, there is reasonable necessity to update the address used by the department for prevailing wage matters while the rule is otherwise being amended.

24.17.121 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS -- HIGHWAY CONSTRUCTION SERVICES

(1) and (2) remain the same.

(3) Based on survey data collected by the department statewide, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Where a wage rate is adopted from a collective bargaining agreement, applicable zone pay or travel pay, if any, must be adopted from that same agreement. If the wage rate is adopted from collective bargaining agreements which have equal wage rates and different zone pay or travel pay, the zone pay or travel pay must be adopted from the agreement covering more employees. Wage rates calculated for each occupation will be established using the following procedure:

(a) through (e) remain the same.

(4) Based on survey data collected by the department, statewide, the commissioner will compile fringe benefit information for a given occupation statewide that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. Where a fringe benefit is adopted from a collective bargaining agreement, applicable per diem, if any, must be adopted from that same agreement. If the fringe benefit is adopted from collective bargaining agreements which have equal fringe benefits and different per diem, the per diem must be adopted from the agreement covering more employees. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave, using the following procedure:

(a) through (e) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, ~~P.O. Box 1728, Helena, Montana 59624-1728~~ P.O. Box 201503, Helena, Montana 59620-1503, within the time set by the commissioner.

(b) through (7) remain the same.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-414, 18-2-419, MCA

REASON: Reasonable necessity exists to modify this rule to clarify how zone pay, travel pay, and per diem are calculated. In particular, these amendments permit greater predictability for the public, and provide the department a definitive answer with regard to these pay add-ons. In addition, there is reasonable necessity to update the address used by the department for prevailing wage matters while the rule is otherwise being amended.

24.17.122 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS – NONCONSTRUCTION SERVICES

(1) and (2) remain the same.

(3) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. Where a wage rate is adopted from a collective bargaining agreement, applicable zone pay or travel pay, if any, must be adopted from that same agreement. If the wage rate is adopted from collective bargaining agreements which have equal wage rates and different zone pay or travel pay, the zone pay or travel pay must be adopted from the agreement covering more employees. Wage rates calculated through the survey for each occupation will be established using the following procedure:

(a) through (f) remain the same.

(4) Based on survey data collected by the department for each district, the commissioner will compile fringe benefit information for a given occupation that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. Where a fringe benefit is adopted from a collective bargaining agreement, applicable per diem, if any, must be adopted from that same agreement. If the fringe benefit is adopted from collective bargaining agreements which have equal fringe benefits and different per diem, the per diem must be adopted from the agreement covering more employees. A single fringe benefit rate calculated through the survey for each occupation will be established for bona fide benefits paid or contributed to approved plans, funds, or programs for health insurance, life insurance, pension or retirement, vacations, holidays, and sick leave using the following procedure:

(a) through (f) remain the same.

(5) The commissioner considers current wage rate information on file and as provided in survey responses when setting the standard prevailing rate of wages and fringe benefits for each craft, trade, occupation, or type of workers.

(a) Wage information will be considered by the commissioner only if such information is received by the Department of Labor and Industry, ~~P.O. Box 1728, Helena, Montana 59624-1728~~ P.O. Box 201503, Helena, Montana 59620-1503, within the time set by the commissioner.

(b) through (7) remain the same.

AUTH: 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-415, 18-2-419, MCA

REASON: Reasonable necessity exists to modify this rule to clarify how zone pay, travel pay, and per diem are calculated. In particular, these amendments permit greater predictability for the public, and provide the department a definitive answer with regard to these pay add-ons. In addition, there is reasonable necessity to update the address used by the department for prevailing wage matters while the rule is otherwise being amended.

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2014~~ 2015 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2014~~ 2015 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2014~~ 2015 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2014~~ 2015 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction and highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.124 to determine those prevailing wage rates.

24.17.321 PAYMENT OF FRINGE BENEFITS (1) remains the same.

(2) Apprentices must be paid the percentage of the basic hourly rate required, based on the total time in the craft, ~~and/or fringe benefits specified in the employers' registered apprenticeship standards.~~ If the apprentice performs labor which is subject to a higher wage rate either by contract or by law than that specified in the apprenticeship standards, the higher wage rate shall be paid by the contractor, subcontractor, or employer. ~~If the standards are silent on the payment of fringes, In any event,~~ the apprentice is to receive the full amount of the fringe benefits stipulated on the wage decision.

(3) through (7) remain the same.

AUTH: 18-2-431, MCA

IMP: 18-2-412, MCA

REASON: There is reasonable necessity to amend this rule so as clearly to state that, while apprentices may be paid a percentage of the hourly rate based on time in the craft, fringe benefits must always be paid in full.

24.17.821 FILING COMPLAINTS (1) through (3) remain the same.

(4) Wage complaint forms can be obtained from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, ~~P.O. Box 6518, Helena, Montana 59624-6518~~ P.O. Box 201503, Helena, Montana 59620-1503. The telephone number is (406) 444-5600.

(a) and (5) remain the same.

AUTH: 18-2-431, 39-3-202, MCA

IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-207, 39-3-209, 39-3-210, 39-3-211, MCA

REASON: Reasonable necessity exists to modify this rule so that the address contained therein is accurate.

4. The department proposes to repeal the following rule:

24.17.101 PURPOSE AND SCOPE

AUTH: 18-2-409, 18-2-431, 39-3-202, MCA

IMP: 18-2-401, 18-2-402, 18-2-411, 39-3-201 through 39-3-216, MCA

REASON: There is reasonable necessity to repeal the rule to assist in the departmental goal of producing and maintaining administrative rules which are clear, concise, and free from superfluity.

5. Copies of the proposed 2015 publications, identified as "preliminary building construction rates," "preliminary highway construction rates," "preliminary heavy construction rates," and "preliminary nonconstruction rates" are available and can be accessed online at: www.mtwagehourbopa.com.

6. A printed version of the proposed 2015 publications is also available by contacting Mike Smith at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

7. 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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to msmith3@mt.gov, and must be received no later than 5:00 p.m., November 21, 2014.

8. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

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 or areas of law 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 Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Locky Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all, small businesses (those with less than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but only affect those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government

agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

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

13. The department proposes to make the above amendments and repeal effective on January 2, 2015, in order to coincide with the start of the calendar year. The department believes there is reasonable necessity to propose the changes now so that interested parties have further opportunity to review them prior to them becoming effective. The department reserves the right to make the proposed amendments effective on a different date, or to not make the proposed changes.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State October 14, 2014.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.174.301 definitions,	)	PROPOSED AMENDMENT,
24.174.411 pharmacist meal/rest	)	AMENDMENT AND TRANSFER,
breaks, 24.174.602 internship	)	ADOPTION, AND TRANSFER
requirements, 24.174.701 registration)	
requirements, 24.174.903 patient)	
counseling, 24.174.1101 personnel,)	
24.174.1111 drug distribution and)	
control, 24.174.1115 use of)	
contingency kits, 24.174.1704)	
requirements for submitting)	
prescription registry information,)	
24.174.2403 legal suspension or)	
revocation, the amendment and)	
transfer of ARM 24.174.510,)	
24.174.514, and 24.174.523 related)	
to prescription requirements,)	
24.174.1121 sterile products, the)	
adoption of NEW RULE I quality)	
assurance program requirements,)	
and the transfer of ARM 24.174.511)	
through 24.174.513, 24.174.515, and)	
24.174.520 through 24.174.522)	
related to prescription requirements)	

TO: All Concerned Persons

1. On November 13, 2014, at 1:00 p.m., a public hearing will be held in the basement conference room, Room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, amendment and transfer, adoption, and transfer 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 Pharmacy (board) no later than 5:00 p.m., on November 6, 2014, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; or dlibsdpha@mt.gov (board's e-mail).

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

24.174.301 DEFINITIONS (1) "Airborne particulate cleanliness classification" means the level of cleanliness defined by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) "Classification of Air Cleanliness" (ISO 14644-1) for Class 5, Class 7, and Class 8.

(a) ISO Class 5 is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air;

(b) ISO Class 7 is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air; and

(c) ISO Class 8 is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air.

(2) "Beyond use date" (BUD) means the date after which the preparation may not be dispensed or administered to a patient. BUD also means expiration date.

(4) (3) "Biological safety cabinet" means a contained unit suitable for the preparation of low to moderate risk agents and where there is a need for protection of the product, personnel, and environment according to National Sanitation Foundation Standard 49 ventilated cabinet with an inward airflow for personnel protection; a downward, High Efficiency Particulate Arresting (HEPA) filtered, laminar airflow for product protection; and HEPA filtered exhaust system for environmental protection.

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

(6) "Compounded sterile preparation" (CSP) means:

(a) a preparation prepared according to the manufacturer's labeled instructions and other manipulations when preparing sterile products that expose the original contents to potential contamination, and includes all preparations compounded in a sterile environment; or

(b) a preparation containing nonsterile ingredients or employing nonsterile components and devices that must be sterilized before administration.

(4) through (8) remain the same, but are renumbered (7) through (11).

(9) (12) "Drug order" means a written or electronic order issued by an authorized practitioner, or a verbal order promptly reduced to writing transcribed, for the compounding and dispensing of a drug or device to be administered to patients within the facility.

(10) through (17) remain the same, but are renumbered (13) through (20).

(21) "Immediate use" means a preparation compounded pursuant to the conditions in ARM 24.174.1121 and whose administration must begin within one hour of preparation.

(18) and (19) remain the same, but are renumbered (22) and (23).

(24) "Laminar airflow hood" (LAF) means a workspace where the work surface is subjected to a constant HEPA filtered airflow that is directed towards the user.

(20) through (23) remain the same, but are renumbered (25) through (28).

(29) "Multi-dose vial" means a vial of liquid medication intended for parenteral administration, whether by injection or infusion, that contains more than one dose of medication; is labeled as containing more than one dose of medication by the manufacturer; and typically contains an antimicrobial preservative to help prevent the growth of bacteria.

(24) through (33) remain the same, but are renumbered (30) through (39).

(40) "Risk levels for sterile preparations" means the three risk levels of CSP recognized by the United States Pharmacopeia (USP) in USP Chapter 797 "Pharmaceutical Compounding - Sterile Preparations" that are based on the probability of contamination by microbial, chemical, or physical agents. Pursuant to the conditions set forth in ARM 24.174.1121, the three risk levels are low-risk, medium-risk, and high-risk.

(41) "Same-day use" means that the administration of the preparation shall commence within 24 hours from the time of preparation.

(34) and (35) remain the same, but are renumbered (42) and (43).

(44) "Single-dose vial" means a sterile medication in a vial without preservatives.

(36) and (37) remain the same, but are renumbered (45) and (46).

AUTH: 37-1-131, 37-7-201, 50-32-314, MCA

IMP: 37-7-102, 37-7-201, 37-7-301, 37-7-321, 37-7-406, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

REASON: The board is amending this rule to update one definition and add several new definitions to accurately reflect current sterile compounding terminology and standards of practice, as these are used and referenced in the amended rules on sterile compounding.

24.174.411 PHARMACIST MEAL/REST BREAKS (1) through (4) remain the same.

(5) When authorized by the pharmacist, only registered technicians and interns directly involved in the process of filling prescriptions may remain in the prescription department to perform nondiscretionary duties as delineated by the pharmacist.

(6) through (12) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that a pharmacist may also authorize an intern to remain in the prescription department. In 2011-12, the board's biennial rule review identified the need to add interns to this rule. Additionally, both pharmacists and interns had asked the board how, if at all, this rule applied to interns. Because the pharmacist supervises technicians and interns, both types of personnel need to be among those authorized to remain in the department and perform nondiscretionary duties.

24.174.602 INTERNSHIP REQUIREMENTS (1) through (11) remain the same.

(12) The intern shall notify the board of any change of address, employment, or preceptor within ~~ten~~ 30 days.

(13) and (14) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending this rule to allow interns additional time to notify the board of any address changes and align this requirement with the notification requirement for pharmacist preceptors in ARM 24.174.604.

24.174.701 REGISTRATION REQUIREMENTS (1) through (2)(b) remain the same.

(c) provide the name and address of the pharmacy in which the technician-in-training is employed. A change in place of employment will require submission of updated information within ~~ten~~ 30 working days of the change.

(3) and (4) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending this rule to allow technicians-in-training additional time to notify the board of any address changes and align this requirement with the notification requirement for pharmacist preceptors in ARM 24.174.604.

24.174.903 PATIENT COUNSELING (1) Upon receipt of a new prescription drug order or refill prescription drug order if deemed necessary by the pharmacist, and following a review of the patient's record, a pharmacist shall personally offer to discuss matters which will enhance or optimize drug therapy with each patient or caregiver of such patient. Such discussion shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling. Such elements may include the following:

(a) through (j) remain the same.

(2) Each pharmacy shall have at least one area that offers appropriate visual and auditory patient confidentiality for patient counseling. ~~This requirement shall go into effect three years from the date of enactment.~~

(3) Alternative forms of patient information shall be used to supplement patient counseling when appropriate. Examples ~~to~~ include written information leaflets, pictogram labels, video programs, etc.

(4) and (5) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-406, MCA

REASON: It is reasonably necessary to amend this rule and remove the effective date of the patient counseling area requirement, as the requirement became effective in 2003. The board determined this language is no longer needed and potentially confusing.

24.174.1101 PERSONNEL (1) Each institutional pharmacy must be directed by a pharmacist-in-charge who is licensed to engage in the practice of pharmacy in ~~the state of~~ Montana and who is responsible for the storage, compounding, repackaging, dispensing, and distribution of drugs within the facility. Depending upon the needs of the facility, pharmacy services may be provided on a full or part-time basis, with a mechanism for emergency service provided at all times. Contractual providers of pharmacy services shall meet the same requirements as pharmacies located within the institution.

(2) remains the same.

(3) Personnel shall be provided with appropriate training before beginning to prepare sterile and nonsterile compounded pharmaceuticals, including training in the theoretical principles and practical skills of aseptic manipulations when performing compounded sterile preparation (CSP). The pharmacist-in-charge shall establish pharmacy policies and procedures that contain protocols in accordance with the guidelines in the United States Pharmacopeia (USP) Chapter 797 "Pharmaceutical Compounding - Sterile Preparations" for the initial training and testing of all personnel and for annual retesting in aseptic manipulative skills for those personnel involved in low- and medium-risk compounding.

(4) Personnel involved in high-risk compounding must be retested in aseptic manipulative skills at least semi-annually.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-307, MCA

REASON: The board concluded it is reasonably necessary to amend certain rules regarding drug compounding to align with the standards of pharmacy practice as published by the United States Pharmacopeia (USP). USP 797 establishes standards for sterile compounding of drugs and is updated frequently, including five times this year. In 2011-12, the board conducted a biennial rule review which demonstrated that the board's current rules on drug compounding are not in line with the standards published in USP 797, nor are the rules current with pharmacy best practices, as recognized by the FDA. The board is amending this rule to require training and testing for personnel who will prepare sterile and nonsterile compounded pharmaceuticals to align with the USP 797 and better ensure the sterility and quality of these preparations as provided to Montana residents.

24.174.1111 DRUG DISTRIBUTION AND CONTROL IN AN INSTITUTIONAL FACILITY (1) and (2) remain the same.

(3) Drugs or herbal/alternative food supplement products brought into an institutional facility by a patient must not be administered, unless they can be identified and their quality assured by a pharmacist, and their use has been authorized by the attending physician. If such drugs are not to be administered, the

pharmacist-in-charge shall develop policies and procedures for storing them for return to the patient upon discharge or transferring them to an adult member of the patient's immediate family.

(4) Investigational drugs must be stored in and dispensed from the pharmacy only pursuant to written policies and procedures. ~~Complete information regarding these drugs and their disposition must be maintained in the facility. The drug monograph and a signed patient consent form must be obtained and made available in accordance with state and federal guidelines.~~

(a) Complete information regarding these drugs and their disposition must be maintained in the facility prior to their initial dispensing.

(b) The drug monograph and a signed patient consent form must be obtained and made available in accordance with state and federal guidelines.

(5) and (6) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-307, 37-7-308, 37-7-406, MCA

REASON: The board is amending and reorganizing this rule to comply with formatting requirements of the Secretary of State and increase clarity.

24.174.1115 USE OF CONTINGENCY KITS IN CERTAIN INSTITUTIONAL FACILITIES (1) through (5) remain the same.

(6) All documentation must be readily available for inspection by the board. The contents of the contingency kit and all related records shall be made freely available and open for inspection to representatives of the board and when information of possible violations is received.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that contingency kit contents and related records must be made available for board inspection. The board concluded that this clarification will aid board inspectors and staff in performing their inspection and investigation duties and answering licensee questions.

24.174.1704 REQUIREMENTS FOR SUBMITTING PRESCRIPTION REGISTRY INFORMATION TO THE BOARD (1) ~~All prescription dispensing information submitted under this subchapter shall be submitted at least weekly drug order information for controlled substances shall be submitted to the board pursuant to this subchapter.~~

(2) The information submitted shall be consecutive and complete from the date and time of the submitting pharmacy's last submission, and shall be reported no later than eight days after the date of dispensing. A pharmacy shall submit all prescription drug order information for a controlled substance to the board no later than eight days after the date of dispensing the controlled substance.

(3) If a pharmacy that dispenses controlled substances has not dispensed ~~no~~ reportable any controlled substances during a ~~reporting period~~ calendar month, the pharmacy shall ~~submit a timely~~ verify that no controlled substances were dispensed for that month by submitting a "zero report." to the board. A "zero report" is due on or before the fifth day of the next month.

(4) A pharmacy that does not dispense controlled substances shall notify the board by submitting an appropriate board-approved form attesting that the pharmacy does not dispense controlled substances.

(a) The form submitted by a pharmacy that does not dispense controlled substances shall be maintained on file with the board and at the pharmacy's location.

(b) If a pharmacy does dispense a controlled substance, it shall then comply with the reporting requirements of this rule.

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

~~(5)~~ (6) In the event that a pharmacy cannot submit the required information as described in this rule, the pharmacy must timely report that fact ~~on the appropriate board-approved form. This form is due~~ to the board on or before the date that the ~~weekly~~ submission is ~~otherwise~~ due. The board office may grant an extension, at their discretion, when a pharmacy notifies the board that they are unable to submit their report.

~~(6)~~ (7) It is the responsibility of the submitting pharmacy to address any errors or questions about information that the pharmacy has submitted to the prescription drug registry and resubmit corrected data no later than eight days after the date of the original submission.

AUTH: 37-7-1512, MCA

IMP: 37-7-1503, 37-7-1512, MCA

REASON: The board determined that it is reasonably necessary to amend this rule and further clarify which pharmacies must report information to the Montana Prescription Drug Registry (MPDR), and when that information must be reported. The board has concluded that pharmacies that do not dispense controlled substances are not subject to the reporting requirements of this rule.

The board also concluded that the requirements for submitting a request for extension of time to report information to the MPDR should be amended to make it easier for pharmacies to request an extension. Further, the board determined that it is reasonably necessary to clarify the requirements for resubmitting corrected data to the MPDR so pharmacies are aware that the board expects for errors to be corrected and reported to the MPDR within a reasonable amount of time.

24.174.2403 LEGAL SUSPENSION OR REVOCATION (1) All licensed pharmacists and operators of pharmacies in ~~the state of~~ Montana must adhere to all the laws of ~~the state of~~ Montana and the rules of the board pertaining to pharmacists and operators of pharmacies and any violation thereof may constitute a cause for the revocation of such licenses.

(2) If an intern pharmacist is found or allowed to work in a pharmacy without the supervision of a registered pharmacist, meaning that the intern is allowed to

work a shift by himself/herself, it may be cause for the board to cancel his or her internship in said pharmacy and may be cause for suspension or revocation of his or her intern pharmacist license. The board may in its discretion ask for surrender, suspension, or revocation of the pharmacy license of the pharmacy in which the intern has violated this section of the pharmacy law.

(3) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-311, 37-7-321, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the board's intent of when an intern may work without supervision. The board determined that public protection is not measured by unsupervised practice of a certain "shift" period, and is clarifying that interns may not work unsupervised.

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

24.174.510 (24.174.831) PRESCRIPTION REQUIREMENTS (1) through (3) remain the same.

(4) "Chart order" means a lawful order entered on the chart or a medical record of an inpatient or resident of an institutional facility by a practitioner, or his or her designated agent, for a drug or device and shall be considered a prescription.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-505, MCA

REASON: The board determined it is reasonably necessary to amend this rule to define "chart order" to clarify what constitutes a prescription in an institutional setting. The board has received several questions regarding the process and validity of prescriptions stemming from these institutional settings.

The board is transferring this rule and ARM 24.174.514 and 24.174.523 from subchapter 5 (Licensing) to subchapter 8 (Pharmacies) to make it easier for the public and licensees to identify and locate these rules on prescriptions, as they relate more closely to pharmacies than licensure requirements.

24.174.514 (24.174.835) TRANSFER OF PRESCRIPTIONS (1) The manual transfer of original prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

(a) the transfer is communicated directly between two licensed pharmacists/interns; and the transferring pharmacist records the following information:

(i) ~~write the word 'VOID' on the face of the invalidated prescription,~~
(ii) ~~record on the reverse of the invalidated prescription the name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information,~~

~~(iii) record the date of the transfer and the name of the pharmacist transferring the information.~~

~~(b) The pharmacist receiving the transferred prescription information shall reduce to writing the following:~~

~~(i) write the word 'TRANSFER' on the face of the transferred prescription,~~

~~(ii) provide all information required to be on a prescription pursuant to state and federal laws and regulations and include:~~

~~(A) date of issuance of original prescription,~~

~~(B) original number of refills authorized on original prescription,~~

~~(C) date of original dispensing,~~

~~(D) number of valid refills remaining and date of last refill,~~

~~(E) pharmacy's name, address and original prescription number from which the prescription information was transferred,~~

~~(F) name of transferor pharmacist.~~

(b) controlled substances may only be transferred from the original pharmacy to which it was presented; and

(c) for a period of not less than two years, a retrievable audit trail must be maintained that includes the date of transfer and initials or code of the transferring party.

(2) The manual transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV₁ or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only, by following the procedures listed above in (1). In addition:

(a) through (3) remain the same.

(4) The electronic transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV₁ or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only, by following the procedures listed above in (1) and (3).

(5) and (5)(a) remain the same.

(b) Whenever a consumer objects to their prescription records being made accessible to other pharmacies through the use of electronic prescription files, it is the duty of the pharmacy to assure that the consumer's records are not shared with or made accessible to another pharmacy except as provided in (1), (2)₁ and (4) of this rule. ~~The pharmacist to whom the consumer communicated the objection shall ask the consumer to sign a form which reads substantially as follows: "I hereby notify (name of pharmacy) that my prescription drug records may not be made accessible to other pharmacies through a common or shared electronic file." The pharmacist shall date and co-sign the form and shall deliver a copy thereof to the patient. The original shall be maintained by the pharmacy for three years from the date of the last filling or refilling of any prescription in the name of the consumer.~~

(6) In an emergency, a pharmacy may transfer original prescription drug order information for a noncontrolled substance to a second pharmacy for the purpose of dispensing up to a seven-day ~~days~~ supply₁ without voiding the original prescription drug order.

(7) and (8) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending this rule to clarify and simplify the processes for transferring prescriptions. The board is amending (1)(a) to address the involvement of interns in current pharmacy practice and to align with process changes due to technological advances. It is reasonably necessary to delete (1)(a)(i) through (1)(b) as the board concluded that these requirements are currently being accomplished electronically through the use of prescription software.

The board is adding new (1)(b) and (c) to further protect against potential fraudulent transactions by limiting the transfer of prescriptions for controlled substances and requiring pharmacies to maintain retrievable audit trails.

The board is amending (5) to remove the requirement that pharmacists obtain and maintain forms when patients object to electronic transmission of their records. Because of technological advancements, the protections afforded by federal law, and other transfer restrictions enumerated in this rule, the board concluded it is no longer necessary for a signed patient form.

24.174.523 (24.174.840) TRANSMISSION OF PRESCRIPTIONS BY ELECTRONIC MEANS (1) remains the same.

(2) A pharmacist may dispense directly a controlled substance in Schedule II, which is a prescription drug as determined by the Federal Food, Drug, and Cosmetic Act (FD&C Act), ~~only~~ pursuant to a written prescription signed by the practitioner. A In addition, a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by electronic means, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance or by electronic means that meet all of the federal guidelines for controlled substances that are electronically prescribed. The original prescription shall be maintained in accordance with ARM 24.174.512.

(a) through (c) remain the same.

(3) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V, which is a prescription drug as determined under the FD&C Act, only pursuant to either a written prescription signed by a practitioner or a copy of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy by electronic means, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hardcopy by the pharmacist, containing all information required or by electronic means that meet all of the federal guidelines for controlled substances that are electronically prescribed. The prescription shall be maintained in accordance with ARM 24.174.512.

(4) through (6) remain the same.

AUTH: 37-7-201, 50-32-103, MCA

IMP: 37-1-101, 37-7-102, 37-7-201, 50-32-208, MCA

REASON: The board is amending (2) by striking "only" to align with federal regulations that permit dispensing by other means, including by electronic methods.

The board is also amending (2) and (3) to align with federal guidelines for transmitting prescriptions electronically and recent changes to the board's definition of "prescription drug order."

24.174.1121 (24.174.841) STERILE PRODUCTS (1) Policies and procedures must be prepared for the compounding, dispensing, delivery, administration, storage, and use of sterile pharmaceutical products. The policies must include a quality assurance program for monitoring personnel qualifications and training in sterile technique, product storage, stability standards, and infection control. Policies and procedures must be current and available for inspection by a designee of the Board of Pharmacy.

(2) through (4) remain the same.

(a) Protective apparel including nonvinyl gloves, gowns, and masks must be available, and gloves must be worn at all times.

(b) remains the same.

(c) Prepared doses of cytotoxic drugs must be clearly identified, labeled with proper precautions, and dispensed in a manner to minimize risk of cytotoxic spills.

(d) Disposal of cytotoxic waste must comply with all applicable local, state, and federal laws.

(e) through (8) remain the same.

(9) The board expects pharmacies/pharmacists engaged in compounding to have policies and procedures to adhere to those guidelines that apply to their practice setting and in all situations to comply with the spirit of United States Pharmacopeia (USP) Chapter 795 "Compounding Nonsterile Preparations" and USP Chapter 797 "Pharmaceutical Compounding-Sterile Preparations."

(10) Immediate use compounds defined in ARM 24.174.301(21) are prepared in an air quality environment that does not meet International Organization of Standardization (ISO) Class 5 or better conditions. A preparer of immediate use compounds is not required to wear gloves or gown if the compounds are prepared using aseptic manipulation, only sterile ingredients, products, components, and devices, and the following conditions are met:

(a) no more than three sterile ingredients, products, components, and devices are used;

(b) only simple manipulation techniques are employed;

(c) the preparer completes the preparation without interruption and with no direct contact contamination;

(d) the administration must begin within one hour of preparation;

(e) if prepared by someone other than the person who will administer the drug, labeling must include patient name, name and quantity of ingredients, name of person who prepared it, and exact one hour "beyond use date"; and

(f) preparations do not involve the use of hazardous materials.

(11) Multi-dose vial defined in ARM 24.174.301(29) may be used until the expiration date noted on the vial. The beyond use date (BUD) may be up to one month or the manufacturer's assigned BUD, whichever is shorter from the time of initial entry, in accordance with the pharmacy policies and procedures.

(12) A same-day use product, defined in ARM 24.174.301(41), that is prepared using aseptic manipulation in a controlled environment with ISO 5 or better

class air quality conditions, using only sterile ingredients, products, components, and devices, may be classified as low- or medium-risk provided that it meets all of the following conditions:

- (a) only simple manipulation techniques employed;
- (b) the environment meets or exceeds the following conditions:
 - (i) the mixing cabinet is located in an area that restricts airflow to prevent drafts and reduce particle counts;
 - (ii) there is a partitioned area around the mixing cabinet to create a buffer zone, which must be at least the width of the hood in front of the mixing cabinet; and
 - (iii) the buffer zone must be clearly identified to prevent cardboard or outer packing material intruding into the buffer zone and to prevent any intrusion during the compounding process.
- (c) the environment is cleaned daily;
- (d) batch preparation will not exceed eight CSPs;
- (e) administration of the preparation must begin within 24 hours of preparation; and
- (f) the preparer must use gloves, shoe covers or dedicated shoes, hair covers, gown, and a mask.

(13) The beyond use date (BUD), as defined in ARM 24.174.301(2), for a single-dose vial:

- (a) shall be no greater than one hour from the time of initial entry if accessed in an environment of less than ISO 5; or
- (b) may be up to 24 hours from the time of initial entry if appropriately stored and accessed only in an environment equal to or better than ISO 5.

(14) Low-risk and medium-risk level compounded sterile preparation (CSP) is determined by the potential for microbial contamination during preparation, and high-risk level CSP by the potential for not being properly sterilized before administration to patients.

- (a) Low-risk conditions:
 - (i) CSPs prepared using aseptic manipulation with an air quality environment that is equal to or better than ISO Class 5, using only sterile ingredients, products, components, and devices;
 - (ii) no more than three commercially manufactured sterile products and entries into one container of sterile product during preparation;
 - (iii) manipulations limited to:
 - (A) aseptically opening ampoules;
 - (B) penetrating sterile stoppers on vials with sterile needles and syringes;
- and
 - (C) transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and sterile containers for storage and dispensing.
 - (iv) in the absence of sterility testing, preparations must be properly stored prior to administration as follows:
 - (A) BUD less than or equal to 48 hours at controlled room temperature;
 - (B) BUD up to 14 days under refrigeration; or
 - (C) BUD up to 45 days in solid frozen state at minus 20 degrees centigrade.
- (b) Medium-risk conditions:

(i) CSPs compounded aseptically under low-risk conditions, but with the addition of one or more of the following conditions:

(A) multiple individual or small doses of sterile precuts are combined or pooled to prepare a CSP that will be administered either to multiple patients or to one patient on multiple occasions;

(B) the compounding process includes complex aseptic manipulations other than single volume transfer; or

(C) the compounding process requires unusually long duration, such as that required to complete dissolution or homogenous mixing.

(ii) In the absence of sterility testing, preparations must be properly stored prior to administration as follows:

(A) BUD less than or equal to 30 hours at controlled room temperature;

(B) BUD up to nine days under refrigeration; or

(C) BUD up to 45 days in solid frozen state at minus 20 degrees centigrade.

(c) High-risk conditions:

(i) CSPs compounded from nonsterile ingredients including products manufactured for other routes of administration, or a nonsterile device is employed before terminal sterilization;

(ii) exposure to an air quality environment that does not meet ISO 5 or better conditions for more than one hour for any of the following:

(A) sterile contents of commercially manufactured products;

(B) CSPs that lack effective antimicrobial preservatives; or

(C) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.

(iii) Prior to terminal sterilization:

(A) nonsterile procedures including weighing and mixing occur in an air quality environment that does not meet ISO 7 or better conditions;

(B) compounding personnel are improperly gloved or garbed; or

(C) water containing preparations are stored for more than six hours.

(iv) in the absence of sterility testing, preparations must be properly stored prior to administration as follows:

(A) BUD less than or equal to 24 hours at controlled room temperature;

(B) BUD up to three days under refrigeration; or

(C) BUD up to 45 days in solid frozen state at minus 20 degrees centigrade.

(v) all nonsterile devices must be rinsed thoroughly with sterile, pyrogen-free water, then thoroughly drained or dried immediately before use.

(vi) terminal sterilization is required as follows:

(A) CSP solutions passed through a filter with a nominal porosity not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter; or

(B) sterilization of high-risk level CSPs by filtration must be performed with a sterile 0.22 micron pore filter entirely within an air quality environment better than or equal to ISO 5.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-307, 37-7-308, MCA

REASON: The board concluded it is reasonably necessary to amend certain rules regarding drug compounding to align with the standards of pharmacy practice as published by the United States Pharmacopeia (USP). USP 797 establishes standards for sterile compounding of drugs and is updated frequently, including five times this year. In 2011-12, the board conducted a biennial rule review which demonstrated that the board's current rules on drug compounding are not in line with the standards published in USP 797, nor are the rules current with pharmacy best practices, as recognized by the FDA. The board is amending this rule to establish the standards and requirements that are pertinent to the amended and new definitions proposed in ARM 24.174.301 relating to compounding sterile products.

Additionally, the board is transferring this rule related to sterile products from subchapter 11 (Institutional Pharmacies) to subchapter 8 (Pharmacies), after concluding that the issue of compounding sterile products in Montana has expanded beyond institutional pharmacies to include other pharmacy practice settings.

5. The proposed new rule provides as follows:

NEW RULE I QUALITY ASSURANCE PROGRAM REQUIREMENTS

(1) Each pharmacy shall implement or have in place a quality assurance program to detect, identify, and prevent prescription errors. The quality assurance program shall include necessary documentation, internal reporting, and assessment of prescription errors to determine the cause and an appropriate response.

(2) The primary purpose of the quality assurance program shall be to advance error prevention by analyzing, individually and collectively, investigative and other pertinent data collected in response to a prescription error to assess the cause and any contributing factors such as system or process failures.

(3) Each pharmacy, corporation, or health system shall use the findings of its quality assurance program to develop pharmacy systems and workflow processes designed to prevent prescription errors, as well as communicate those findings to all pharmacy personnel.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule; implementation of quality assurance programs is designed to improve patient safety and quality of care through the reporting and assessment of prescription errors.

6. The rules proposed to be transferred provide as follows:

24.174.511 (24.174.832) LABELING FOR PRESCRIPTIONS

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is transferring the rules relating to prescriptions from subchapter 5 (Licensing) to subchapter 8 (Pharmacies) to make it easier for the

public and licensees to identify and locate these rules, as they relate more closely to pharmacies than licensure requirements.

24.174.512 (24.174.833) RECORDS OF DISPENSING found at page 24-19548.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

24.174.513 (24.174.834) COPY OF PRESCRIPTION found at page 24-19548.

AUTH: 37-7-201, MCA
IMP: 37-7-101, MCA

24.174.515 (24.174.836) EMERGENCY PRESCRIPTION REFILLS found at page 24-19551.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

24.174.520 (24.174.837) PRESCRIPTION REQUIRED FOR SCHEDULE V found at page 24-19565.

AUTH: 37-7-201, MCA
IMP: 37-7-102, 37-7-201, MCA

24.174.521 (24.174.838) RETURNED PRESCRIPTION found at page 24-19565.

AUTH: 37-7-201, 37-7-1401, MCA
IMP: 37-7-201, 37-7-1401, MCA

24.174.522 (24.174.839) ALTERNATE DELIVERY OF PRESCRIPTIONS found at page 24-19565.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-301, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., November 21, 2014.

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

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to dlibsdp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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 board has determined that the amendment of ARM 24.174.301, 24.174.411, 24.174.602, 24.174.701, 24.174.903, 24.174.1101, 24.174.1111, 24.174.1115, 24.174.1704, and 24.174.2403 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment and transfer of ARM 24.174.510, 24.174.514, 24.174.523, and 24.172.1121 will not significantly and directly impact small businesses.

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

With regard to the requirements of 2-4-111, MCA, the board has determined that the transfer of ARM 24.174.511 through 24.174.513, 24.174.515, and 24.174.520 through 24.174.522 will not significantly and directly impact small businesses.

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

12. Kevin Maki, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
BECKY DESCHAMP, RPh, VICE
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 October 14, 2014

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 36.12.101, 36.12.201,	)	PROPOSED AMENDMENT,
36.12.203, 36.12.204, 36.12.206,	)	ADOPTION, AND REPEAL
36.12.207, 36.12.209, 36.12.210,)	
36.12.212 through 36.12.216,)	
36.12.220, 36.12.223, 36.12.225)	
through 36.12.228, 36.12.234; the)	
adoption of New Rule I; and the)	
repeal of ARM 36.12.202, 36.12.205,)	
36.12.211, 36.12.219, and 36.12.229)	
regarding definitions and the)	
procedural rules for hearings)	

To: All Concerned Persons

1. On November 19, 2014, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Ted Doney Conference Room (top floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment, adoption, 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 November 17, 2014, 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:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (15) remain the same.

(16) "Contested case" means a proceeding before the department in which a determination of legal rights, duties, or privileges of a party is required to be made after an opportunity for hearing pursuant to Title 2, chapter 4, part 6, MCA. A contested case includes, but is not limited to: a proceeding and hearing on an objection to application pursuant to 85-2-309, MCA; a show cause proceeding and hearing involving revocation or modification of a permit or change in appropriation right pursuant to 85-2-314, MCA; and a show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA.

(16) through (20) remain the same but are renumbered (17) through (21).

(22) "Director" means the director of the department or the director's designee.

(21) through (28) remain the same but are renumbered (23) through (30).

(31) "Hearing examiner" means the person or persons assigned by the director to hear the contested case.

(29) through (42) remain the same but are renumbered (32) through (45).

(46) "Party" means an applicant, objector, petitioner, respondent, or other person named, admitted, or entitled to a contested case hearing pursuant to Title 85, chapter 2, parts 3 and 4, MCA.

(43) and (44) remain the same but are renumbered (47) and (48).

(49) "Permit" means a permit to appropriate water issued by the department under Title 85, chapter 2, part 3, MCA.

(50) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity (see 85-2-102, MCA).

(45) through (53) remain the same but are renumbered (51) through (59).

(60) "Proceeding" means all events in a contested case following issuance of a hearing notice and appointment of hearing examiner, including prehearing conferences, hearings, interlocutory orders, and the decision of the hearing examiner on the merits.

(54) through (60) remain the same but are renumbered (61) through (67).

(68) "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to a person's last known address. Proof of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Montana may also serve by depositing the item to be served with the mail and distribution section, General Services Division, Department of Administration.

(69) "Show cause" means a contested case before the department in which a person aggrieved by a proposed action of the department is given the opportunity to present evidence and testimony to show why the proposed action should not be taken. A show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA, shall be conducted as an informal contested case proceeding pursuant to 2-4-604, MCA.

(61) through (63) remain the same but are renumbered (70) through (72).

(73) "Staff" means a person employed or retained by the department.

(64) through (79) remain the same but are renumbered (74) through (89).

AUTH: 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 2-4-201, 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, MCA

36.12.201 SCOPE AND PURPOSE (1) The procedures contained ~~herein~~ within this subchapter shall govern the contested case proceedings conducted by the department of natural resources and conservation pursuant to ~~Montana Code Annotated (MCA) Title 85, chapter 2, parts 1 through 4, MCA.~~

(2) The attorney general's model rules for conducting contested case proceedings, adopted by the department at ~~Administrative Rules of Montana (ARM) 36.2.101~~, shall not apply to proceedings conducted by the department pursuant to Title 85, chapter 2, MCA, and are superseded for that purpose only. ~~These rules do not govern any proceedings conducted by the Board of Natural Resources and Conservation pursuant to Title 85, chapter 2, MCA.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-201(2), 85-2-113(2), 85-2-121, MCA

36.12.203 HEARING EXAMINERS (1) A hearing examiner shall be assigned to preside over a contested case proceeding before the department. ~~When the department orders a contested case hearing, the director shall assign a hearing examiner to hear the case. The director may not assign as hearing examiner a~~An individual that was involved in the preliminary determination on the application shall not be assigned as hearing examiner. The department shall provide the hearing examiner with a complete copy of the department's file including all applications, correspondence, documents, notices, objections, petitions, and preliminary determinations. ~~The file that is submitted to the hearing examiner, subsequent to the assignment of the case, shall contain the parties' applications, notices of applications, petitions, objections to applications, or permits under consideration to be modified or revoked. After reviewing the file, the hearing examiner shall contact the parties and advise them as to the location and time during which a hearing should be held. Except as required under the circumstances of ARM 36.12.232, no hearing shall be scheduled on a Saturday, Sunday, or legal holiday.~~

(2) Consistent with law, the hearing examiner shall perform the following duties:

(a) regulate the course of the proceeding ~~hearing~~, including the scheduling, establishing deadlines, recessing, reconvening, and adjournment thereof;

(b) ~~grant or deny motions for discovery including the taking of depositions;~~

(c) ~~receive and act upon requests for subpoenas where appropriate;~~

(d) ~~hear and rule on motions;~~

(e) ~~preside over at the contested case hearing;~~

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

(g) maintain a complete record of the proceeding ~~grant or deny requests for continuances; and~~

(h) issue a decision or final order containing findings of fact and conclusions of law. ~~examine witnesses where the hearing examiner deems it necessary to make a complete record;~~

(i) ~~rule upon offers of proof and receive evidence;~~

(j) ~~make preliminary, interlocutory or other orders as he deems appropriate;~~

~~(k) recommend a summary disposition of any part of the case where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons;~~

~~(l) require testimony, upon the motion of a party or upon the hearing examiner's motion, to be prefiled in whole or in part when prefiling will expedite the hearing and the interests of the parties will not be prejudiced substantially;~~

~~(m) hold conferences for settlement, simplification of the issues, or any other proper purpose;~~

~~(n) appoint a staff expert;~~

~~(o) prepare a proposal for decision or a final order containing findings of fact, conclusions of law and a proposed or final order;~~

~~(p) after issuing a proposal for decision, participate in the final decision-making process;~~

~~(q) do all things necessary and proper to the performance of the foregoing; and~~

~~(r) as authorized by law and rule, perform such other duties as well as any that may be delegated by the director.~~

(3) Consistent with law and at the hearing examiner's discretion, the hearing examiner is authorized to perform the following duties:

(a) enter preliminary, interlocutory, and other orders deemed necessary;

(b) limit the scope of discovery;

(c) appoint a staff expert to issue a written report;

(d) question witnesses;

(e) issue subpoenas;

(f) enter rulings regarding the admissibility of evidence;

(g) request the submission of proposed findings of fact and conclusions of law;

(h) perform such other duties consistent with the authority provided for by law; and

(i) perform such other duties as may be delegated by the director.

(4) The authority of the hearing examiner terminates upon the entry of a decision or final order on the merits.

AUTH: 2-4-201~~(2)~~, 85-2-113~~(2)~~, MCA

IMP: 2-4-611, 2-4-612, 2-4-614, ~~2-4-621~~, 2-4-623, 85-2-121, MCA

36.12.204 HEARING NOTICE AND APPOINTMENT OF HEARING EXAMINER COMMENCEMENT OF A CONTESTED CASE A contested case is commenced, subsequent to the assignment of a hearing examiner, by the service of a notice of and order for hearing by the director.

(1) The department shall serve all parties with a hearing notice and appointment of hearing examiner:

(a) within 30 days of issuing a preliminary determination to deny an application pursuant to 85-2-310, MCA; or

(b) within 30 days of the applicant filing a written request for a hearing on a preliminary determination to grant application in modified form pursuant to 85-2-310, MCA; or

(c) within 30 days after determining the validity of objections to application pursuant to 85-2-308 and 85-2-309, MCA.

(42) A hearing notice and appointment of hearing examiner in all contested cases shall include ~~The notice and order. A notice of and order for hearing, which shall be a single document, shall be served upon all parties and shall contain, but not be limited to, the following:~~

(a) a short and plain statement regarding each of the requirements set forth in 2-4-601, MCA ~~the time, date, place, and nature of the hearing;~~

(b) name, address, and telephone number of the hearing examiner;

(c) notification of the right of the parties to be represented by legal counsel ~~a statement of the legal authority and jurisdiction under which the hearing is to be held;~~

(d) notification that the failure of a party to appear at the hearing may result in default against a party ~~a reference to the particular sections of the statutes and rules involved; and~~

(e) a short and plain statement of the matters asserted; for an application or petition, the matters asserted shall be whether the application or petition meets the statutory requisites. For revocation or modification of a permit, the matters asserted are the grounds for revocation or modification;

(f) notification of the right of the parties to be represented by legal counsel or appear on their own behalf;

(g)(e) a citation to these procedural rules and to the contested case provisions of Title 2, chapter 4, part 6, MCA;

(h) a statement that a formal proceeding may be waived pursuant to 2-4-603, MCA;

(i) a statement advising parties that if any party fails to appear at the hearing, the party will be in default; and a statement which explains the possible results of a default;

(j) a statement advising the parties that communication with the hearings examiner containing obscene, lewd, profane, or abusive language which terrifies, intimidates, threatens, or harasses the hearing examiner will be returned. Any communication returned shall be conclusively presumed to have not been served or filed with the department for purposes of these rules.

(23) A hearing notice and appointment of hearing examiner involving an objection to application pursuant to 85-2-308 and 85-2-309, MCA, shall include: ~~The notice of and order for hearing shall be served not less than 30 days prior to the hearing unless all parties agree in writing to a shorter notice time period. Provided, however, that a shorter time period may be allowed when the hearing examiner determines, on the basis of the parties' applications and objections to applications, that the parties will not be substantially prejudiced by a shorter time.~~

(a) a copy of all valid objections; and

(b) the name, address, and telephone number of each objector or the objector's attorney if represented.

(3) When a party is represented by an attorney, service upon the attorney shall constitute service upon the party. (Note: (1)(a) (c) (d) (1st sentence) (e) (h) of this rule are codified at 2-4-601 MCA (2) (a-e).)

(4) A hearing notice and appointment of hearing examiner in a show cause proceeding conducted following a preliminary determination to deny an application or to grant application in modified form pursuant to 85-2-310, MCA, shall include a statement that the proceeding is subject to the informal contested case proceedings provisions of 2-4-604, MCA.

(5) A hearing notice and appointment of hearing examiner shall be served not less than 30 days prior to the hearing unless the parties agree in writing to a shorter notice time period.

(6) Except as required under the circumstances of ARM 36.12.232, no hearing shall be scheduled on a Saturday, Sunday, or legal holiday.

(7) Service of a hearing notice and appointment of hearing examiner constitutes the commencement of a contested case proceeding before the department.

(8) When a party is represented by an attorney, service upon the attorney shall constitute service upon the party.

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-105, 2-4-601, 85-2-308, 85-2-310, MCA

36.12.206 REPRESENTATION (1) Any party may appear on their own behalf or may be represented by an attorney legal counsel throughout the proceedings in a contested case proceeding or an individual may appear on his/her own behalf. All legal entities, including but not limited to corporations, limited liability companies, trusts, partnerships, and not for profit associations must be represented by an attorney licensed to practice law in the state of Montana throughout all contested case proceedings. This rule shall not be construed to sanction the unauthorized practice of law.

(2) The department may appear in a contested case for the limited purpose of representing the interests of the public.

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-105, MCA

36.12.207 INFORMAL DISPOSITION SETTLEMENT, STIPULATION OR CONSENT (1) The terms of a settlement, stipulation, or consent entered between parties as a private contractual agreement are not binding on the department.

(2) If the parties propose inclusion of the terms of a settlement, stipulation, or consent as a condition(s) to a permit or change authorization, the parties shall submit a copy of the written settlement, stipulation, or consent along with any proposed condition(s) to the department for consideration. At the department's discretion, the terms of a settlement, stipulation, or consent may be included as a condition(s) to a permit or change authorization upon determination that the terms of the settlement, stipulation, or consent are consistent with and necessary to satisfy the applicable statutory criteria.

(3) A complete copy of any settlement, stipulation, or consent considered by the department must be included in the record.

~~(1) Informal disposition may be made of any contested case or any issue therein at any point in the proceedings by agreed settlement, stipulation or default. The parties may mutually agree to be bound by the terms of such settlement, stipulation, or default as a private contractual agreement; provided, however, that to the extent such settlement, stipulation, or default is based on conditions which the parties agree must be included in any permit to be issued, the parties' agreement shall not be binding on the department. The parties shall submit such proposed conditions to the department for review, but the department shall include them in the permit only if the conditions are designed to further compliance with the applicable statutory criteria.~~

~~(2) Department staff may propose conditions for settlement of a contested case which further compliance with the statutory criteria. Any proposed conditions which are sent to the parties in a contested case shall be accompanied by written notification that agreeing to the proposed condition(s) will not necessarily obviate the need for a hearing.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-603 85-2-310, 85-2-311, 85-2-402, MCA

36.12.209 TIME (1) remains the same.

~~(2) Computing time when serving by mail: Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him them, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, postmarking of the notice or paper on or before the prescribed period shall satisfy this rule.~~

~~(3) If a pleading or other document is not filed in accordance with applicable time limits, upon motion of a party or the hearing examiner, the pleading may be stricken from the record.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-611, MCA

36.12.210 CONSOLIDATION (1) Two or more proceedings may be proposed for consolidation as a single proceeding upon motion of a party or upon notice by the hearing examiner: Whenever it is determined, either on the hearing examiner's motion or upon motion by any party, that two or more contested cases present substantially the same issues of fact or law, that a holding in one case would affect the rights of parties in another case, and that consolidation would not substantially prejudice any party, the hearing examiner may order such cases consolidated for a single hearing on the merits. In every case, all objections to a single application shall be consolidated without requirement of order. Applications by the same applicant may be consolidated without requirement of an order.

(a) if consolidation is proposed by a party, the procedures regarding filing of motions to the hearing examiner provided for by ARM 36.12.213 shall be followed;
or

(b) if consolidation is proposed by the hearing examiner, the hearing examiner shall serve each party with written notification of the proposal to consolidate. Any party opposing consolidation shall file and serve a written objection stating the reasons consolidation should not be ordered within 14 days of service of notice.

(2) The hearing examiner may order consolidation upon determining: ~~Following an order for consolidation, the hearing examiner shall serve on all parties a copy of the order for consolidation. The order shall contain, among other things:~~

(a) the proceedings present substantially the same issues of fact or law a description of the cases for consolidation;

(b) the final order in one proceeding would affect the rights of parties in the other(s) the reasons for consolidation; and

(c) the consolidation would not substantially prejudice any party notification of a consolidated prehearing conference if one has been requested.

(3) An order granting or denying a motion for consolidation shall be served upon all parties and shall contain a description of the cases being consolidated and shall explain the basis for the hearing examiner's determination ~~(a) Any party may object to consolidation by filing, at least ten days prior to the hearing in the case, a motion for severance from consolidation, setting forth the party's name and address, the title of the case prior to consolidation, and the reasons for that party's motion.~~

~~(b) If the hearing examiner finds that consolidation would prejudice the party, the hearing examiner may, without hearing, order such severance or other relief as the hearing examiner deems necessary.~~

(4) Multiple objections to a single application shall be consolidated without requirement of a motion, notice, or order.

AUTH: 2-4-201~~(2)~~, 85-2-113~~(2)~~, MCA

IMP: 85-2-309, MCA

36.12.212 PREHEARING CONFERENCES AND ORDERS

~~(1) The purpose of the prehearing conference is to simplify the issues to be determined, to fix hearing dates, to obtain stipulations in regard to foundation for testimony or exhibits, to hear and rule upon evidentiary objections to prefiled testimony, to identify the proposed witnesses for each party, to schedule discovery, to discuss the procedure at the hearing, to consider such other matters that may be necessary or advisable, and, if possible, to reach a final settlement without the necessity for further hearing.~~

(21) Upon written request of any party or upon by order of the hearing examiner's motion, a prehearing conference may be conducted to: ~~ordered prior to each contested case hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously following written notice to all parties or their attorneys. Agreements on the simplification of issues, amendments, stipulations or other matters may be entered on the record or may be the subject of an order by the hearing examiner. A~~

party who fails (without having made prior arrangements with the hearing examiner) to appear at a prehearing conference shall have waived the right to object to any matters agreed upon by other parties in attendance at the prehearing conference. Following a prehearing conference, the hearing examiner may issue a procedural order which fixes any dates which are appurtenant to the disposition of the case, and which sets out the procedures to be followed by the parties. The procedural order may include a description of the matters discussed at and the actions taken pursuant to the prehearing conference.

- (a) clarify the issues to be determined prior to or at the hearing;
- (b) establish deadlines for matters including but not limited to:
 - (i) submission of prehearing evidence;
 - (ii) submission of post-hearing pleadings; and
 - (iii) submission of proposed findings of fact and conclusions of law;
- (c) obtain stipulations regarding foundation for evidence including but not limited to expert witness testimony;
- (d) hear argument and rule on prehearing motions and evidentiary objections;

(e) identify witnesses and exhibits;
(f) establish and review hearing procedures; and
(g) address other issues related to the hearing.
(2) Following a prehearing conference the hearing examiner shall issue an order reciting the matters addressed and documenting any action taken at the prehearing conference. The order shall control the subsequent course of the proceeding and hearing unless modified by order.

(3) A party who fails to appear at a prehearing conference without good cause waives the right to object to any matters set forth in the prehearing order.

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-611, 2-4-612, MCA

36.12.213 MOTIONS TO HEARING EXAMINER (1) Any party may seek relief by means of an appropriate written motion. Written motions shall clearly state the relief sought by a party and the grounds and authority supporting the entry of an order granting the motion. All motions which assert factual matters not of record as the grounds for relief must be accompanied by affidavits or verified exhibits which show the facts upon which the proposed relief is grounded. Each motion must be supported by a brief or memorandum of law showing the moving party's entitlement to relief as a matter of law. Any application to the hearing examiner for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. Written motions or responses to motions shall first be served on all parties, and then filed with the hearing examiner with a certificate of service attached. A written motion shall give notice to other parties that should they wish to contest the motion they must file a written response with the hearing examiner (after first serving all parties), and that the written response, with a certificate of service attached, must be filed within ten days after service of the motion. Requests for disqualification of a hearing examiner, prehearing conferences, and subpoenas are not governed by the

requirements of this rule. The hearing examiner may require a hearing or telephone conference call before issuing an order on the motion. All orders on such motions, other than those made during the course of the hearing, shall be in writing, and shall be served upon all parties of record. In ruling on motions where these rules are silent, the hearing examiner shall apply the Montana Rules of Civil Procedure to the extent the hearing examiner determines is appropriate to do so in order to promote a fair and expeditious proceeding.

(a) All written motions other than motions for summary judgment shall contain a statement that each party has been contacted and state whether the party contests the motion. Uncontested written motions shall be accompanied by a proposed order for the hearing examiner's consideration.

(b) Within ten days after service of a contested motion, each opposing party shall file a written response stating with particularity the factual and legal basis for opposition to the motion.

(c) Within ten days of being served with a response, the moving party may file a written reply in support of the written motion.

(d) A written motion, response, or reply may include a request for oral argument on the motion. At the hearing examiner's discretion the parties may be ordered to appear at a specific time and place for oral argument telephonically or in person before ruling on the motion.

(e) The original of all written motions, responses, and replies must be filed with the hearing examiner.

(f) A copy of all written motions, responses, and replies must be served on all parties.

(g) All written motions, responses, and replies must include a signed certificate of service setting forth the date and manner of service on all parties.

(2) At the hearing examiner's discretion, oral motions may be considered during a contested case hearing.

(a) The hearing examiner may request that an oral motion and/or any response presented at the time of hearing be submitted in writing before ruling.

(b) The hearing examiner may enter an oral ruling granting, denying, or modifying the relief requested at the time of hearing.

(3) The hearing examiner shall enter an order on all written and oral motions granting, denying, or modifying the relief requested. All orders of the hearing examiner regarding written and oral motions shall state with particularity the basis for the order and shall be:

(a) issued in writing prior to the hearing; or

(b) incorporated in writing into the hearing examiner's decision or final order following hearing.

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-611, MCA

36.12.214 MOTIONS TO DIRECTOR (1) ~~No motions shall be made directly to or be decided by the director subsequent to the assignment of a hearing examiner and prior to the completion and filing of the hearing examiner's proposal for decision except as provided by ARM 36.12.211 or except when the motion is certified to the~~

~~director by the hearing examiner.~~ Any party may request that a pending motion, or a motion decided adversely to that party by the hearing examiner before or during the course of the proceeding hearing be certified by the hearing examiner to the director. In deciding what motions should be certified, the hearing examiner shall consider the following:

(a) whether the motion involves a controlling question of law, which if finally determined, would materially advance the ultimate determination of the proceeding hearing; or

(b) whether certifying the motion is necessary to promote the development of the full record or resolution of the case on the merits ~~and avoid a remand.~~

(2) The director may not rule upon a motion unless the motion is certified to the director by the hearing examiner in the manner described in this rule. If a motion is certified to the director, the director may require the parties to file briefs before ruling upon the a-certified motion. Certified motions shall be decided in the manner provided for in ARM 36.12.229(2). ~~Uncertified motions shall be ruled upon by the hearing examiner and reviewed during the final decision-making process.~~

(3) No motions shall be made directly to the director subsequent to the assignment of a hearing examiner.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-611, MCA

36.12.215 DISCOVERY (1) Written Ddiscovery may commence upon service of the hearing notice and appointment of hearing examiner under this rule may commence following the department's acknowledgement of receipt of valid objections. Unless otherwise specified in this rule or order of the hearing examiner, the methods, scope, and procedures of discovery available pursuant to the Montana Rules of Civil Procedure apply to written discovery in a contested case.

(2) ~~Each A party shall,~~ may make a written demand upon another party requesting the disclosure of witnesses and written documents following the commencement of discovery. wWithin ten days of a service of a written demand, by another the responding party must, ~~disclose the following:~~

(a) disclose Tthe names and addresses of all witnesses known to the responding party to have knowledge of relevant facts along that a party intends to call at the hearing together with a brief summary of the facts known by each witness, whether the responding party intends to call the witness as a witness at hearing, and the anticipated testimony of any witness the responding party intends to call as a witness at hearing each witness's testimony. All witnesses unknown at the time of said disclosure shall be disclosed, together with a brief summary of the expected their testimony, as soon as they become known:-

(b) identify all Any relevant documents, maps, photographs, correspondence, written or recorded statements, or other written materials;

(c) provide the name and address of the custodian of such information; and

(d) disclose whether the responding party intends to use the evidence at hearing made by the party or by witnesses on behalf of the party shall be permitted to be inspected and reproduced by the demanding parties.

(3) Unless otherwise provided for by order of the hearing examiner, within ten days of being served with written requests for production of documents, written interrogatories, and/or written requests for admission, the responding party shall serve written responses and/or objections upon the requesting party.

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

~~(4) A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The written answer shall either admit or deny the truth of the matters contained in the request, or shall make a specific objection thereto. Failure to make a written answer may result in the subject matter of the request being deemed admitted.~~

~~(5) A demand or request for admission made pursuant to (1) or (3) hereof must be served at least 15 days prior to the hearing, and shall be answered in writing by the party to whom the demand or request is directed within ten days of the service of the demand or request.~~

~~(6) Any means of discovery available pursuant to the Montana Rules of Civil Procedure, excepting Rule 37(b)(1) and 37(b)(2)(D), is allowed provided such discovery is needed for the proper presentation of a party's case, is not for purposes of delay, and the issues in controversy are significant enough to warrant such discovery. Copies of all requests for discovery under this subsection must be filed with the hearings examiner. Objection for a demand for discovery may be made by motion to quash, and the form, filing, and disposition of such motion shall be governed by the provisions of ARM 36.12.213. If a party fails to reasonably comply with a proper demand for discovery, the hearing examiner may:~~

~~(a) order that the subject matter of the order for discovery or any other relevant facts be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; or~~

~~(b) refuse to allow the party failing to comply to support or oppose designated claims or defenses, or prohibit that party from introducing designated matters into evidence.~~

~~(7) Any demand for discovery made pursuant to (6) must be made so as to allow all responses to be completed at least 5 days prior to the hearing.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-602, MCA

36.12.216 DEPOSITIONS BY ORAL EXAMINATION TO PRESERVE TESTIMONY (1) Depositions of parties and witnesses by oral examination may be taken in accordance with Rule 30, Montana Rules of Civil Procedure, governing depositions by oral examination Upon the motion of any party, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve that witness' testimony in the manner prescribed by law for depositions in civil actions, which includes the right of other parties to attend the deposition and cross-examine the witness. The motion shall indicate the relevancy and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause. No part of a deposition shall constitute a part of the record unless received in evidence by the hearing examiner.

(2) Depositions of parties and witnesses by oral examination may be used at hearing for any purpose permitted by Rule 32, Montana Rules of Civil Procedure, for the use of depositions in court proceedings.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-602, 2-4-611, MCA

36.12.220 WITNESSES AND PRE-FILED TESTIMONY (1) Any party may be a witness and may present witnesses at the hearing. ~~All oral testimony at the hearing shall be under oath or affirmation.~~

(2) ~~Upon the hearing examiner's motion or, upon the motion of a party, the hearing examiner may order anticipated that the testimony to be given upon direct examination~~ testimony by experts or other witnesses shall be prepared in advance and submitted as pre-filed testimony in either question-and-answer or narrative format. ~~Such prefiled~~

(3) Pre-filed testimony shall be served upon the hearing examiner and all parties as established by a schedule set by the hearing examiner at least seven days prior to the first hearing date. ~~Any witness who submits~~ The pre-filed testimony will be part of the record in each proceeding as if read, but all of the ~~witnesses whose substantive testimony is prefiled~~ must be available for cross-examination at the hearing.

(4) ~~Evidentiary objections (such as motions to strike)~~ to such pre-filed direct testimony may be made by any party at any time during the hearings conducted pursuant to these rules.

(5) At the hearing, the party presenting the testimony may, if they deem it appropriate, briefly summarize the pre-filed testimony prior to the start of cross-examination. Nothing contained within the pre-filed testimony ~~herein~~ shall be deemed to foreclose any party from presenting rebuttal testimony or from presenting testimony in response to reasonably unforeseen areas without the necessity of pre-filing.

(6) At the request of a party or a witness, the hearing examiner may permit a witness to appear and provide oral testimony by means of telephonic or video participation. Such requests may only be granted if the hearing examiner determines that telephonic or video participation will not substantially prejudice the rights of any party.

(37) All oral testimony and pre-filed testimony shall be under oath or affirmation ~~parties shall be advised of a staff expert witness' findings, if any, based on any prepared written testimony filed by the parties pursuant to ARM 36.12.220(2), site observations taken pursuant to ARM 36.12.225, materials noticed pursuant to ARM 36.12.221(4) and ARM 36.12.228(1)(b), or testimony or other documents introduced during the proceeding. A staff expert witness' deposition may be taken by any party and the expert may be called to testify by any party and/or by the hearing examiner. The expert witness shall be subject to cross-examination by all parties. Nothing in this rule shall prevent any of the parties from producing other expert evidence on the same fact or matter to which the testimony of the staff expert witness appointed by the hearing examiner relates.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-611, 2-4-612, MCA

36.12.223 HEARING PROCEDURE (1) Unless the hearing examiner determines otherwise the a contested case hearing shall be conducted substantially in the following manner:

(a) The hearing examiner shall open the hearing and provide a statement that explains or identifies: ~~After opening the hearing, the hearing examiner shall, unless all parties are represented by counsel, state the procedural rules for the hearing including the following:~~

(i) the subject matter of the hearing and issues presented; ~~All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the hearing examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination to the extent consistent with disclosure of all relevant testimony and information.~~

(ii) the procedures to be followed at hearing including the sequence for presenting evidence and argument; ~~All parties have a right to be represented at the hearing.~~

(iii) any exhibits or evidence entered into the record by stipulation of the parties; ~~The rules of evidence are set forth in ARM 36.12.221(1).~~

(iv) the burden of proof for each party;

(v) the hearing is the time and place for each party to present argument, evidence, and cross-examine witnesses;

(vi) the common law and statutory rules of evidence do not apply;

(vii) the hearing examiner's discretion to make determinations regarding admissibility of evidence; and

(viii) such other matters as the hearing examiner considers appropriate.

(2) ~~Any stipulation agreements entered into by any of the parties prior to or during the hearing shall be entered into the record.~~

(32) Each ~~The party with the burden of proof may~~ shall be provided the opportunity to make an opening statement. ~~All of the parties may make such statements in a sequence determined by the hearing examiner.~~

(43) Each party shall be provided the opportunity to present evidence and examine witnesses ~~After any opening statements, unless otherwise determined by the hearing examiner, the applicant shall begin the presentation of evidence. The applicant shall be followed by the other parties and/or expert witness in a sequence determined by the hearing examiner.~~

(54) Each party shall be provided the opportunity to cross-examine witnesses ~~Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.~~

(65) Each party shall be given the ~~When all parties and witnesses have been heard, opportunity shall be offered to present final argument in a sequence and form~~ determined by the hearing examiner. Such final argument may be in the form of written memoranda or oral argument, or both.

(76) After final argument, the hearing shall be closed or continued. If the hearing is continued, ~~it~~ the hearing examiner shall make an oral statement providing:

(a) the contested case hearing will be either continued to a certain time and day, announced at the time of the hearing and made a part of the record; or

(b) the contested case hearing will be continued to a date to be determined later by written order, ~~which must be upon not less than ten days written notice to the parties.~~

(87) The hearing examiner may require submission of all parties of record to file proposed findings of fact and/or post-hearing briefs, or both, at the close of testimony in the hearing. The proposed findings and briefs may be submitted simultaneously or sequentially and within such time periods as the hearing examiner may prescribe. ~~Any party may volunteer to file proposed findings and briefs, and the hearing examiner may receive them even if the other parties choose not to so file.~~

(98) The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits that the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-611, 2-4-612, MCA

36.12.225 SITE VISIT (1) Upon the hearing examiner's motion or upon the motion of any party, a site visit to the lands involved in the proceeding may be made at any time during the proceeding.

(2) The hearing examiner may enter upon lands to view proposed works, sources of water, location of proposed uses, construction of works, and such other views that are deemed relevant by the hearing examiner to gain a proper understanding of the issues involved in the proceeding.

(3) Before making any site visit, the hearing examiner shall give the parties at least five days written notice to participate, unless the motion is made during a hearing and then oral notice on the record shall be sufficient. ~~During the final decision-making process, the final decision-makers may, upon their own motion or upon the motion of any party, make a site visit of the lands involved in the proceeding provided that the parties are given written notice as stated above.~~

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 85-2-115, MCA

36.12.226 THE RECORD (1) The hearing examiner shall maintain the official record in each contested case proceeding until the issuance of the final order.

(2) The record in a contested case shall contain:

(a) a complete copy of the application file;

(ab) all pleadings, motions, and intermediate rulings, and orders;

(bc) all evidence received or considered, including a verbatim record of oral proceedings and pre-filed testimony;

(cd) a statement of matters officially noticed;

(de) questions and offers of proof, objections, and rulings thereon;

- ~~(e) proposed findings and exceptions;~~
- ~~(f) any decision, opinion or report by the hearing examiner; and~~
- ~~(gf) the department file and all staff memoranda or data submitted to the hearing examiner as evidence in connection with the case; and . (Note substantially the same as 2-4-614, MCA.)~~
- (g) the decision or final order by the hearing examiner.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-614, MCA

36.12.227 VERBATIM RECORD (1) The verbatim record consisting of ~~tape~~ audio recordings of the contested case hearing shall be transcribed if requested by the hearing examiner.

(2) If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting party must make arrangements with the department for ordering and payment of preparation cost of a written transcript.

(3) If the hearing examiner does not request a transcript, ~~no request is made~~ the department will transmit a copy of the ~~tape(s)~~ recording(s) of the proceedings to the district court.

(4) Any party may request copies of the ~~tape~~ recordings and shall pay the charge set by the department ~~board~~. All monies received for copies of the ~~tapes~~ recordings shall be payable to the department and shall be deposited in the department's water right appropriation account in the state treasury.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-614, MCA

36.12.228 THE DECISION OR FINAL ORDER ~~(1) The hearing record shall be the basis for the decision.~~

~~(a) No factual information or evidence which is not a part of the record shall be considered by the hearing examiner in the preparation of the decision.~~

~~(b) The hearing examiner may take official notice of judicially cognizable facts and generally recognized technical or scientific facts within the department's specialized knowledge, in conformance with the requirements of 2-4-612(6), MCA.~~

(21) Following the close of the record, the hearing examiner shall make a decision or final order pursuant to ~~2-4-621~~ 2-4-623, MCA, ~~and~~

(2) Upon completion, a copy of the decision shall be served upon all parties by:

- (a) personal service; ~~by~~
- (b) first class mail; ~~or by~~
- (c) depositing it with the mail and distribution section, General Services Division, Department of Administration.

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-612, ~~2-4-621~~, 2-4-623, MCA

36.12.234 REOPENING RECORD (1) Upon motion of a party to the proceeding filed prior to ~~issue~~ issuance of a decision or final order, the record may be reopened for receipt of evidence. ~~Such motion must be received by the hearing examiner within 15 days after the issuance of the proposal for decision. Additional evidence may be received only if it is shown to the satisfaction of the hearing examiner that:~~

~~(a) the additional evidence is to be material; and~~

~~(b) there were good reasons for the failure to present it in the hearing.~~

(2) Prior to issuance of a decision or final order and upon providing the parties with notice and the opportunity to object, the hearing examiner may reopen the record to request additional evidence or clarification that the hearing examiner deems necessary to issue a decision or final order.

AUTH: 2-4-201(2), 85-2-113(2), MCA

IMP: 2-4-611, 2-4-614, 2-4-703, 2-4-621, 2-4-622, MCA

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

NEW RULE I APPOINTMENT OF STAFF EXPERT (1) A department staff expert may be appointed to issue a written report/opinion regarding:

(a) the subject matter and issues presented by technical aspects of the application;

(b) valid objections; and/or

(c) evidence in the contested case proceeding.

(2) A copy of any department staff expert report/opinion shall be served on each party at least 14 days before commencement of the contested case hearing.

(3) A party may take the deposition pursuant to ARM 36.12.216 of any department staff expert witness who prepares a report/opinion.

(4) A department staff expert witness who prepares a report/opinion may be called as a witness at the contested case hearing and examined or cross-examined by any party and/or the hearing examiner.

(5) Nothing in this rule shall prevent any of the parties from producing other expert evidence on the same fact or matter to which the staff expert witness appointed by the hearing examiner relates.

AUTH: 2-4-201, 85-2-113, MCA

IMP: 2-4-611, 2-4-612, MCA

5. The department proposes to repeal the following rules:

36.12.202 DEFINITIONS

AUTH: 2-4-201, 85-2-113, MCA

IMP: 2-4-201, 85-2-113, MCA

36.12.205 DEFECTIVE NOTICE OF APPLICATION

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-105, MCA

36.12.211 DISQUALIFICATION OF HEARING EXAMINER

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-611, MCA

36.12.219 UNTIMELY OBJECTORS

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-611, 2-4-612, MCA

36.12.229 EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSAL
FOR DECISION AND THE FINAL DECISION-MAKING PROCESS

AUTH: 2-4-201(2), 85-2-113(2), MCA
IMP: 2-4-621, 2-4-622, 2-4-623, MCA

REASONABLE NECESSITY: The amendments to ARM 36.12.101, 36.12.201, 36.12.203, 36.12.204, 36.12.206, 36.12.207, 36.12.209, 36.12.210, 36.12.212 through 36.12.216, 36.12.220, 36.12.223, 36.12.225 through 36.12.228, 36.12.234; the adoption of New Rule I; and the repeal of ARM 36.12.202, 36.12.205, 36.12.211, 36.12.219, and 36.12.229 are reasonably necessary to clarify the procedure for contested case procedures before the department. The department's hearing rules were originally adopted in 1984. In 2009, HB 40 was adopted by the legislature. HB 40 (2009) amended the process for granting, modifying, or denying applications for water use permits and change authorizations and expressly provided an applicant with the opportunity to show cause on preliminary determinations to deny or grant in modified form pursuant to 85-2-310, MCA. The amendments, New Rule I, and repeal of these rules provide clarification and guidance regarding procedures for show cause hearings. The amendments, New Rule I, and repeal to these rules also eliminate unnecessary rules, eliminate unnecessary definitions, and consolidate the definition section of the department's rules.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted 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 November 20, 2014.

7. Martin Balukas, 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, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment, adoption, and repeal of the above-referenced rules will not significantly and directly 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 October 14, 2014.

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 37.85.105 pertaining to the) PROPOSED AMENDMENT
revision of fee schedules for Medicaid)
provider rates)

TO: All Concerned Persons

1. On November 13, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 6, 2014, 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:

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) remains the same.

(b) Fee schedules are effective ~~July 1, 2014~~ January 1, 2015. The conversion factor for physician services is \$35.86. The conversion factor for allied services is \$24.33. The conversion factor for mental health services is \$23.87. The conversion factor for anesthesia services is \$28.66.

(c) through (i) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2014~~ January 1, 2015.

(d) through (k) remain the same.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~October 1, 2014~~ January 1, 2015. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~October 1, 2014~~ January 1, 2015.

(m) through (r) remain the same.

(s) The optometric fee schedule provided in ARM 37.86.2005, is effective January 1, 2015.

(4) through (6) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.105(2)(b) and (3)(c) to change the effective date for federal Medicare procedure codes and provider fee reimbursement schedules for RBRVS and hearing aid services, from July 1, 2014 to January 1, 2015, and to amend the effective date reference in ARM 37.85.105(3)(l) for DME fee schedules from October 1, 2014 to January 1, 2015. The department is proposing to further amend ARM 37.85.105(3) through the insertion of new (3)(s) to incorporate by reference citation of an Optometric program provider fee schedule provided in ARM 37.86.2005, effective January 1, 2015.

The department administers the Montana Medicaid program as a joint federal-state program pursuant to 53-6-101, MCA, et seq., and Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Medicare physician fee schedules and procedure codes described and incorporated by reference in (2)(a) of this rule are revised annually, effective January 1, to reflect additions, deletions, and changes in the federal Medicare program. The department receives, examines, and implements these changes to affected Medicaid programs as authorized under 53-6-101(8), MCA. The proposed rule amendments are necessary for the department to administer Montana Medicaid for calendar year 2015 within agreed federal funding requirements and to maintain federal program compliance without undue loss of funding or services to Medicaid members. The proposed addition of the Optometric program's provider fee schedule and procedure coding references in (3)(s) is a continuation of the department's efforts to consolidate all program provider fee schedules and procedure codes affected by the periodic Medicare coding and fee reimbursement adjustments into one rule, minimizing the amount of rulemaking required by the department's programs when such periodic adjustments occur.

Fiscal Impact

The department estimates the general fund impact of the proposed amendment to ARM 37.85.105(2)(b), regarding RBRVS rates, is approximately \$36,800 and the proposed amendment to ARM 37.85.105(3)(l), regarding DME services, is approximately \$36,500. The proposed amendments to ARM 37.85.105(3)(c) and (s) for hearing aid services and optometric services have no material impact.

The proposed amendments could affect an estimated 15,900 RBRVS providers, 391 DME providers, 27 hearing aide providers, 160 optometric providers, and 124,874 Medicaid eligible clients.

5. The department intends to adopt these rule amendments effective January 1, 2015.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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.

/s/ Geralyn Driscoll
Geraldyn Driscoll, Attorney
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2014.

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 37.40.402, 37.40.406,	)	AMENDMENT
37.40.420, and 37.40.422 pertaining)	
to updating the hospital swing-bed)	
direct care wage to the current fiscal	)	NO PUBLIC HEARING
year	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 22, 2014, 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 November 13, 2014, 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:

37.40.402 SWING-BED HOSPITALS, PROVIDER PARTICIPATION REQUIREMENTS (1) To participate and be reimbursed as a swing-bed hospital service provider in the Montana Medicaid program, a hospital must meet all of the following requirements:

- (a) through (g) remain the same.
- (h) The hospital meets the requirements of ~~(2)~~ ARM 37.40.416(1).
- (i) remains the same.

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

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

37.40.406 SWING-BED HOSPITALS, REIMBURSEMENT (1) through (3) remain the same.

(4) Providers must bill for all services and supplies in accordance with the provisions of ARM 37.85.406. The department's fiscal agent will pay a provider ~~on a monthly basis~~ the amount determined under these rules upon receipt of an appropriate billing which reports the number of patient days of swing-bed hospital services provided to authorized Medicaid recipients during the billing period.

(5) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.40.420 RESIDENT TRANSFER AND DISCHARGE RIGHTS (1) through (5) remain the same.

(6) The written notice of transfer or discharge must include the following:

(a) through (d) remain the same.

(e) the name, address, and telephone number of the state of Montana long term care ombudsman in the Governor's Office on Aging, Senior and Long Term Care Division; and

(f) and (7) remain the same.

AUTH: 53-6-113, MCA

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

37.40.422 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~January 1, 2010~~ January 1, 2015 through ~~December 31, 2010~~ December 31, 2015, swing-bed hospitals must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum amounts paid for all direct care and ancillary services workers that will receive the benefit of a direct care and ancillary workers' wage and benefit increase.

(2) remains the same.

(3) The department will pay Medicaid certified swing-bed hospitals located in Montana, in accordance with this rule, lump sum payments in addition to the reimbursement rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in swing-bed hospitals.

(a) The department will determine lump sum payments commencing ~~January 1, 2010~~ January 1, 2015, and again six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (4) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.40.402, 37.40.406, 37.40.420, and 37.40.422.

ARM 37.40.402

The proposed amendment is necessary to amend an incorrect citation to an administrative rule.

ARM 37.40.406

The proposed amendment is necessary to delete the wording "on a monthly basis" since providers can also bill on a weekly basis.

ARM 37.40.420

The proposed amendment is necessary to correct the contact information for the "long term care ombudsman" who is located in the Office on Aging within the Senior and Long Term Care Division, not the Governor's office.

ARM 37.40.422

The proposed amendment is necessary to correct an oversight and update the "lump sum payments for direct-care workers wage increases" to the correct fiscal year.

Fiscal Impact

There is one hospital and 44 critical access hospitals (CAHs) that participate in the Medicaid swing-bed program. Thirteen of the providers will participate in the FY 2015 Direct Care Wage payment in the amount of \$160,080, based on previous historical utilization. We are continuing the methodology for Medicaid swing-bed providers that incorporates the calendar year average nursing facility payment rate methodology for calculation of swing-bed rates for SFY 2015.

5. The department intends to adopt these rule amendments effective January 1, 2015.

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 November 20, 2014. 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., November 20, 2014.

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 the forty-five hospital Medicaid swing bed providers directly affected has been determined to be 13 facilities based on the number of hospital Medicaid swing-bed days.

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/ Valerie Bashor
Valerie Bashor, Attorney
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Oppen, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2014.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XIV and repeal of	)	PROPOSED ADOPTION AND
ARM 37.40.1101, 37.40.1102,	)	REPEAL
37.40.1105, 37.40.1106, 37.40.1301,)	
37.40.1302, 37.40.1303, 37.40.1305,)	
37.40.1306, 37.40.1307, 37.40.1308,)	
and 37.40.1315 pertaining to the)	
establishment of regulations for the)	
personal assistance services program)	

TO: All Concerned Persons

1. On November 12, 2014, at 11:00 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, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: DEFINITIONS (1) "Activities of daily living" (ADL) means basic personal everyday activities limited to bathing, personal hygiene, transferring, positioning, eating, dressing, toileting, assistance with exercise routine performed in home, self-administered medication, including medication reminders, and meal preparation.

(2) "Agency-based services" means services provided by a qualified personal care provider agency. The agency works with the member to establish the schedule for service provision and provides the trained staff necessary for the delivery of care.

(3) "Annual review" means a member review conducted by a licensed nurse from the designated quality improvement organization once every 365 days. The review of the member's health status includes the completion of a functional assessment and service profile.

(4) "Case manager" means a nurse or social worker who is responsible for managing services provided to eligible members under the Home and Community Based Services (HCBS Waiver) Program. These case managers plan, implement, and monitor the delivery of services available through the program to the member.

(5) "Department" means the Montana Department of Public Health and Human Services.

(6) "Direct-Care Wage" means funding which is a supplemental payment made to Personal Assistance Services (PAS) providers for the purpose of providing direct-care wage increases, benefits, or lump-sum payments to workers that provide direct services. These funds are distributed proportionately based on a pro rata share of appropriated funding to participating providers of PAS. The distribution is based on the number of units of Medicaid PAS provided by each provider agency for the distribution year relative to the total number of units provided statewide by all providers of PAS.

(7) "Functional assessment" means an assessment that is performed by the designated quality improvement organization licensed nurse to determine if the member qualifies for PAS and requires assistance with activities of daily living, instrumental activities of daily living, and health-related tasks.

(8) "Health Care for Health Care Workers" means funding which is designated for the purpose of Medicaid provider rate increases when health insurance is provided for direct-care workers in the personal assistance, personal assistance services, and private duty nursing programs. The funds must be used to cover premiums for health insurance that meet defined benchmark criteria established by the department. These funds are distributed proportionately based on a pro rata share of appropriated funding to participating providers of PAS based on the number of units of Medicaid PAS provided by each provider for the distribution year relative to the total number of units provided statewide by all providers of service.

(9) "Health care professional" means a medical doctor, certified physician assistant, nurse practitioner or registered nurse, occupational therapist or a medical social worker, who is familiar with the member's activities of daily living. The health care professional may not be a paid employee of the PAS provider agency.

(10) "Health maintenance activities" means health-related tasks that may be reimbursed through the Nurse Practice Act exemption in accordance with ARM 24.159.1616 and 37-8-103, MCA. These tasks are limited to bowel programs, wound care, urinary system management, and administration of medication. These activities are delivered by the member's personal care attendant when the activities, in the opinion of the physician or other health care professional, can be performed by the person if the person were physically capable and if the procedure could be safely performed in the home. A member is only able to receive these services from a personal care attendant using the self-direct model.

(11) "Instrumental activities of daily living" means activities which are limited to activities provided in accordance with the service plan, which are directly related to the member's person-centered needs. These activities are limited to the following:

(a) household tasks which are limited to cleaning the area used by the member, changing the member's bed linens, and doing the member's laundry; and

(b) shopping.

(12) "Member" means a person eligible for and enrolled as a participant in the Montana Medicaid Program.

(13) "Nurse supervisor" means a licensed nurse employed by an agency-based PAS provider agency who completes the service plan with the member and oversees the training and orientation of personal care attendants in the delivery of PAS.

(14) "Personal Assistance Services" (PAS) means the delivery of medically necessary in-home services provided to Medicaid eligible members whose health conditions cause them to be functionally limited in performing activities of daily living. A member must have a medical need for hands-on assistance in order to receive PAS.

(15) "Personal Assistance Services Program" (PASP) means a program developed in accordance with 1905 (a)(24) of the Social Security Act, which allows states the option of providing personal assistance services through an approved state plan. The PAS Program is developed to deliver attendant-based services through the use of a person-centered planning process that includes service coordination and member involvement to provide long-term services and supports (LTSS) to individuals in their homes or communities rather than in institutional settings.

(16) "Personal care attendants" means individuals who assist members with their activities of daily living, instrumental activities of daily living, and other health care needs.

(17) "Person-centered plan" means a department-generated form that is utilized in the identification of the member's goals, strengths, and preferences for service delivery. The form is developed using a person-centered planning process that focuses on learning what is important to a member and how they want to live. The ultimate goal of the person-centered planning process is increased member choice, participation, and independence, while also ensuring health and safety.

(18) "Personal representative" means an individual designated by a member to act on the member's behalf to hire, direct, schedule, and train personal care attendants in performing self-directed PAS.

(19) "Plan Facilitator" means the person designated by the department to be responsible for developing and coordinating the member's person-centered plan. The plan facilitator is either a qualified case manager, when one exists, or an individual appointed by the provider agency who is responsible for development of the plan in situations where there is no qualified case manager.

(20) "Oversight staff" means the person employed by a self-directed PAS provider agency that completes the service plan with the member and oversees the member's participation in the program.

(21) "Provider agency" means a Medicaid-enrolled provider who provides attendant-based services.

(22) "Quality Improvement Organization" (QIO) means a department-contracted entity who is responsible for completing the functional assessments for members accessing PAS.

(23) "Self-directed services" means a service delivery option for PAS. In this option the member, or a personal representative, takes responsibility of managing

the PAS. Under the self-directed option, the member or personal representative must hire, fire, supervise, and manage the personal care attendants.

(24) "Service Delivery Record" means a form used to document the personal care attendants' delivery of PAS on a daily basis. The form includes:

- (a) dates;
- (b) times;
- (c) location, when not in the home; and
- (d) types of tasks provided by the personal care attendant.

(25) "Service plan" means a department-generated form that captures the scope and frequency of PAS based on the functional assessment of a member's needs for service and support.

(26) "Service profile" means a form that summarizes the member's functional need for PAS. A licensed quality improvement organization nurse completes the service profile form. The service profile identifies the member's level of impairment, frequency and need for assistance with activities of daily living, instrumental activities of daily living, and health maintenance activities. The profile also provides the member's total authorization for PAS on a biweekly basis.

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

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

NEW RULE II AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: ELIGIBILITY, SERVICES PROVIDED, AND LIMITATIONS

(1) To qualify for Personal Assistance Services (PAS), a person must:

- (a) be Medicaid eligible; and
- (b) demonstrate a medical and functional need for assistance with activities of daily living.

(2) PAS include assistance with the following activities:

- (a) activities of daily living;
- (b) instrumental activities of daily living; and
- (c) medical escort services.

(3) Instrumental activities of daily living are only authorized when the member demonstrates a medical and functional need to receive assistance with activities of daily living. Instrumental activities of daily living may not account for more than one-third of the total time allocated per two-week period for PAS or a maximum of six hours per two-week time period, whichever is less.

(4) Medical escort services are only authorized when the member has demonstrated a medical and functional need for PAS. Medical escort services must be directly related to a member's medical and functional need for assistance en route to, or at the Medicaid reimbursable medical service, and are available when a family member or caregiver is unable to accompany the member.

(5) PAS, except for medical escort services, shopping, and laundry, will be provided in the member's home.

(6) PAS may not typically be provided in group home settings unless prior authorized by the department. Group home settings include licensed youth foster homes, mental health group homes, and adult intensive community home services.

PAS may be authorized when the person's medical needs are beyond the scope of services normally provided by programs funding services in the group setting. For example, a person requiring additional assistance because of an acute medical episode or post-hospitalization period may receive PAS in a youth foster home setting.

(7) PAS are not available to the following:

(a) persons who reside in a hospital, hospitals providing long-term care, or a long-term care facility as defined in 50-5-101, MCA, and licensed under 50-5-201, MCA;

(b) persons who reside in assisted living or adult foster homes, as defined in 50-5-225, MCA, and licensed under 50-5-227, MCA; or

(c) persons who live in homes which are not safely accessible by normal modes of transportation.

(8) PAS may not include any skilled services that require professional medical training unless otherwise permitted under 37-8-103, MCA, or ARM 24.159.1616.

(9) PAS do not include services which maintain an entire household. PAS do not include:

(a) cleaning floors and furniture in areas that members do not use or occupy;

(b) laundering clothing or bedding that members do not use;

(c) supervision, respite care, babysitting, or visiting;

(d) maintenance of animals unless the animal is a certified service animal specifically trained to meet the health and safety needs of the member;

(e) home and outside maintenance; and

(f) meal preparation for other family members.

(10) PAS provided by a member of the member's immediate family are not PAS for the purposes of the Medicaid program, and are not eligible for reimbursement. Immediate family member includes the following:

(a) a spouse; and

(b) a natural, adoptive, or foster parent of a minor child.

(11) In addition to the PAS provided through these rules, a member may receive PAS through the Medicaid Home and Community-Based Services Program for elderly and physically disabled persons, persons with severe and disabling mental illness, or persons with developmental disabilities.

(12) PAS must be delivered by a PAS personal care attendant employed by an enrolled Medicaid provider that has met the criteria established by the department for the delivery of PAS as referenced in [New Rules X and XI].

(13) PAS may not be provided to relieve a parent of child-caring or other legal responsibilities. PAS for children with disabilities may be appropriate when the parent is unqualified or otherwise unable to provide services and the child is at risk of institutionalization unless the services are provided.

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

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

NEW RULE III AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: PERSON-CENTERED PLAN REQUIREMENTS

(1) In order to receive Personal Assistance Services (PAS), the member must be capable of making choices about activities of daily living and instrumental activities of daily living. The member must be able to understand the impact of these choices and assume responsibility for the choices. If the member is unable to meet these criteria, the member may have someone assist them in decision making and directing their activities. The PAS person-centered planning process includes multiple steps to protect a member's health and safety while ensuring that member choice and control are an integral component of service delivery. Prior to delivering PAS, the following person-centered planning requirements must be met:

- (a) a licensed contract nurse must complete a functional assessment and service profile;
- (b) a plan facilitator must complete the person-centered plan; and
- (c) a nurse supervisor or program oversight staff must complete the service plan.

(2) The person-centered planning requirements in (1) may be delayed in the circumstances outlined in (7).

(3) The quality improvement organization will define the member's medical and functional needs in a functional assessment and service profile. The functional assessment and service profile must meet the following criteria:

- (a) a licensed contract nurse will develop and review the member's functional assessment and service profile initially and will renew it at least annually; and
- (b) the service profile will establish the maximum authorization for PAS in a two-week time period.

(4) The member and plan facilitator must meet to complete a person-centered plan that identifies, in writing, member-specific goals and objectives for the delivery of PAS. The plan facilitator must ensure the person-centered plan is completed prior to service and renewed at least annually. The person-centered plan will be based on the member's functional assessment and service profile as provided by the quality improvement organization.

(a) In agency-based PAS, the PAS provider agency nurse supervisor must participate in the initial and annual person-centered planning visit.

(b) In self-directed PAS, the PAS provider agency oversight staff must participate in the initial and annual person-centered planning visit.

(5) The service plan will identify the type and amount of PAS and will govern the delivery of service. The service plan must meet the following criteria:

- (a) in agency-based PAS, the agency nurse supervisor must approve the service plan initially, and must recertify the service plan every six months;
- (b) in self-directed PAS, the provider agency oversight staff must approve the service initially, and must recertify the service plan every six months;
- (c) the plan must address the member's medical and functional need for service; and

(d) the plan must not exceed the service profile authorization for hours delivered in a two-week time period.

(6) A member will not receive PAS beyond the service profile authorization unless one of two conditions is met:

- (a) The provider agency implements a temporary service plan as outlined in (7).

(i) in agency-based PAS, the provider agency nurse supervisor must sign the temporary service plan and prescribe in writing the member's needs for the increase in services.

(ii) in self-directed PAS, the provider agency oversight staff must sign the temporary service plan and prescribe in writing the member's needs for the increase in services.

(b) The provider agency approves medical escort service during the time period. The provider agency must provide documentation to ensure the escort was provided according to program parameters.

(7) If a member is at high risk for institutionalization or in need of temporary PAS, the provider agency may implement services immediately that include activities of daily living without the functional assessment, service profile, and person-centered plan in place. In this case the provider agency must implement a temporary service plan. The provider agency must use a department-approved form to document the temporary service plan. The temporary service plan must prescribe in writing the member's medical and functional need for service. The provider must refer the member to the quality improvement organization for a functional assessment by the 28th day of the temporary service plan or they must discharge the member.

(a) In self-directed PAS, the health care professional must complete the health care professional authorization form prior to the delivery of services and the provider agency oversight staff must complete and sign the service plan prior to the delivery of services.

(b) In agency-based PAS, the provider agency nurse supervisor must complete and sign the temporary service plan prior to the delivery of services.

(8) The member must agree to accept the provision of PAS as specified in the person-centered service plan.

(9) The PAS provider must have a written complaint process. The member may receive a copy upon request. The provider must adhere to the process for any member complaints related to the person-centered planning and service-delivery process.

(10) The delivery of agency-based PAS must be supervised by a licensed agency nurse. Supervision includes oversight of the training and orientation of direct-care workers.

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

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

NEW RULE IV SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:

DESCRIPTION AND PURPOSE (1) Self-directed Personal Assistance Services (PAS) are services provided to Medicaid members who choose to take the responsibility or have a representative take the responsibility of managing the PAS. Self-directed PAS allow the member to direct PAS, including health maintenance tasks.

(2) Health maintenance tasks include the following:

- (a) urinary systems management;
- (b) bowel care;

- (c) wound care; and
- (d) medication management.
- (3) Members must provide their physician or health care professional evidence of ability to manage their PAS and health maintenance tasks.
 - (a) The scope and detail of the evidence will be determined by the physician or health care professional.
 - (4) Members who are unable to utilize self-directed PAS may receive services through the agency-based PAS program managed by provider agencies under agreement with Medicaid.

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

NEW RULE V SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:
GENERAL REQUIREMENTS (1) Self-directed Personal Assistance Services (PAS) may only be delivered by an attendant who is the employee of a Medicaid-enrolled provider and who is selected by the member or their personal representative.

(2) Agency-based PAS managed by provider agencies under agreement with Medicaid are not available to members who are participating in the self-directed PAS program. The use of PAS managed by provider agencies may be permissible in the event that the member's backup plan fails.

(3) Home health and home and community-based waiver skilled nursing services are not available to members for the completion of health maintenance activities which the member has been authorized to manage. The use of home health and home and community-based waiver skilled nursing services may be permissible in the event that the member's backup plan fails. In this case the service must be prior authorized.

(4) Members who have been terminated from the self-directed program may apply for agency-based PAS through the Medicaid PAS program managed by approved provider agencies.

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

NEW RULE VI SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:
MEMBER REQUIREMENTS (1) To qualify for self-directed Personal Assistance Services (PAS), the member:

- (a) must be capable of assuming the management responsibilities of self-directed PAS or have a personal representative willing to assume this responsibility. Management responsibilities include the following:
 - (i) recruit, hire, schedule, train, and dismiss all personal care attendants;
 - (ii) develop a backup plan for when a personal care attendant is unable to provide services. The backup plan identifies the process for addressing the member's functional need for service as identified on the service plan should the personal care attendant be unable to deliver services;
 - (iii) review, approve, sign, and date all service delivery records to provide assurance that the service plan has been followed; and

- (iv) assume medical and related liability regarding the delivery of PAS.
 - (b) must obtain authorization from a physician or health care professional to participate in the program;
 - (c) must obtain authorization prior to service delivery and annually thereafter; and
 - (d) must be capable of making choices about activities of daily living, understand the impact of these choices, and assume the responsibility of the choices.
- (2) The member may have a personal representative assume some or all of the responsibilities imposed by this rule. The personal representative is an immediately involved representative who meets the following criteria:
- (a) is a person who is directly involved in the daily care of the member;
 - (b) is available to assume the responsibility of managing the member's care, including directing the care as it occurs in the home; and
 - (c) will not be employed by the member's PAS provider agency.

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

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

NEW RULE VII AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: TERMINATION OF SERVICES (1) Personal

Assistance Services (PAS) may be terminated for any of the following reasons:

- (a) the member, or other persons in the household, subjects the direct-care worker to physical or verbal abuse, sexual harassment, exposure to the use of illegal substances, or to threats of physical harm;
- (b) the member requests termination of services or refuses to accept help;
- (c) the environment of the member is unsafe for the provision of PAS;
- (d) the member is engaging in illegal activity in the home;
- (e) the member's physician requests termination of services;
- (f) the member no longer has a medical need for PAS;
- (g) the member refuses the services of a direct-care worker based solely or partly on the attendant's race, creed, religion, sex, marital status, color, age, handicap, or national origin;
- (h) the member refuses to accept services in compliance with the service plan;
- (i) the member refuses to participate in the functional assessment, recertification, and person-centered planning visits; or
- (j) the member falsifies the service delivery record.

(2) The department may terminate or reduce PAS when funding for services is unavailable.

(3) The provider must give at least ten days advance notice to a member when PAS are terminated for reasons listed in (1)(d) through (1)(j).

(4) The provider may immediately, but temporarily, suspend services for the reasons listed in (1)(a) through (1)(c). Following the temporary suspension of services the provider may enter into an agreement with the member to ensure that the violations of (1)(a) through (1)(c) do not reoccur. If the member fails to abide by the terms of the agreement, services may be permanently terminated.

(5) The department will provide written notice to an applicant when PAS are initially denied to the applicant.

(6) A person may request a fair hearing for any adverse determination made by the department. Fair hearings will be conducted as provided for in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

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

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

NEW RULE VIII AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: PROVIDER ENROLLMENT (1) Providers will enroll as a Personal Assistance Services (PAS) personal care attendant provider. Providers must enroll through the department's fiscal intermediary.

(2) PAS providers must be businesses incorporated under the laws of the state of Montana.

(3) PAS providers must submit a description of the proposed service area which must include, at a minimum, coverage of the entire area of at least one county or Indian reservation.

(4) PAS providers must comply with onsite visit requirements both before and after enrollment to verify information submitted to the department.

(5) PAS providers must provide the documentation to demonstrate the following:

(a) general liability insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate;

(b) motor vehicle liability insurance with split limits of \$500,000 per person for personal injury, \$1,000,000 per accident occurrence for personal injury, and \$100,000 per accident occurrence for property damage; or, combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the provider or its agents, officers, representatives, assigns, or subcontractors;

(c) current unemployment insurance and workers' compensation coverage; and

(d) verification of completion of the department's mandatory PAS training.

(6) PAS providers will select to deliver either agency-based or self-directed PAS option. Once a provider has completed a successful compliance review the provider may enroll in the other service option.

(7) The department may contract with out-of-state agencies to provide PAS for Montana Medicaid members temporarily living out of state.

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

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

NEW RULE IX AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: CONFLICT-OF-INTEREST CRITERIA (1) In order to perform the duties of an agency-based nurse supervisor, self-directed program

oversight staff, or the Personal Assistance Services (PAS) provider person-centered plan facilitator the person cannot:

- (a) be related by blood or marriage to the member or to any paid caregiver for the member;
- (b) be financially responsible to the member;
- (c) have authority to make financial or health-related decisions on behalf of the member;
- (d) benefit financially from the provision of assessed need for services;
- (e) be employed as a direct-care worker at the agency; or
- (f) have a majority ownership stake in the agency.

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

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

NEW RULE X AGENCY-BASED PERSONAL ASSISTANCE SERVICES: PROVIDER REQUIREMENTS (1) Providers may enroll as a Personal Assistance Services (PAS) personal care attendant provider.

(2) PAS providers will maintain staff resources, including a nurse supervisor and person-centered plan facilitator, to perform the necessary PAS duties as referenced in [New Rule III]. The nurse supervisor and plan facilitator may be the same person.

(3) PAS nurse supervisors must meet the following criteria:

- (a) be a licensed nurse;
- (b) have at least one year's experience in aging and disability services;
- (c) receive training in PAS; and
- (d) be free of conflict-of-interest criteria as referenced in [New Rule IX].

(4) PAS plan facilitators must meet the following criteria:

- (a) have at least one year's experience in aging and disability services;
- (b) receive certification in the person-centered planning process; and
- (c) be free of conflict-of-interest criteria as referenced in [New Rule IX].

(5) The PAS provider agency must provide documentation to verify the nurse supervisor and plan facilitator credentials, certification, and training.

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

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

NEW RULE XI SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: PROVIDER REQUIREMENTS (1) Self-directed Personal Assistance Services (PAS) providers must employ program oversight staff to perform the following self-directed oversight activities:

- (a) assist members to identify resources for personal assistants;
- (b) advise the member regarding program requirements;
- (c) complete compliance documentation and follow-up if the member does not comply with program requirements; and
- (d) provide documentation to ensure that the personal representative meets the participation criteria described in [New Rule VI].

(2) Self-directed PAS providers must maintain staff resources, including a program oversight staff and person-centered plan facilitator, to perform the necessary PAS duties as referenced in [New Rule III]. The program oversight staff and person-centered plan facilitator may be the same person.

(3) Self-directed program oversight staff must meet the following criteria:

(a) have at least one year's experience in aging and disability services;

(b) receive training in PAS; and

(c) be free of conflict-of-interest criteria as referenced in [New Rule IX].

(4) Self-directed plan facilitators must meet the following criteria:

(a) have at least one year's experience in aging and disability services;

(b) receive certification in the person-centered planning process; and

(c) be free of conflict-of-interest criteria as referenced in [New Rule IX].

(5) The PAS provider agency must provide documentation to verify program oversight staff and plan facilitator credentials, certification, and training.

(6) Self-directed PAS provider agencies must act as the employer of record for direct-care workers for the purposes of payroll and federal hiring practices.

(7) Effective January 1, 2015, self-directed PAS provider agencies must provide quarterly reports for all self-directed personal care attendants employed by the agency, in the format specified by the department. The quarterly report must include the names, addresses, and phone numbers, wages, years of experience in aging and disability services, availability of employee-sponsored health insurance, whether a background check was conducted, and, if so, whether it was a fingerprint criminal background check.

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

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

NEW RULE XII AGENCY-BASED PERSONAL ASSISTANCE SERVICES:
PROVIDER COMPLIANCE (1) Providers of Personal Assistance Services (PAS) will be subject to compliance reviews to provide assurance to the department that services are being provided within the rules and policy of the program.

(2) The department will conduct compliance reviews on the provider's premises and through documentation requests. The provider must supply documentation requested by the department in a reasonable time frame and no later than 30 days following the request.

(3) The reviews will take place at times determined by the department.

(4) The department will determine compliance in the following service delivery areas:

(a) service authorization documentation;

(b) high-risk authorization;

(c) amendments and temporary authorization;

(d) service plan and member choice;

(e) service delivery;

(f) nurse supervision and oversight; and

(g) health and welfare and serious occurrence reports.

(5) The department will determine compliance in the following administrative areas:

- (a) attendant training;
 - (b) staff credentials, certification, and training;
 - (c) principles of charting;
 - (d) maintenance of serious occurrence reports;
 - (e) member satisfaction surveys;
 - (f) required documentation;
 - (g) agency manuals and handouts, including complaint process;
 - (h) workers' compensation, liability, and automobile coverage; and
 - (i) service billing.
- (6) The department will determine compliance in the following person-centered planning delivery areas:
- (a) plan facilitator certification documentation;
 - (b) member and plan facilitator rights and responsibility documentation;
 - (c) person-centered plan and member choice; and
 - (d) risk assessment and mitigation.
- (7) The department will examine a minimum of three cases or five percent of the provider's case load for the purpose of the compliance review, whichever is greater. The department will review additional cases, when necessary.
- (8) The provider will meet all standards in ninety percent of the cases to be considered in compliance. If ninety percent compliance is not met, a second compliance review will be scheduled.
- (9) The provider must meet all standards in ninety percent of the cases in the second review or will be subject to department sanctions as provided in ARM 37.85.401.

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

NEW RULE XIII SELF-DIRECTED PERSONAL ASSISTANCE SERVICES:
PROVIDER COMPLIANCE (1) Providers of self-directed Personal Assistance Services (PAS) will be subject to compliance reviews to provide assurance to the department that services are being provided within the rules and policy of the program.

(2) The department will conduct compliance reviews on the provider's premises and through documentation requests. The provider must supply documentation requested by the department in a reasonable time frame and no later than 30 days following the request.

(3) The reviews will take place at times determined by the department.

(4) The department will determine compliance in the following service delivery areas:

- (a) service authorization documentation;
- (b) health-care professional authorization;
- (c) high-risk authorization;
- (d) amendments and temporary authorization;
- (e) service plan and member choice;
- (f) service delivery;
- (g) agency program oversight; and

- (h) health and welfare and serious occurrence reports.
- (5) The department will determine compliance in the following administrative areas:
 - (a) staff credentials, certification, and training;
 - (b) principles of charting;
 - (c) maintenance of serious occurrence reports;
 - (d) member satisfaction surveys;
 - (e) required documentation;
 - (f) agency manuals and handouts, including complaint process;
 - (g) workers' compensation, liability, and automobile coverage; and
 - (h) service billing.
- (6) The department will determine compliance in the following person-centered planning delivery areas:
 - (a) plan facilitator certification documentation;
 - (b) member and plan facilitator rights and responsibility documentation;
 - (c) person-centered plan and member choice; and
 - (d) risk assessment and mitigation.
- (7) The department will examine a minimum of three cases or five percent of the provider's case load for the purpose of the compliance review, whichever is greater. The department will review additional cases, when necessary.
- (8) The provider must meet all standards in ninety percent of the cases to be considered in compliance. If ninety percent compliance is not met, a second compliance review will be scheduled.
- (9) The provider must meet all standards in ninety percent of the cases in the second review or will be subject to department sanctions as provided in ARM 37.85.401.

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

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

NEW RULE XIV AGENCY-BASED AND SELF-DIRECTED PERSONAL ASSISTANCE SERVICES: REIMBURSEMENT (1) Personal Assistance Services (PAS) may be provided up to, but not more than, 80 hours of attendant service per two-week time period per person as defined by the service profile. The department may, within its discretion, authorize additional hours in excess of this limit. Any services exceeding this limit must be prior authorized by the department. Prior authorization for excess hours may be authorized if additional assistance is required for:

- (a) a period of time not to exceed three months and as the result of an acute medical episode;
 - (b) a period of time not to exceed three months and to prevent institutionalization during the absence of the normal caregiver; or
 - (c) a period of time not to exceed three months and during a post-hospitalization period.
- (2) Add-on payments for direct-care wage, bonus, and health care for health care workers are subject to the requirements in [New Rules XV and XVI, proposed in MAR Notice No. 37-690].

(3) PAS include the following:

(a) personal care attendant service is a 15-minute unit and means an onsite visit specific to a member. Personal care attendant services include the performance of activities of daily living, instrumental activities of daily living, and health maintenance activities. The personal care attendant service rate is an all-inclusive rate and includes the provider agency's administrative, person-centered planning, supervision, and oversight duties;

(b) medical escort is a 15-minute unit and means transportation time and appointment time so the person can access an approved medical appointment; and

(c) mileage is a unit of one mile and means reimbursement for mileage when an attendant uses their vehicle to transport a person on an approved shopping, or medical escort trip.

(4) The department will not reimburse a member for in-home services delivered by a privately retained attendant.

(5) Reimbursement is not available for PAS provided by immediate family members as described in [New Rule II].

(6) The agency-based and self-directed PAS fee schedules are effective July 1, 2014. Copies of the department's current fee schedules are posted at <http://medicaidprovider.hhs.mt.gov> and may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

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

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

4. The department proposes to repeal the following rules:

37.40.1101 PERSONAL CARE, SERVICES, SERVICES PROVIDED AND LIMITATIONS is found on page 37-9101 of the Administrative Rules of Montana.

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

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

37.40.1102 PERSONAL CARE SERVICES, REQUIREMENTS is found on page 37-9103 of the Administrative Rules of Montana.

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

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

37.40.1105 PERSONAL CARE SERVICES, AGENCY-BASED REIMBURSEMENT is found on page 37-9109 of the Administrative Rules of Montana.

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

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

37.40.1106 PERSONAL CARE SERVICES, PROVIDER COMPLIANCE is found on page 37-9110 of the Administrative Rules of Montana.

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

37.40.1301 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, DESCRIPTION AND PURPOSE is found on page 37-9141 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1302 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, APPLICATION OF GENERAL PERSONAL CARE RULES is found on page 37-9143 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1303 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, REIMBURSEMENT is found on page 37-9143 of the Administrative Rules of Montana.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1305 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, CONSUMER REQUIREMENTS is found on page 37-9147 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1306 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, PLAN OF CARE REQUIREMENTS is found on page 37-9149 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1307 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, PROVIDER REQUIREMENTS is found on page 37-9149 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1308 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, GENERAL REQUIREMENTS is found on page 37-9150 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

37.40.1315 SELF-DIRECTED PERSONAL ASSISTANCE SERVICES, COMPLIANCE REVIEWS is found on page 37-9161 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-6-145, MCA
IMP: 53-6-101, 53-6-145, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes to adopt New Rules I through XIV for the Personal Assistance Services Program and repeal ARM 37.40.1101, 37.40.1102, 37.40.1105, 37.40.1106, 37.40.1301 through 37.40.1303, 37.40.1305 through 37.40.1308, and 37.40.1315.

The purpose for proposing to repeal the current personal assistance rules and creating these new rules is to establish the same regulations for the Personal Assistance Services Program (PASP) that are proposed for the Community First Choice Program (CFCP), as noticed in MAR Notice No. 37-690. The new rules propose a service delivery model based on person-centered planning and self-directed service options. The proposed rules include sections that pertain to personal assistance agency-based and self-directed service options. The rule subsections provide guidance specific to the functional areas of the program: services provided and limitations; service requirements; provider enrollment; conflict-of-interest criteria; self-directed description and purpose; self-directed general requirements; self-directed consumer requirements; person-centered plan requirements; provider requirements; provider compliance; and reimbursement.

The proposed rules will establish the parameters for service scope, authorization, and service delivery for the current state plan personal assistance services.

The proposed rules will also provide requirements for service scope and service delivery for the two service delivery options available under the PASP: agency-based and self-directed.

Next, the proposed rules will provide the scope of expectations for the federally mandated person-centered framework, including conflict-of-interest criteria and service structure to support the planning framework.

In addition, the proposed rules will provide reimbursement methodology for each PASP service.

Finally, the proposed rules will also establish expectations for provider enrollment, provider requirements, and provider compliance in the PASP.

New Rule I

The department is proposing this rule to provide the definitions of agency-based and self-directed Personal Assistance Services (PAS). The proposed new rule is necessary to provide uniform definitions and the foundational requirements for PAS.

New Rule II

The department is proposing this rule to outline the minimal requirements for a member to be eligible to receive PAS and the service options available to a member who qualifies for PAS. The rule also establishes the settings where a member may reside to receive PAS. Last, this rule provides the service limitations for PAS and the individual who can be employed to provide PAS. The intent of this rule is to provide clear guidelines for service availability in the PASP.

New Rule III

The department is proposing this rule to outline the steps that must be followed through a person-centered planning process to deliver PAS. The person-centered planning process ensures member involvement and participation in all aspects of service delivery. The department has developed a planning process that provides the member and people close to him/her with relevant information and resources and a support team to guide the member in developing a plan for receiving services. The rule also provides the expectations for the plan facilitator and provider agency staff in relation to the person-centered planning process and delivery of PAS.

New Rules IV through VI

The department is proposing these three new rules to provide a general description of the self-directed option of PAS. The goal of the department is to provide the most enhanced options for consumer choice and control. The self-directed rule provides the scope and authority wherein a member can assume increased responsibility and authority over the provision of his/her PAS. The proposed rules outline the criteria that must be met for a member to receive self-directed services and the additional service options that are available under the self-directed option. It also establishes the member responsibilities and expectations, which are a key component of the self-directed option. Lastly, the rule establishes the criteria a provider agency must meet to deliver self-directed PAS.

New Rule VII

The department is proposing this rule to provide a general outline for situations when PAS may be terminated. Termination of services may be based on a department or provider agency decision. Proposed New Rule VII establishes parameters to govern the department and provider agency in making these decisions so as to ensure member rights are upheld and proper protocol are adhered to.

New Rule VIII

The department is proposing this rule to provide the requirements for provider agency enrollment and participation in the PASP. The provider enrollment verifies that provider agencies are established businesses in the state of Montana and that the provider agency has reasonable coverage for personal care attendant worker claims. The standards for provider agencies are based on federal regulations and department standards. The training criteria are provided in lieu of any certification or licensure criteria used to regulate home-based services.

New Rule IX

The department is proposing this rule to provide the requirements for conflict-of-interest criteria. Conflict-of-interest criteria are mandated by the federal government to ensure compliance with expectations for service delivery in home-based settings. The conflict-of-interest criteria are developed to ensure that the individuals who are working with consumers in the person-centered planning process can act in a manner free of conflict when supporting the consumer in the decision-making process around their service options.

New Rule X and New Rule XI

The department is proposing these two new rules to provide the requirements for provider participation in the PASP. The rule establishes the minimum staffing requirements for an agency in order to deliver PAS. The department developed these requirements to ensure qualified staff provides planning, oversight, and supervision of PAS. The criteria also ensure that all plan facilitators receive training in the person-centered planning philosophy of service delivery. The department also developed this rule to outline the expectations that are unique to the agency-based provider agency found in New Rule X and the self-directed provider agency found in New Rule XI, specifically with regard to oversight and supervisory expectations and authority. Additionally, we have added the requirement for self-directed PAS provider agencies to report quarterly on the workers that deliver self-directed services in order to evaluate this work force quality, stability, and sustainability. The department may use the information to provide ongoing training and compliance information to direct-care workers, and may create a voluntary online directory to assist potential members in finding information about available direct-care workers and PAS self-directed providers.

New Rule XII and New Rule XIII

The department is proposing the two new rules to provide the requirements for provider compliance in the PASP. The rule establishes the areas that the department will use to evaluate compliance with the program parameters. The department has an extensive quality assurance process to ensure PASP provider agencies deliver services according to the parameters established in the PASP rule. The compliance process is an important component in the department's overall quality assurance strategy.

New Rule XIV

The department is proposing this rule because it specifies the reimbursement for services under the PASP. This rule is necessary to direct an individual to the correct location for the rates of reimbursement.

ARM 37.40.1101, 37.40.1102, 37.40.1105, 37.40.1106, 37.40.1301, 37.40.1302, 37.40.1303, 37.40.1305, 37.40.1306, 37.40.1307, 37.40.1308, and 37.40.1315

These administrative rules are being repealed because the PASP rules are being rewritten to correspond with the Community First Choice Program (CFCP) administrative rules.

6. The department intends to apply these rule adoptions retroactively to July 1, 2014. A retroactive application of the proposed rule adoptions does not result in a negative impact to any affected party.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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

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

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Valerie Bashor
Valerie Bashor, Attorney
Rule Reviewer

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

Certified to the Secretary of State October 14, 2014.

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

In the matter of the amendment of)
ARM 37.81.304 pertaining to Big Sky)
Rx prescription drug premium)
changes)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 13, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 6, 2014, 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:

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~\$32.20~~ \$30.00 per month. The benefit amount will not exceed ~~\$32.20~~ \$30.00 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~\$32.20~~ \$30.00 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~\$32.20~~ \$30.00, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.81.304, pertaining to the Big Sky Rx monthly benefit payment, to match the federal Low Income Subsidy (LIS) premium assistance for Medicare Part D for this region of the United States, as set forth in a letter to the department from the Centers for Medicare and Medicaid Services (CMS) dated August 6, 2014. Specifically, the proposed amendments would change the monthly maximum premium assistance from \$32.20 to \$30.00. The proposed amendments are necessary to ensure the monthly benefit does not exceed the LIS set for this region. Since the inception of the Big Sky Rx program, the benefit has mirrored the LIS premium assistance to ensure a reasonable and prudent monthly benefit for enrolled members. These amendments are being proposed only after extensive consideration of their impact on recipients and are consistent with the department's attempts to clearly communicate program rules and guidelines to the public.

Fiscal Impact

The number of people affected by the decrease of maximum premium from \$32.20 to \$30.00 is 5,680. The decrease results in an estimated decrease in general fund spending of approximately \$146,598.00.

5. The department intends to adopt these rule amendments effective January 1, 2015.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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.

/s/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Oppen, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2014.

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 37.86.1103 pertaining to the) PROPOSED AMENDMENT
addition of definitions to the)
outpatient drugs, fraud, waste, and)
abuse rules)

TO: All Concerned Persons

1. On November 13, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 6, 2014, 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:

37.86.1103 OUTPATIENT DRUGS, FRAUD, WASTE, AND ABUSE

(1) through (3) remain the same.

(4) "Drug not covered" means that a member is unable to receive a selected medication or class of medication unless a prior authorization is granted.

(4) through (7) remain the same, but are renumbered (5) through (8).

(9) As stated in ARM 37.86.1102, the department may impose prescription limitations and requirements due to inappropriate use of drugs, as determined by professional review. These limitations or requirements may include:

(a) random drug screening;

(b) random pill counts;

(c) implementation of a treatment contract with one prescribing physician;

(d) restrictions through "Drug Not Covered";

(e) member requirement to have utilized 100 percent of the estimated therapy days prior to granting a prescription authorization; or

(f) member referral to the team care program, as outlined in ARM 37.86.5303.

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

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.86.1103 by adding two key components to this rule. This rule was the first step in ensuring several key components of managing prescription drug waste, fraud, and abuse were in administrative rule. In review of the current rule, the department determined that two additional items needed to be added to strengthen the program. In order to rectify this, the department added a definition of "Drug Not Covered" and a description of "Case Management" in new (9).

Case Management works with prescribers to ensure that several steps are being completed when members are having issues managing their controlled substance use. For example, in order for Medicaid to authorize payment for medications of abuse, Case Management will require a treatment contract, random pill counts, random drug screens, and in extreme cases, 100 percent therapy usage prior to refill.

Drug Not Covered is a process in which a member is unable to receive a selected medication or class of medication, unless prior authorization is granted. This is a provider-driven process, meaning that a member's prescribing provider will approve and/or request that the member be restricted in collaboration with Case Management personnel.

These measures are current practice for the Pharmacy Program, but it is beneficial that they be added to the rule to strengthen the process. Placing these programs into rule adds validity and strength to practices that are aiding in identifying and curtailing prescription waste, fraud, and abuse in Medicaid.

Fiscal Impact

No fiscal impact is anticipated by the proposed rule amendments. These proposed amendments are expected to be budget neutral.

The proposed rules are estimated to affect 273 in-state pharmacies, 127 out-of-state pharmacies, 22,469 HMK members, and 124,874 Medicaid members.

5. The department intends to adopt these rule amendments effective January 1, 2015.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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.

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

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2014.

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 37.86.1802 pertaining to the) PROPOSED AMENDMENT
coverage codes for durable medical)
equipment)

TO: All Concerned Persons

1. On November 13, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 6, 2014, 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:

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies will be limited to items included on the department's fee schedule delivered in the most appropriate and cost effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) and as provided in ARM 37.85.105(3). For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare coverage will be determined by the department and published on the department's fee schedule in accordance with ARM 37.86.1807. The items must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) through (5) remain the same.

(6) The following items are not reimbursable by the program:

(a) through (s) remain the same.

(t) backup equipment; ~~and~~

(u) safety equipment unless explicitly covered by Medicare-; and
(v) any item that does not appear on the DME fee schedule unless delivered in accordance with ARM 37.86.2201.
(7) remains the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.86.1802. This proposed amendment is necessary to clarify that a coverage code not appearing on the durable medical equipment (DME) fee schedule is considered noncovered and will not be considered for coverage by the department, unless specifically applicable to ARM 37.86.2201.

Fiscal Impact

This proposed change is budget neutral and will have no fiscal impact.

The proposed amendments are estimated to affect 391 DME providers and 124,056 Medicaid members.

5. The department intends to adopt these rule amendments effective January 1, 2015.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 20, 2014.

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.

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

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State October 14, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.18.121, 42.18.122,	)	PROPOSED AMENDMENT AND
42.18.124, 42.18.128, 42.18.134,	)	REPEAL
42.18.135, and 42.18.136 and the)	
repeal of ARM 42.18.107, 42.18.110,)	
42.18.113, 42.18.116, 42.18.120,)	
42.18.130, and 42.18.131 pertaining)	
to the Montana reappraisal plan)	

TO: All Concerned Persons

1. On November 12, 2014, at 1 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 3, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.18.121 ADOPTION OF THE MONTANA APPRAISAL MANUAL
MONTANA REAPPRAISAL PLAN AND MANUALS (1) For each reappraisal period the department shall develop and adopt the Montana Appraisal Manual Montana Reappraisal Plan, the Montana Agricultural Land Classification Manual, and the Montana Forest Land Classification Manual to be used during the reappraisal cycle. The Montana Appraisal Manual plan and manuals will be used for valuing residential land and improvements, commercial land and improvements, and industrial land and improvements, new construction, and use changes, agricultural land, and forest land.

(2) The Montana Appraisal Manual plan and manuals provides details provide detail on the valuation processes the department uses.

(3) The Montana Appraisal Manual incorporates plan and manuals incorporate the department's duties as provided in 15-1-701 through 15-7-103, MCA, and the department shall consider the manual them when performing these duties.

(4) The Montana Appraisal Manual plan and manuals shall guide department appraisers in the application of approved appraisal practices, including but not

limited to the three approaches to property valuation: market, cost, and income.

(5) The publication date and use for each is set forth in ARM 42.18.122.

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.121 to set forth the current name and publication date of the department's reappraisal plan and to include the names and publication dates of the manuals the department's appraisal staff uses to classify and value agricultural and forest land. The current language refers only to the plan for valuing residential, commercial, and industrial properties. The title of the rule is proposed to be revised to better reflect the content of the rule as amended.

42.18.122 MONTANA APPRAISAL MANUAL- RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL 2015-2020 MONTANA REAPPRAISAL PLAN AND MANUALS (1) The Montana Appraisal Manual as adopted on August 25, 2010, shall be known as the 2008 Montana Appraisal Manual For the reappraisal cycle beginning January 1, 2015, and ending December 31, 2020, the department will use the plan and manuals identified in this rule to value:

- (a) residential land and improvements;
- (b) commercial land and improvements;
- (c) industrial land and improvements;
- (d) new residential, commercial, and industrial construction;
- (e) changes in use of land or improvements;
- (f) agricultural land; and
- (g) forest land.

(2) For the reappraisal cycle beginning January 1, 2009, and ending on December 31, 2014, the The department shall use the 2008 Montana Appraisal Manual 2015-2020 Montana Reappraisal Plan, adjusted for local conditions, for valuing residential land and improvements, commercial land and improvements, industrial land and improvements, and new construction published on October 10, 2014, to value residential, commercial, and industrial land and improvements.

(3) If the 2008 Montana Appraisal Manual 2015-2020 Montana Reappraisal Plan does not provide information necessary to value a specific property, the department shall use other construction cost manuals with a publication date as close to the 2008 Montana Appraisal Manual 2015-2020 Montana Reappraisal Plan as possible, such as Marshall Valuation Service, Richardson Engineering Services, Inc., or R.S. Means Company, Inc. The cost base schedules set out in those publications will be considered to reflect January 1, 2014, cost information.

(3) The department shall use the 2015-2020 Montana Agricultural Land Classification Manual, published on October 10, 2014, to value agricultural land.

(a) Current land use classification, productivity levels, and assessed values per acre are adopted in ARM 42.20.660, 42.20.665, 42.20.670, 42.20.675, and 42.20.680.

(b) Taxable values for each land use classification and productivity level will be phased in pursuant to 15-7-111, MCA, and ARM 42.20.503.

(4) The department shall use the 2015-2020 Montana Forest Land Classification Manual, published on October 10, 2014, to value forest land.

(a) Current land use classification, productivity levels, and assessed values per acre are adopted in ARM 42.20.705, 42.20.710, 42.20.715, 42.20.720, 42.20.725, and 42.20.730.

(b) Taxable values for each land use classification and productivity level will be phased in or phased down pursuant to 15-7-111, MCA, and ARM 42.20.503.

(4)(5) Copies of the 2008 Montana Appraisal Manual The 2015-2020 reappraisal plan and manuals may be reviewed in the department's field offices, at the central office at 125 North Roberts Street, Helena, Montana, or on the department's web site at <http://revenue.mt.gov/publications> revenue.mt.gov/home/property/resources-laws-rules.

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

(7)(8) This rule applies to tax years January 1, 2009 2015, through December 31, 2014 2020.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.122 to identify the reappraisal plan and manuals the department will use to value property during the upcoming reappraisal cycle that begins on January 1, 2015, and runs through December 31, 2020, and to update the web address at which those manuals are published. The title of the rule is also proposed to be revised to better reflect the content of the rule as amended.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) and (b) remain the same.

(c) For the taxable years from January 1, 2015, through December 31, 2020, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2014.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.124 to include information regarding the upcoming reappraisal cycle which begins on January 1, 2015, and runs through December 31, 2020.

42.18.128 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) remains the same.

(2) "CAMA" means the Computer Assisted Mass Appraisal ~~(System), system which is the computer software~~ the department uses to administer and value real and personal property.

(3) through (5) remain the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-139, 15-9-101, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.128 as a matter of housekeeping to include personal property in the definition for CAMA. The department uses the CAMA system to administer and value both real and personal property, and the proposed amendment will add that clarity.

42.18.134 2015 RESIDENTIAL AND COMMERCIAL REAPPRAISAL PLAN

(1) through (9) remain the same.

(10) This rule applies to tax years January 1, 2015, through December 31, ~~2024~~ 2020.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.134 to correct a date error in (10).

42.18.135 2015 AGRICULTURAL AND FOREST LANDS REAPPRAISAL PLAN (1) and (2) remain the same.

(3) This rule applies to tax years January 1, 2015, through December 31, ~~2024~~ 2020.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.135 to correct a date error in (3).

42.18.136 2015 INDUSTRIAL PROPERTY REAPPRAISAL (1) and (2) remain the same.

(3) This rule applies to tax years January 1, 2015, through December 31, ~~2024~~ 2020.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.136 to correct a date error in (3).

4. The department proposes to repeal the following rules:

42.18.107 2009 MONTANA REAPPRAISAL PLAN

AUTH: 15-1-201, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.107 because the rule becomes outdated with the onset of the upcoming reappraisal cycle. The current and relevant information for the 2015 reappraisal plan is located in ARM 42.18.133.

42.18.110 2009 RESIDENTIAL REAPPRAISAL PLAN

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.110 because the rule becomes outdated with the onset of the upcoming reappraisal cycle. The current and relevant information for the upcoming 2015 residential reappraisal plan is located in ARM 42.18.134.

42.18.113 2009 COMMERCIAL REAPPRAISAL PLAN

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.113 because the rule becomes outdated with the onset of the upcoming reappraisal cycle. The current and relevant information for the upcoming 2015 commercial reappraisal plan is located in ARM 42.18.134.

42.18.116 2009 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.116 because the rule becomes outdated with the onset of the upcoming reappraisal cycle. The current and relevant information for the upcoming 2015 agricultural/forest land reappraisal plan is located in ARM 42.18.135.

42.18.120 CERTIFICATION AND TRAINING REQUIREMENTS

AUTH: 15-1-201, MCA

IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.120 as a matter of housekeeping. ARM 42.18.205 through 42.18.208 provide detailed certification requirements which make this rule redundant and unnecessary.

42.18.130 PURPOSE OF THE 2015 REAPPRAISAL PLAN

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-112, 15-9-101, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.130 as a matter of housekeeping. ARM 42.18.133 through 42.18.136 provide all necessary details and specifics for the upcoming 2015 reappraisal cycle which make this rule redundant and no longer necessary.

42.18.131 SPECIFIC OBJECTIVES OF THE 2015 REAPPRAISAL

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-101, 15-7-111, 15-7-112, 15-9-101, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.131 as a matter of housekeeping. ARM 42.18.133 through 42.18.136 provide the necessary details and specifics for the upcoming 2015 reappraisal cycle which makes this rule redundant and no longer necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 20, 2014.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. 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 and repeal of the above-referenced rules 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 October 14, 2014

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.21.113, 42.21.123,	)	PROPOSED AMENDMENT
42.21.124, 42.21.131, 42.21.137,)	
42.21.138, 42.21.139, 42.21.140,)	
42.21.151, 42.21.153, 42.21.155,)	
42.21.165, and 42.22.1311 pertaining)	
to the trended depreciation schedules)	
for valuing property)	

TO: All Concerned Persons

1. On November 12, 2014, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 3, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The department uses data from the guides and valuation manuals listed in its rules to determine the trended depreciation schedules published in those rules. Personal property is valued annually and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process. The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

The department has considered the small business impact study requirements of 2-4-111, MCA, and determined the proposed amendments to the rules in this notice will not significantly and directly impact small businesses. ARM 42.21.157 requires the department to update the depreciation schedules of tangible personal property on an annual basis. The annual changes to ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.155, and 42.21.1311, affect all businesses with tangible personal property. By annually updating the depreciation schedules, the department accounts for the impact an additional year of wear and tear has on the value of tangible personal

property. Small businesses would see a negative impact if these tables were not updated.

It is reasonably necessary to update the trend tables to reflect any changes for the upcoming year. This general statement of reasonable necessity applies to all of the following proposed amendments, and has been supplemented as appropriate for any additional proposed rule change.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, weekly, semimonthly, or monthly basis, but is not exempt under 15-6-202 or 15-6-219, MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	70%
2012 <u>2013</u>	43 <u>44</u> %
2011 <u>2012</u>	48 <u>19</u> %
2010 <u>2011</u> and older	8 <u>9</u> %

(b) For equipment that has an acquired cost of \$501 to \$1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	85%
2012 <u>2013</u>	66 <u>69</u> %
2011 <u>2012</u>	54 <u>50</u> %
2010 <u>2011</u>	33%
2009 <u>2010</u> and older	22%

(c) For equipment that has an acquired cost of \$1,501 to \$5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	92%
2012 <u>2013</u>	84 <u>85</u> %
2011 <u>2012</u>	78 <u>77</u> %
2010 <u>2011</u>	70%
2009 <u>2010</u>	61%
2008 <u>2009</u>	55 <u>52</u> %

2007 <u>2008</u>	44%
2006 <u>2007</u>	35%
2005 <u>2006</u>	29 <u>28</u> %
2004 <u>2005</u> and older	26%

(d) For equipment that has an acquired cost of \$5,001 to \$15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2014 <u>2015</u>	80%
2013 <u>2014</u>	65%
2012 <u>2013</u>	57 <u>62</u> %
2011 <u>2012</u>	57 <u>58</u> %
2010 <u>2011</u>	54 <u>52</u> %
2009 <u>2010</u>	48 <u>49</u> %
2008 <u>2009</u>	43%
2007 <u>2008</u>	40%
2006 <u>2007</u>	36 <u>37</u> %
2005 <u>2006</u>	32 <u>34</u> %
2004 <u>2005</u>	30 <u>33</u> %
2003 <u>2004</u>	23 <u>32</u> %
2002 <u>2003</u>	22 <u>29</u> %
2001 <u>2002</u>	23 <u>27</u> %
2000 <u>2001</u>	24 <u>25</u> %
1999 <u>2000</u>	19 <u>23</u> %
1998 <u>1999</u>	21 <u>22</u> %
1997 <u>1998</u>	20 <u>21</u> %
1996 <u>1997</u>	20 <u>21</u> %
1995 <u>1996</u> and older	15 <u>19</u> %

(e) For rental video tapes and digital video disks, the following trended depreciation schedule will be used:

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	25%
2012 <u>2013</u>	15%
2011 <u>2012</u> and older	10%

(2) through (4) remain the same.

(5) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

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

IMP: 15-6-135, 15-6-138, 15-6-202, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.113 to strike an incorrect implementing statute.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (7) remain the same.

(8) The trended depreciation schedule referred to in (2) through (6) is listed below and shall be used for tax year ~~2014~~ 2015. The schedule is derived by using the guidebook listed in (2) as the data base. The values derived through use of the trended depreciation schedule will approximate average wholesale value.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD AVERAGE WHOLESALE</u>
2014 <u>2015</u>	80%
2013 <u>2014</u>	75%
2012 <u>2013</u>	66%
2011 <u>2012</u>	64 <u>61</u> %
2010 <u>2011</u>	61 <u>58</u> %
2009 <u>2010</u>	54 <u>55</u> %
2008 <u>2009</u>	53 <u>48</u> %
2007 <u>2008</u>	51 <u>48</u> %
2006 <u>2007</u>	48 <u>47</u> %
2005 <u>2006</u>	44%
2004 <u>2005</u>	43 <u>41</u> %
2003 <u>2004</u>	38 <u>39</u> %
2002 <u>2003</u>	33 <u>35</u> %
2001 <u>2002</u>	31%
2000 <u>2001</u>	29 <u>28</u> %
1999 <u>2000</u>	27%
1998 <u>1999</u> and older	22 <u>21</u> %

(9) remains the same.

(10) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

(1) For purposes of assessing the per capita ~~tax fees~~ on livestock, poultry, and bees to pay the expense of enforcing the livestock, poultry, and bee laws, the following categories of livestock, poultry, and bees shall be used by the producer to report the number of animals within each category. The established categories are:

(a) through (j) remain the same.

(2) This rule is effective for tax years beginning after December 31, ~~1997~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-207, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.21.124 to correctly identify the per capita fee as a fee, rather than a tax, and to update the year referenced in (2).

42.21.131 HEAVY EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2014~~ 2015. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDING DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
2014 <u>2015</u>	80%
2013 <u>2014</u>	65%
2012 <u>2013</u>	57 <u>62</u> %
2011 <u>2012</u>	57 <u>58</u> %
2010 <u>2011</u>	54 <u>52</u> %
2009 <u>2010</u>	48 <u>49</u> %
2008 <u>2009</u>	43%
2007 <u>2008</u>	40%
2006 <u>2007</u>	36 <u>37</u> %
2005 <u>2006</u>	32 <u>34</u> %
2004 <u>2005</u>	30 <u>33</u> %
2003 <u>2004</u>	23 <u>32</u> %
2002 <u>2003</u>	22 <u>29</u> %
2001 <u>2002</u>	23 <u>27</u> %
2000 <u>2001</u>	24 <u>25</u> %
1999 <u>2000</u>	19 <u>23</u> %
1998 <u>1999</u>	21 <u>22</u> %
1997 <u>1998</u>	20 <u>21</u> %
1996 <u>1997</u>	20 <u>21</u> %
1995 <u>1996</u> and older	15 <u>19</u> %

(6) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014, and applies to all heavy equipment.

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

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.131 to remove an unnecessary table header and to strike an incorrect implementing statute.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2014~~ 2015.

SEISMOGRAPH UNIT

<u>YEAR</u> <u>NEW/ACQUIRED</u>	<u>%</u> <u>GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>	<u>WHOLESALE</u> <u>FACTOR</u>	<u>WHOLESALE</u> <u>% GOOD</u>
2014 <u>2015</u>	100%	1.000	100%	80%	80%
2013 <u>2014</u>	85%	1.000	85%	80%	68%
2012 <u>2013</u>	69%	1.000 <u>9</u>	69 <u>70%</u>	80%	55 <u>56%</u>
2011 <u>2012</u>	52%	1.027 <u>10</u>	53%	80%	43 <u>42%</u>
2010 <u>2011</u>	34%	1.055 <u>38</u>	36 <u>35%</u>	80%	29 <u>28%</u>
2009 <u>2010</u>	23%	1.040 <u>66</u>	24 <u>25%</u>	80%	19 <u>20%</u>
2008 <u>2009-2006</u>	18%	1.077 <u>51</u>	19%	80%	16 <u>15%</u>
2005 and older	5%				5%

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR NEW/</u> <u>ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED %</u> <u>GOOD</u>
2014 <u>2015</u>	100%	1.000	100%
2013 <u>2014</u>	85%	1.000	85%
2012 <u>2013</u>	69%	1.000 <u>1.009</u>	69 <u>70%</u>
2011 <u>2012</u>	52%	1.027 <u>1.010</u>	53%
2010 <u>2011</u>	34%	1.055 <u>1.038</u>	36 <u>35%</u>
2009 <u>2010</u>	23%	1.040 <u>1.066</u>	24 <u>25%</u>
2008 <u>2009-2006</u>	18%	1.077 <u>1.051</u>	19%
2005 and older	5%		5%

(5) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.137 to strike an incorrect implementing statute.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~2014~~ 2015.

OIL AND GAS FIELD PRODUCTION

EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TREND % GOOD</u>
2014 <u>2015</u>	100%	1.000	100%
2013 <u>2014</u>	95%	1.000	95%
2012 <u>2013</u>	90%	1.000 1.009	90 91%
2011 <u>2012</u>	85%	1.027 1.010	87 86%
2010 <u>2011</u>	79%	1.055 1.038	83 82%
2009 <u>2010</u>	73%	1.040 1.066	76 78%
2008 <u>2009</u>	68%	1.077 1.051	73 71%
2007 <u>2008</u>	62%	1.125 1.088	70 67%
2006 <u>2007</u>	55%	1.192 1.137	66 63%
2005 <u>2006</u>	49%	1.252 1.204	61 59%
2004 <u>2005</u>	43%	1.358 1.265	58 54%
2003 <u>2004</u>	37%	1.406 1.372	52 51%
2002 <u>2003</u>	31%	1.434 1.420	44%
2001 <u>2002</u>	26%	1.442 1.449	37 38%
2000 <u>2001</u>	23%	1.456 1.457	33 34%
1999 <u>2000</u> and older	21%	1.479 1.471	30 31%

(4) remains the same.

(5) Downhole equipment which is not in an oil or gas well as of the assessment date, January 1, each year shall be taxed as class eight property.

(6) This rule is effective for tax years beginning after December 31, 2013 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-213, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.138 to clearly set forth the assessment date for determining the taxable or exempt status of downhole equipment, and to remove an unnecessary table header.

42.21.139 WORK-OVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year 2014 2015.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR/NEW ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TREND WHOLESALE % GOOD</u>
2014 <u>2015</u>	100%	1.000	80%	80%

2013 <u>2014</u>	92%	1.000	80%	74%
2012 <u>2013</u>	84%	1.000 <u>1.009</u>	80%	67 <u>68</u> %
2011 <u>2012</u>	76%	1.027 <u>1.010</u>	80%	62 <u>61</u> %
2010 <u>2011</u>	67%	1.055 <u>1.038</u>	80%	57 <u>56</u> %
2009 <u>2010</u>	58%	1.040 <u>1.066</u>	80%	48 <u>49</u> %
2008 <u>2009</u>	49%	1.077 <u>1.051</u>	80%	42 <u>41</u> %
2007 <u>2008</u>	39%	1.125 <u>1.088</u>	80%	35 <u>34</u> %
2006 <u>2007</u>	30%	1.192 <u>1.137</u>	80%	29 <u>27</u> %
2005 <u>2006</u>	24%	1.252 <u>1.204</u>	80%	24 <u>23</u> %
2004 <u>2005</u> and older	21%	1.358 <u>1.265</u>	80%	22 <u>21</u> %

(6) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.139 to remove an unnecessary table header.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published in the Marshall & Swift Valuation Service Guide. The "% good" for all drill rigs less than one year old shall be 100 percent. The trended depreciation schedule for tax year ~~2014~~ 2015 is listed below.

DRILL RIG-TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2014 <u>2015</u>	100%	1.000	100%
2013 <u>2014</u>	92%	1.000	92%
2012 <u>2013</u>	84%	1.000 <u>1.009</u>	84 <u>85</u> %
2011 <u>2012</u>	76%	1.027 <u>1.010</u>	78 <u>77</u> %
2010 <u>2011</u>	67%	1.055 <u>1.038</u>	71 <u>70</u> %
2009 <u>2010</u>	58%	1.040 <u>1.066</u>	60 <u>62</u> %
2008 <u>2009</u>	49%	1.077 <u>1.051</u>	53 <u>51</u> %
2007 <u>2008</u>	39%	1.125 <u>1.088</u>	44 <u>42</u> %
2006 <u>2007</u>	30%	1.192 <u>1.137</u>	36 <u>34</u> %
2005 <u>2006</u>	24%	1.252 <u>1.204</u>	30 <u>29</u> %
2004 <u>2005</u> and older	21%	1.358 <u>1.265</u>	28 <u>27</u> %

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.140 to remove an unnecessary table header and to strike an incorrect implementing statute.

42.21.151 LOCALLY ASSESSED CABLE TELEVISION CABLE SYSTEMS

(1) The average market value for television cable systems is \$2,000 per mile of coaxial cable (transmission line) and \$25 per service drop of central office or headend type equipment will be determined by using a ten-year trended depreciation schedule.

(2) The market value of transmission and distribution type assets will be determined by using a twenty-year trended depreciation schedule.

(3) The percent good will be derived from the Marshall & Swift Valuation Service Guide furniture and fixtures depreciation tables, as published by the Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307.

(4) The trend factors shall be calculated using the most recent available "Producer Price Index for Commodities," Series Id WPU1178, "Electronic Components and Accessories," published by the United States Department of Labor, Bureau of Labor Statistics.

~~(2)~~(5) The average market value for of the dishes and towers will be determined by using a five-year trended depreciation schedule on for dishes and ten-year trended depreciation schedule on for towers. Both the trend factors and the depreciation tables will be derived from the Marshall & Swift Valuation Service Guide, as published by the Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307. The trend factors shall be the most recent available from the "Average of all Indexes" listed in the above publication.

~~(3)~~(6) The trended depreciation schedules will be applied to the acquired cost including installation and year acquired of the dish or tower equipment.

~~(4)~~(7) The trended depreciation schedules referred to in (1), (2), and ~~(3)~~(5) are listed below and shall be in effect for tax year 2014 2015.

TEN-YEAR "HEADEND EQUIPMENT"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2014</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2013</u>	<u>84%</u>	<u>0.999</u>	<u>84%</u>
<u>2012</u>	<u>76%</u>	<u>0.983</u>	<u>75%</u>
<u>2011</u>	<u>67%</u>	<u>0.955</u>	<u>64%</u>
<u>2010</u>	<u>58%</u>	<u>0.921</u>	<u>53%</u>
<u>2009</u>	<u>49%</u>	<u>0.905</u>	<u>44%</u>
<u>2008</u>	<u>39%</u>	<u>0.874</u>	<u>34%</u>

<u>2007</u>	<u>30%</u>	<u>0.790</u>	<u>24%</u>
<u>2006</u>	<u>24%</u>	<u>0.793</u>	<u>19%</u>
<u>2005 and older</u>	<u>21%</u>	<u>0.783</u>	<u>16%</u>

TWENTY-YEAR "TRANSMISSION & DISTRIBUTION ASSETS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2014</u>	<u>97%</u>	<u>1.000</u>	<u>97%</u>
<u>2013</u>	<u>93%</u>	<u>0.999</u>	<u>93%</u>
<u>2012</u>	<u>90%</u>	<u>0.983</u>	<u>89%</u>
<u>2011</u>	<u>86%</u>	<u>0.955</u>	<u>82%</u>
<u>2010</u>	<u>82%</u>	<u>0.921</u>	<u>76%</u>
<u>2009</u>	<u>78%</u>	<u>0.905</u>	<u>71%</u>
<u>2008</u>	<u>74%</u>	<u>0.874</u>	<u>65%</u>
<u>2007</u>	<u>70%</u>	<u>0.790</u>	<u>55%</u>
<u>2006</u>	<u>65%</u>	<u>0.793</u>	<u>52%</u>
<u>2005</u>	<u>60%</u>	<u>0.783</u>	<u>47%</u>
<u>2004</u>	<u>55%</u>	<u>0.767</u>	<u>42%</u>
<u>2003</u>	<u>50%</u>	<u>0.751</u>	<u>38%</u>
<u>2002</u>	<u>45%</u>	<u>0.742</u>	<u>33%</u>
<u>2001</u>	<u>40%</u>	<u>0.717</u>	<u>29%</u>
<u>2000</u>	<u>35%</u>	<u>0.706</u>	<u>25%</u>
<u>1999</u>	<u>31%</u>	<u>0.696</u>	<u>22%</u>
<u>1998</u>	<u>27%</u>	<u>0.678</u>	<u>18%</u>
<u>1997</u>	<u>24%</u>	<u>0.646</u>	<u>16%</u>
<u>1996</u>	<u>22%</u>	<u>0.617</u>	<u>14%</u>
<u>1995 and older</u>	<u>21%</u>	<u>0.598</u>	<u>13%</u>

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2012 2013</u>	<u>69%</u>	<u>1.007 1.010</u>	<u>69 70%</u>
<u>2011 2012</u>	<u>52%</u>	<u>1.036 1.018</u>	<u>54 53%</u>
<u>2010 2011</u>	<u>34%</u>	<u>1.068 1.047</u>	<u>36%</u>
<u>2009 2010 and older</u>	<u>24 23%</u>	<u>1.060 1.080</u>	<u>22 25%</u>

TABLE 2: TEN-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>

2012 <u>2013</u>	84%	1.007 <u>1.010</u>	85%
2011 <u>2012</u>	76%	1.036 <u>1.018</u>	79 <u>77%</u>
2010 <u>2011</u>	67%	1.068 <u>1.047</u>	72 <u>70%</u>
2009 <u>2010</u>	58%	1.060 <u>1.080</u>	64 <u>63%</u>
2008 <u>2009</u>	49%	1.094 <u>1.072</u>	53%
2007 <u>2008</u>	39%	1.134 <u>1.103</u>	44 <u>43%</u>
2006 <u>2007</u>	30%	1.196 <u>1.146</u>	36 <u>34%</u>
2005 <u>2006</u>	24%	1.254 <u>1.209</u>	30 <u>29%</u>
2004 <u>2005</u> and older	21%	1.345 <u>1.265</u>	28 <u>27%</u>

~~(5)~~(8) This rule is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.151 to provide trended depreciation tables and the valuation method for certain cable television equipment to more accurately reflect current market value. Furthermore, the department proposes removing unnecessary table headers, striking an incorrect implementing statute, and changing the rule title to better reflect the rule content.

42.21.153 SKI LIFT EQUIPMENT (1) and (2) remain the same.

(3) The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	92%	1.000	92%
2012 <u>2013</u>	84%	1.007 <u>1.010</u>	85%
2011 <u>2012</u>	76%	1.036 <u>1.018</u>	79 <u>77%</u>
2010 <u>2011</u>	67%	1.068 <u>1.047</u>	72 <u>70%</u>
2009 <u>2010</u>	58%	1.060 <u>1.080</u>	64 <u>63%</u>
2008 <u>2009</u>	49%	1.094 <u>1.072</u>	53%
2007 <u>2008</u>	39%	1.134 <u>1.103</u>	44 <u>43%</u>
2006 <u>2007</u>	30%	1.196 <u>1.146</u>	36 <u>34%</u>
2005 <u>2006</u>	24%	1.254 <u>1.209</u>	30 <u>29%</u>
2004 <u>2005</u> and older	21%	1.345 <u>1.265</u>	28 <u>27%</u>

(a) The taxpayer must initially list with the department:

- (i) all equipment by year of installation; and
- (ii) installed costs of that equipment.
- (b) Each year thereafter, the taxpayer must list with the department:
 - (i) all additions or deletions from the previous year's list, with installed cost.
 - (4) This methodology is effective for tax years beginning after December 31, ~~2013~~ 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes further amending ARM 42.21.153 to remove an unnecessary table header and to strike an incorrect implementing statute.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year ~~2014~~ 2015 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR NEW/ ACQUIRED</u>	<u>%GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	70%	1.000	70%
2012 <u>2013</u>	45%	0.953 <u>0.986</u>	43 <u>44</u> %
2011 <u>2012</u>	20%	0.879 <u>0.934</u>	18 <u>19</u> %
2010 <u>2011</u> and older	10%	0.808 <u>0.861</u>	8 <u>9</u> %

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	85%	1.000	85%
2012 <u>2013</u>	69%	0.962 <u>0.998</u>	66 <u>69</u> %
2011 <u>2012</u>	52%	0.975 <u>0.960</u>	51 <u>50</u> %
2010 <u>2011</u>	34%	0.979 <u>0.973</u>	33%
2009 <u>2010</u> and older	23%	0.937 <u>0.977</u>	22%

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	85%	1.000	85%
2012 <u>2013</u>	69%	0.987 <u>0.999</u>	68 <u>69</u> %
2011 <u>2012</u>	52%	0.959 <u>0.983</u>	50 <u>51</u> %

<u>2010 2011</u>	34%	0.925 <u>0.955</u>	34 <u>32%</u>
<u>2009 2010</u> and older	23%	0.909 <u>0.921</u>	21%

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	85%	1.000	85%
<u>2012 2013</u>	69%	0.999 <u>0.996</u>	69%
<u>2011 2012</u>	52%	0.995 <u>0.995</u>	52%
<u>2010 2011</u>	34%	0.983 <u>0.991</u>	33 <u>34%</u>
<u>2009 2010</u> and older	23%	0.972 <u>0.978</u>	22 <u>23%</u>

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	85%	1.000	85%
<u>2012 2013</u>	69%	1.011 <u>1.008</u>	70%
<u>2011 2012</u>	52%	1.042 <u>1.020</u>	54 <u>53%</u>
<u>2010 2011</u>	34%	1.051 <u>1.050</u>	36%
<u>2009 2010</u> and older	23%	1.056 <u>1.059</u>	24%

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	85%	1.000	85%
<u>2012 2013</u>	69%	1.016 <u>1.015</u>	70%
<u>2011 2012</u>	52%	1.044 <u>1.032</u>	54%
<u>2010 2011</u>	34%	1.080 <u>1.060</u>	37 <u>36%</u>
<u>2009 2010</u> and older	23%	1.100 <u>1.097</u>	25%

CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2013 2014</u>	92%	1.000	92%
<u>2012 2013</u>	84%	1.017 <u>1.015</u>	85%
<u>2011 2012</u>	76%	1.047 <u>1.031</u>	80 <u>78%</u>
<u>2010 2011</u>	67%	1.064 <u>1.063</u>	71%
<u>2009 2010</u>	58%	1.058 <u>1.079</u>	61 <u>63%</u>
<u>2008 2009</u>	49%	1.092 <u>1.074</u>	53%

2007 <u>2008</u>	39%	1.114 <u>1.108</u>	43%
2006 <u>2007</u>	30%	1.135 <u>1.128</u>	34%
2005 <u>2006</u>	24%	1.170 <u>1.152</u>	28%
2004 <u>2005</u> and older	21%	1.204 <u>1.187</u>	25%

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2013 <u>2014</u>	92%	1.000	92%
2012 <u>2013</u>	84%	1.004 <u>1.012</u>	84 <u>85</u> %
2011 <u>2012</u>	76%	1.033 <u>1.016</u>	78 <u>77</u> %
2010 <u>2011</u>	67%	1.043 <u>1.045</u>	70%
2009 <u>2010</u>	58%	1.047 <u>1.056</u>	61%
2008 <u>2009</u>	49%	1.114 <u>1.060</u>	55 <u>52</u> %
2007 <u>2008</u>	39%	1.138 <u>1.127</u>	44%
2006 <u>2007</u>	30%	1.170 <u>1.152</u>	35%
2005 <u>2006</u>	24%	1.208 <u>1.185</u>	29 <u>28</u> %
2004 <u>2005</u> and older	21%	1.254 <u>1.223</u>	26%

(3) This rule is effective for tax years beginning after December 31, 2013 2014.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, ~~15-6-207~~, 15-6-219, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.21.155 to strike an incorrect implementing statute.

42.21.165 LIVESTOCK REPORTING REQUIREMENTS (1)

A taxpayer person who raises or owns livestock in the state of Montana subject to the per capita fees under 15-24-921, MCA, and the requirement of a written statement under 15-24-903, MCA, must submit a completed livestock reporting form.

(2) ~~The department must receive the completed statement postmarked completed livestock reporting form must be submitted~~ no later than February 15 March 1. If a taxpayer fails to timely return a completed livestock reporting form, ~~the~~ The department will issue written notice to the taxpayer advising the taxpayer inform the livestock owner of their obligation to return a completed complete and submit a livestock reporting form. ~~The notice shall also and~~ advise the taxpayer livestock owner that they are subject to penalty under the provisions of 15-8-309 and 15-24-904, MCA, for failure to return submit the reporting form ~~within ten days of receiving the reminder notice in a timely manner~~.

(3) If a taxpayer livestock owner fails to ~~return a completed and submit a~~ livestock reporting form during the ~~timeframes~~ time frame set forth in (2), the

department shall, ~~after ten days' notice,~~ may assess a \$25 penalty under 15-8-309, and 15-24-904, MCA.

(4) ~~If, after issuance of the notice required in (2), a taxpayer a livestock owner~~ fails to ~~return~~ submit a completed livestock reporting form, the department will estimate livestock numbers based upon the best information available. The department may utilize previously reported livestock numbers, brand inspections, or other available information as a basis for its estimation.

(5) Statements ~~postmarked~~ submitted after the deadline in (2) ~~will~~ may be assessed a penalty unless:

(a) the ~~taxpayer~~ livestock owner provides evidence of their inability to comply due to hospitalization, physical illness, infirmity, or mental illness; and

(b) evidence that this/these conditions(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March ~~45~~ 1 to prevent timely filing of the reporting form.

AUTH: 15-1-201, MCA

IMP: 15-8-309, 15-24-903, 15-24-904, 15-24-921, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.21.165 to more accurately reflect the department's move to an electronic online livestock reporting process. Because livestock is not subject to ad valorem taxes, the department is completely separating livestock reporting for per capita fee assessment from personal property reporting which is required for ad valorem property tax assessment.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from the Marshall & Swift Valuation Service Guide. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed in the Marshall & Swift Valuation Service Guide for a particular industry, that industry was grouped with other industries using similar equipment. The department will utilize the machinery and equipment trend factors that are set forth in the following tables:

(2) Life expectancies for industrial machinery and equipment are shown in the trend table below.

~~2013~~ 2015 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

<u>Description</u>	<u>Trend Table</u>	<u>Life</u>
(a) through (cj) remain the same.		
Note: 1. Lab equipment is included in its related industry's table at ten-year life expectancy.		

(3) Tables 1 through 32 represent the yearly trend factors for each of the

categories.

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
2013	1.000	1.000	1.000	1.000	1.000
2012	1.000	1.008	1.004	1.008	1.008
2011	1.030	1.036	1.032	1.034	1.037
2010	1.068	1.070	1.065	1.063	1.070
2009	1.051	1.062	1.055	1.057	1.064
2008	1.081	1.088	1.083	1.087	1.089
2007	1.125	1.132	1.130	1.135	1.133
2006	1.187	1.212	1.198	1.203	1.217
2005	1.249	1.268	1.260	1.264	1.272
2004	1.352	1.363	1.366	1.366	1.367
2003	1.404	1.415	1.416	1.413	1.417
2002	1.429	1.439	1.442	1.438	1.441
2001	1.434	1.448	1.449	1.447	1.450
2000	1.444	1.464	1.461	1.463	1.467
1999	1.471	1.494	1.489	1.490	1.496
1998	1.472	1.499	1.492	1.498	1.501
1997	1.484	1.514	1.504	1.513	1.517
1996	1.502	1.540	1.527	1.538	1.545
1995	1.522	1.563	1.550	1.567	1.569
1994	1.583	1.627	1.611	1.626	1.634
<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>1.007</u>	<u>1.011</u>	<u>1.009</u>	<u>1.010</u>	<u>1.011</u>
<u>2012</u>	<u>1.008</u>	<u>1.020</u>	<u>1.013</u>	<u>1.019</u>	<u>1.021</u>
<u>2011</u>	<u>1.037</u>	<u>1.048</u>	<u>1.041</u>	<u>1.046</u>	<u>1.049</u>
<u>2010</u>	<u>1.076</u>	<u>1.082</u>	<u>1.075</u>	<u>1.074</u>	<u>1.083</u>
<u>2009</u>	<u>1.058</u>	<u>1.074</u>	<u>1.065</u>	<u>1.068</u>	<u>1.077</u>
<u>2008</u>	<u>1.089</u>	<u>1.101</u>	<u>1.093</u>	<u>1.098</u>	<u>1.102</u>
<u>2007</u>	<u>1.133</u>	<u>1.145</u>	<u>1.141</u>	<u>1.147</u>	<u>1.147</u>
<u>2006</u>	<u>1.196</u>	<u>1.226</u>	<u>1.209</u>	<u>1.216</u>	<u>1.232</u>
<u>2005</u>	<u>1.258</u>	<u>1.282</u>	<u>1.271</u>	<u>1.278</u>	<u>1.288</u>
<u>2004</u>	<u>1.362</u>	<u>1.379</u>	<u>1.378</u>	<u>1.381</u>	<u>1.384</u>
<u>2003</u>	<u>1.414</u>	<u>1.431</u>	<u>1.429</u>	<u>1.428</u>	<u>1.434</u>
<u>2002</u>	<u>1.440</u>	<u>1.456</u>	<u>1.455</u>	<u>1.454</u>	<u>1.458</u>
<u>2001</u>	<u>1.445</u>	<u>1.465</u>	<u>1.462</u>	<u>1.463</u>	<u>1.468</u>
<u>2000</u>	<u>1.455</u>	<u>1.481</u>	<u>1.475</u>	<u>1.479</u>	<u>1.485</u>
<u>1999</u>	<u>1.481</u>	<u>1.511</u>	<u>1.503</u>	<u>1.507</u>	<u>1.514</u>
<u>1998</u>	<u>1.483</u>	<u>1.516</u>	<u>1.506</u>	<u>1.515</u>	<u>1.519</u>
<u>1997</u>	<u>1.495</u>	<u>1.532</u>	<u>1.518</u>	<u>1.530</u>	<u>1.536</u>
<u>1996</u>	<u>1.513</u>	<u>1.558</u>	<u>1.541</u>	<u>1.554</u>	<u>1.564</u>
<u>1995</u>	<u>1.533</u>	<u>1.581</u>	<u>1.564</u>	<u>1.584</u>	<u>1.588</u>
<u>YEAR</u>	<u>TABLE 6</u>	<u>TABLE 7</u>	<u>TABLE 8</u>	<u>TABLE 9</u>	<u>TABLE 10</u>

	<u>Cement Mfg.</u>	<u>Chemical Mfg.</u>	<u>Clay Mfg.</u>	<u>Contractor Eq.</u>	<u>Creamery/Dairy</u>
2013	1.000	1.000	1.000	1.000	1.000
2012	1.009	1.004	1.010	1.017	1.008
2011	1.044	1.029	1.043	1.051	1.036
2010	1.073	1.056	1.074	1.081	1.069
2009	1.059	1.042	1.066	1.077	1.065
2008	1.107	1.078	1.115	1.109	1.089
2007	1.156	1.127	1.163	1.144	1.135
2006	1.217	1.193	1.225	1.184	1.215
2005	1.277	1.254	1.284	1.238	1.275
2004	1.388	1.360	1.386	1.322	1.372
2003	1.443	1.408	1.436	1.360	1.420
2002	1.473	1.436	1.464	1.382	1.443
2001	1.482	1.444	1.474	1.393	1.453
2000	1.496	1.458	1.490	1.401	1.469
1999	1.521	1.481	1.515	1.425	1.499
1998	1.528	1.489	1.520	1.437	1.505
1997	1.543	1.504	1.536	1.453	1.520
1996	1.563	1.523	1.560	1.481	1.546
1995	1.592	1.553	1.590	1.506	1.573
1994	1.648	1.610	1.645	1.547	1.639

<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>1.010</u>	<u>1.009</u>	<u>1.011</u>	<u>1.011</u>	<u>1.010</u>
<u>2012</u>	<u>1.020</u>	<u>1.010</u>	<u>1.023</u>	<u>1.030</u>	<u>1.020</u>
<u>2011</u>	<u>1.055</u>	<u>1.038</u>	<u>1.056</u>	<u>1.065</u>	<u>1.048</u>
<u>2010</u>	<u>1.085</u>	<u>1.066</u>	<u>1.087</u>	<u>1.095</u>	<u>1.082</u>
<u>2009</u>	<u>1.071</u>	<u>1.051</u>	<u>1.079</u>	<u>1.091</u>	<u>1.077</u>
<u>2008</u>	<u>1.119</u>	<u>1.088</u>	<u>1.129</u>	<u>1.123</u>	<u>1.101</u>
<u>2007</u>	<u>1.169</u>	<u>1.137</u>	<u>1.177</u>	<u>1.159</u>	<u>1.148</u>
<u>2006</u>	<u>1.230</u>	<u>1.204</u>	<u>1.241</u>	<u>1.200</u>	<u>1.228</u>
<u>2005</u>	<u>1.291</u>	<u>1.265</u>	<u>1.300</u>	<u>1.254</u>	<u>1.289</u>
<u>2004</u>	<u>1.403</u>	<u>1.372</u>	<u>1.403</u>	<u>1.339</u>	<u>1.387</u>
<u>2003</u>	<u>1.459</u>	<u>1.420</u>	<u>1.453</u>	<u>1.378</u>	<u>1.436</u>
<u>2002</u>	<u>1.489</u>	<u>1.449</u>	<u>1.482</u>	<u>1.400</u>	<u>1.459</u>
<u>2001</u>	<u>1.498</u>	<u>1.457</u>	<u>1.492</u>	<u>1.411</u>	<u>1.469</u>
<u>2000</u>	<u>1.513</u>	<u>1.471</u>	<u>1.508</u>	<u>1.419</u>	<u>1.485</u>
<u>1999</u>	<u>1.538</u>	<u>1.495</u>	<u>1.534</u>	<u>1.444</u>	<u>1.516</u>
<u>1998</u>	<u>1.545</u>	<u>1.502</u>	<u>1.539</u>	<u>1.455</u>	<u>1.522</u>
<u>1997</u>	<u>1.561</u>	<u>1.517</u>	<u>1.555</u>	<u>1.472</u>	<u>1.537</u>
<u>1996</u>	<u>1.580</u>	<u>1.537</u>	<u>1.579</u>	<u>1.501</u>	<u>1.564</u>
<u>1995</u>	<u>1.609</u>	<u>1.567</u>	<u>1.609</u>	<u>1.525</u>	<u>1.591</u>

<u>YEAR</u>	<u>TABLE 11</u>	<u>TABLE 12</u>	<u>TABLE 13</u>	<u>TABLE 14</u>	<u>TABLE 15</u>
	<u>Elec. Pwr.</u>	<u>Elec. Eq.</u>		<u>Flour, Cer.</u>	
	<u>Eq.</u>	<u>Mfg.</u>	<u>Cannery/Fish</u>	<u>Feed</u>	<u>Cannery/Fruit</u>
2013	1.000	1.000	1.000	1.000	1.000

2012	0.990	0.993	1.007	1.007	1.011
2011	1.012	1.019	1.036	1.036	1.039
2010	1.068	1.069	1.070	1.070	1.072
2009	1.060	1.054	1.061	1.061	1.068
2008	1.064	1.072	1.089	1.089	1.089
2007	1.122	1.124	1.133	1.136	1.130
2006	1.215	1.203	1.213	1.210	1.204
2005	1.303	1.277	1.268	1.272	1.256
2004	1.426	1.391	1.367	1.373	1.347
2003	1.491	1.450	1.419	1.423	1.397
2002	1.516	1.475	1.445	1.447	1.419
2001	1.510	1.473	1.454	1.455	1.430
2000	1.521	1.484	1.470	1.471	1.444
1999	1.551	1.511	1.499	1.500	1.474
1998	1.544	1.506	1.504	1.507	1.479
1997	1.547	1.512	1.519	1.521	1.493
1996	1.555	1.526	1.547	1.544	1.523
1995	1.568	1.544	1.570	1.569	1.543
1994	1.651	1.618	1.634	1.632	1.602

<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>0.999</u>	<u>1.003</u>	<u>1.011</u>	<u>1.010</u>	<u>1.012</u>
<u>2012</u>	<u>0.987</u>	<u>0.996</u>	<u>1.020</u>	<u>1.018</u>	<u>1.024</u>
<u>2011</u>	<u>1.010</u>	<u>1.022</u>	<u>1.049</u>	<u>1.047</u>	<u>1.053</u>
<u>2010</u>	<u>1.065</u>	<u>1.071</u>	<u>1.084</u>	<u>1.082</u>	<u>1.087</u>
<u>2009</u>	<u>1.057</u>	<u>1.057</u>	<u>1.074</u>	<u>1.073</u>	<u>1.082</u>
<u>2008</u>	<u>1.061</u>	<u>1.074</u>	<u>1.102</u>	<u>1.101</u>	<u>1.104</u>
<u>2007</u>	<u>1.119</u>	<u>1.126</u>	<u>1.147</u>	<u>1.148</u>	<u>1.145</u>
<u>2006</u>	<u>1.212</u>	<u>1.205</u>	<u>1.228</u>	<u>1.223</u>	<u>1.220</u>
<u>2005</u>	<u>1.300</u>	<u>1.280</u>	<u>1.284</u>	<u>1.285</u>	<u>1.273</u>
<u>2004</u>	<u>1.422</u>	<u>1.394</u>	<u>1.384</u>	<u>1.387</u>	<u>1.365</u>
<u>2003</u>	<u>1.487</u>	<u>1.454</u>	<u>1.437</u>	<u>1.438</u>	<u>1.416</u>
<u>2002</u>	<u>1.512</u>	<u>1.478</u>	<u>1.462</u>	<u>1.462</u>	<u>1.439</u>
<u>2001</u>	<u>1.506</u>	<u>1.477</u>	<u>1.472</u>	<u>1.470</u>	<u>1.449</u>
<u>2000</u>	<u>1.517</u>	<u>1.487</u>	<u>1.488</u>	<u>1.486</u>	<u>1.464</u>
<u>1999</u>	<u>1.547</u>	<u>1.515</u>	<u>1.518</u>	<u>1.516</u>	<u>1.494</u>
<u>1998</u>	<u>1.540</u>	<u>1.509</u>	<u>1.522</u>	<u>1.522</u>	<u>1.499</u>
<u>1997</u>	<u>1.543</u>	<u>1.516</u>	<u>1.538</u>	<u>1.537</u>	<u>1.513</u>
<u>1996</u>	<u>1.551</u>	<u>1.530</u>	<u>1.566</u>	<u>1.561</u>	<u>1.544</u>
<u>1995</u>	<u>1.564</u>	<u>1.547</u>	<u>1.589</u>	<u>1.585</u>	<u>1.564</u>

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2013	1.000	1.000	1.000	1.000	1.000
2012	1.017	1.006	1.009	1.010	1.029
2011	1.045	1.035	1.039	1.039	1.065

2010	1.076	1.069	1.069	1.070	1.044
2009	1.075	1.059	1.054	1.065	1.083
2008	1.097	1.095	1.089	1.099	1.125
2007	1.135	1.140	1.128	1.142	1.188
2006	1.188	1.202	1.175	1.217	1.240
2005	1.237	1.256	1.227	1.269	1.338
2004	1.321	1.355	1.319	1.360	1.381
2003	1.366	1.404	1.366	1.406	1.403
2002	1.387	1.430	1.387	1.430	1.406
2001	1.399	1.438	1.396	1.441	1.415
2000	1.410	1.450	1.404	1.457	1.435
1999	1.441	1.477	1.429	1.484	1.435
1998	1.447	1.480	1.435	1.491	1.448
1997	1.459	1.491	1.447	1.508	1.467
1996	1.493	1.515	1.469	1.535	1.493
1995	1.512	1.539	1.490	1.562	1.550
1994	1.559	1.594	1.538	1.621	1.590

<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>1.014</u>	<u>1.010</u>	<u>1.010</u>	<u>1.012</u>	<u>1.008</u>
<u>2012</u>	<u>1.033</u>	<u>1.018</u>	<u>1.020</u>	<u>1.024</u>	<u>1.008</u>
<u>2011</u>	<u>1.062</u>	<u>1.047</u>	<u>1.051</u>	<u>1.054</u>	<u>1.039</u>
<u>2010</u>	<u>1.094</u>	<u>1.081</u>	<u>1.081</u>	<u>1.085</u>	<u>1.074</u>
<u>2009</u>	<u>1.093</u>	<u>1.071</u>	<u>1.066</u>	<u>1.080</u>	<u>1.054</u>
<u>2008</u>	<u>1.114</u>	<u>1.107</u>	<u>1.101</u>	<u>1.114</u>	<u>1.093</u>
<u>2007</u>	<u>1.153</u>	<u>1.153</u>	<u>1.140</u>	<u>1.158</u>	<u>1.135</u>
<u>2006</u>	<u>1.207</u>	<u>1.216</u>	<u>1.188</u>	<u>1.234</u>	<u>1.198</u>
<u>2005</u>	<u>1.257</u>	<u>1.270</u>	<u>1.240</u>	<u>1.287</u>	<u>1.251</u>
<u>2004</u>	<u>1.342</u>	<u>1.370</u>	<u>1.333</u>	<u>1.379</u>	<u>1.350</u>
<u>2003</u>	<u>1.388</u>	<u>1.420</u>	<u>1.381</u>	<u>1.426</u>	<u>1.393</u>
<u>2002</u>	<u>1.409</u>	<u>1.446</u>	<u>1.402</u>	<u>1.450</u>	<u>1.416</u>
<u>2001</u>	<u>1.422</u>	<u>1.454</u>	<u>1.411</u>	<u>1.461</u>	<u>1.419</u>
<u>2000</u>	<u>1.433</u>	<u>1.466</u>	<u>1.419</u>	<u>1.477</u>	<u>1.428</u>
<u>1999</u>	<u>1.464</u>	<u>1.494</u>	<u>1.445</u>	<u>1.505</u>	<u>1.448</u>
<u>1998</u>	<u>1.470</u>	<u>1.496</u>	<u>1.450</u>	<u>1.512</u>	<u>1.448</u>
<u>1997</u>	<u>1.482</u>	<u>1.508</u>	<u>1.462</u>	<u>1.529</u>	<u>1.462</u>
<u>1996</u>	<u>1.517</u>	<u>1.532</u>	<u>1.485</u>	<u>1.556</u>	<u>1.480</u>
<u>1995</u>	<u>1.536</u>	<u>1.556</u>	<u>1.506</u>	<u>1.583</u>	<u>1.506</u>

<u>YEAR</u>	<u>TABLE 21</u>	<u>TABLE 22</u>	<u>TABLE 23</u>	<u>TABLE 24</u>	<u>TABLE 25</u>
	<u>Mine</u>	<u>Paint</u>			<u>Paper</u>
	<u>Mill</u>	<u>Mfg.</u>	<u>Petroleum</u>	<u>Printing</u>	<u>Mfg.</u>
2013	1.000	1.000	1.000	1.000	1.000
2012	1.017	1.004	1.006	1.003	1.008
2011	1.062	1.035	1.036	1.030	1.038
2010	1.096	1.069	1.063	1.061	1.072

2009	1.095	1.056	1.046	1.051	1.060
2008	1.145	1.093	1.089	1.074	1.094
2007	1.194	1.141	1.143	1.112	1.138
2006	1.246	1.208	1.215	1.173	1.196
2005	1.307	1.268	1.287	1.220	1.250
2004	1.417	1.375	1.398	1.301	1.355
2003	1.471	1.427	1.448	1.338	1.407
2002	1.499	1.456	1.476	1.360	1.434
2001	1.517	1.465	1.491	1.362	1.446
2000	1.528	1.478	1.510	1.373	1.455
1999	1.553	1.506	1.532	1.392	1.484
1998	1.560	1.510	1.539	1.394	1.488
1997	1.577	1.525	1.560	1.401	1.501
1996	1.603	1.548	1.586	1.424	1.531
1995	1.628	1.575	1.618	1.445	1.551
1994	1.679	1.636	1.677	1.499	1.604

<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>1.013</u>	<u>1.009</u>	<u>1.008</u>	<u>1.006</u>	<u>1.011</u>
<u>2012</u>	<u>1.032</u>	<u>1.014</u>	<u>1.015</u>	<u>1.010</u>	<u>1.020</u>
<u>2011</u>	<u>1.078</u>	<u>1.045</u>	<u>1.045</u>	<u>1.036</u>	<u>1.051</u>
<u>2010</u>	<u>1.113</u>	<u>1.079</u>	<u>1.072</u>	<u>1.068</u>	<u>1.085</u>
<u>2009</u>	<u>1.112</u>	<u>1.067</u>	<u>1.055</u>	<u>1.058</u>	<u>1.073</u>
<u>2008</u>	<u>1.163</u>	<u>1.104</u>	<u>1.098</u>	<u>1.081</u>	<u>1.107</u>
<u>2007</u>	<u>1.212</u>	<u>1.153</u>	<u>1.152</u>	<u>1.119</u>	<u>1.152</u>
<u>2006</u>	<u>1.265</u>	<u>1.220</u>	<u>1.226</u>	<u>1.181</u>	<u>1.210</u>
<u>2005</u>	<u>1.327</u>	<u>1.281</u>	<u>1.298</u>	<u>1.228</u>	<u>1.265</u>
<u>2004</u>	<u>1.439</u>	<u>1.389</u>	<u>1.410</u>	<u>1.309</u>	<u>1.371</u>
<u>2003</u>	<u>1.493</u>	<u>1.442</u>	<u>1.460</u>	<u>1.347</u>	<u>1.424</u>
<u>2002</u>	<u>1.522</u>	<u>1.471</u>	<u>1.489</u>	<u>1.369</u>	<u>1.451</u>
<u>2001</u>	<u>1.540</u>	<u>1.480</u>	<u>1.504</u>	<u>1.371</u>	<u>1.464</u>
<u>2000</u>	<u>1.551</u>	<u>1.493</u>	<u>1.523</u>	<u>1.382</u>	<u>1.473</u>
<u>1999</u>	<u>1.577</u>	<u>1.522</u>	<u>1.544</u>	<u>1.402</u>	<u>1.502</u>
<u>1998</u>	<u>1.584</u>	<u>1.526</u>	<u>1.552</u>	<u>1.403</u>	<u>1.506</u>
<u>1997</u>	<u>1.601</u>	<u>1.541</u>	<u>1.573</u>	<u>1.411</u>	<u>1.519</u>
<u>1996</u>	<u>1.627</u>	<u>1.564</u>	<u>1.599</u>	<u>1.433</u>	<u>1.549</u>
<u>1995</u>	<u>1.653</u>	<u>1.591</u>	<u>1.632</u>	<u>1.455</u>	<u>1.570</u>

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
	<u>Refrigeration</u>	<u>Rubber</u>	<u>Steam</u> <u>Power</u>	<u>Textile</u>	<u>Warehousing</u>
2013	1.000	1.000	1.000	1.000	1.000
2012	1.005	1.000	1.000	1.005	1.014
2011	1.036	1.027	1.028	1.030	1.044
2010	1.071	1.057	1.065	1.056	1.074
2009	1.064	1.041	1.055	1.042	1.067
2008	1.100	1.079	1.091	1.073	1.101

2007	1.148	1.121	1.143	1.111	1.140
2006	1.215	1.182	1.220	1.158	1.182
2005	1.273	1.231	1.285	1.202	1.223
2004	1.373	1.320	1.400	1.287	1.309
2003	1.422	1.366	1.452	1.324	1.354
2002	1.451	1.394	1.481	1.343	1.370
2001	1.463	1.398	1.487	1.349	1.375
2000	1.477	1.410	1.499	1.360	1.383
1999	1.506	1.431	1.522	1.380	1.409
1998	1.512	1.437	1.523	1.382	1.410
1997	1.527	1.453	1.534	1.394	1.415
1996	1.552	1.473	1.550	1.418	1.438
1995	1.579	1.501	1.576	1.437	1.451
1994	1.638	1.553	1.638	1.480	1.492

<u>2014</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2013</u>	<u>1.010</u>	<u>1.008</u>	<u>1.007</u>	<u>1.010</u>	<u>1.011</u>
<u>2012</u>	<u>1.017</u>	<u>1.009</u>	<u>1.007</u>	<u>1.015</u>	<u>1.027</u>
<u>2011</u>	<u>1.048</u>	<u>1.036</u>	<u>1.036</u>	<u>1.041</u>	<u>1.057</u>
<u>2010</u>	<u>1.084</u>	<u>1.066</u>	<u>1.073</u>	<u>1.067</u>	<u>1.087</u>
<u>2009</u>	<u>1.076</u>	<u>1.051</u>	<u>1.063</u>	<u>1.052</u>	<u>1.081</u>
<u>2008</u>	<u>1.113</u>	<u>1.089</u>	<u>1.099</u>	<u>1.085</u>	<u>1.115</u>
<u>2007</u>	<u>1.161</u>	<u>1.132</u>	<u>1.152</u>	<u>1.122</u>	<u>1.154</u>
<u>2006</u>	<u>1.229</u>	<u>1.192</u>	<u>1.229</u>	<u>1.170</u>	<u>1.196</u>
<u>2005</u>	<u>1.288</u>	<u>1.242</u>	<u>1.294</u>	<u>1.214</u>	<u>1.238</u>
<u>2004</u>	<u>1.389</u>	<u>1.332</u>	<u>1.411</u>	<u>1.300</u>	<u>1.325</u>
<u>2003</u>	<u>1.439</u>	<u>1.379</u>	<u>1.463</u>	<u>1.338</u>	<u>1.371</u>
<u>2002</u>	<u>1.468</u>	<u>1.407</u>	<u>1.493</u>	<u>1.357</u>	<u>1.387</u>
<u>2001</u>	<u>1.480</u>	<u>1.411</u>	<u>1.498</u>	<u>1.363</u>	<u>1.392</u>
<u>2000</u>	<u>1.494</u>	<u>1.423</u>	<u>1.510</u>	<u>1.374</u>	<u>1.400</u>
<u>1999</u>	<u>1.523</u>	<u>1.444</u>	<u>1.533</u>	<u>1.395</u>	<u>1.426</u>
<u>1998</u>	<u>1.529</u>	<u>1.450</u>	<u>1.535</u>	<u>1.397</u>	<u>1.428</u>
<u>1997</u>	<u>1.545</u>	<u>1.466</u>	<u>1.546</u>	<u>1.408</u>	<u>1.433</u>
<u>1996</u>	<u>1.570</u>	<u>1.486</u>	<u>1.562</u>	<u>1.432</u>	<u>1.456</u>
<u>1995</u>	<u>1.598</u>	<u>1.514</u>	<u>1.587</u>	<u>1.452</u>	<u>1.469</u>

<u>YEAR</u>	<u>TABLE 31</u> <u>Woodworking</u>	<u>TABLE 32</u> <u>Glass Mfg.</u>
2013	1.000	1.000
2012	1.015	1.005
2011	1.042	1.035
2010	1.074	1.071
2009	1.066	1.059
2008	1.091	1.094
2007	1.126	1.145
2006	1.172	1.213
2005	1.216	1.279

2004	1.298	1.391
2003	1.338	1.446
2002	1.358	1.475
2001	1.371	1.482
2000	1.372	1.497
1999	1.395	1.525
1998	1.397	1.528
1997	1.403	1.541
1996	1.438	1.561
1995	1.453	1.588
1994	1.494	1.652

2014	1.000	1.000
2013	1.013	1.008
2012	1.031	1.014
2011	1.058	1.044
2010	1.090	1.080
2009	1.082	1.068
2008	1.107	1.104
2007	1.143	1.154
2006	1.189	1.223
2005	1.234	1.289
2004	1.318	1.403
2003	1.359	1.458
2002	1.379	1.487
2001	1.391	1.495
2000	1.393	1.509
1999	1.416	1.538
1998	1.418	1.541
1997	1.424	1.554
1996	1.460	1.574
1995	1.475	1.601

AUTH: 15-1-201, MCA

IMP: 15-6-138, 15-8-111, MCA

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 20, 2014.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons

who wish to have their name added to the list shall make a written request, 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 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. 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 rules 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 October 14, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III, the amendment of	)	PROPOSED ADOPTION,
ARM 42.20.102, 42.20.106,	)	AMENDMENT, AND REPEAL
42.20.118, 42.20.156, 42.20.173,)	
42.20.302, 42.20.454, 42.20.455,)	
42.20.501, 42.20.502, 42.20.503,)	
42.20.504, 42.20.509, 42.20.515,)	
42.20.601, 42.20.603, 42.20.604,)	
42.20.606, 42.20.620, 42.20.660,)	
42.20.665, 42.20.670, 42.20.675,)	
42.20.680, 42.20.705, 42.20.720,)	
42.20.725, 42.20.730, 42.20.735,)	
42.20.740, and 42.20.745, and the)	
repeal of ARM 42.20.605, 42.20.607,)	
and 42.20.625 pertaining to the)	
valuation and classification of real)	
property)	

TO: All Concerned Persons

1. On November 12, 2014, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 3, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I AGRICULTURAL COMMODITY PRICES AND VALUES

(1) Commodity prices for the 2015 appraisal cycle used for the determination of income are calculated using a 10-year Olympic average of prices from Montana Agricultural Statistics for the years 2004-2013. An Olympic average throws out the high and low years and averages the remaining 8 years. The prices used for valuing agricultural land for the 2015 appraisal cycle are as follows:

(a) Spring wheat price used in the valuation of nonirrigated summer fallow and nonirrigated continuous cropped farm lands = \$6.36 per bushel.

(b) Alfalfa hay price, reduced by 20 percent as required by 15-7-201, MCA, used in the valuation of irrigated and nonirrigated hay lands = \$76.50 per ton.

(c) Private grazing fees used in the valuation of grazing lands = \$18.08 per Animal Unit Month (AUM).

(2) The minimum value of irrigated land as determined by the methodology detailed in ARM 42.20.675 = \$571.41 per acre.

(3) The statewide average grazing productivity = .21 AUMs per acre, and is used in calculating the values of:

(a) nonqualified agricultural lands; and

(b) nonproductive patented mining claims.

(4) For the 2015 appraisal cycle the capitalization rate for Class 3 agricultural land, which is used to convert an ongoing income stream into an estimate of value = 6.4 percent.

(5) For the 2015 appraisal cycle the highest productivity of nonirrigated continuously cropped farmland is 55 bushels per acre, and is used in calculating the values of specialty crop land.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to consolidate the commodity prices, the minimum value of irrigated land, statewide average productivity of grazing land, the capitalization rate, and the highest productivity of nonirrigated continuously cropped farmland into a single rule. The department is proposing to strike these values from other agricultural rules in ARM Title 42, chapter 20, and placing them in this new rule.

NEW RULE II FAMILY FARM (1) Parcels of land between 20 acres and 160 acres that do not meet income requirements for agricultural eligibility as outlined in 15-7-202, MCA, but which are used for farming or ranching, or as a part of a family farm or ranch business as described in 15-7-202, MCA, may be valued as agricultural land if the taxpayer provides sufficient evidence, as described in this rule, to prove the property is part of a family farm or ranch business.

(2) The following proof of eligibility requirements will be considered when the owner of the land applies for agricultural land classification:

(a) the subject property must be located within 15 air miles of the family-operated farm or ranch;

(b) the owner of the subject property must submit proof that 51 percent or more of the owner's Montana annual gross income is derived from agricultural production;

(c) the property taxes on the subject property are paid by the family-operated farm or ranch business, which may be a family corporation, family partnership, sole proprietorship, or a family trust; and

(d) the owner of the property must submit documentation proving that at least 51 percent of the farm or ranch entity's Montana annual gross income is derived from agricultural production.

(3) If the conditions of (2) are satisfied, the land is eligible for agricultural classification.

(4) The department will accept a copy of a cancelled check as proof of payment of property taxes by the family-operated business entity. Other acceptable proof of payments of the property taxes will be considered on a case-by-case basis.

(5) If the owner of the subject property, which does not meet the requirements to be classified and valued as agricultural land, is a shareholder, partner, owner, or member of the family-operated farming or ranching entity involved in Montana agricultural production, the property owner may qualify the subject property as agricultural land if proof is submitted that details the legal relationship between the owner and the family-operated farming or ranching business entity. This proof must include:

(a) a copy of the documents that establish a legal relationship with the family-operated farming or ranching business entity, such as the documents on file with the Secretary of State; and

(b) proof that at least 51 percent of the property owner's or family-operated farming or ranching business entity's Montana annual gross income comes from agricultural production.

(6) If the conditions of this rule are satisfied, the land is eligible for classification as agricultural land according to its use.

(7) For all applications received under this rule, the acceptable proof of income will be the most recent year's Montana individual and/or corporate tax return, whichever is appropriate. The forms presented as proof must include all state and federal tax forms that detail the amount of income received from agricultural production as well as the amount of Montana gross income.

(8) A current county farm and ranch reporting form that reflects any livestock or personal property used on the land must have been filed by the current landowner with the local department office.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to reduce confusion regarding the qualifications for agricultural land classification. The department proposes striking similar language from other agricultural rules and including it in this proposed rule to locate the information together in a single rule.

NEW RULE III SPECIALTY AND UNIQUE CROPS (1) An applicant applying for agricultural land classification must prove that the land indicated in the application actually produced an agricultural crop as defined in 15-1-101, MCA, and that the crop produced \$1,500 in annual agricultural income based on parcel size as set forth in ARM 42.20.620. The agricultural land, indicated in the application, must actually produce the crop(s).

(2) Poultry or game birds must be raised in an unconfined area receiving their general dietary requirements from the land. Game birds raised in a building, cage, or enclosed area, are considered activities that are not supported and produced by the land. Land used for poultry and game birds raised in this manner are not eligible for consideration as agricultural land.

(3) The sale of honey and other products from bees will be considered agricultural income. For valuation as agricultural land, the owner of the land must provide proof that:

(a) the landowner is registered with the Montana Department of Agriculture as a landowner apiary; and

(b) the apiary must have at least 25 bee colonies annually sited on the land continually from May 1 through August 31.

(4) The sale of biological control insects will be considered agricultural income if the insects are supported solely from noxious weeds grown on the land indicated on the application.

(5) A garden or produce farm must grow plants or nursery stock in the ground to be considered agriculture if the provisions of (6) are met. Plants not grown in or nourished by the land are not considered agricultural production and the income generated by those plants is not considered agricultural income for the purposes of this rule. Examples of ineligible plants include, but are not limited to, trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.

(6) For valuation as agricultural land, the owner of land used as a garden or produce farm must provide proof that the garden or produce farm:

(a) consists of a minimum of 1 acre;

(b) is cultivated for weeds and grass; and

(c) is managed according to accepted husbandry practices, including necessary fencing and a watering system.

(7) The sale of Christmas trees will be considered agricultural income if the provisions of (8) are met. Provisional agricultural classification will be granted for 5 years during the startup to allow time for the initial crop of trees to reach salable maturity.

(8) For valuation as agricultural land, the owner of land must provide proof that:

(a) all trees are cultivated under accepted, proven husbandry practices;

(b) all trees are sheared on a regular basis; and

(c) the property contains a minimum of 2,000 trees.

(9) Following the fifth year of provisional classification, the property owner must submit an application for agricultural classification.

(10) The property owner must include with the application documentation sufficient to prove that:

(a) the property continues to meet the requirements of (8); and

(b) the property produces at least \$1,500 in gross annual income.

(11) A fruit tree orchard will be considered agriculture if the provisions of (12) are met. Provisional agricultural classification will be granted for 5 years during the startup to allow time for the initial crop of trees to reach salable maturity.

(12) For valuation as agricultural land, the owner of land must provide proof that:

- (a) the orchard consists of contiguous parcels of land totaling not less than 1 acre;
- (b) the orchard contains a minimum of 100 live fruit trees; and
- (c) the orchard is maintained using accepted fruit tree husbandry practices including fencing and a watering system.

(13) Following the fifth year of provisional classification, the property owner must submit an application for agricultural classification.

(14) The property owner must include with the application documentation sufficient to prove that:

- (a) the property continues to meet the requirements of (12); and
- (b) the orchard produces at least \$1,500 in gross annual income once the trees reach production maturity.

(15) A vineyard shall be considered agriculture if the provisions of (16) are met. Provisional agricultural classification will be granted for 5 years during the startup to allow time for the initial crop of vines to reach salable maturity.

(16) For valuation as agricultural land, the owner of land must prove that:

- (a) the vineyard consists of contiguous parcels of land totaling not less than 1 acre;
- (b) the vineyard contains a minimum of 120 live vines;
- (c) the vineyard is maintained for weeds and grass;
- (d) all vines are pruned; and
- (e) the vineyard is maintained with accepted husbandry practices, including trellising and staking.

(17) Following the fifth year of provisional classification, the property owner must submit an application for agricultural classification.

(18) The property owner must include with the application documentation sufficient to prove that the property continues to meet the requirements of (16).

(19) Land qualifying under this rule is valued at the highest productivity level of nonirrigated continuously cropped farm land as established by the department.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule III to reduce confusion regarding the qualifications for agricultural land classification for specialty and unique crops. The department proposes striking similar language from other agricultural rules and including it in this proposed rule to locate the information together in a single rule.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) through (9) remain the same.

(10) For real property exemption applications submitting use for parks and recreational facilities, the following documents must accompany the applications:

(a) documentation verifying the park and/or recreational facility is open to the general public; or

(b) if a federally recognized tribe, a tribal resolution identifying the fee land to be used exclusively for parks and recreational facilities, by legal description, language stating the type of exemption the tribe is requesting, and language stating how the property qualifies for this type of exemption, not to exceed ~~15~~ 640 acres.

(11) and (12) remain the same.

AUTH: 15-1-201, 15-6-230, MCA

IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-6-211, 15-6-216, 15-6-221, 15-6-230, 15-7-102, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.102 to implement Senate Bill 231, L. 2013, which amended the 15-acre limitation to 640 acres for federally recognized tribes applying for a parks and recreational facilities exemption.

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) through (5)(a)(xiii) remain the same.

~~(iv)~~(xiv) manufactured homes are comparable to other manufactured homes.

(6) through (16) remain the same.

(17) "Property type" is the general description of each parcel's present use.

(17) through (21) remain the same, but are renumbered (18) through (22).

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-101, 15-7-111, 15-7-112, 15-7-304, 15-7-306, 15-9-101, 15-24-1501, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.106 to correct a numbering error in (5) and to define the term "property type" because it is commonly used in this subchapter.

42.20.118 TRIBAL GOVERNMENT'S GOVERNMENT APPLICATION FOR A TEMPORARY PROPERTY TAX EXEMPTION (1) remains the same.

(2) The tribe must file for a property tax exemption on a form available from the local department office in the county in which the tribal fee land is located on or before March 1 of the year for which the exemption is sought ~~or within 30 days after receiving an assessment notice, whichever is later, or in the case of newly acquired land, within 30 days of receiving the initial assessment notice.~~ A tribe with tribal fee lands located in more than one county must file an application for a property tax exemption in each county. Applications postmarked after March 1, will be considered for the following tax year. ~~For tax year 2012 only, the filing deadline is June 4.~~ All applications postmarked after that date will be considered for the following year.

(3) through (9) remain the same.

AUTH: 15-1-201, 15-6-230, MCA

IMP: 15-6-230, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.118 to correct an inequitable situation that exists in the current language in the rule relative to applying for property tax exemptions in general. Section 15-8-201, MCA, requires the department to assess all property to the person by whom it was owned, claimed, or in possession of on January 1. Taxpayers may file for an exemption of their property taxes within 30 days after the date on their assessment notices.

When a property transfer occurs very early in the calendar year, the department typically has time to record the ownership transfer prior to processing that year's property assessment notices. For acquisitions occurring closer to the department's assessment notice processing time, the opportunity to update the record of transfer ahead of the assessment notice mailing does not exist.

In those instances, the owners of the property acquired later do not have the same opportunity to file for an exemption that the owners of property acquired earlier in the year do, and instead must wait to file for an exemption in the following tax year. This creates a situation where not all property owners who acquire property after January 1 in a given year are receiving similar treatment. Therefore, the department proposes to remove the 30-day language in (2) that has previously allowed for this inequity to occur.

The department further proposes striking an outdated reference to the 2012 tax year in (2), because it is no longer relevant or necessary in the rule, and making a grammatical correction in the title.

The proposed amendments will make the language in this rule consistent with ARM 42.20.102, as amended in 2013. The department has considered the guiding principles set forth in 2-15-142, MCA, in amending this rule.

42.20.156 AGRICULTURAL AND FOREST LAND USE CHANGE CRITERIA

(1) The department ~~shall~~ will change the classification and valuation of land from class three, as defined in 15-6-133, MCA, or class ten, as defined in 15-6-143, MCA, to class four, as defined in 15-6-134, MCA, when any of the following criteria are met:

~~(a) the land contains covenants or other restrictions that prohibit agricultural use or the cutting of timber, other than that required as part of a timber management plan or a conservation easement;~~

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

~~(d) the land is part of a platted and filed subdivision, and~~

(c) the land contains three or more of the following physical site improvements:

(i) through (3) remain the same.

AUTH: 15-1-201, 15-7-111, 15-44-105, MCA

IMP: 15-1-101, 15-6-133, 15-7-103, 15-7-111, 15-7-202, 15-7-206, 15-7-207, 15-7-210, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.156 to comply with a recent Supreme Court decision. Agricultural land may be a recorded and filed platted subdivision but it may still be used for agricultural purposes. The department is removing the language referring to a platted and filed subdivision.

42.20.173 STATUTORY DEADLINE FOR ASSESSMENT REVIEWS

(1) For the current reappraisal cycle, tax years ~~2009-2014~~ 2015-2020, the department will accept requests for informal assessment reviews (Form AB-26) for classes three, four, and ten. The owner of any land and/or improvements who had not previously submitted a request for an informal review of their ~~2009~~ 2015 assessment notice and who is dissatisfied with the valuation may request an informal review of the assessment notice by submitting a request for informal review form (Form AB-26) to the local ~~Department of Revenue~~ department office in the county in which the property is located, on or before the first Monday in June of the current tax year, or within 30 days ~~of the receipt of an~~ after the date on the assessment notice to be considered for the current tax year.

(2) For taxpayers who do not file on or before the first Monday in June of the current tax year, or within 30 days ~~of receipt of an~~ after the date on the assessment notice, the informal review will be considered for the following year.

(3) and (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-7-102, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.173 to update the years for the upcoming reappraisal cycle, and to better define and administer the 30-day timeline set out in 15-7-102, MCA.

42.20.302 DEFINITIONS The following definitions apply to this subchapter:

(1) "Has a separate and independent value for such other purposes" means the land has a demonstrated capacity for recreation, commercial, industrial, or agricultural/timber use. That capacity is demonstrated by one of the following criteria:

(a) the filing of a certificate of survey that creates a division of the mining claim;

(b) the growth of agricultural commodities on the mining claim;

(c) the construction of a recreational or residential structure such as a summer home or commercial structure ~~within one mile of~~ on the mining claim; or

~~(d) the construction of a commercial structure or the operation of a commercial operation such as a hunting guide or outfitter within one mile of the mining claim; or~~

~~(e)~~(d) the lease of any portion of the surface area for a recreational, commercial, residential, industrial, or agricultural use.

~~(f)(e)~~ The requirements of ~~(4)(c)~~ and ~~(d)~~ may be waived when the topography of the property is so severe that it precludes development for any purpose other than mining.

(2) through (6) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-101, 15-6-133, 15-8-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.302 to strike the language dealing with the construction of a structure within one mile of a mining claim because the one mile language is arbitrary, leads to the inequitable treatment of landowners, and is difficult to defend.

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered, a taxpayer or the taxpayer's agent must ~~meet the following requirements:~~

~~(a) make application on a property adjustment form (AB-26) submit a completed Request for Informal Review (Form AB-26) to the local department office in the county where the property is situated, on or before the first Monday in June or within 30 days after the date on the assessment notice;~~

~~(b) the property adjustment form (AB-26) must be filed within 30 days after receipt of a valuation notice or before the first Monday in June, whichever is later;~~

~~(c) the sale must be substantiated by~~

~~(b) submit an accurately completed and filed RTC Realty Transfer Certificate;~~

~~(d)(c) complete and sign a sales verification form including that includes the sales price of the property;~~

~~(e)(d) provide a signed affidavit completed by at least one party or person who is not a participating party (buyer or seller) in the transaction the buyer or seller and that identifies the conditions, terms, and sale price of the property;~~

~~(f)(e) provide an executed buy/sell agreement as supporting documentation; and~~

~~(g)(f) provide evidence of two comparable sales of similar property in the same general geographic area to where the taxpayer's property is situated. The property sales must have occurred within six months of the valuation date adopted by the department in its reappraisal plan administrative rules, as set forth in ARM Title 42, chapter 18. The department will:~~

~~(i) use its sales records to identify the sale prices and determine if the sales were valid, arm's-length sales. Taxpayers will be permitted; and~~

~~(ii) permit taxpayers to examine the sales information for the comparable property if they agree to keep the information confidential; and~~

~~(h) the actual selling price of the property and the comparable sales must be adjusted by the department to a value that is consistent with the base year adopted by the department in its administrative rules, ARM Title 42, chapter 18.~~

(2) For the actual selling price of the property to be considered, the department must:

(a) analyze and maintain the information and requirements in (1)(a) through ~~(h)(f)~~ as a part of the file supporting the value placed on the property for tax purposes;

(b) verify the subject sale ~~as is~~ a valid arm's-length transaction as defined in 15-8-111, MCA;

(c) verify the comparable sales ~~as are~~ valid arm's-length transactions as defined in 15-8-111, MCA; and

(d) adjust the actual selling price of the property to a value that is consistent with the base year adopted by the department in its administrative rules, ARM Title 42, chapter 18; and

~~(d)(e)~~ adjust the sale sales price of the property to account for changes in market conditions that may have occurred between the time of sale and the base year valuation date.

(3) After making a determination regarding use of the adjusted selling price as an indication of market value for tax purposes, the department ~~must~~ shall return the ~~form (AB-26)~~ Form AB-26 to the taxpayer stating clearly the reasons for accepting or rejecting the application and, if appropriate, what adjustments were made to the actual selling price and why ~~these~~ the adjustments were made.

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

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.454 as a matter of housekeeping to set out the proper name for the Form AB-26 and to change the reference to the term "valuation" to the term "assessment" for clarity in the rule. The term "assessment" is both on the form and used in current practice by the department. The department further proposes amending and restructuring (1)(g) and (h) for improved readability and to clarify that the department will consider the sale of a taxpayer's property provided the sale occurred within 6 months of the department's valuation date. The sections, as proposed to be amended, will become (1)(f).

42.20.455 CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) through (1)(b) remain the same.

(c) submit a ~~property adjustment form (AB-26)~~ Request for Informal Review (Form AB-26) and the original long-form narrative appraisal, to the local department office in the county where the property is situated; and

~~(d) file the property adjustment form (AB-26) and the original long-form narrative appraisal on or before the first Monday in June or within 30 days after receipt of a valuation~~ the date on the assessment notice or before the first Monday in June, whichever is later.

(2) For the independent appraisal to be considered, the department must:

(a) maintain the information and requirements in (1)(a) through ~~(d)(c)~~ as a part of the file supporting the value placed on the property for tax purposes;

(b) through (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.455 as a matter of housekeeping to set out the proper name for the Form AB-26 and to change the reference to the term "valuation" to the term "assessment" for clarity in the rule. The term "assessment" is both on the Form AB-26 and used in current practice by the department.

42.20.501 DEFINITIONS The following definitions apply to this subchapter:

(1) "~~2002~~ 2014 tax year value" means the market value of a property which appears on the ~~2002~~ 2014 property tax record of that property.

(2) through (16) remain the same.

(17) "Neighborhood (NBHD) group percentage" means the percent of change in value from the total ~~2002~~ 2014 tax year value of the year before reappraisal to the total ~~2003~~ 2015 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

Neighborhood Group Percentage =

$$\frac{(\text{Total } 2003 \text{ NBHD REAP Value} - \text{Total } \del{2002} \text{ } 2014 \text{ NBHD Tax Year Value})}{\text{Total } \del{2002} \text{ } 2014 \text{ NBHD Tax Year Value}}$$

(a) through (19) remain the same.

(20) "Phase-in percentage" for tax years ~~2003~~ 2015 through ~~2008~~ 2020 is 16.6% percent per year. The phase-in percentage accumulates annually.

(21) remains the same.

(22) "Reappraisal (REAP) value" means the full ~~2003~~ 2015 value determined for the current reappraisal cycle pursuant to 15-7-111, MCA, adjusted annually for new construction or destruction. The ~~2003~~ 2015 reappraisal value reflects a market value of the property on January 1, ~~2002~~ 2014. A current year REAP value is the same as the ~~2003~~ 2015 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~2003~~ 2015 or subsequent tax years.

(23) and (24) remain the same.

(25) "Value before reappraisal (VBR)" means the ~~2002~~ 2014 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the ~~2003~~ 2015 tax year and subsequent years is the same as the ~~2002~~ 2014 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, ~~land productivity changes~~, improvement grade changes, or other changes made to the property during ~~2002~~ 2014 or subsequent tax years.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-222, 15-7-111, 15-10-420, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.501 to update the years for the upcoming reappraisal cycle beginning in tax year 2015, and proposes making a format change in (20) as a matter of housekeeping.

42.20.502 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR), EXCLUDING INDUSTRIAL PROPERTIES (1) and (2) remain the same.

(3) For class three property that contains a productivity ~~or grade change~~ only, the current year VBR will ~~be the prior year VBR of the prior grade~~ remain the same as the full appraisal value of the previous cycle.

(4) remains the same.

(5) Land which has been reclassified as residential or commercial land after January 1, ~~2002~~ 2014, will have the VBR determined by comparing other ~~2002~~ 2014 market values of similar residential or commercial land, and determining a comparable VBR for the new residential or commercial land.

(6) through (10) remain the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.502 to remove references to the outdated term "grade" and replace it with the term "productivity" as used in current practice by the department to value class three agricultural land. The department is also updating the years for the upcoming reappraisal cycle beginning in tax year 2015.

42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS THREE, CLASS FOUR, AND CLASS TEN PROPERTY (1) For tax years ~~2003~~ 2015 through ~~2008~~ 2020, the department is required to determine the current year phase-in value for each property in class three, class four, and class ten annually. The current year phase-in value is determined by subtracting the ~~2002~~ 2014 ~~VBR~~ reappraisal value from the ~~2003~~ 2015 reappraisal value multiplied by the applicable phase-in percentage, the product of which is added to the ~~2002~~ 2014 ~~VBR~~ reappraisal value. The calculations of the phase-in values are represented by the following formula:

~~2003~~ 2015 Phase-in value =

$$\begin{aligned} & [(\text{~~2003~~ 2015 full reappraisal value} - \text{~~2002~~ VBR 2014 full reappraisal value}) \times \\ & 16.66\%] \\ & + \text{~~2002~~ VBR 2014 full reappraisal value} \end{aligned}$$

~~2004~~ 2016 Phase-in value =

$$\begin{aligned} & [(\text{~~2003~~ 2015 full reappraisal value} - \text{~~2002~~ VBR 2014 full reappraisal value}) \times \\ & 33.32\%] \\ & + \text{~~2002~~ VBR 2014 full reappraisal value} \end{aligned}$$

2005 2017 Phase-in value =
[(~~2003~~ 2015 full reappraisal value - ~~2002~~ VBR 2014 full reappraisal value) x
49.98%]
+ ~~2002~~ VBR 2014 full reappraisal value

2006 2018 Phase-in value =
[(~~2003~~ 2015 full reappraisal value - ~~2002~~ VBR 2014 full reappraisal value) x
66.64%]
+ ~~2002~~ VBR 2014 full reappraisal value

2007 2019 Phase-in value =
[(~~2003~~ 2015 full reappraisal value - ~~2002~~ VBR 2014 full reappraisal value) x
83.30%]
+ ~~2002~~ VBR 2014 full reappraisal value

2008 2020 Phase-in value =
2003 2015 full reappraisal value

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.503 to reflect the 2015 reappraisal dates and to reformat the formula section.

42.20.504 NEW CONSTRUCTION DETERMINATION (1) The following criteria will be used to identify new construction and destruction:

(a) all residential or commercial structures, out-buildings, and mobile homes that were built, remodeled, or destroyed in the preceding year;

(b) properties with new, attached garages built in the preceding year;

(c) properties which had any land reclassification or land use changes; ~~or~~

(d) properties with out-buildings built in the preceding year; or

(e) properties with a physical change to the improvements.

(2) The following will not be considered new construction or destruction:

(a) properties with square footage changes due to correction of measurements or sketch vectoring, or due to coding corrections for story heights, such as story with full finished attic to 1.5 stories;

(b) properties with improvement grade changes;

(c) properties with condition, desirability, and usefulness (CDU rating) changes;

(d) properties with changes in heat or air conditioning; or

~~(e) residential dwelling units with changes in square footage of living area of 100 square feet or less;~~

~~(f)(e) properties with changes in effective year; or~~

~~(g) properties with changes in finished basement areas.~~

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.504(1) to include "physical" changes as a means of identifying new construction or destruction, and striking the square footage language in (2) to specify all valuation changes and not only square footage changes. The department also proposes striking the reference to finished basement areas because changes in finished basement areas may be considered new construction or destruction.

42.20.509 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR INDUSTRIAL PROPERTIES (CLASS FOUR) (1) remains the same.

(2) The reappraisal value of new construction will be trended back to a VBR. The trend used to arrive at the VBR ~~shall~~ will be calculated using cost indices from "Marshall Valuation Service." The trend used ~~shall~~ will be called the new construction trend factor. The new construction trend factor for industrial properties is .84. The VBR will be adjusted to reflect the new construction as if it were in place in ~~2002~~ 2014. The same method will be used in subsequent tax years.

For purposes of illustration, assume the following:

Reappraisal New Construction Value	=	\$100,000
New Construction Trend Factor	=	.84

(a) Given these assigned values, the trend factor is applied as follows:

New construction VBR =
REAP new construction value x new construction trend factor

Example: \$84,000 = \$100,000 x .84

(3) Property destroyed after January 1, ~~2002~~ 2014, will be removed from the VBR of the industrial site. The destroyed property also will be deducted from the reappraised value at its reappraised cost.

(4) Land which has been reclassified as industrial land after January 1, ~~2002~~ 2014, will have the VBR determined by comparing other ~~2002~~ 2014 market values of similar industrial land, and determining a comparable VBR for the new industrial land.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.509 to update the dates for the upcoming 2015 reappraisal cycle and to make grammatical changes.

42.20.515 DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) ~~For the 2009 tax year and subsequent tax years,~~
~~the~~ The department will calculate the value attributable to newly taxable property

that is classified as class four, five, seven, eight, nine, twelve, thirteen, fourteen, fifteen, and sixteen for each taxing jurisdiction the total taxable value of class four newly taxable property as follows annually.

(2) For the 2014 tax year and subsequent years, the department will calculate the taxable value attributable to newly taxable property in each of the classes of property listed in (1) for each taxing jurisdiction as follows:

(a) For tax years 2009 and subsequent years, the department shall determine the market value of class four newly taxable property in a taxing jurisdiction. Class four newly taxable property in a taxing jurisdiction will include the total market value of class four property for any tax increment financing district which has been dissolved or terminated. The value attributable to newly taxable property will be calculated by subtracting the prior year adjusted taxable value from the current year adjusted taxable value to determine the total value of newly taxable property in a jurisdiction by tax class.

(b) The current year total market value is determined by valuing each current year parcel with the current cycle valuation schedules and models. These values for current year parcels are then added together to arrive at the current year total market value. The previous year total market value is determined by valuing each previous year parcel with the current cycle valuation schedules and models. These values for previous year parcels are then added together to arrive at the previous year total market value. The difference between the current year total market value and the previous year total market value is the total market value of class four newly taxable property and prior year adjusted taxable values will be calculated by adjusting the current and prior year taxable values by an effective rate. The effective rate will be calculated from the current year taxable value and the current year market value, with the exception of class four, which will use the current year taxable value and the current year phase-in value to reduce the impact that a change in phase-in value has on the effective rate.

(c) The newly taxable property value for class four property for the current tax current year adjusted taxable value is determined will be calculated by multiplying the current year total class four market value by the appropriate current year exemption percentage and the current year class four tax effective rate determined in (b).

(d) The prior year adjusted taxable value will be calculated by multiplying the prior year market value by the effective rate determined in (b).

(2) For tax year 2009 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class five, seven, eight, nine, twelve, thirteen, fourteen, fifteen, and sixteen property. The taxable value of newly taxable property of class five, seven, eight, nine, twelve, thirteen, fourteen, fifteen, and sixteen property shall be determined as follows:

(a) The department shall determine the total market value of newly taxable property in a taxing jurisdiction. The total market value of newly taxable property is calculated as the difference between the current year total market value for each class of property and the previous year total market value of the same class of property.

~~(b) For each class of property, the total taxable value of newly taxable property for the current tax year is determined by multiplying the current year total market value of newly taxable property by the current year tax rate for that class of property.~~

~~(3) The total taxable value of newly taxable class three and class ten property shall be determined in the same manner as set forth in (2) to the extent that land is transferred into a taxing jurisdiction (e.g., a change from exempt status to taxable status) and identified as newly taxable property. For jurisdictions in which land transfers have not been specifically identified, a value for newly taxable class three and ten property will not be calculated.~~

~~(4)(3) The total taxable value of attributable to all of the newly taxable property in a taxing jurisdiction shall be determined by adding together the separate taxable values as determined above for class three, four, five, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, and sixteen property for that taxing jurisdiction will be calculated by summing the taxable value attributable to newly taxable property in all classes of property listed in (1).~~

~~(5)(4) If the newly taxable value, as calculated according to (1) through (4)(2) and (3), for any class of property in any taxing jurisdiction is less than zero, then the newly taxable value for that class of property in that taxing jurisdiction is zero.~~

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-10-420, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.515 to more accurately explain how the amount of value that is attributed to newly taxable property is calculated. The changes are being proposed to simplify and make the calculation easier to understand and to restructure the rule for ease of readability.

The proposed amendments include relocating the list of tax classes that the amount of newly taxable value will be calculated for from (4) to (1), and setting forth the calculation of newly taxable property for those classes together in new (2).

As proposed, new (2) describes the calculation for each class of property utilizing an effective rate to determine the amount of value attributable to newly taxable property and describes how the effective rate is calculated. The existing language in the rule states that the difference in market value between the current and prior year will be multiplied by the current year tax rate to determine the amount of newly taxable value and the department proposes changing this to an effective rate to decrease the impacts that changes in exemptions, tax rates, and phase-in values have on the taxable value.

The department further proposes striking (3) and renumbering the remaining sections as part of the overall simplification of the rule.

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Agricultural products produced by the land" means crops or forage ~~used to support livestock are grown~~ raised directly in the land's soil and used to support

livestock. "Agricultural products produced by the land" does not mean land that is used as a "platform" for agricultural activities. Examples of agricultural activities that do not meet the definition "agricultural products produced by the land" are the feeding of livestock from external sources that allow stocking rates to exceed the carrying capacity or crops produced in potted soil that are not grown directly in the land's soil.

(3) "Ancillary improvements" means improvements necessary for the production and storage of raw agricultural commodities. These improvements do not include improvements that are used to process, treat, or package raw agricultural commodities into a value-added product, or improvements designed to accommodate and serve the public.

~~(3)~~(4) "Animal unit" means a cow/calf pair, including a mature cow of approximately ~~4,000~~ 1,200 pounds and a calf as old as ~~six~~ 6 months, or their equivalent.

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

~~(6)~~(7) "Bona fide agricultural operation" means an agricultural enterprise in which the land actually produces agricultural crops defined in 15-1-101, MCA, that directly contribute agricultural income to a functional agricultural business, consisting of contiguous parcels totaling not less than 1 acre, excluding the 1-acre site beneath a residence.

(7) through (12) remain the same, but are renumbered (8) through (13).

~~(13) "Effectively prohibit" means the land has limitations that prevent agricultural use of the land in its entirety. If the covenants or other restrictions prohibit all farming and grazing activities the land is effectively prohibited from agricultural use.~~

(14) remains the same.

(15) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural classification, it must be reportable income for income tax purposes.

(a) Wages received as a farm employee or wages received from a farm corporation are not gross income from farming.

(b) A bona fide agricultural operation may combine the income of more than one parcel to meet the income requirements. The parcels must be dependent upon each other in the agricultural operation as a whole. For example, one parcel may be used to grow hay, which is fed to livestock raised on a different parcel.

(16) "Land use" means land placed into a certain type of service or utilization, such as the agricultural uses described in ARM 42.20.660 through 42.20.680.

(17) and (18) remain the same.

(19) "Native grazing land" means all lands devoted to the production of forage from native or naturalized plants that are ~~part of the original flora of an area that are~~ harvested directly by grazing animals.

(20) through (24) remain the same.

(25) "Pertinent" means scientific, verifiable information relating directly to a specific geographical area that could affect the productive capacity of the land.

(25) through (28) remain the same, but are renumbered (26) through (29).

(30) "Residential" means land used for the purpose of family housing.

(31) "Residential use only" means land that allows buildings for the purpose of family housing and restricts commercial or industrial buildings.

(32) "Site-specific" means data associated within a defined geographic area, usually composed of similarly situated parcels of land characterized by reoccurring patterns of soils, geology, climate, water resources, and land use. Site-specific data may refer to one continuous area or several separate nearby areas. Site-specific data rarely references an individual ownership or an individual parcel of land.

(29) and (30) remain the same, but are renumbered (33) and (34).

AUTH: 15-7-111, MCA

IMP: 15-1-101, 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.601 to update the definitions for the terms used in the subchapter.

The department proposes adding a definition for "ancillary improvements" as it is used in a bona fide agricultural operation; amending the definition of "animal unit" to increase the weight from 1,000 to 1,200 pounds, to implement House Bill 132, L. 2011; clarifying the income requirements for an agricultural operation; more clearly defining "bona fide agricultural operation" and "native grazing land"; and striking the definition of the term "effectively prohibit" and adding definitions for the terms "residential" and "residential use only," due to a recent Montana Supreme Court decision.

The department further proposes adding definitions for "pertinent" and "site specific" to the rule by recommendation from the Agricultural Land Advisory Committee, to implement House Bill 132, L. 2011, which required the committee to define those terms.

42.20.603 STEPS NECESSARY TO VALUE VALUATION OF AGRICULTURAL LAND THAT DOES NOT HAVE A PUBLISHED SOIL SURVEY

(1) Denied access (DA) lands and not completed (NOTCOM) lands do not currently have any agricultural use productivity information associated with them from a published soil survey.

~~(a)~~(2) When ~~denied access~~ DA and NOTCOM lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use Geographic Information System (GIS) technology to determine the ~~highest~~ average level of productivity in the same agricultural use from the surrounding soils within one mile of the DA or NOTCOM land and will assign the ~~highest~~ average level of productivity to the ~~denied access~~ DA lands.

~~(b)~~(3) Where an inadequate number of acres within the same use class with

productivity information are not identified in the one-mile buffer routine, the buffer routine is expanded to include all acres with the same use and productivity information within five miles of the DA property. On occasion the buffer routine is expanded to 20 miles to ensure that an adequate number of acres with soils productivity information and in the same use are identified.

~~(c) When the owner of the land makes arrangements with the Natural Resource Conservation Service (NRCS) and provides written proof to the department that an arrangement has been made to have a soil survey conducted on their lands, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the denied access land and will assign the average level of productivity to the denied access lands.~~

~~(d) Upon completion of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated in the published soil survey.~~

~~(e) When the department receives the information in (b) or (c) above within 30 days of receipt of the assessment or the 1st Monday in June, the department will make the adjustments for the current tax year. If the information is received after that date, it will be adjusted for the following tax year.~~

~~(2) Not completed (NOTCOM) lands do not have any agricultural use productivity information associated with them from a published soil survey.~~

~~(a) When NOTCOM lands are encountered in the department's efforts to assign a productivity to an agricultural use, the department will use GIS technology to determine the average level of productivity in the same agricultural use from the surrounding soils within one mile of the NOTCOM land and will assign the average level of productivity to the NOTCOM lands.~~

~~(b) Where an inadequate number of acres within the same use class with productivity information are not identified in the one-mile buffer routine, the buffer routine is expanded to include all acres with the same use and productivity information within five miles of the NOTCOM property. On occasion the buffer routine is expanded to 20 miles to ensure that an adequate number of acres with soils productivity information and in the same use are identified.~~

~~(c) Upon completion and publication of the soil survey by the NRCS the department will apply the productivity of the soil to the agricultural use as indicated by the published soil survey.~~

AUTH: 15-7-111, MCA

IMP: 15-7-201, 15-7-202, 15-7-208, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.603 to add a reference to not completed (NOTCOM) land. Lands are considered to be NOTCOM if the USDA Natural Resource Conservation Service (NRCS) has not completed a soil survey on the land. Denied access (DA) lands are lands where the NRCS was unable to complete a soil survey because the landowner was either unavailable or denied access to the land to conduct the survey. In the absence of the information from a soil survey to provide otherwise, the department has assigned highest productivity value to these lands.

The department proposes amending the rule to change the productive value assigned to the DA and NOTCOM lands from the "highest" productivity level to the "average" productivity level, and further proposes striking the language in the rule that sets forth the landowner requirements for receiving the "average" productivity level, because they will no longer be necessary. The department further proposes renumbering the remaining language in the rule.

42.20.604 STEPS IN DETERMINING THE PRODUCTIVITY OF AGRICULTURAL LAND (1) Productivity is determined using the Natural Resource Conservation Service (NRCS) soil surveys. The productivity determination is specific to the agricultural land use classification under average typical management practices.

(2) Productivity is adjusted to reflect, as near as possible, average typical management practices for an area using the following procedures:

(a) for lands whose productivity is based on bushels of spring wheat per acre, the soil survey productivity in the following counties is adjusted ~~to reflect the 12-year countywide average spring wheat production as reported by Montana Agricultural Statistical Services on a regional basis by multiplying the soil survey productivity by the regional adjustment.~~ The county designations and regional adjustments are as follows:

(i) Region 1: Beaverhead, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow is 0.86;

(ii) Region 2: Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Teton, Toole, Treasure, Wheatland, and Yellowstone is 0.77; and

(iii) Region 3: Dawson, Daniels, McCone, Richland, Roosevelt, Sheridan, Valley, and Wibaux is 0.70;

(b) for irrigated lands, the soil survey productivity for tons of irrigated alfalfa hay per acre is adjusted on a county-by-county basis ~~to reflect producer responses received during the 2008-2009 map mailing process and information obtained from irrigation districts. Since the soil survey productivity is based on a full application of water, the adjustment is made based on the amount of water the producer is actually able to apply on a regular basis; and;~~

(c) for grazing land, the ~~midpoint of~~ production for the amount of air-dry herbage grown ~~between in~~ "unfavorable" precipitation condition years and "normal" ~~precipitation years~~ is used to determine the land's productivity in animal unit months based on the requirements to sustain a 1,200-pound animal unit;

(d) the department will use the following formula to calculate the carrying capacity for nonirrigated native grazing land:

(i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;

(ii) per-acre per-year dry herbage production consumed by livestock divided by 1,098 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and

(iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs;
and

(e) for nonirrigated hay land, the production of the amount of air-dry herbage grown between "unfavorable" condition years and "normal" condition years divided by 2,000 is used to determine the land's productivity in tons per acre.

AUTH: 15-7-111, MCA

IMP: 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.604, in accordance with the Agricultural Land Advisory Committee's recommendations. Section (1) is proposed to be amended to make a grammatical change and (2) is proposed to be amended to provide a list of the counties by region and to include the adjustment percentage for each region, and to incorporate the formula for calculating the carrying capacity for nonirrigated native grazing land. Section (2) is further proposed to be updated to implement House Bill 132, L. 2011, which amended the weight of the animal unit from 1,000 pounds to 1,200 pounds.

42.20.606 EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT

(1) The following land ~~shall~~ will not be classified and assessed as agricultural land:

- (a) land that is used for residential, commercial, or industrial purposes;
- ~~(b) land that has covenants or other restrictions that effectively prohibit agricultural use;~~
- (c) and (d) remain the same, but are renumbered (b) and (c).
- (2) remains the same.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.606 to strike the language in (1)(b) to comply with a recent Supreme Court decision. The department will determine the classification of agricultural land based upon the use of the land and not upon covenants.

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 20 160 ACRES (1) Multiple parcels, consisting of less than 160 acres, both contiguous and noncontiguous, in the same ownership, actively devoted to agricultural use and part of a bona fide agricultural operation must meet all of the production and income qualification tests in these rules for classification as agricultural land.

(2) Noncontiguous parcels in the same ownership and actively devoted to agricultural use can combine agricultural production and/or livestock carrying capacity to meet eligibility requirements. Each noncontiguous parcel of land, less than 160 acres in size and not a part of a larger agricultural operation, must individually meet the agricultural eligibility criteria set forth in this rule.

(3) An applicant for agricultural land classification must prove that the land indicated in the application actually produced the livestock, poultry, honey and other products from bees, biological control insects, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes agricultural crops as defined in 15-1-101, MCA.

~~(2) Contiguous and noncontiguous parcels must be under one ownership and each parcel must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Noncontiguous parcels in the same ownership that are actively devoted to agricultural use can combine agricultural production and/or current livestock carrying capacity to meet the income or carrying capacity requirements.~~

~~(3)(4) A county farm and ranch personal property reporting form that reflects any lists the farm and ranch personal property and livestock or personal property used on the land must have been filed at some time must be completed by the current landowner with and be on file at the local department office.~~

~~(4)(5) Poultry or game birds that are raised in a building, confined cage or enclosed area, are considered activities that are not supported and produced by the land. Land used for poultry and game birds raised under these conditions is not eligible for consideration as agricultural land If agricultural products, other than livestock, are marketed from the land identified in the application, the applicant must provide proof that the parcel(s) indicated in the application produced at least \$1,500 gross agricultural income each year.~~

~~(5) The sale of honey and other products from bees shall be considered agricultural income if the applicant meets the following requirements:~~

~~(a) the landowner is registered with the Montana Department of Agriculture as an apiary; and~~

~~(b) the apiary must have at least 25 bee colonies annually sited on the land from May 1 through August 31.~~

~~(6) Income must be from agricultural products marketed by, or received by the owner, the owner's family members, or the owner's agent, employee, or lessee. Acceptable proof of income must include:~~

~~(a) sales receipts;~~

~~(b) cancelled checks;~~

~~(c) copies of income tax statements;~~

~~(d) other written evidence of sales transactions;~~

~~(e) annual rental or lease payments of at least \$1,500, provided there is demonstrated proof of agricultural activity on the land and the land is capable of sustaining that activity; or~~

~~(f) annual rental payments of at least \$1,500, made under the federal conservation reserve program (CRP), or a similar program that reimburses the landowner for removing the land from the current agricultural use and placing it in a different agricultural use.~~

~~(7) For parcels of land under 20 acres, (6)(e) and (f) are not considered eligible agricultural income for this rule.~~

~~(6) remains the same, but is renumbered (8).~~

~~(7) Plants or nursery stock not grown and nourished by the land are not~~

~~acceptable forms of agricultural income or agricultural production for purposes of this rule. Examples include trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.~~

~~(8) If the land is used primarily to raise and market livestock, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics, with cattle as the base.~~

~~(a) Beef cows are owned to produce calves, usually one calf per year.~~

~~(b) The calf is the annual product produced from the grazing land via the beef cow.~~

~~(c) Calf prices have averaged approximately \$1.00 per pound. Weaning weights for calves are typically 500 pounds. The average revenue produced by one cow/calf pair is \$500. Three sold calves from three cow/calf pairs would generate \$1,500 in income.~~

~~(d) Based on a 10-month grazing season (typical), 30 AUM are required to generate \$1,500 (3 cow/calf pair X 10 months = 30 AUM).~~

~~(e) For the reappraisal cycle ending December 31, 2014, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 30 animal unit months. For subsequent reappraisal cycles, the minimum number of animal unit months of carrying capacity needed to equate to \$1,500 in annual gross income for each cycle will be determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics for the base year for each cycle. The base year for each cycle will be established by administrative rule.~~

~~(f) One animal unit (AU) is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on information obtained from the United States Natural Resource and Conservation Service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the local county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for the midpoint between the normal and unfavorable precipitation year estimates on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:~~

~~(i) per-acre per-year dry herbage production multiplied by 0.25 equals the per-acre per-year dry herbage production consumed by livestock;~~

~~(ii) per-acre per-year dry herbage production consumed by livestock divided by 915 pounds of dry herbage production consumed per-month per-animal unit equals the animal unit months per acre (AUMs/acre); and~~

~~(iii) livestock acres grazed multiplied by AUMs/acre equals the total AUMs.~~

~~(9) If agricultural products, other than livestock, are marketed from land in the application, the applicant must provide proof that the parcel(s) indicated in the application produced at least \$1,500 of gross agricultural income each year. Annual rental payments, government payments, or lease payments are not eligible agricultural income. Acceptable proof of income shall include:~~

- ~~(a) sales receipts;~~
- ~~(b) canceled checks;~~
- ~~(c) copy of income tax statements; or~~
- ~~(d) other written evidence of sales transactions~~

For grazing land, the land must be capable of sustaining a minimum carrying capacity expressed in animal unit months. The minimum animal unit months must equate to \$1,500 in annual gross income as determined by the Montana State University-Bozeman's Department of Agricultural Economics and Economics, with cattle as the base.

(a) For the reappraisal cycle ending December 31, 2020, the Montana State University-Bozeman's Department of Agricultural Economics and Economics determined the minimum number of animal unit months of carrying capacity to be 31 animal unit months.

(b) The department will use the NRCS soil survey information to calculate the carrying capacity for nonirrigated native grazing land.

(c) For nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50 percent.

~~(10) If the land is primarily used to grow crops that are not marketed but consumed by humans, livestock, poultry, or other animals in the agricultural operation, the applicant must prove that the land on the application produced the equivalent of \$1,500 in gross agricultural income each year from crops that were consumed. The applicant must make a written estimate of the weight or quantity of food or animal fiber produced. The written estimate must include all proof set forth in this rule. The weight or quantity estimate will be multiplied by the current commodity price to determine whether the \$1,500 annual gross income test has been met~~ For land other than grazing land that is used primarily to raise crops for consumption by humans, livestock, poultry, or other animals in the agricultural operation rather than for market, the applicant must prove that the land on the application produced the annual equivalent of \$1,500 in gross agricultural income from these crops. Proof of income must include:

(a) a written estimate of the weight or quantity of food or other eligible agricultural product produced. The weight provided must be multiplied by the current commodity price to determine that the minimum annual gross income of \$1,500 was met; and

(b) if the consumption was from livestock, or the livestock was consumed by humans, the land must be capable of sustaining the minimum number of animal unit months of carrying capacity described in (9), with cattle as the base.

~~(11) If the consumption was from livestock, or the livestock was consumed by humans, the land must be capable of sustaining the minimum number of animal unit months of carrying capacity described in (8), with cattle as the base.~~

~~(12) Acceptable proof of production shall include:~~

~~(a) a statement from the United States Farm Services Agency (FSA) indicating estimated yield if crops are the basis for income;~~

~~(b) if livestock is the basis for income, information the taxpayer or their agent obtains from the NRCS web site, or a statement from the NRCS or the county agricultural extension agent indicating that the parcel(s) is/are capable of producing in its current state the minimum number of animal unit months of carrying capacity described in (8); and~~

~~(c) a confirmation by the department.~~

~~(13) For valuation as agricultural land, the owner of land used as a Christmas tree farm must provide proof that:~~

~~(a) all trees are cultivated or under accepted, proven husbandry practices;~~

~~(b) all trees are sheared on a regular basis;~~

~~(c) the property contains a minimum of 2,000 trees; and~~

~~(d) the Christmas tree operation continues to produce at least \$1,500 in gross annual income once the initial crop of trees reaches salable maturity.~~

~~(14) For valuation as agricultural land, the owner of land used as a fruit tree orchard must provide proof that:~~

~~(a) there are a minimum of 100 trees;~~

~~(b) they are under accepted fruit tree husbandry practices; and~~

~~(c) the fruit tree operation continues to produce at least \$1,500 in gross annual income once the initial crop of trees begins to produce fruit.~~

~~(15) Land qualifying in (13) and (14) will be assessed at the value established by the department for the highest productivity level of nonirrigated continuously cropped farm land.~~

~~(16) For valuation as agricultural land, the owner of land used solely for summer fallow farmland as defined in the Montana Agricultural Classification and Appraisal Manual must produce a minimum of \$1,500 in agricultural crop income every other growing season.~~

(11) Land used solely for summer fallow farmland must produce a minimum of \$1,500 in agricultural crop income every other growing season to be valued as agricultural land.

~~(17)~~(12) A parcel or parcels of land less than 20 acres that meet all of the following criteria will remain classified and valued as agricultural land or as nonqualified agricultural land as defined in 15-6-133 and 15-7-202, MCA. The criteria that must be met are:

~~(a) remains the same.~~

~~(b) the parcel or parcels previous to a reduction in acreage as defined in (17)(c) totaled 20 acres or more in size and qualified as agricultural land or as nonqualified agricultural land under 15-6-133 and 15-7-202, MCA;~~

~~(c) and (d) remain the same.~~

~~(18)~~(13) A parcel or parcels of land that meet the criteria in ~~(17)(a) through (17)(d)~~ (12)(a) through (d) are eligible for the classification determination identified in ~~(17)(12)~~ regardless of when the acreage reduction occurred. However, taxpayers must notify the department of their eligibility in writing by the first Monday in June or within 30 days after receiving an the date on the assessment notice from the Department of Revenue, whichever is later.

~~(19)~~(14) No refunds of taxes resulting from a reclassification of parcels under this part will be allowed for any tax year prior to the tax year in which the taxpayer notifies the department of their eligibility in ~~(18)~~(13).

~~(20)~~(15) For contiguous and noncontiguous parcels of land under one ownership as defined in ARM 42.20.601 totaling less than 20 acres in size, any acreage in excess of that stated in the forest land classification in ARM 42.20.705 is classified as agricultural provided the acreage is actively devoted to qualifying agricultural use.

AUTH: 15-1-201, MCA

IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.620 to incorporate language currently found in ARM 42.20.625, which the department is proposing to repeal. The purpose of combining the two rules is to eliminate language duplication and to provide the information together in a single rule for better clarity.

The department further proposes amending the rule to set forth the expectations of a bona fide agricultural operation and to provide the income requirements for meeting agricultural classification. Furthermore, the rule is proposed to be restructured and renumbered to improve the overall readability of the rule and the title is proposed to be changed to reflect the content of the rule as amended.

42.20.660 NONIRRIGATED SUMMER FALLOW FARM LAND

(1) Nonirrigated summer fallow farm land productivity values for each year of the reappraisal cycle beginning January 1, ~~2009~~ 2015, are:

(a) remains the same.

(b) For the reappraisal cycle beginning January 1, ~~2009~~ 2015, the per acre nonirrigated summer fallow farm land value is calculated as follows:

(i) ~~Average price for spring wheat = \$4.58 per bushel;~~

(ii) Gross income per acre = Number of bushels per acre times ~~\$4.58~~ the average price per bushel for spring wheat;

~~(iii)~~(ii) Net income per acre = Gross income per acre times 12.5% percent, which is the ~~landlord's~~ landlord's crop share percentage for nonirrigated summer fallow farm land; and

~~(iv)~~(iii) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

~~(c) For lands with an increase in value the department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for nonirrigated summer fallow farm land for the reappraisal cycle beginning January 1, 2009.~~

~~(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.660 to update the reappraisal dates for the 2015 reappraisal. The commodity prices are proposed to be stricken and moved to New Rule I to consolidate and locate all commodity prices together in a single location. Phase-in language is removed to eliminate duplication in other agricultural land use classification rules.

The department further proposes making grammatical and punctuation amendments.

42.20.665 NONIRRIGATED, CONTINUOUSLY CROPPED FARM LAND

(1) Nonirrigated continuously cropped fallow farm land productivity values for each year of the reappraisal cycle beginning January 1, ~~2009~~ 2015, are:

(a) remains the same.

(b) For the reappraisal cycle beginning January 1, ~~2009~~ 2015, the per acre nonirrigated continuously cropped farm land value is calculated as follows:

(i) ~~Average price for spring wheat = \$4.58 per bushel;~~

(ii) ~~Gross income per acre = Number of bushels per acre times \$4.58 the average price per bushel for spring wheat;~~

~~(iii)~~(ii) Net income per acre = Gross income per acre times 25% percent, which is the ~~landlord's~~ landlord's crop share percentage for nonirrigated continuously cropped farm land; and

~~(iv)~~(iii) Productivity value per acre = Net income per acre divided by ~~0.064~~, which is the capitalization rate of 6.4%, in decimal form, as set forth in ~~15-7-201(4)(c)~~, MCA.

~~(c) For lands with an increase in value the department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for nonirrigated continuously cropped fallow farm land for the reappraisal cycle beginning January 1, 2009.~~

~~(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.665 to update the reappraisal dates for the 2015 reappraisal. The commodity prices are proposed to be stricken and moved to New Rule I to consolidate and locate all commodity prices together in a single location. Phase-in language is removed to eliminate duplication in other agricultural land use classification rules.

42.20.670 NONIRRIGATED CONTINUOUSLY CROPPED HAY LAND

(1) Nonirrigated continuously cropped hay land productivity values for each year of the reappraisal cycle beginning January 1, ~~2009~~ 2015, are:

(a) remains the same.

(b) For the reappraisal cycle beginning January 1, 2009 2015, the per acre nonirrigated continuously cropped hay land value is calculated as follows:

(i) ~~Average price for alfalfa = \$63.04 per ton;~~

(ii) ~~Gross income per acre = Number of tons per acre times \$63.04 the average price per ton for alfalfa;~~

(iii)(ii) Net income per acre = Gross income per acre times 25% percent, which is the ~~landlords~~ landlord's crop share percentage for nonirrigated continuously cropped hay land; and

(iv)(iii) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

~~(c) For lands with an increase in value the department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for nonirrigated continuously cropped hay land for the reappraisal cycle beginning January 1, 2009.~~

~~(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.670 to update the reappraisal dates for the 2015 reappraisal. The commodity prices are proposed to be stricken and moved to New Rule I to consolidate and locate all commodity prices together in a single location. The department further proposes striking the phase-in language to eliminate duplication in other agricultural land use classification rules and making grammatical and punctuation corrections.

42.20.675 TILLABLE IRRIGATED FARM LAND (1) ~~Tillable irrigated~~ Irrigated farm land values for each year of the reappraisal cycle beginning January 1, 2009 2015, are:

(a) remains the same.

(b) For the reappraisal cycle beginning January 1, 2009 2015, the per acre ~~tillable~~ irrigated farm land value is calculated as follows:

(i) ~~Average price for alfalfa = \$63.04 per ton;~~

(ii) ~~Gross income per acre = Number of tons per acre times \$63.04 the average price per ton for alfalfa;~~

(iii)(ii) Net income per acre = Gross income per acre times 25% percent, which is the ~~landlords~~ landlord's crop share percentage for ~~tillable~~ irrigated farm land;

(iv)(iii) Less water cost = Net income per acre minus water cost allowance; and

~~(v)(iv)~~ (iv) Productivity value per acre = Net income per acre less water cost allowance divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201, MCA.

~~(c) There are seven~~ The allowable water cost classes for tillable irrigated farm land: are as follows:

WATER COST CLASSES (WC)

WC1	WC2	WC3	WC4	WC5	WC6	WC7
Under	\$20.00	\$25.00	\$30.00	\$35.00	\$40.00	\$45.00
\$19.99	\$24.99	\$29.99	\$34.99	\$39.99	\$44.99	\$49.99

(2) For lands with an increase in value the department will apply a phase-in percentage as defined in 15-7-111, MCA and ARM 42.20.503 to the full reappraisal productivity values for tillable irrigated farm land for the reappraisal cycle beginning January 1, 2009, if the values are higher than the base values in effect for tax year 2008.

(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.

(3) The phase-in formula for each year of the reappraisal cycle is as follows:

(a) change in value = full reappraisal value – value before reappraisal;

(b) phase-in value (year 1) = value before reappraisal + (change in value x .1666);

(c) phase-in value (year 2) = value before reappraisal + (change in value x .3342);

(d) phase-in value (year 3) = value before reappraisal + (change in value x .4998);

(e) phase-in value (year 4) = value before reappraisal + (change in value x .6664);

(f) phase-in value (year 5) = value before reappraisal + (change in value x .8330); and

(g) phase-in value (year 6) = value before reappraisal + (change in value x 1.000).

(4) The following examples demonstrate how the phase-in formula calculates the assessed value for irrigated land:

(a) For 2008:

(i) the 2008 full reappraisal value for irrigated land in water class five is \$518.63;

(ii) the full reappraisal value for the same irrigated land in water class five in 2014 is \$553.51; and

(iii) the change in value is \$34.88 (\$553.51 – \$518.63).

(b) The 2009 phase-in value = \$518.63 + (34.88 x .1666) = \$518.63 + \$5.81 or \$524.44.

(c) For 2013:

(i) the 2008 full reappraisal value for irrigated land in water class five is \$518.63;

(ii) the full reappraisal value for the same irrigated land in water class five in 2014 is \$553.51; and

(iii) the change in value is \$34.88 (\$553.51 – \$518.63).

(d) The 2013 phase-in value = \$518.63 + (34.88 x .8330) = \$518.63 + \$29.06 or \$547.69.

(5) The department will not apply a phase-in percentage calculation to the full reappraisal productivity values for tillable irrigated farm land values for the

reappraisal cycle beginning January 1, 2009, if the values are lower than the base values in effect for tax year 2008. If the full reappraisal productivity values for tillable irrigated farm land are lower than the base values in effect for tax year 2008, the full reappraisal productivity values for tillable irrigated farm land will be fully implemented on January 1, 2009, and remain in effect for each year of the reappraisal cycle.

(6) through (10) remain the same, but are renumbered (2) through (6).

~~(11)~~(7) The minimum value of irrigated land is \$411.48 as determined by using 23 bushels of spring wheat and the nonirrigated continuously cropped ~~farmland~~ farm land methodology.

(12) and (13) remain the same, but are renumbered (8) and (9).

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.675 to update the reappraisal dates for the 2015 reappraisal. The commodity prices are proposed to be stricken and moved to New Rule I to consolidate and locate all commodity prices together in a single location. The Water Cost Class table is proposed to be amended to remove a class that is no longer used. Phase-in language is proposed to be stricken to eliminate duplication in other agricultural land use classification rules.

42.20.680 GRAZING LAND (1) Grazing land productivity values for each year of the reappraisal cycle beginning January 1, ~~2009~~ 2015, are:

(a) remains the same.

(b) For the reappraisal cycle beginning January 1, ~~2009~~ 2015, the per acre grazing land value is calculated ~~as follows~~ by:

(i) Average multiplying the average private grazing lease = \$15.72 per Animal Unit Month (AUM) by 25 percent to determine the landlord's share of expenses;

(ii) Less expense allowance = \$ 3.93 per AUM (\$15.72 X 25%) subtracting the landlord's share of expenses from the average private grazing lease per AUM to determine the adjusted gross income per AUM;

(iii) Adjusted multiplying the adjusted gross income per AUM = \$11.79 (\$15.72 minus \$3.93) by the productivity of the grazing land expressed as AUMs per acre to determine net income; and

(iv) Statewide average productivity = 0.31 AUM per acre; dividing the net income by the cap rate identified in 15-7-211, MCA.

(v) Net income per acre = \$11.79 per AUM times X AUM per acre; and

(vi) Productivity value per acre = Net income per acre divided by 0.064, which is the capitalization rate of 6.4%, in decimal form, as set forth in 15-7-201(4)(c), MCA.

(c) ~~For lands with an increase in value the department will apply a phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for grazing land for the reappraisal cycle beginning January 1, 2009.~~

~~(i) For lands with a decrease in value as a result of the 2009 reappraisal, the lower value will be implemented immediately.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.680 to update the reappraisal dates for the 2015 reappraisal. The commodity prices are proposed to be stricken and moved to New Rule I to consolidate and locate all commodity prices together in a single location. The department further proposes striking the phase-in language to eliminate duplication in other agricultural land use classification rules.

42.20.705 FOREST LAND ASSESSMENT (1) The department ~~shall~~ will assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(i) contiguous forested land of 15 acres or more, that is at least 120 feet in width in the same ownership and is capable of producing timber that can be harvested in commercial quantity; and

(ii) land that is producing timber or land in which the trees have been removed by man through harvest, including clear-cuts, or by natural disaster, including, but not limited to fire;

(2) Classified forest land that is reduced to less than 15 acres for a public use as the result of a land acquisition through eminent domain, as set forth in 70-30-102, MCA, maintains its forest land classification unless the forest land:

(a) has been further divided; or

(b) is devoted to a residential, commercial, or industrial use.

(3) Taxpayers must notify the department in writing of their eligibility for forest land classification for the current tax year on or before the first Monday in June, or within 30 days after the date on the assessment notice.

~~(iii) land that is not classified as nonforest land.~~

(4) Nonforest land is land used for agricultural, nonqualifying agricultural, industrial, commercial, or residential purposes.

AUTH: 15-44-105, MCA

IMP: 15-6-143, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.705 to implement House Bill 195, L. 2013, (15-6-143, MCA) which allows forest land classification even though public use of the forest land decreases the total amount below the required 15 acres. The department treats agricultural and forest land classifications similarly and the proposed amendments to this rule bring consistency to both property types. The proposed amendments to the rule will benefit forest land owners impacted by governmental decisions to acquire land through eminent domain.

The department proposes new (3) to set forth the requirement for forest land owners to timely notify the department of their eligibility for forest land classification for the current tax year and provides the date parameters for the notification requirement.

The department further proposes adding 15-6-143, MCA, as an implementing statute.

42.20.720 FOREST LAND VALUATION ZONES (1) and (1)(a) remain the same.

(b) Zone 2 - Southwest: Beaverhead, Deer Lodge, Granite, Jefferson, ~~Lewis and Clark~~, Madison, Mineral, Missoula, Powell, Ravalli, and Silver Bow counties;

(c) Zone 3 - Central: Blaine, Broadwater, Cascade, Chouteau, Fergus, Gallatin, Glacier, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, Meagher, Park, Pondera, Teton, Toole, and Wheatland counties;

(d) remains the same.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.720 to update the forest land valuation zones by moving Lewis and Clark County from Zone 2 to Zone 3 for the 2015 reappraisal.

42.20.725 FOREST LAND VALUATION FORMULA (1) through (5)(b) remain the same.

(c) R is the capitalization rate.

(i) For the appraisal cycle beginning after December 31, ~~2008~~ 2014, and concluding on December 31, ~~2014~~ 2020, the capitalization rate used ~~in the determination of value for all forest land in Montana is statutorily established at is~~ 8% percent.

(6) through (9) remain the same.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.725 to update the dates for the 2015 reappraisal and to make a grammatical change.

42.20.730 FOREST COSTS (1) The determination of forest costs in ARM 42.20.725 ~~represent~~ represents the average costs for reforestation, fire assessment, slash disposal, timber stand improvement, timber harvest, forest practices, administration, and the severance tax over the base period specified in ARM 42.20.725.

(2) Forest costs, with the exception of the fire assessment fee and the severance tax, are calculated from the actual expenditures for those activities conducted by the Department of Natural Resources and ~~Conservation~~, Conservation's Forestry and Trust Land Management Division (DNRC).

(3) The average forest cost in each forest valuation zone is derived from DNRC land management areas. The fire assessment fee will be the average fee the

DNRC charges landowners over the base period. The severance tax is the average severance tax that is paid by landowners who harvest timber over the base period in each land management area. Forest costs ~~shall~~ will be deducted from the per acre gross timber income.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.730 to include the names of the divisions that provide forest cost information to the department and to restructure the rule to partition one long section into three sections to improve readability.

42.20.735 FOREST LAND ELIGIBILITY - GENERAL PRINCIPLES (1) and (2) remain the same.

(3) The property owner of record or the owner's agent must provide proof of eligibility on an application form prescribed by the department.

(a) Forest land application forms ~~shall~~ will be available at the local department office. Applications must be submitted to the local department office in the county in which the property is located ~~prior to the first Monday in June of the year for which the reclassification is being sought, on or before the first Monday in June of the current tax year~~ or within 30 days after ~~receiving the notice of classification and appraisal from the department, whichever is later~~ the date on the assessment notice.

(b) through (4) remain the same.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.735 to bring consistency in the rule language and to better define and administer the 30-day timeline set forth in 15-7-102, MCA.

42.20.740 NATURAL DISASTER REDUCTION - GENERAL PRINCIPLES

(1) Forest lands upon which, after December 31, 1993, trees are destroyed by fire, disease, insect infestation, or other natural disaster shall be eligible for a 50% percent reduction in assessed value for 20 tax years beginning the first full tax year following the natural disaster.

(2) The property owner of record as of January 1 of the first full tax year for which the reduction in value is sought or that owner's agent must complete an application with the local department office in which the property is located. The application prescribed by the department will be the property adjustment form ~~(AB-26)~~ Form AB-26. The application must be made ~~by~~ on or before the first Monday in June or within 30 days ~~of receipt of~~ after the date on the assessment notice for the first full year for which the reduction in value is requested.

(3) through (5) remain the same.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.740 to bring consistency in the rule language and to allow mailing time for the taxpayer to receive the assessment notice before the 30-day timeline begins.

The department further proposes making grammatical edits.

42.20.745 FOREST LAND (1) Forest land productivity values are calculated by using the formula defined in 15-44-103, MCA.

(a) For forest land with an increase in value as a result of the ~~2009~~ 2015 reappraisal, the department will apply the phase-in percentage as defined in 15-7-111, MCA, and ARM 42.20.503 to the full reappraisal productivity values for forest land for the reappraisal cycle beginning January 1, ~~2009~~ 2015.

(b) For forest lands with a decrease in value as a result of the ~~2009~~ 2015 reappraisal, the lower value will be fully implemented immediately and will not be phased in.

(2) remains the same.

(3) The following examples demonstrate how the phase-in formula calculates the per-acre assessed value for forest land:

(a) For tax year ~~2009~~ 2015:

(i) the ~~2008~~ 2014 full reappraisal value for forest land is \$518.63 per-acre;

(ii) the full reappraisal value for the same forest land in ~~2014~~ 2020 is \$553.51 per-acre; and

(iii) the change in value is \$34.88 (\$553.51 - \$518.63).

(b) The ~~2009~~ 2015 phase-in value per-acre = \$518.63 + plus (34.88 x .1666) = \$518.63 + plus \$5.81 or \$524.44 per-acre.

~~(c) For tax year 2013:~~

~~(i) the 2008 full reappraisal value for forest land is \$518.63 per-acre;~~

~~(ii) the full reappraisal value for the same forest land in 2014 is \$553.51 per-acre; and~~

~~(iii) the change in value is \$34.88 (\$553.51 - \$518.63).~~

~~(d) The 2013 phase-in value = \$518.63 + (34.88 x .8330) = \$518.63 + \$29.06 or \$547.69 per-acre.~~

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.745 to update the dates and remove confusing language for the 2015 reappraisal.

5. The department proposes to repeal the following rules:

42.20.605 AGRICULTURAL LANDS

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-7-103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.20.605 and placing the relevant information into ARM 42.18.121 and 42.18.122, to locate all appraisal manual information together in the same location within the Montana Appraisal Plan subchapter of ARM Title 42.

42.20.607 CORRECTION OF VALUE BEFORE REAPPRAISAL (VBR) FOR 2009 AGRICULTURAL LAND

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, 15-7-201, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.20.607, because the rule is no longer necessary as it pertains to the valuation of agricultural land for the 2009 Reappraisal cycle and does not apply to the upcoming reappraisal cycle that begins on January 1, 2015.

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING 20 TO 160 ACRES IN SIZE

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.20.625 and relocating the relevant content of the rule to ARM 42.20.620 to eliminate language duplication.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 20, 2014.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 132, L. 2011, Representative Brian Hoven, was notified by regular mail on December 15, 2011, and subsequently notified by regular mail on September 15, 2014. The primary sponsor of House Bill 195, L. 2013, Representative Pat Ingraham, was notified by regular mail on June 21, 2013, and subsequently notified on September 9, 2014. The primary sponsor of Senate Bill 231, L. 2013, Senator Shannon Augare, was notified by regular mail on July 29, 2013, and subsequently notified on August 26, 2014.

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

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 14, 2014.

BEFORE THE STATE PARKS AND RECREATION BOARD AND
THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT, ADOPTION,
12.14.101, 12.14.105, 12.14.110,) AND REPEAL
12.14.115, 12.14.120, 12.14.125,)
12.14.130, 12.14.150, 12.14.155,)
12.14.160, and 12.14.165, the adoption)
of NEW RULE I, and repeal of)
12.14.135, 12.14.140, and 12.14.145)
pertaining to commercial use rules)

TO: All Concerned Persons

1. On May 8, 2014, the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-404 pertaining to the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 897 of the 2014 Montana Administrative Register, Issue Number 9.

2. The board and commission have amended ARM 12.14.101, 12.14.105, 12.14.110, 12.14.115, 12.14.120, 12.14.125, 12.14.130, 12.14.150, 12.14.155, 12.14.160, and 12.14.165 as proposed.

3. The board and commission have adopted NEW RULE I (12.14.121) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (12.14.121) SUSPENSION OR REVOCATION OF PERMIT

(1) and (2) remain as proposed.

(3) Causes for suspending a permit include:

(a) ~~repeated~~ willful, purposeful, or negligent violation of the commercial use rules or specific river use rules;

(b) ~~repeated~~ willful, purposeful or negligent falsification of use records;

(c) ~~repeated~~ willful, purposeful or negligent failure to comply with the terms of the permit;

(d) acts that negatively limit the opportunities or use by the general public of resources covered under the permit;

(e) acts that are harmful to natural resource values; and

(f) acts that endanger the health, safety, and welfare of the public.

(4) remains as proposed.

(5) Causes for revoking a permit include the following:

(a) conducting commercial use while a permit is suspended;

(b) ~~repeated~~ willful, purposeful, or negligent violation of the commercial use rules or specific river use rules after having been formally placed on suspension;

(c) ~~repeated~~ willful, purposeful, or negligent falsification of use records after

having been formally placed on suspension; and

(d) ~~repeated~~ failure to comply with the terms of the permit after having been formally placed on suspension.

(6) through (8) remain as proposed.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

4. The board and commission repealed ARM 12.14.135, 12.14.140, and 12.14.145 as proposed.

5. The board and commission have thoroughly considered the comments and testimony received. A summary of the comments received and the responses are as follows:

COMMENT 1: One comment expressed concern about excluding individual photographers from the commercial use rules because it could result in other types of commercial use requesting an exception.

RESPONSE 1: The commission and board decided to exclude individual photographers because these photographers do not always know in advance whether they intend to sell their photographs and this type of commercial use is very difficult to detect and administer.

COMMENT 2: One comment supported the definition of "non-profit organization."

RESPONSE 2: The commission and the board appreciate the support.

COMMENT 3: One comment requested the commission and board delete the words "collect fees from clients" from ARM 12.14.120. The comment stated fee collection by agents is a standard business because the outfitter in charge of the trip is not present in all locations where their employees or contractors are conducting trips with clients.

RESPONSE 3: The commission and the board are prepared to make this proposal through a separate rulemaking effort in the near future.

COMMENT 4: One comment supported NEW RULE I.

RESPONSE 4: The commission and the board appreciate the support.

COMMENT 5: The department recommended that the board and the commission strike the word "repeated" from the causes for suspending or revoking a permit. The department explained that violations should not occur multiple times in order to warrant a suspension or revocation.

RESPONSE 5: The board and the commission adopted NEW RULE I (12.14.121)

as recommended.

COMMENT 6: One comment stated the commission and board should focus on resource issues instead of over-regulating commercial users who abide by the rules.

RESPONSE 6: The commission, board, and department develop rules and policies that address all resource issues. Rules are necessary to properly administer commercial use occurring on public lands and address serious violations such as illegal outfitting and guiding.

COMMENT 7: One comment stated commercial users are good stewards of the rivers and help keep the rivers clean, practice catch and release, report poaching, and bring millions of dollars of out of state revenue to Montana and expressed concern about the new fees.

RESPONSE 7: The rule establishing fees is outside the scope of this rulemaking process.

COMMENT 8: One comment discussed the no wake zone on Lake Alva.

RESPONSE 8: This comment is outside the scope of this rulemaking process.

/s/ Tom Towe
Tom Towe, Chairman
State Parks and Recreation Board

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

Certified to the Secretary of State October 14, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
17.74.504, 17.74.505, 17.74.506,	)	REPEAL
17.74.507, 17.74.508, 17.74.511,)	
17.74.512, 17.74.513, 17.74.514,	)	(METHAMPHETAMINE CLEANUP)
17.74.515, 17.74.517, 17.74.518 pertaining)	
to definitions, decontamination standards,)	
performance, assessment, and inspection,)	
performance standards, contractor)	
certification and renewal, initial training)	
course content, refresher training course,)	
reciprocity, training provider certification,)	
certified training provider responsibilities,)	
denial, suspension, and revocation of)	
certification, and fees and the repeal of)	
ARM 17.74.502, 17.74.503, 17.74.509, and)	
17.74.510 pertaining to incorporation by)	
reference--publication dates, incorporation)	
by reference, worker and supervisor)	
certification, and worker and supervisor)	
certification renewal)	

TO: All Concerned Persons

1. On August 21, 2014, the Department of Environmental Quality published MAR Notice No. 17-366 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1866, 2014 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 17.74.504, 17.74.505, 17.74.506, 17.74.507, 17.74.511, 17.74.512, 17.74.513, 17.74.514, 17.74.515, 17.74.517, 17.74.518 and repealed ARM 17.74.502, 17.74.503, 17.74.509, and 17.74.510 exactly as proposed. The department has amended ARM 17.74.508 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.74.508 CONTRACTOR CERTIFICATION AND RENEWAL (1) An applicant for department certification as a CML decontamination contractor shall:

(a) provide evidence of successful completion of HAZWOPER training, including initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher, ~~and HAZWOPER supervisor training~~ conducted pursuant to 29 CFR 1910.120; and

(b) through (5) remain as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: A commenter expressed that requiring methamphetamine lab cleanup contractors to complete HAZWOPER supervisor training, before being certified by the department as a contractor, is unnecessary because methamphetamine-contaminated properties are not classified as hazardous waste sites.

RESPONSE: The proposed amendments to the methamphetamine cleanup program rules eliminate designations for certified workers and supervisors and retain certified contractors to align the rules with the requirements of Title 75, chapter 10, part 13, MCA. The department believes that requiring contractors to complete initial and refresher HAZWOPER training will ensure that individuals, seeking certification to decontaminate methamphetamine-contaminated properties, are properly trained to clean up contaminated property in a way that is protective of human health and the environment, regardless of whether a methamphetamine-contaminated property is designated a hazardous waste site. However, the department agrees that HAZWOPER supervisor training would not add a significant benefit to the knowledge and experience of cleanup contractors and is amending the rules to remove that requirement.

COMMENT NO. 2: A commenter stated that training course requirements covering HAZWOPER topics should be reduced and simply be a quick review with greater focus on cleanup, sampling, and work plans.

RESPONSE: The proposed rule amendments governing certified training providers, or training course content, do not require HAZWOPER training to be part of the curriculum offered by training providers for contractor certification. People seeking certification as a methamphetamine lab cleanup contractor must demonstrate to the department that the person has completed, and maintained, HAZWOPER training from any available training provider.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

By: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, DIRECTOR

Certified to the Secretary of State, October 14, 2014.

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I military training or experience)

TO: All Concerned Persons

1. On March 27, 2014, the Board of Outfitters (board) published MAR Notice No. 24-171-33 regarding the public hearing on the proposed adoption of the above-stated rule, at page 562 of the 2014 Montana Administrative Register, Issue No. 6. On May 8, 2014, the board published an amended notice of public hearing on the proposed adoption of the above-stated rule, at page 918 of the 2014 Montana Administrative Register, Issue No. 9.

2. On May 29, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. One comment was received by the June 6, 2014, comment deadline.

3. The board has thoroughly considered the comment received. A summary of the comment and the board's response is as follows:

COMMENT 1: One commenter provided information 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 commenter suggested the board amend this new rule to allow consideration of other evidence of discharge in addition to or in lieu of a DD 214.

RESPONSE 1: The board agrees with the suggestion and is amending the new rule accordingly.

4. The board has adopted NEW RULE I (ARM 24.171.404) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) and (2) remain as proposed.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an outfitter or guide. ~~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 as proposed.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRPERSON

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

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

Certified to the Secretary of State October 14, 2014

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.301.401 incorporation by)
reference of national electrical code,)
and 24.301.461 electrical inspections)
fees)

TO: All Concerned Persons

1. On August 7, 2014, the Department of Labor and Industry (department) published MAR Notice No. 24-301-287 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1769 of the 2014 Montana Administrative Register, Issue No. 15.

2. On August 28, 2014, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the September 5, 2014, deadline.

3. The department has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: One commenter stated that their organization was in support of the proposed amendment to ARM 24.301.401 and the new fee associated with the rule. The commenter also commended the department for providing training to inspectors on alternate energy systems.

RESPONSE 1: The department recognizes the participation of the commenter's organization and their help in formulating the language and inaugural fee structure. The department appreciates the commendation.

COMMENT 2: One commenter supported the amendment and, stated that because it is found in the National Electric Code, it makes sense to provide the permitting and inspection of it. The commenter also inquired whether there was a method that could speed up the code adoption process.

RESPONSE 2: The department recognizes the participation of the commenter's organization in this process and concurs that the rule pertains to provisions in the National Electric Code. On the issue of expediting code adoptions, the department seeks to find a balance between providing a transparent, open method and accelerating the process. The department finds great value in providing staff-generated code analysis, listening sessions, and seeking advice from the Building Codes Council prior to formulating a rule proposal. This may extend the time necessary to adopt a code, but provides people, businesses, and organizations affected by the code several opportunities to weigh in on its adoption.

4. The board has amended ARM 24.301.401 and 24.301.461 exactly as proposed.

/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 October 14, 2014

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.204, 42.4.209, 42.4.1702,)
and 42.4.2403 pertaining to tax)
credits regarding energy conservation)
installation, temporary emergency)
lodging, and health insurance claims)

TO: All Concerned Persons

1. On August 7, 2014, the Department of Revenue published MAR Notice No. 42-2-913 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1789 of the 2014 Montana Administrative Register, Issue Number 15.

2. The department has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 14, 2014.

BEFORE THE BOARD OF REVIEW
DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.8.101, 42.8.102, and)
42.8.104 pertaining to the revision of)
the name of the one-stop business)
licensing program)

TO: All Concerned Persons

1. On August 21, 2014, the Board of Review, Department of Revenue, published MAR Notice No. 42-2-914 pertaining to the proposed amendment of the above-stated rules at page 1914 of the 2014 Montana Administrative Register, Issue Number 16.

2. The board has amended the above-stated rules as proposed.

3. No comments were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Chairman

Certified to the Secretary of State October 14, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III pertaining to)
claiming the unlocking state lands tax)
credit)

TO: All Concerned Persons

1. On September 4, 2014, the Department of Revenue published MAR Notice No. 42-2-916 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1989 of the 2014 Montana Administrative Register, Issue Number 17.

2. The department has adopted NEW RULE I (42.4.2301), II (42.4.2302), and III (42.4.2303) 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 October 14, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and amendment of ARM) AMENDMENT
44.5.121 pertaining to fees charged)
by the Business Services Division)

TO: All Concerned Persons

1. On September 4, 2014, the Secretary of State published MAR Notice No. 44-2-200 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1993 of the 2014 Montana Administrative Register, Issue Number 17.

2. The Secretary of State has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

New Rule I (44.5.122) MANUAL AND ONLINE SEARCH FEES (1) and (2) remain as proposed.

AUTH: 2-15-403, 2-15-404, 2-15-405, MCA
IMP: 2-15-403, 2-15-404, 2-15-405, MCA

3. No member of the public commented on the proposed new rule. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee (SAVA). The Secretary of State responds to Ms. Aldrich's comments as follows:

COMMENT 1: Ms. Aldrich stated that the Secretary of State may not charge fees concerning electronic information other than the fees authorized in 2-6-110, MCA, and suggested adding 2-6-103 and 2-6-110, MCA, to the list of implemented statutes. She also stated that under 2-6-103, MCA, the Secretary of State is not authorized to charge a member of the legislature, a state officer, or a county officer for any search relative to matters pertaining to the duties of the office.

RESPONSE 1: The Secretary of State strongly disagrees that the Secretary of State may not charge fees concerning electronic information other than the fees authorized in 2-6-110, MCA. Title 2, chapter 6, MCA, pertains to "public records" and the Secretary of State's responsibilities for managing the public records for all state agencies in the executive branch of government. This responsibility was transferred from the Department of Administration to the Secretary of State in 1991. It is currently administered through the Records and Information Management Division within the Secretary of State's office.

Section 2-6-110, MCA, is not applicable to a rule notice promulgated under the Secretary's duties under 2-15-403, MCA. The more specific authority to charge a fee for the business records contained on the "corporate information computer system maintained by the secretary of state" is 2-15-403, MCA, which not only gives the Secretary of State the authority to charge a fee to both "private or public entities," but rulemaking authority. This is confirmed by a review of the legislative history.

The Statement of Intent for Ch. 289, L. 1991, states as follows: "A statement of intent is required for this bill because [section 1][2-15-403] authorizes the secretary of state to adopt rules setting fees to be charged for the sale of the corporate information list. It is the intent of the legislature that the fees should be commensurate with the costs of producing the list. Existing fees may be modified to the extent necessary to conform to this statement of intent and [section 1][2-15-403]."

The "corporate information computer system maintained by the secretary of state" is the Secretary of State's Information Management System (SIMS) located on and accessed through the Secretary of State's web site. It is hard to argue that the information contained in SIMS is not "electronic." The statutory authority for the SIMS system is 2-15-404, MCA, which has been added as an authority and implementation statute for this rule.

Also, 2-15-405, MCA, is the general authority for the Secretary of State to charge a fee for all its services. The Secretary of State is structured to run as a business and deposit its fees into an enterprise fund. The office is fully funded through the fees it charges. House Bill 639, as passed by the 2001 Montana Legislature, enacted 2-15-405, MCA. It was the Montana Legislature's intent that 2-15-405, MCA, provides broad rulemaking authority for all fees the Secretary of State charges.

Corporate information is also excluded from the public records statutes by 2-6-109(7), MCA.

4. The Secretary of State has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.5.121 MISCELLANEOUS FEES (1) through (9) remain as proposed.

AUTH: 2-15-403, 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-403, 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, MCA

5. No member of the public commented on this proposed rule amendment. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee (SAVA). The Secretary of State responds to Ms. Aldrich's comments as follows:

COMMENT 2: Ms. Aldrich suggested adding 2-15-403, MCA, to the list of authorizing statutes and questioned whether 35-2-1107 and 35-7-103, MCA, should still appear as implementing statutes.

RESPONSE 2: The Secretary of State agrees and has added 2-15-403, MCA, to the authorizing and implementing statutes, but disagrees with the suggestion to remove 35-2-1107 and 35-7-103, MCA, because fees charged under this rule apply to both nonprofit corporations and registered agents.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of October, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 1.2.419 pertaining to the)
scheduled dates for the 2015)
Montana Administrative Register)

TO: All Concerned Persons

1. On September 4, 2014, the Secretary of State published MAR Notice No. 44-2-201 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1996 of the 2014 Montana Administrative Register, Issue Number 17.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of October, 2014.

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 June 30, 2014. This table includes those rules adopted during the period July 1, 2014, through September 30, 2014, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2014, 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 2014 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in September 2014 appear. Vacancies scheduled to appear from November 1, 2014 through January 31, 2015, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2014.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice)			
Ms. Danna Jackson	Governor	Carbonari	9/19/2014
Helena			1/1/2017
Qualifications (if required): Professional and Community Organizations			
Board of Professional Engineers and Professional Land Surveyors (Labor and Industry)			
Mr. Ronald Drake	Governor	reappointed	9/12/2014
Helena			7/1/2018
Qualifications (if required): Professional Engineer			
Mr. David Elias	Governor	reappointed	9/12/2014
Anaconda			7/1/2018
Qualifications (if required): Land Surveyor			
Rep. Hal Jacobson	Governor	reappointed	9/12/2014
Helena			7/1/2018
Qualifications (if required): Public Representative			
Board of Medical Examiners (Labor and Industry)			
Dr. Anna Earl	Governor	reappointed	9/12/2014
Chester			9/1/2018
Qualifications (if required): Doctor of Medicine			
Dr. Bruce Hayward	Governor	reappointed	9/12/2014
McAllister			9/1/2018
Qualifications (if required): Osteopath			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Labor and Industry) cont.			
Dr. Nathan Thomas	Governor	reappointed	9/12/2014
Missoula			9/1/2018
Qualifications (if required): Podiatrist			
Board of Nursing (Labor and Industry)			
Mr. Tom Glover	Governor	Schye	9/12/2014
Great Falls			7/1/2018
Qualifications (if required): Public Representative			
Economic Development Advisory Council (Commerce)			
Mr. Chad Cottet	Governor	Marchi	9/12/2014
Polson			7/1/2017
Qualifications (if required): Lake County Community Development Corporation Region Representative			
Governor's Advisory Council on Aging (Public Health and Human Services)			
Sen. Dan W. Harrington	Governor	Barnhart	9/12/2014
Butte			7/1/2017
Qualifications (if required): Public Representative			
Mr. John Melton	Governor	Carter	9/12/2014
Chester			7/1/2017
Qualifications (if required): Public Representative			
Mr. Robert Meyers	Governor	Kippen	9/12/2014
Great Falls			7/1/2017
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Aging (Public Health and Human Services) cont.			
Ms. Peggy Tombre Bozeman	Governor	James-Hawley	9/12/2014 7/1/2017
Qualifications (if required): Public Representative			
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)			
Ms. Marilyn Zimmerman Poplar	Governor	Stevens	9/19/2014 7/1/2016
Qualifications (if required): Experience related to the private or nonprofit provision of prevention programs			
Montana Council on Developmental Disabilities (Commerce)			
Ms. Rebecca DeCamera Helena	Governor	Sturm	9/12/2014 1/1/2017
Qualifications (if required): Agency Representative			
Montana Health Coalition (Public Health and Human Services)			
Mr. Todd Harwell Helena	Governor	Smilie	9/12/2014 5/31/2015
Qualifications (if required): Department of Public Health and Human Services			
Mr. Roger Holt Billings	Governor	Logan	9/12/2014 5/31/2015
Qualifications (if required): Parent Representative			
Public Defender Commission (Administration)			
Mr. Terrell Jessee Billings	Governor	Daem	9/12/2014 7/1/2017
Qualifications (if required): member of an organization that advocates on behalf of indigent persons			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Traumatic Brain Injury Advisory Council (Public Health and Human Services)			
Dr. Richard Felix	Governor	Wright	9/12/2014
Saint Ignatius			1/1/2016
Qualifications (if required): Advocate for Brain-Injured Persons			
Workers' Compensation Judge (Labor and Industry)			
Mr. David Michael Sandler	Governor	Shea	9/8/2014
Kalispell			9/7/2017
Qualifications (if required): nominated by the Judicial Nomination Commission			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Aeronautics (Transportation)		
Mr. Fred Lark, Lewistown	Governor	1/1/2015
Qualifications (if required): public representative		
Mr. Charles Manning, Lakeside	Governor	1/1/2015
Qualifications (if required): aviation education representative		
Mr. Alexander C. Edwards, Billings	Governor	1/1/2015
Qualifications (if required): official of a fixed base operator		
Mr. Robert Buckles, Bozeman	Governor	1/1/2015
Qualifications (if required): commercial airlines representative		
Board of Chiropractors (Labor and Industry)		
Ms. Alice Whiteman, Missoula	Governor	1/1/2015
Qualifications (if required): public representative		
Dr. Lee Hudson, Great Falls	Governor	1/1/2015
Qualifications (if required): practicing chiropractor with at least one year experience		
Board of Crime Control (Justice)		
Mr. Mike Batista, Helena	Governor	1/1/2015
Qualifications (if required): law enforcement representative		
Rep. Angela Russell, Lodge Grass	Governor	1/1/2015
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont.		
Ms. Randi Hood, Helena Qualifications (if required): representative of a criminal justice agency	Governor	1/1/2015
Director Mike Ferriter, Helena Qualifications (if required): state law enforcement representative	Governor	1/1/2015
Mr. Richard Kirn, Poplar Qualifications (if required): tribal government representative	Governor	1/1/2015
Ms. Beth McLaughlin, Helena Qualifications (if required): Judge/Judiciary Representative	Governor	1/1/2015
Mr. Godfrey Saunders, Bozeman Qualifications (if required): educator	Governor	1/1/2015
Ms. Tara Jensen, Helena Qualifications (if required): public representative	Governor	1/1/2015
Ms. Sherry Matteucci, Billings Qualifications (if required): public representative	Governor	1/1/2015
Ms. Brenda C. Desmond, Missoula Qualifications (if required): representative of the judiciary	Governor	1/1/2015
Mr. William Hooks, Helena Qualifications (if required): Criminal Justice Agency representative	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Environmental Review (Environmental Quality) Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2015
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2015
Mr. Larry Mires, Glasgow Qualifications (if required): public member	Governor	1/1/2015
Board of Horseracing (Livestock) Mr. Allen Fisher, Ashland Qualifications (if required): resident of District 1	Governor	1/20/2015
Mr. John Hayes, Great Falls Qualifications (if required): resident of District 3	Governor	1/20/2015
Board of Housing (Commerce) Rep. Sheila Rice, Great Falls Qualifications (if required): public representative	Governor	1/1/2015
Rep. Jeanette S. McKee, Hamilton Qualifications (if required): public representative	Governor	1/1/2015
Mr. Robert Gauthier, Ronan Qualifications (if required): public representative	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Investments (Commerce) Mr. Gary Buchanan, Billings Qualifications (if required): financial representative	Governor	1/1/2015
Mr. Karl Englund, Missoula Qualifications (if required): attorney	Governor	1/1/2015
Mr. Jon Satre, Helena Qualifications (if required): business person	Governor	1/1/2015
Mr. Quinton Nyman, Helena Qualifications (if required): labor representative	Governor	1/1/2015
Board of Labor Appeals (Labor and Industry) Rep. Jerry L. Driscoll, Billings Qualifications (if required): public representative	Governor	1/1/2015
Rep. Jennifer J.P. Pomnichowski, Bozeman Qualifications (if required): public representative	Governor	1/1/2015
Ms. Cindy Stergar, Butte Qualifications (if required): public representative	Governor	12/31/2014
Mr. Nate Naprstek, Bozeman Qualifications (if required): occupational therapist	Governor	12/31/2014

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Mr. Jack King, Billings	Governor	1/1/2015
Qualifications (if required): industry representative		
Mr. Ronald Efta, Wibaux	Governor	1/1/2015
Qualifications (if required): public member/attorney		
Mr. Bret Smelser, Sidney	Governor	1/1/2015
Qualifications (if required): landowner without minerals		
Board of Pardons and Parole (Corrections)		
Mr. Michael E. McKee, Hamilton	Governor	1/1/2015
Qualifications (if required): education or experience in criminology, psychiatry, psychology, law, social work		
Mr. John Rex, Miles City	Governor	1/1/2015
Qualifications (if required): education or experience in criminology, psychiatry, psychology, law, social work		
Board of Personnel Appeals (Labor and Industry)		
Mr. Jim Soumas, Joliet	Governor	1/1/2015
Qualifications (if required): labor unions, substitute member		
Mr. Steve Johnson, Missoula	Governor	1/1/2015
Qualifications (if required): management representative with collective bargaining experience		
Mr. Jerry Rukavina, Great Falls	Governor	1/1/2015
Qualifications (if required): officer of a labor union or an association recognized by the board (substitute member)		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry) cont.		
Ms. Caryn Kallay, Ronan Qualifications (if required): public representative	Governor	12/31/2014
Commissioner Dave Gallik, Helena Qualifications (if required): an attorney with labor-management experience	Governor	1/1/2015
Ms. Amy Verlanic, Anaconda Qualifications (if required): management representative with collective bargaining experience	Governor	1/1/2015
Mr. Richard Parish, Helena Qualifications (if required): individual with general labor-management experience	Governor	1/1/2015
Mr. Max Hallfrisch, Great Falls Qualifications (if required): officer of a labor union or an association recognized by the board	Governor	1/1/2015
Board of Public Assistance (Public Health and Human Services)		
Ms. Helen Barta Schmitt, Sidney Qualifications (if required): public representative	Governor	1/1/2015
Board of Respiratory Care Practitioners (Labor and Industry)		
Mr. William Carmichael, Great Falls Qualifications (if required): respiratory care practitioner	Governor	1/1/2015
Board of Social Work Examiners and Professional Counselors (Labor and Industry)		
Ms. Rosemary Hertel, Deer Lodge Qualifications (if required): licensed counselor	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors (Labor and Industry) cont. Ms. Carol Stratemeyer, Hamilton Qualifications (if required): licensed counselor	Governor	1/1/2015
Mr. Peter Degel, Helena Qualifications (if required): licensed counselor	Governor	1/1/2015
Ms. Beverley McCurry, Columbus Qualifications (if required): public representative	Governor	1/1/2015
Mr. B.A. Doc Tweedy, Helena Qualifications (if required): public representative	Governor	1/1/2015
Board of Speech-Language Pathologists and Audiologists (Labor and Industry) Ms. Lynn Harris, Missoula Qualifications (if required): audiologist	Governor	12/31/2014
Ms. Tina Hoagland, Billings Qualifications (if required): audiologist	Governor	12/31/2014
Children's Trust Fund (Public Health and Human Services) Ms. Roberta Kipp, Browning Qualifications (if required): public representative	Governor	1/1/2015
Ms. Lisa Stroh, Chinook Qualifications (if required): public representative	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Coal Board (Commerce) Rep. Ralph L. Lenhart, Glendive Qualifications (if required): expertise in education and a resident of District 2	Governor	1/1/2015
Ms. Marcia Brown, Butte Qualifications (if required): representative from business and a resident of District 1	Governor	1/1/2015
Mr. Loren W. Acton, Bozeman Qualifications (if required): expertise in education and a resident of District 1	Governor	1/1/2015
Electronic Government Advisory Council (Administration) Rep. Dan Villa, Anaconda Qualifications (if required): agency representative	Governor	1/1/2015
Ms. Karen Harrison, Lolo Qualifications (if required): public representative	Governor	1/1/2015
Director Pam Bucy, Helena Qualifications (if required): agency representative	Governor	1/1/2015
Ms. Sherri Davidoff, Missoula Qualifications (if required): public representative	Governor	1/1/2015
Ms. Jane Weber, Great Falls Qualifications (if required): local government	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Equal Pay for Equal Work Task Force (Labor and Industry)		
Ms. Aimee Grmoljez, Helena Qualifications (if required): private business	Governor	11/1/2014
Ms. Jacquie Helt, Missoula Qualifications (if required): organized labor	Governor	11/1/2014
Ms. Kimberly Rickard, Helena Qualifications (if required): organized labor	Governor	11/1/2014
Ms. Amy Stiffarm, Polson Qualifications (if required): tribal member	Governor	11/1/2014
Mr. Scott Wilson, Bozeman Qualifications (if required): private business	Governor	11/1/2014
Ms. Deb Larson, Bozeman Qualifications (if required): private business	Governor	11/1/2014
Ms. Jen Euell, Helena Qualifications (if required): non-profit organization	Governor	11/1/2014
President Waded Cruzado, Bozeman Qualifications (if required): higher education	Governor	11/1/2014
Mr. Dean Barry Good, Missoula Qualifications (if required): higher education	Governor	11/1/2014

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Equal Pay for Equal Work Task Force (Labor and Industry) cont. Mayor Tom Hanel, Billings Qualifications (if required): local government	Governor	11/1/2014
Facility Finance Authority (Commerce) Rep. Joe Quilici, Butte Qualifications (if required): public member	Governor	1/1/2015
Mr. Matthew B. Thiel, Missoula Qualifications (if required): an attorney	Governor	1/1/2015
Ms. Kimberly Rickard, Helena Qualifications (if required): public member	Governor	1/1/2015
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks) Mr. Dan Vermillion, Livingston Qualifications (if required): District 2	Governor	1/1/2015
Mr. A.T. Stafne, Wolf Point Qualifications (if required): District 4 and experience with domestic livestock	Governor	1/1/2015
Mr. Lawrence Wetsit, Wolf Point Qualifications (if required): District 4 Representative	Governor	1/1/2015
Hard Rock Mining Impact Board (Commerce) Commissioner Marianne Roose, Eureka Qualifications (if required): elected county commissioner and resident of District 1/impact area	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Hard Rock Mining Impact Board (Commerce) cont. Ms. Donna von Nieda, Nye Qualifications (if required): elected school trustee and resident of District 1/impact area	Governor	1/1/2015
Human Rights Commission (Labor and Industry) Ms. Cynthia Wolken, Missoula Qualifications (if required): public representative	Governor	1/1/2015
Ms. Lucy Simpson, Helena Qualifications (if required): public representative	Governor	1/1/2015
Interstate Oil Compact Commission (Natural Resources and Conservation) Mr. Thomas P. Richmond, Billings Qualifications (if required): associate official representative	Governor	1/1/2015
Mr. Ronald Efta, Wibaux Qualifications (if required): official representative	Governor	1/1/2015
Judicial Nomination Commission (Judiciary) Ms. Shirley Ball, Nashua Qualifications (if required): public representative	Governor	1/1/2015
Livestock Loss Reduction and Mitigation Board (Livestock) Ms. Elaine Allestad, Big Timber Qualifications (if required): livestock industry	Governor	1/1/2015
Mr. Larry Trexler, Hamilton Qualifications (if required): livestock industry	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lottery Commission (Administration) Mr. Leo Prigge, Butte Qualifications (if required): public accountant	Governor	1/1/2015
Mental Disabilities Board of Visitors (Governor) Mr. Jonathan Angel, Billings Qualifications (if required): consumer or family of consumer of mental health services	Governor	1/1/2015
Milk Control Board (Livestock) Mr. Jerrold A. Weissman, Great Falls Qualifications (if required): public representative that identifies himself as a Republican	Governor	1/1/2015
Mr. W. Scott Mitchell, Billings Qualifications (if required): attorney that identifies himself as a Democrat	Governor	1/1/2015
Montana Alfalfa Seed Committee (Agriculture) Mr. Ernest Johnson, Chinook Qualifications (if required): alfalfa seed grower	Governor	12/21/2014
Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower	Governor	12/21/2014
Mr. Marvin Frank, Joliet Qualifications (if required): alfalfa seed grower	Governor	12/21/2014
Montana Children's Trust Fund Board (Public Health and Human Services) Mrs. Clementine Lindley, Billings Qualifications (if required): general public representative	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Children's Trust Fund Board (Public Health and Human Services) cont. Ms. Leslie Caye, Pablo Qualifications (if required): public representative	Governor	1/1/2015
Montana Council on Developmental Disabilities (Commerce) Mr. Jason Billehus, Missoula Qualifications (if required): primary consumer representative	Governor	1/1/2015
Mr. Darwin Nelson, Helena Qualifications (if required): primary consumer representative	Governor	1/1/2015
Ms. Connie Wethern, Glasgow Qualifications (if required): secondary consumer representative	Governor	1/1/2015
Ms. Janet Carlson, Malta Qualifications (if required): primary consumer representative	Governor	1/1/2015
Ms. Tarra Thomas, Billings Qualifications (if required): secondary consumer representative	Governor	1/1/2015
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Alvin Windy Boy Sr., Box Elder Qualifications (if required): public representative	Governor	1/1/2015
Mr. William F. Kennedy, Ekalaka Qualifications (if required): grazing district director	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Safety Officer Standards and Training Council (Justice) Rep. Hal Harper, Helena Qualifications (if required): public representative	Governor	1/1/2015
Ms. Winnie Ore, Helena Qualifications (if required): public representative	Governor	1/1/2015
Commissioner Mike Anderson, Havre Qualifications (if required): Board of Crime Control representative	Governor	1/1/2015
Ms. Georgette Hogan Boggio, Hardin Qualifications (if required): county attorney	Governor	1/1/2015
Mr. John Schaffer, Great Falls Qualifications (if required): local law enforcement officer (nonadministrative)	Governor	1/1/2015
Mr. Lewis Matthews, Wolf Point Qualifications (if required): certified tribal law enforcement representative	Governor	1/1/2015
Mr. James Smith, Libby Qualifications (if required): chief of police	Governor	1/1/2015
Mr. Jesse Slaughter, Great Falls Qualifications (if required): local law enforcement	Governor	1/1/2015
Ms. Tia Robbin, Kalispell Qualifications (if required): public representative	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Safety Officer Standards and Training Council (Justice) cont. Ms. Gina Dahl, Havre Qualifications (if required): County Attorney	Governor	1/1/2015
Chief William Dial, Whitefish Qualifications (if required): Board of Crime Control representative	Governor	1/1/2015
Rail Service Competition Council (Transportation) Ms. Carla Allen, Denton Qualifications (if required): having knowledge of class II railroads	Governor	1/1/2015
Mr. Russell Hobbs, Columbia Falls Qualifications (if required): having knowledge of transportation for the wood products industry	Governor	1/1/2015
Mr. Walt Ainsworth, Helena Qualifications (if required): having knowledge of the trucking industry	Governor	1/1/2015
Respiratory Care Practitioners (Labor and Industry) Mr. Thomas Fallang, Butte Qualifications (if required): respiratory care practitioner	Governor	1/1/2015
Small Business Health Insurance Pool Board (Auditor's Office) Mr. John Thomas, Helena Qualifications (if required): management-level individual with knowledge of state employee health benefits plans	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Parks and Recreation Commission (Fish, Wildlife and Parks) Sen. Thomas E. "Tom" Towe, Billings Qualifications (if required): District 5	Governor	1/1/2015
Director Mary Sexton, Helena Qualifications (if required): District 3	Governor	1/1/2015
State Tax Appeals Board (Governor) Ms. Karen Powell, Helena Qualifications (if required): public representative	Governor	1/2/2015
Statewide Independent Living Council (Public Health and Human Services) Ms. Monica Garrahan, Havre Qualifications (if required): public representative	Governor	12/1/2014
Transportation Commission (Transportation) Rep. Carol Lambert, Broadus Qualifications (if required): resident of District 4 (Republican)	Governor	1/1/2015
Mr. S. Kevin Howlett, Arlee Qualifications (if required): resident of District 1 (Democrat)	Governor	1/1/2015
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Ms. Julia Hammerquist, Kalispell Qualifications (if required): a survivor	Governor	1/1/2015
Mr. Darcy Merchant, Billings Qualifications (if required): injury control or prevention	Governor	1/1/2015

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2014 THROUGH JANUARY 31, 2015

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Traumatic Brain Injury Advisory Council (Public Health and Human Services) cont. Mrs. Teresa McKeon, Malta Qualifications (if required): survivor or family member of a survivor of traumatic brain injury	Governor	1/1/2015