

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.11.115 and 12.11.501 and the) PROPOSED AMENDMENT AND
adoption of NEW RULE I regarding) ADOPTION
recreational water use on Lake Five)

TO: All Concerned Persons

1. On April 14, 2010 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 1 offices located at 490 North Meridian Road, Kalispell, Montana to consider the amendment and adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than April 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

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

12.11.115 NO WAKE ZONES FOR LAKES GREATER THAN 35 ACRES IN THE WESTERN FISHING DISTRICT (1) This rule applies to any public lake or reservoir in the western fishing district greater than 35 acres and therefore not regulated in ARM 12.11.110.

(2) All watercraft on public lakes or reservoirs greater than 35 surface acres within the western fishing district are limited to a controlled no wake speed as defined in ARM 12.11.101 from shoreline to 200 feet from the shoreline. The following are exceptions under this rule:

(a) personal watercraft which must maintain a certain minimum operating speed to remain upright and maneuver in the water may travel at that minimum operating speed following the most direct route through the no wake zone to and from shore;

(b) motorized watercraft towing a water skier from or to a dock or the shore, except watercraft falling under this exception must travel the most direct route through the no wake zone to and from the dock or shore;

(c) Crystal Lake located within the Thompson Chain of Lakes, Lincoln County;

(d) Horseshoe Lake located within the Thompson Chain of Lakes, Lincoln County;

(e) Lake Five located in Flathead County;

~~(e)~~ (f) Loon Lake located within the Thompson Chain of Lakes, Lincoln County;

~~(f)~~ (g) Lower Thompson Lake located within the Thompson Chain of Lakes, Lincoln County;

~~(g)~~ (h) McGregor Lake located within the Thompson Chain of Lakes, ~~Lincoln~~ Flathead County;

~~(h)~~ (i) Middle Thompson Lake located within the Thompson Chain of Lakes, Lincoln County; and

~~(i)~~ (j) Upper lobe of Upper Thompson Lake located within the Thompson Chain of Lakes, Lincoln County.

(3) Any more specific regulations adopted by the commission pertaining to bodies of water affected by this rule are controlling.

~~(4) This rule is effective May 15, 2001.~~

AUTH: 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-106, 23-1-501, 87-1-303, MCA

12.11.501 LIST OF WATER BODIES The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(1) through (64) remain the same.

(65) Lake Five NEW RULE I

(65) through (112) remain the same but are renumbered (66) through (113).

AUTH: 23-1-106, ~~87-1-301~~, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

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

NEW RULE I LAKE FIVE (1) Lake Five is located in Flathead County.

(2) ARM 12.11.115 exempts Lake Five from the controlled no wake speed defined in ARM 12.11.101(1).

(3) Personal watercraft as defined in 23-2-502, MCA are prohibited.

(4) All vessels towing a person water skiing, tubing, or any similar activity must travel in a counter-clockwise direction.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

5. STATEMENT OF REASONABLE NECESSITY: The Department of Fish, Wildlife and Parks decided to develop a fishing access site (FAS) on property it owns on Lake Five. The commission is proposing the above-stated rules in response to concerns expressed by certain Lake Five landowners. The landowners are concerned about the increased traffic, safety issues, noise, and user conflicts due to the public having access to Lake Five via the FAS.

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: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, Helena, MT 59620-0701, fax (406) 444-7456, or e-mail them to jfitzpatrick@mt.gov. Any comments must be received no later than April 22, 2010.

7. Jessica Fitzpatrick or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk, Rule Reviewer
Department of Fish, Wildlife and Parks

Certified to the Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I on Transportation of Hazardous Materials and the amendment of 18.8.202, 18.8.431, 18.8.432, 18.8.1501, 18.8.1502, and 18.8.1505 pertaining to Definitions, Motor Carriers Operating Interstate, Maximum Allowable Weights, Maximum Allowable Weights on the Noninterstate, Transportation of Hazardous Materials, Federal Motor Carrier Safety Rules and Safety Inspection Program)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 25, 2010, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on April 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Motor Carrier Services, Department of Transportation, PO Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; TDD (406) 444-7696 or (800)335-7592; or e-mail dkiely@mt.gov.

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

NEW RULE I TRANSPORTATION OF HAZARDOUS MATERIALS (1) A commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials. The regulations adopted by reference are 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through January 1, 2010. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

18.8.202 MOTOR CARRIERS OPERATING INTERSTATE (1) remains the same.

(2) ~~There is a charge of \$5.00 per motor vehicle for each vehicle registered through the single state registration system~~ Fees are established by the Unified Carrier Registration (UCR) Board of Directors. All fees must be paid before a company will be able to register through the International Registration Plan (IRP) or International Fuel Tax Agreement (IFTA). Both IRP and IFTA are programs for interstate operations.

(3) ~~By reference, the department hereby adopts the rules promulgated by the single state registration system~~ established by the UCR Board in accordance with 49 USC 14506 14504, a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 4639, Helena, MT 59620-4639.

(4) ~~By reference, the department hereby adopts the rules of the Interstate Commerce Commission~~ Federal Motor Carriers Safety Administration codified as part 1023 of Title 49, Subtitle B, Chapter III, of the Code of Federal Regulations, a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 201001, Helena, MT 59620-1001 obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(5) The Motor Carrier Services Division shall identify, collect, and maintain the USDOT number and Taxpayer Identification Number (TIN) for the registrant and motor carrier that is responsible for the safe operation of each vehicle being registered as required by the Performance and Registration Information System Management (PRISM) established at 49 CFR §390.19. The Motor Carrier Identification Report (form MCS-150) information which identifies the carrier responsible for safety shall be updated if the last update is more than one year prior to the first day of the registration period.

(a) Motor Carrier Services Division shall issue a suspension notice for all vehicles assigned to a motor carrier which have been prohibited by a federal agency from conducting interstate operations. This suspension will remain in effect for those vehicles despite carrier name changes or USDOT number changes until the carrier responsible for the safety of the motor vehicle has come into compliance with the Federal Motor Carrier Safety Administration Act (FMCSA) which determination shall be made by the FMCSA.

(b) Motor Carrier Services Division shall determine the safety rating of a motor carrier prior to any registration or permitting. If it is determined the carrier has an unfit or unsatisfactory safety rating, as defined by federal procedures, or a federal out-of-service order has been issued, the registrations or permitting will be denied, suspended, or revoked until the carrier responsible for safety of the motor vehicle has come into compliance with the Federal Motor Carrier Safety Administration Act (FMCSA), which determination shall be made by the FMCSA.

(c) Any carrier responsible for the safety of a vehicle, which was not identified as holding an unfit safety rating until after a registration had been issued, is subject

to credential revocation and registration and license plates confiscation by any authorized enforcement personnel.

AUTH: 61-3-710, 61-10-155, MCA

IMP: 61-3-708, 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, MCA

18.8.431 MAXIMUM ALLOWABLE WEIGHT (1) remains the same

(2) The maximum allowable gross weight for vehicle combinations hauling divisible loads and operating under the provisions of 23 CFR 658, appendix C, April 1, ~~2004~~ 2010 edition, is 137,800 pounds.

AUTH: 61-10-155, MCA

IMP: 61-10-107, MCA

18.8.432 MAXIMUM ALLOWABLE WEIGHT ON THE NONINTERSTATE

(1) Maximum allowable weights allowed for vehicle combinations hauling divisible loads and operating on applicable noninterstate highways cannot exceed a gross vehicle weight and single, tandem, or tridem axle weights as described in 23 CFR 658, appendix C, April 1, ~~2004~~ 2010 edition. Information pertaining to the U.S. Code of Federal Regulation (CFR) may be obtained by contacting the Office of the Federal Register, 800 North Capitol Street, Northwest, Suite 700, Washington, DC 20001; phone (202) 741-6000.

(2) A department weight analysis of the highway infrastructure will determine the maximum gross weight and axle weights allowed on applicable noninterstate. The maximum gross weight and axle weights may be less than those allowed in 23 CFR 658, appendix C, April 1, ~~2004~~ 2010 edition.

(3) and (4) remain the same.

(5) Permits will be issued for the weights in 23 CFR 658, appendix C, April 1, ~~2004~~ 2010 edition, for the same permit types and under the same fee schedule that is provided in 61-10-125, MCA and subchapter 6 of this chapter.

(6) Sections (1) through (5) apply only to noninterstate highways specified in 61-10-107(4), MCA.

AUTH: 61-10-155, MCA

IMP: 61-10-107, 61-10-108, 61-10-121, 61-10-125, MCA

~~18.8.1501 TRANSPORTATION OF HAZARDOUS MATERIALS- INTRASTATE OPERATION- MOTOR CARRIER SAFETY DEFINITIONS~~ (1) A commercial motor vehicle or motor carrier subject to regulation by the department under ~~61-10-154, MCA, shall comply with and the department adopts by reference the following federal regulations of the Department of Transportation concerning the transportation of hazardous materials. The regulations adopted by reference are 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found~~

in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through January 1, 2006. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. For purposes of interstate commerce safety operations and subchapter 15 of these rules, the department adopts by reference the definitions found at 49 CFR 390.5.

(2) ~~The following definitions apply to the federal regulations incorporated in this rule and ARM 18.8.1502 with respect to the operation of a commercial motor vehicle or motor carrier in intrastate commerce:~~ For purposes of intrastate commerce safety operations and subchapter 15 of these rules, the department adopts by reference the definitions found at 49 CFR 390.5 with the following clarifications:

(a) "Commercial motor vehicle (CMV)" means any self-propelled or towed motor vehicle used on a way of this state open to the public to transport passengers or property when the vehicle:

(i) has a gross vehicle weight rating, or gross combination weight rating, or gross vehicle weight, or gross combination weight of 26,001 ~~or more~~ pounds (11,804 ~~or more~~ kilograms) and that is not a farm vehicle operating solely in Montana or more, whichever is greater;

(ii) remains the same.

(iii) is designed or used to transport ~~nine or more~~ than eight passengers, including the driver, for compensation; or

(iv) ~~is of any size and~~ is used in the transportation of materials found by the U.S. Secretary of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 USC 5101, et seq.) and which require the motor vehicle to be marked or placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C) under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR subtitle B, chapter I, subchapter C.

(b) through (h) remain the same.

(i) "Motor carrier" means a person, corporation, or firm transporting goods or passengers by operation of a commercial motor vehicle upon a way of the state open to the public. The term includes duly authorized agents, officers, and representatives, as well as employees of the motor carrier who are responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

(j) remains the same

AUTH: ~~44-1-1005, 61-10-155, 69-12-201~~, MCA

IMP: 44-1-1005, 61-10-154, ~~69-12-201(1)(e)~~, MCA

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 373, 49 CFR part 375,

49 CFR part 377 through 379, 49 CFR part 382, 49 CFR part 385, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through January 1, 2006 2010. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) The federal regulations incorporated by reference are subject to the following modifications:

(a) For purposes of part 385 as applied to intrastate carriers, the "~~compliance review~~" safety investigation will be referred to as a an "safety fitness review intrastate safety investigation." ~~A safety fitness review~~ An intrastate safety investigation may only be conducted by a ~~specialized~~ specially trained civilian inspector authorized by the department to perform such reviews.

~~(b) With respect to 49 CFR 385.13, the prohibitions on transportation only apply to commercial motor vehicles or motor carriers operating in interstate commerce.~~

~~(c)~~ (b) With respect to 49 CFR ~~385.24~~ 390.19, an intrastate motor carrier must complete a "Motor Carrier Identification Report" (form MCS-150) at the following times:

(i) and (ii) remain the same.

~~(d)~~ (c) For the purpose of 49 CFR 390.21, the department will assign a United States Department of Transportation (USDOT) number to each intrastate motor carrier and that number, in addition to the name or trade name of the motor carrier, must be marked on each self-propelled commercial motor vehicle operated by the carrier in the same manner as is required of a federally issued USDOT number: except:

(i) The motor carrier is required to mark each vehicle subject to these regulations with the assigned "USDOT," ~~the number assigned~~ immediately followed by and the state abbreviation "MT."

~~(ii) All CMVs that are part of an intrastate motor carrier's existing fleet as of April 23, 2004 and that are marked with a motor vehicle identification (MVI) number must be converted to the carrier's USDOT number on or before September 30, 2005.~~

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

~~(g) For the purpose of 49 CFR part 395, drivers of utility service vehicles are exempt from the hours of service requirements consistent with P.L. 108-199.~~

~~(h)~~ (f) For the purpose of 49 CFR 395.8, a person exempted from 49 CFR 395.3 pursuant to the exclusion set forth in 49 CFR 395.1(k) must keep a daily record of the number of hours worked. ~~No record of duty status must be maintained.~~ The format of the daily record may be determined by the record keeper, so long as the format includes a provision for entry of hours worked by calendar day. The daily record must be retained for a period of six months from initial entry date. Payroll records or time sheets may be used for this purpose, if they are updated on a daily basis.

AUTH: 44-1-1005, 61-10-155, ~~69-12-101, 69-12-103, 69-12-201~~, MCA

IMP: 44-1-1005, 61-10-141(4), 61-10-154, ~~69-12-103, 69-12-201(1)(e)~~, MCA

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) The safety inspection program implemented by the U.S. Department of Transportation is intended to focus on those driver-related and mechanical factors most often ~~blamed~~ responsible for ~~accidents~~ crashes involving trucks, passenger carriers, and hazardous material transporters and is designed to remove potentially unsafe drivers and imminently hazardous vehicles from Montana's highways.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Uniform Out-of-Service Criteria (April ~~2006~~, and August ~~2005~~ 1, 2010), incorporated by reference. A copy of the North American Uniform Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036.

(3) remains the same.

AUTH: ~~44-1-1005~~, 61-10-155, ~~69-12-201~~, MCA

IMP: 44-1-1005, 61-10-154, ~~69-12-201(1)~~, ~~69-12-201(2)~~, MCA

REASON:

New Rule I - The proposed new rule is necessary to move information on transportation of hazardous materials into a separate rule for clarity. The hazardous materials information is currently included with safety definitions, and is therefore difficult to find. The new rule will retain all current wording, and will also update the CFR citation to the most recent 2010 version.

ARM 18.8.202 - The proposed changes to (2) are necessary because the Single State Registration Program referenced in (2) was a federal program that was discontinued effective December 31, 2006. It has been replaced by the Unified Carrier Registration Program (UCR) and the proposed rule language will use the correct reference to UCR, as well as update the USC reference to the correct citation.

The proposed changes will also clarify that companies may register through International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA), which are agreements with other jurisdictions for vehicle registration and fuel requirements.

The proposed changes to (3) are necessary because in order to register through IRP and IFTA, the companies must be in compliance with Federal Regulations for UCR. Companies do not have to participate in these programs but if they elect to participate they will need to be in compliance. MDT is therefore adopting the complete UCR federal rules by reference.

The proposed changes to (4) are necessary because the Interstate Commerce Commission was terminated in 1995, thus the rule reference to that defunct commission must be deleted. The duties are now under the Federal Motor

Carriers Safety Administration(MCSA), thus the language on adoption of federal rules under the FMCSA is necessary and will remain.

The proposed new (5) is necessary because MDT is implementing a new federal program known as Performance and Registration Information Systems Management (PRISM). PRISM includes two major processes — the Commercial Vehicle Registration Process, and the Motor Carrier Safety Improvement Process (MCSIP) — which work along parallel lines to identify interstate motor carriers and hold them responsible for the safety of their operation.

First, under the Commercial Vehicle Registration Process a State's commercial vehicle registration process establishes a system of accountability by insuring that no vehicle is plated without identifying the carrier responsible for the safety of the vehicle during the registration year; and also serves as a powerful incentive for unsafe carriers to improve their safety performance through the use of registration sanctions. The vehicle registration process ensures that all carriers engaged in interstate commerce are uniquely identified through a USDOT number and the safety fitness of each carrier can then be checked prior to issuing vehicle registrations. Any motor carriers that have been prohibited from operating in interstate commerce may then have their ability to register vehicles denied.

Second, the Motor Carrier Safety Improvement Process (MCSIP) is the means by which a motor carrier's safety is systematically tracked and improvements are made to motor carriers with demonstrated poor safety performance through accurate identification, performance monitoring and treatment. MCSIP carriers that do not improve their safety performance face progressively more stringent penalties that may result in a Federal "unfit" or "imminent hazard" determination and the possible suspension of vehicle registrations by the state.

The proposed new rule changes at (5)(a) and (b) will establish use of PRISM in Montana, and set forth possible penalties such as denial of registration and permits, or suspension or revocation of state registration for carriers identified by the federal PRISM system as having an unfit safety rating. The rule language explains a carrier must come into compliance with the federal Motor Carrier Safety Administration Act - which compliance is to be determined by the Federal Motor Carriers Safety Administration - before a Montana registration or license plates may be issued or reinstated. Finally, the rule sets forth the ability of the Montana MCS Division to revoke a registration and confiscate license plates if a state registration has already been issued, and it is later discovered the carrier holds an unfit safety rating as determined by the federal Motor Carrier Safety Administration.

The proposed rule change will also add pertinent statutory citations to indicate those Montana statutes being implemented through this rule.

ARM 18.8.431, 18.8.432 - The proposed changes to ARM 18.8.431 and 18.8.432 are necessary to update citations to the current Code of Federal Regulations.

The proposed rule change will also add pertinent statutory citations to indicate those Montana statutes which both authorized and are being implemented through this rule.

ARM 18.8.1501 – The proposed changes to this rule will move the hazardous materials information into a separate rule for clarity. The definitions are currently included with the hazardous materials rule, and are therefore difficult to find. The proposed amendment will retain all current definitions, with changes to (a) "Commercial Motor vehicle" (to delete an outdated reference to kilograms and a redundant reference to farm vehicles which is already found in the CFR) and (i) "Motor Carrier" (to add "corporation" and "firm" to the definitions).

The proposed rule change will also delete and add pertinent statutory citations to indicate those Montana statutes which both authorized and are being implemented through this rule.

ARM 18.8.1502 – The proposed changes to (1) are necessary to further protect the public by incorporation by reference of additional parts of the Code of Federal Regulations. These additional regulations will allow Motor Carrier Safety Assistance Program (MCSAP) inspectors to complete a more thorough intrastate safety investigation of the carriers' records and recordkeeping through inspection of billing records, bills-of-lading, etc. Enforcement of these regulations ultimately protects Montana consumers.

The proposed changes to (2)(a) are necessary to change the name of the review from "intrastate safety fitness review" to "intrastate safety investigation" in order to align the name with federal language on these safety investigations.

The proposed deletion of (2)(b) will eliminate an exception to 49 CFR 385.13 which previously allowed intrastate carriers which were found to have an unsatisfactory rating during an intrastate safety investigation to continue to operate unabated inside Montana using unacceptable safety practices and procedures. The previous exception also gave carriers that failed to follow safety regulations an unfair advantage in day-to-day business cost over carriers who follow the regulations. The proposed rule change will delete this exception.

The proposed changes to the remaining subsections of the rule are necessary to eliminate outdated language on motor vehicle identification (MVI) numbers in use before 2005, to eliminate an exception for utility service vehicles which is no longer used in Montana, and to update rule language to current requirements on daily records.

The proposed rule change will also delete and add pertinent statutory citations to indicate those Montana statutes which both authorized and are being implemented through this rule.

ARM 18.8.1505 – The proposed changes to this rule are necessary to adopt the most current Commercial Vehicle Safety Alliance (CVSA) North American Uniform "Out-of-Service" criteria and update some archaic language. The proposed rule change will also delete and add pertinent statutory citations to indicate those Montana statutes which both authorized and are being implemented through this rule. The proposed rule change will also delete and add pertinent statutory citations to indicate those Montana statutes which both authorized and are being implemented through this rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Kiely or Jeff Steeger, Motor Carrier Services, Department of Transportation, PO Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629 or (406) 444-4207; fax (406) 444-9263 or (406) 444-7681; TDD (406) 444-7696 or (800)335-7592; or e-mail dkiely@mt.gov or jsteeger@mt.gov, and must be received no later than 5:00 p.m., April 22, 2010.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dan Kiely or Jeff Steeger at the above address no later than 5:00 p.m., April 22, 2010.

7. If the agency receives requests for a public hearing on the proposed action from either 10% 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 400 persons based on the 4000 active intrastate MT DOT numbers.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in #5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the 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.

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Jim Lynch
Jim Lynch
Director
Department of Transportation

Certified to the Secretary of State March 15, 2010.

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

In the matter of the amendment of)
ARM 37.30.1001 and 37.30.1002 and)
repeal of ARM 37.30.1006 and)
37.30.1007 pertaining to standards)
for providers of services funded)
through certain disability transitions)
programs)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On April 14, 2010, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 5, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.30.1001 STANDARDS FOR PROVIDERS OF SERVICES FUNDED THROUGH CERTAIN DISABILITY TRANSITIONS PROGRAMS: GENERALLY CERTIFICATION (1) ~~It is the policy of the department to use, whenever feasible, providers which are accredited or approved by an appropriate public authority or professional organization. Where this is not possible, the providers selected, whether public or private, are those that appear upon investigation to be the best adapted to render the specific services required. Providers will be chosen based upon the professional and technical qualifications of personnel, adequacy of equipment, and scope and quality of services rendered.~~ Services that the department purchases to be delivered to persons who are applicants for or who are eligible consumers of the Vocational Rehabilitation Program, the Blind and Low Vision Program, the Older Blind Program, the Independent Living Program, the Extended Employment Program, or the Visual Medical Program must be appropriate to meet the needs of the person for whom they are purchased.

(2) ~~The department purchases services for applicants and clients~~ consumers only from providers entities or persons that meet the required or appropriate, as determined by the department, accreditation, certification, licensure or other requirements and criteria made applicable by law, accrediting body, or determination of the department as provided for in ARM Title 37, chapter 30, subchapter 1.

(3) ~~A provider who fails to meet accreditation, certification, licensure or other requirements and criteria made applicable by law, accreditation body or determination of the department will lose certification as a provider. The department reimburses the cost of professional services delivered to persons who are applicants for or who are eligible consumers of the Vocational Rehabilitation Program, the Blind and Low Vision Program, the Older Blind Program, the Independent Living Program, the Extended Employment Program, or the Visual Medical Program only if the person who is to deliver the services is currently professionally licensed to provide the type of services that are to be delivered to the applicant or consumer and is in conformance otherwise with the professional standards that are appropriate for the profession the person is practicing. A provider of professional services is a person who provides services to persons with disabilities for the purposes of furthering their employment or life skills and who are subject under state law to licensure as a particular type of professional services practitioner.~~

(4) The department reimburses the cost of program services delivered to persons who are applicants for or who are eligible consumers of the Vocational Rehabilitation Program, the Blind and Low Vision Program, the Older Blind Program, the Independent Living Program, the Extended Employment Program, or the Visual Medical Program only if the department, in accordance with ARM Title 37, chapter 30, subchapter 1, has certified the entity that is to deliver the program services as an enrolled provider of services and the entity is in conformance with all legal requirements necessary for the conduct of business, including but not limited to licensure, incorporation and registration, and federal and state laws and regulations on tax and wage and hour requirements. A provider of program services is an incorporated or other legal business entity that provides services to persons with disabilities for the purposes of furthering their employment or life skills.

(5) The department may evaluate through quality assurance reviews, inclusive of service inspections and consumer and provider interviews, and other measures the quality of professional and program services delivered to consumers of the Vocational Rehabilitation Program, the Blind and Low Vision Program, the Older Blind Program, the Independent Living Program, the Extended Employment Program, or the Visual Medical Program. The department based upon those evaluations and other pertinent information as it may note or receive from third parties may take any appropriate measures, including termination of the provider relationship, to assure that consumers receive appropriate and effective services and that state and federal monies are appropriately managed and accounted for.

AUTH: 53-2-201, 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-2-201, 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

37.30.1002 STANDARDS FOR PROVIDERS OF SERVICES FUNDED THROUGH CERTAIN DISABILITY TRANSITIONS PROGRAMS: ENROLLMENT

AS A PROVIDER OF PROGRAMS OR SERVICES (1) A provider of services for applicants or consumers of services provided through this chapter that is an incorporated corporation delivering a program of vocational rehabilitation, visual rehabilitation, extended employment services or independent living services in order to become enrolled with the department as qualified to be a provider must be accredited by the appropriate accrediting body as specified on the following list: The department in its discretion may enroll an entity as a provider of program services for the Vocational Rehabilitation, Blind and Low Vision, or Extended Employment Programs if the entity is currently accredited as follows or is provisionally enrolled as provided for in (7) or is approved for limited enrollment by the department as provided for in (8) or (9):

(a) for providers of vocational rehabilitation facilities and similar providers, the standards of and extended employment services, the entity must be accredited by either the eCommission of aAccreditation of rRehabilitation fFacilities (CARF) or the Rehabilitation Services Accreditation System (RSAS); and

(b) for providers serving persons with visual disabilities, the standards of low vision and blind services, the entity must be accredited by either the nNational aAccrediting eCouncil (NAC) or of CARF; and,

(c) for providers of independent living services, the standards of the national council on disability (NCD).

(2) The department in its discretion may enroll an entity as a provider of program services for the independent living programs if the entity is currently recognized and funded as an authorized independent living center by the federal Centers for Independent Living Program of the U.S. Department of Education or is provisionally enrolled as provided for in (7) or is approved for limited enrollment by the department as provided for in (8) or (9).

(3) The standard term of enrollment for a provider of program services is three years. If the enrollment is predicated upon an accreditation or authorization that is for a shorter term than three years, then the term of enrollment coincides with that term.

(4) The department may disenroll a provider at any time upon a determination by the department that the provider:

(a) is no longer accredited by an accrediting body;

(b) is no longer approved or authorized by another state or federal services program;

(c) is failing to perform in accordance with the various program and licensing standards and requirements that are applicable to the provider's service performance;

(d) is failing to prepare, maintain, or provide reports and other documentation necessary for monitoring performance and accounting for service delivery;

(e) is failing to perform in accordance with the terms of any contract the provider has entered into with the department for the delivery of vocational rehabilitation, blind and low vision, older blind, visual medical, extended employment or independent living services; or

(f) is violating or failing to conform with state or federal law.

(5) The department may review the enrollment status of a provider at any time. A review may include a site review.

~~(2)~~ (6) Copies of the standards adopted and incorporated by reference in this rule may be obtained as follows:

(a) the CARF standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, ~~Disability Services Division~~ Disability Transitions Programs, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from CARF, 4891 E. Grant Road, Tucson, AZ 85712; and

(b) the NAC standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, ~~Disability Services Division~~ Disability Transitions Programs, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from NAC, 15 E. 40th Street, Suite 1004, New York, NY 10016;

(c) the RSAS standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, Disability Transitions Programs, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from RSAS, 1309 Horne Street NE, Olympia, WA 98516; and

(d) copies of the federal requirements for a federally authorized independent living center may be obtained through the Department of Public Health and Human Services, Disability Transitions Programs, P.O. Box 4210, Helena, MT 59604-4210.

~~(3)~~ (7) ~~A provider of services~~ An entity, that in accordance with (1) or (2) must receive accreditation in order to be enrolled, may be provisionally enrolled by the department until the ~~provider~~ entity receives the appropriate accreditation. A provisionally enrolled provisional enrollment may not be for more than 18 months. A provider may not receive another provisional enrollment, consecutive with a prior provisional enrollment unless the department determines that the provisional reenrollment is necessary due to matters of process relating to the accreditation and that the provider is making a good faith effort to become accredited.

(4) (8) The department may enroll a ~~provider of services~~ an entity that is not accredited as provided in (1) or (2), if the ~~provider~~ entity is necessary to the delivery of services to an applicant or consumer, and if the provider is approved for the delivery of those services by a entity has formal approval to act as a provider from another state or federal agency services program with which the department has a cooperative agreement concerning the coordinated delivery of services ~~to a class of persons to which the person belongs.~~

(9) The department may provide for the limited enrollment of an entity that is not enrolled as provided for in of this rule if that entity can provide one or more services to a consumer in an area or circumstance that lacks an available enrolled provider. Limited enrollment may be limited with respect to time period, location, type of services, and any other pertinent parameters.

(10) If enrollment is denied, the department must give notice to the entity of the reasons for the decision 30 days from the date that the entity submitted a proposal to enroll.

~~(5)~~ (11) If enrollment is denied to be revoked by the department, the department must give notice to the provider is notified of the reasons for such the decision 30 days in advance of the date on which the department will cease to purchase services from the provider.

~~(6) The department provides for the enrollment of a provider upon receipt from the provider of records and reports attesting to its CARF or NAC accreditation. The duration of the enrollment by the department may be up to three years.~~

~~(a) The department, upon being apprised of any source of material change in the facility's functioning in terms of the standards or in terms of the failure of the facility to provide such records and reports as requested by the department, may review the facility's certification and may modify its certification decision. At the discretion of the department, such review may include an on-site visit.~~

AUTH: 53-2-201, 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-2-201, 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

4. The department proposes to repeal the following rules:

37.30.1006 STANDARDS FOR PROVIDERS: ON SITE EVALUATION, is found on page 37-6603 of the Administrative Rules of Montana.

AUTH: 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

37.30.1007 STANDARDS FOR PROVIDERS: PROFESSIONAL PROVIDERS, is found on page 37-6603 of the Administrative Rules of Montana.

AUTH: 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

5. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.30.1001 and 37.30.1002 and the repeal of ARM 37.30.1006 and 37.30.1007 pertaining to the standards for providers of program or professional services for vocational rehabilitation, blind and low vision services, older blind, visual medical, extended employment services, or independent living services. The proposed amendments to ARM 37.30.1001 and 37.30.1002 and the repeal of ARM 37.30.1006 and 37.30.1007 are necessary to account for changes in the accreditation environment of the programs involved. The current rules reference an accreditation process that no longer exists and there is an additional accreditation process now available for the accreditation of one type of service. The rule amendments and repeals are also necessary in order to consolidate the substantive governing provisions into a more concise rule framework.

ARM 37.30.1001

The department's proposed amendments to ARM 37.30.1001 would specify the particular programs administered by the department through the Disability Transitions Programs to which these provider standards would be applicable. The rule currently is ambiguous as to their programmatic applicability. This option would be desirable as compared to not adding the changes in that it would clarify for

departmental staff, the provider community, and the public the applicability of the standards. A further aspect of the proposed amending to the rule are the provisions clarifying the difference between persons acting as professionals who provide services and entities acting as provider business organizations that provide services. This differentiation would avoid ambiguity in the application of standards as to these two very different types of providers. This option is preferable over no action which would maintain the significant possibility of misapplication of the standards with respect to some providers or over the adoption of one set of standards for all providers which would not be feasible given the very different nature of their service structures and activities.

The department is proposing the addition of express authority in ARM 37.30.1001 to allow the department to consider in the acceptance or enrollment of persons and entities as providers the legal status and conformance of the person or entity with respect to legal requirements other than programmatic requirements that can seriously affect their performance as an organization and in the delivery of services. The amendments would also encompass express authority for the department to undertake quality assurance on and off site reviews and actions to further conformance with the best practices and to foster the delivery of services that are appropriate to meet the consumer's needs. This express expansion of the discretion of the department is necessary to better assure the delivery of services to consumers. It is a preferable option in that it broadens the exercise of quality assurance oversight for the department based upon other pertinent requirements in addition to those expressed in these rules.

ARM 37.30.1002

The department's proposed amendments to ARM 37.30.1002 would remove the required applicability to independent living services of the standards of the National Council on Disability. This particular amendment is necessary because the National Council on Disability no longer provides standards for this purpose. Since there are no standards of an accrediting body which are particularly designed for independent living services, the department is proposing an amendment to provide that an independent living center may be enrolled by the department based upon its recognition and direct funding by the federal Department of Education, Rehabilitation Services Administration, as an independent living center that meets the pertinent federal standards governing the development and operation of independent living centers. This option was implemented because the federal standards are definitive as to the constitution of independent living standards and the alternative of the development of particular state standards would be duplicative of the federal process and therefore an inefficient use of limited state resources. In addition, the application of a state set of standards would be potentially confusing for the independent living centers.

The department's proposed amendments to ARM 37.30.1002 would add the applicability to rehabilitation services of the standards of the Rehabilitation Services Accreditation System (RSAS). This particular amendment is necessary because this

is a new accreditation service for rehabilitation services that did not exist when the rule was originally adopted. This new accreditation service provides an effective and comprehensive accreditation service with desirable standards. The department with the support of interested providers determined it would be desirable to amend the rule to provide for the application of the RSAS accreditation. The department chose this option of an additional accreditation services because it is administratively desirable to recognize and utilize all available services that are appropriate for the purpose and to provide choice of accreditation services for providers.

The proposed amendment of the provision of ARM 37.30.1002 allowing for the department to enroll service programs approved as providers by another state or federal agency, will remove the limitation upon this exercise based upon a class of persons. This will broaden the discretion of the department with respect to enrollment of entities that individually serve a person through another state or federal program. This approach is the better option in that it will facilitate the individualization of services to consumers and further the collaboration in the delivery of services originating with different programs. This option is preferable over no change or a change to no enrollment requirements, in that it continues to provide for the application of best practices in the delivery of services while furthering the improvement of service delivery and coordination.

The department is proposing the amendment of ARM 37.30.1002 allowing for the department to enroll service programs as limited enrollment providers, is for the purpose of assuring service delivery to consumers who live in areas that lack generally enrolled service programs. This will broaden the opportunities for consumers to receive in their own communities and regions services that are funded by the department. This approach is the better option in that it will facilitate the individualization of services to consumers while maintaining departmental oversight of the quality of programs. This option is preferable over no change or a change to no enrollment requirements, in that it will geographically broaden service delivery.

ARM 37.30.1006 and 37.30.1007

The department is proposing the repeal of ARM 37.30.1006 and 37.30.1007. The textual substance of these two existing rules is proposed to be amended into the proposed amendments of ARM 37.30.1001 and ARM 37.30.1002. This would effectively consolidate related provisions together and allow for more succinct rule language for the purposes of administering the provision of services in a manner that facilitates quality assurance in delivery of the services to consumers and that facilitates accountability for the program monies expended on the services. The department determined that this consolidation of provisions was preferable as compared to their retention was desirable for more effective implementation and presentation of the procedures and the criteria governing the selection and retention of entities and persons to obtain services from for the program consumers.

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: Rhonda Lesofski, 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., April 23, 2010.

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.

/s/ Cary B. Lund
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State March 15, 2010.

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

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
37.57.1001 pertaining to the Title V) PROPOSED REPEAL
maternal and child health block grant)

TO: All Concerned Persons

1. On April 22, 2010, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed repeal 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 Department of Public Health and Human Services no later than 5:00 p.m. on April 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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 department proposes to repeal the following rule:

37.57.1001 MATERNAL AND CHILD HEALTH BLOCK GRANT:
STANDARDS FOR RECEIPT OF FUNDS, found on page 37-12699 of the
Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

4. The Department of Public Health and Human Services (the department) is proposing the repeal of ARM 37.57.1001 pertaining to the Title V maternal and child health block grant. The department determined that requirements found in ARM 37.57.1001 are more appropriately suited in a contract format. The Maternal and Child Health Block Grant Contract is issued yearly to contractors and incorporates these requirements. Therefore, the department proposes to repeal ARM 37.57.1001.

There are no new rules being proposed to replace ARM 37.57.1001. The department's intent is to repeal this rule.

The department considered developing a Maternal and Child Health Policy Manual as an alternative. The department further determined that it would be more cost

effective to recommend that the Maternal and Child Health Block Grant Contract, which incorporates all the requirements as found in ARM 37.57.1001, be selected as the replacement for ARM 37.57.1001.

There is no federal or state law that requires ARM 37.57.1001.

Fiscal Impact

There is no fiscal impact for proposing to repeal ARM 37.57.1001.

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: Rhonda Lesofski, 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., April 23, 2010.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Shannon McDonald
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State March 15, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC
42.4.1604, relating to tax credits for) HEARING ON PROPOSED
corporations) AMENDMENT

TO: All Concerned Persons

1. On April 22, 2010, at 8:30 a.m., a public hearing will be held in the (Third Floor) Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., April 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.1604 MANUFACTURING (1) A manufacturing corporation is one engaged in the mechanical or chemical transformation of materials or substances into new products or the production of energy by means of an alternative renewable energy source as defined in ~~90-4-102~~, 15-6-225, MCA. The manufacturing facilities for the transformation of materials or substances into new products are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipment. Corporations engaged in assembling component parts of manufactured products are also considered to be manufacturing, if the new product is neither a structure nor other fixed improvement. Included in this definition is the blending of materials such as lubricating oils, plastics, resins, or liquors.

(2) and (3) remain the same.

(4) If it is difficult to determine the classification between manufacturing and other divisions of the ~~1972 Standard Industrial Classification Manual system~~ North American Industry Classification System (NAICS), the department shall classify according to its best judgment.

(5) remains the same.

(6) There are also some manufacturing-type activities performed by corporations which are primarily engaged in activities covered by other divisions of

the ~~Standard Industrial Classification Manual of 1972~~ North American Industry Classification System (NAICS), and are thus not classified as manufacturing. A few of the important examples are:

(a) agriculture, forestry, and fishing (Processing on farms is not considered manufacturing if the raw materials are grown on the farm and if the manufacturing activities are on a small scale without the extensive use of paid labor. Other exclusions are custom grist milling, threshing, and cotton ~~grinning~~ ginning);

(b) mining with the dressing and beneficiating of ores; the breaking, washing, and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand and gravel and nonmetallic chemical and fertilizer minerals other than barite classified as mining;

(c) construction (Fabricating operations performed at the site of a construction by contractors are not considered manufacturing. The prefabrication of sheet metal, concrete, and terrazzo products and similar construction materials shall be classified as manufacturing.);

(d) wholesale and retail trade, with corporations engaged in the following types of operations included in wholesale or retail trade:

(i) cutting and selling purchased carcasses;

(ii) preparing feed at grain elevators and farm supply stores;:

(iii) stemming leaf tobacco at wholesale establishments;

(iv) production of wiping rags;

(v) breaking of bulk and redistribution in smaller lots, including packaging, repackaging, or bottling products such as liquors or chemicals;

(vi) primarily selling products to the general public which are produced on the same premises from which they are sold, such as bakeries, candy stores, ice cream parlors, and custom tailors;:

(e) services with tire retreading and rebuilding, sign painting and lettering ships, and the production of motion picture films classified as services and with repair activities, with the following exceptions, classified as services:

(i) ship and boat building and repair;

(ii) the rebuilding of machinery and equipment on a factory basis; and

(iii) machine shop repair.

(7) Alternate renewable energy sources defined in 15-6-225, MCA, include solar energy, wind energy, geothermal energy, conversion of biomass, fuel cells that do not require hydrocarbon fuel, small hydroelectric generators producing less than one megawatt, and methane from solid waste.

AUTH: 15-31-127, 15-31-501, MCA

IMP: ~~15-8-114~~, 15-6-225, 15-31-124, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.1604 is necessary to remove a repealed statute and replace it with the proper cross-reference.

The title reference has been updated in (4) and (6).

The department is correcting the term "cotton grinning" referred to in (6)(a) because the department has not be able to define that term but can define "cotton ginning".

New (7) addresses the types of renewable energy sources that are allowed in order to clarify for the taxpayer the types of energy described in 15-6-225, MCA.

The department is proposing to remove the implementing reference of 15-8-111, MCA, which sets forth exceptions to the market value standards of valuing property because it does not apply to the subject matter of this rule and add the implementing statute of 15-6-225, MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than April 30, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices regarding particular subject matter or matters. 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 person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I)	NOTICE OF PUBLIC
and amendment of ARM 42.4.1702,)	HEARING ON PROPOSED
42.4.2501, 42.4.2502, 42.4.2503, 42.4.2504,)	ADOPTION AND
42.4.2601, 42.4.2602, 42.4.2605, 42.4.2701,)	AMENDMENT
42.4.2703, 42.4.2704, 42.4.2705, 42.4.2706,)	
42.4.2707, 42.4.2708, 42.4.2802, 42.4.2902,)	
42.4.2903, 42.4.2904, 42.4.3003, 42.4.3102,)	
42.4.3202, 42.4.3303, 42.4.3304, 42.4.3305,)	
and 42.4.3306 relating to tax credits for)	
corporations and individual taxpayers)	

TO: All Concerned Persons

1. On April 22, 2010, at 9:00 a.m., a public hearing will be held in the (Third Floor) Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., April 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CLAIMING THE HISTORIC PRESERVATION CREDIT

(1) Except as provided in (2) and (3), federal form 3468, the federal form used in claiming the federal rehabilitation credit, must be attached to the applicable Montana tax returns. S corporations and entities taxable as partnerships must attach the form to their information returns and the owners of the pass-through entities must also attach a copy to their individual income or corporation license tax returns.

(2) Taxpayers claiming the alternate credit for creating a conservation easement must attach a statement identifying the historically significant property for which the credit is claimed and the costs of creating the conservation easement and the diminution in value of the historically significant property used in calculating the alternate credit.

(3) A taxpayer who elected to transfer the federal rehabilitation credit to a lessee must attach a copy of the election statement required by U.S. Treasury regulation 26 C.F.R. 1.48-4(f) and (g), and the lessee's form 3468 that identifies the taxpayer as the transferor. If the credit calculation for certified historic structures on the lessee's form 3468 contains qualified rehabilitation expenditures other than those incurred by the taxpayer, the taxpayer must provide a schedule breaking out the taxpayer's own expenditures and a pro forma federal credit calculation.

AUTH: 15-30-2620, MCA

IMP: 15-30-2342, 15-31-151, MCA

REASONABLE NECESSITY: The department is proposing New Rule I so that the taxpayer will know what information and attachments must be included with the Montana tax return when the credit is claimed. The department intends to place this rule in subchapter 29 with the other rules dealing with historic property preservation.

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

42.4.1702 CREDIT FOR TEMPORARY EMERGENCY LODGING

(1) The owner or operator of an establishment in Montana that is licensed by the Montana Department of Public Health and Human Services (DPHHS) to provide lodging may claim the credit described in (2) against the taxes imposed in ~~45-30-403~~ 15-30-2103, or 15-31-101, MCA, for furnishing temporary lodging in Montana, at no cost, to an individual who has been referred by a DPHHS designated charitable organization because the individual is in temporary immediate danger from an assault or potential assault by a partner or family member. The list of organizations designated by DPHHS as authorized to make a referral is available at <http://www.dphhs.mt.gov/PHSD/Food-consumer/emergency-lodging.shtml>.

Additional information regarding the program is also available at this web site.

(2) The amount of credit is \$30 for each night, up to five nights, of gratis lodging provided to a referred individual during a calendar year. The credit must be claimed by the person that owns or operates the licensed establishment in the Montana tax return or report that includes the establishment's lodging receipts for the period during which the creditable lodging was provided. If the credit is claimed by an entity taxed as an S corporation or partnership, the credit must be attributed to shareholders or partners in the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes. The credit is "refundable," and if the amount of the credit exceeds the taxpayer's liability, if any, under ~~45-30-403~~ 15-30-2103, or 15-31-101, MCA, for the period during which the creditable lodging was provided, the excess will be refunded to the taxpayer.

(3) The credit is \$30 per night regardless of the number of individuals in the room. For example, if two people are provided lodging in the same room for three nights, the amount of the credit is \$90 (three nights of lodging multiplied by \$30 per night). ~~If two or more referred individuals share a room for one night, each is treated as having been provided one night of lodging. An establishment may offer a referred~~

~~individual more than five night's emergency lodging during a calendar year, but only the first five nights qualify for the credit.~~

(4) When applying the limitation under 15-30-2381, MCA, each individual is treated as having been provided one night of lodging even if two or more referred individuals share a room for one night. An establishment may offer a referred individual more than five night's emergency lodging during a calendar year, but only the first five nights qualify for the credit.

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

~~(5)(6)~~ The credit must be claimed on ~~Montana Form form~~ TELC, Temporary Emergency Lodging Credit.

(6) through (8) remain the same but are renumbered (7) through (9).

AUTH: 15-1-201, ~~15-30-305~~, 15-30-2620, ~~15-31-150~~ 15-31-501, MCA

IMP: ~~15-30-103~~, ~~15-30-196~~, 15-30-2103, 15-30-2381, 15-31-101, 15-31-102, 15-31-171, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.4.1702 are necessary to improve the language for limitations and calculation of credit in the interest of enhancing taxpayer understanding.

The department further proposes to amend the rule to update the authority and implementing statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2501 DEFINITIONS (1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2501 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2502 CARRYOVER AND RECAPTURE OF OILSEED CRUSH FACILITY TAX CREDIT (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2502 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2503 CARRYOVER AND RECAPTURE OF BIODIESEL OR BIOLUBRICANT PRODUCTION FACILITY TAX CREDIT (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-31-501, MCA

IMP: 15-32-701, 15-32-702, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2503 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2504 CARRYOVER AND RECAPTURE OF BIODIESEL BLENDING AND STORAGE TAX CREDIT (1) and (2) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-31-501, MCA

IMP: 15-32-703, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2504 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2601 DEFINITIONS (1) through (6) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-32-611, MCA

IMP: 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2601 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2602 ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) remains the same

(2) For a taxpayer paying individual income tax, the deduction is an adjustment to federal adjusted gross income for individual income tax. ~~The deduction is available for tax years 1992 through 2005.~~

(3) For a corporation paying income/license tax, the deduction is an adjustment to federal taxable income for corporation income/license tax. ~~The deduction is available for tax years 1992 through 2005.~~

(4) A shareholder of an S corporation may claim a share of the allowable deduction for expenditures that the S corporation incurred for purchase of qualified recycled material based on the shareholder's pro rata share of their ownership in the S corporation. A partner of a partnership may claim a share of the allowable deduction for expenditures the partnership incurred for the purchase of qualified recycled material in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

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

AUTH: 15-32-609, 15-32-611, MCA

IMP: 15-32-603, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The department proposes to amend ARM

42.4.2602 to remove the sunset dates for the recycled material deduction made by the 2009 Legislature in HB 21 (Ch. 159, L. 2009).

The addition of new (4) refers to the amount of the recycled material deduction allowed to the owners of a pass-through entity. This portion of the rule clarifies that the deduction passes through to the owners of these entities.

42.4.2605 PERIOD COVERED FOR THE RECLAMATION AND RECYCLING CREDIT (1) ~~The recycling credit is available for tax years 1992 through 2005.~~ The credit must be taken in the tax year in which the machinery/equipment was acquired and placed into service.

~~(2) To be eligible for the recycling credit, qualifying equipment must be purchased and installed after January 1, 1990, and prior to January 1, 2006.~~

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

AUTH: 15-32-611, MCA

IMP: 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, 15-32-610, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2605 to remove the sunset dates for the recycle credit made by the 2009 Legislature in HB 21 (Ch. 159, L. 2009).

42.4.2701 DEFINITIONS The following definitions apply to this subchapter:

(1) "Allowable contribution" for the purposes of the qualified endowment credit is a charitable gift made to a qualified endowment. The contribution from an individual to a qualified endowment must be by means of a planned gift as defined in ~~15-30-165, 15-30-2327~~, MCA. A contribution from a corporation, small business corporation, estate, trust, partnership, or limited liability company may be made by means of a planned gift or may be made directly to a qualified endowment.

~~(2) "Beneficial interest" is a taxpayer who has a beneficial interest in a business when the taxpayer is either a sole proprietor, partner, or shareholder in an S corporation.~~

~~(3) "Donor" means an individual, corporation, estate, or trust that contributes to a qualified charitable endowment as required by 15-30-165, 15-30-166, 15-30-167, 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, and 15-31-162, MCA.~~

~~(4)(3) "Paid-up life insurance policies" are life insurance policies in which all the premiums have been paid prior to the policies being contributed to a qualified endowment. The donor must make the tax-exempt organization the owner and beneficiary of the policy. The paid-up life insurance policy does not have to be on the life of the donor.~~

~~(4) "Permanent irrevocable fund" means a fund comprised of one or more assets that are invested for the production or growth of income, the principal of which must be retained and the income of which may be added to the principal or expended. Investment assets may include cash, securities, mutual funds, or other investment assets. A "building fund" or other fund that is used to accumulate contributions that will be expended is not a permanent irrevocable fund. A fund from which contributions are expended directly for constructing, renovating, or purchasing~~

operational assets, such as buildings or equipment, is not a permanent irrevocable fund.

(5) "Present value of the charitable gift portion of a planned gift" is the allowable amount of the charitable contribution as defined in ~~15-30-424~~ 15-30-2131, and ~~15-30-136~~, 15-30-2152, MCA, or for corporations as defined in 15-31-114, MCA, prior to any percentage limitations.

(6) "Qualified endowment" means a permanent irrevocable fund established for a specific charitable, religious, educational, or eleemosynary purpose by an organization qualified to hold it as provided in ARM 42.4.2703.

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA

IMP: 15-30-165, 15-30-166, 15-30-167, 15-30-2131, 15-30-2152, 15-30-2327, 15-30-2328, 15-30-2329, 15-31-114, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2701 is necessary to remove a term that is not used in the statutes or rules. In addition, the 2007 Legislature in SB 150 (Ch. 208, L. 2007), added two definitions to 15-30-2327, MCA, although those definitions are contained in this statute, the department believes it is necessary to further define them in this rule in terms that are more common to the taxpayers. In the definition of "permanent irrevocable fund" the department is clarifying the requirement for fund permanence also made by the 2007 Legislature in SB 150 (Ch. 208, L. 2007).

42.4.2703 ELIGIBILITY REQUIREMENTS TO HOLD A QUALIFIED ENDOWMENT (1) To hold a qualified endowment an organization must be:

(a) incorporated or otherwise formed under the laws of Montana and exempt from federal income tax under 26 USC 501(~~C~~)(c)(3); or

(b) a bank or trust company, as defined in ~~15-30-165~~ 15-30-2327, MCA, holding an endowment fund on behalf of a Montana or foreign 501(~~C~~)(c) (3) organization.

(2) ~~For the period December 31, 2000, through December 31, 2004, the affordable housing revolving loan account established in 90-6-133, MCA, is considered a qualified endowment for the purpose of qualifying for the endowment tax credit.~~

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA

IMP: 15-30-165, 15-30-167, 15-30-2327, 15-30-2329, 15-31-161, 15-31-162, 90-6-133, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.2703 to correct the reference in "c" for the Internal Revenue Code and to delete an obsolete reference to the state's affordable housing revolving loan account.

The rule is further amended to update the statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) and (2)

remain the same.

(3) The balance of the allowable contributions not used in the credit calculation may be used as a deduction subject to the limitations and carryover provisions found in ~~15-30-121~~, 15-30-2131, MCA, or for corporations the limitations and carryover provisions found in 15-31-114, MCA.

(a) through (4) remain the same.

(5) The contribution to a qualified endowment from a small business corporation, partnership, or limited liability company is passed through to the shareholders, partners, or members ~~or managers~~ in the same proportion as their distributive share of the entity's income or loss for Montana income tax purposes. The proportionate share of the contribution passed through to each shareholder, partner, or member ~~or manager~~ becomes an allowable contribution for that donor for that year, and the credit allowed and the excess contribution deduction allowed are calculated as set forth in (1) and (2). The credit maximums apply at the corporation and individual levels, and not at the pass-through entity's level for partnerships, small business corporations, and limited liability companies.

(6) and (7) remain the same.

(8) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, ~~2002~~ 2008. The allowable contribution made by the couple is \$30,000. That couple is eligible to take a credit of up to ~~\$9,000~~ 12,000, with each claiming a credit of ~~\$4,500~~ 6,000.

(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, ~~2002~~ 2008, which result in an allowable contribution of \$20,000 for each person. They each would be eligible to take a credit of up to ~~\$6,000~~ 8,000.

(9) A donor may, at a later date, name or substitute the Montana qualified endowment, as defined in ~~15-30-165~~ 15-30-2327, MCA, to receive the planned gift provided that the original trust or gift document reserves in the donor the right to do so.

AUTH: ~~15-30-305~~, 15-30-2620, 15-31-501, MCA

IMP: ~~15-30-165~~, ~~15-30-166~~, ~~15-30-167~~, 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.2704 to remove inaccurate references to LLC managers. Only members of LLCs, as owners, may claim the credit and deduction. In addition, the years and related credit amounts referenced in the examples were updated to make the rule more relevant to the current tax periods for the taxpayer.

The rule is further amended to update the statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2705 CREATING A PERMANENT IRREVOCABLE FUND (1) through (5) remain the same.

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA
IMP: 15-30-165, 15-30-167, 15-30-2327, 15-30-2329, 15-31-161, 15-31-162,
MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2705 is necessary to reflect recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2706 REPORTING REQUIREMENTS (1) The donor must attach a copy of the following information to the tax return reporting the credit:

- (a) a receipt acknowledging the amount of the allowable contribution from the:
- (i) tax-exempt organization under 26 USC 501(~~C~~)(c)(3) holding the qualified endowment receiving the contribution;
 - (ii) trustee of the trust administering the planned gift; or
 - (iii) bank or trust company holding a qualified endowment on behalf of a tax exempt organization.
- (b) the date of the contribution to the qualified endowment or the planned gift;
- (c) the name of the organization incorporated or established in Montana holding the qualified endowment fund or the name of the tax exempt organization on behalf of which the qualified endowment fund is held;
- (d) in the case of a charitable trust where the charity is yet to be named, the donor shall include a copy of the disposition clause of the charitable trust which gives evidence that a qualified endowment fund has been created; and
- (e) a description of the type of gift, i.e. outright gift, charitable remainder unitrust, charitable gift annuity, etc.
- (2) The information required by these rules will be reported on forms prescribed and made available by the Department of Revenue department.

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA
IMP: 15-30-166, 15-30-167, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162,
MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2706 to correct the internal reference from an upper case "C" to a lower case "c" which is the correct format when it is associated with the Internal Revenue Code provisions.

The rule is further amended to update the statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2707 QUALIFIED ENDOWMENT CREDIT FOR CORPORATIONS
(1) remains the same.

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA
IMP: 15-30-165, 15-30-166, 15-30-167, 15-30-2327, 15-30-2328, 15-30-2329,
15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.4.2707 are necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2708 DETERMINING PRESENT VALUE FOR THE ENDOWMENT CREDIT (1) remains the same.

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA
IMP: 15-30-166, 15-30-2328, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2708 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2802 DISABILITY INSURANCE PREMIUMS HEALTH INSURANCE FOR UNINSURED MONTANANS CREDIT (1) ~~Except as provided in (2), disability insurance is synonymous with health insurance and includes insurance of human beings:~~

- ~~(a) against bodily injury, disablement, or death by accident or accidental means or the medical expense or indemnity involved; or~~
- ~~(b) against disablement or medical expense or indemnity resulting from sickness.~~

~~(2) Disability insurance does not include credit disability insurance or workers' compensation insurance. Montana law provides two different tax credits for health insurance purchased by employers for employees. A program administered by the commissioner of insurance, and referred to as the Insure Montana Credit, provides incentives, including a refundable tax credit provided in 15-30-2368 and 33-22-2006, MCA, for eligible, prequalified small employers. The rules related to that program are located in ARM Title 6, chapter 6, subchapter 52. No tax form is required to claim the preauthorized, refundable credit. Rather, the prequalified employers claim it as a line item on their individual income or corporation license tax return or, if they are taxed as an S corporation or partnership, they report it as a line item on their information returns and the pass-through entity owners claim their part as a line item on their individual income tax or corporation license tax returns, including a copy of the certificate issued by the Montana State Auditor's Office, verifying the amount of the credit.~~

(2) The rules in this subchapter apply to a second credit, referred to as the Health Insurance for Uninsured Montanans Credit, provided in 15-30-2367 and 15-31-132, MCA. The credit under 15-30-2367, MCA, against individual income tax, and 15-31-132, MCA, against corporation license tax, is subject to specific conditions and limitations listed in 15-31-132, MCA. It is not refundable, and any unused credit amount may not be carried over to another tax year. An employer can not claim both the small employers credit provided in Title 33, chapter 22 and the

Title 15, chapter 30 and 31, MCA tax credit.

~~(3) The credit may not be claimed for any insurance policy must that does not meet the minimum requirements of the small employer health insurance availability act described~~ Small Employer Health Insurance Availability Act imposed in 33-22-1801 Title 33, chapter 22, part 18, MCA, ~~except to the extent that part of Title 33 is inconsistent with the provisions of 15-31-132, MCA, before the insurance premiums paid by the employer are eligible for the credit.~~

~~(4) The credit may not be claimed for a period of more than 36 consecutive months that begins with the first month for which the credit is claimed. The credit may be claimed for any month qualifying insurance is provided during the 36-month period even if the employer either stops paying for insurance or does not claim the credit for other months. For example, company XYZ provides qualifying insurance for its employees from January 1, 2009, until December 31, 2009, but then stops paying in 2010. The employer is eligible to claim the credit through 2011 if it starts covering its employees again in 2011.~~

~~(5) For ten years after the last payment within the 35 months following the first month for which the credit is claimed, the employer or the employer's successor is ineligible to claim the credit. The 10-year period of ineligibility expires sooner if the credit is not claimed for the full 36-month period. For example, company ABC provides qualifying insurance for its employees from January 1, 2009 until December 31, 2010. The employer, or its successor, is eligible to claim the credit again~~ January 1, 2021.

~~(4)(6) If a corporation qualifies for the credit and has elected the employer is an S corporation status, the credit may be claimed by the individual its shareholders based upon the their pro rata share of ownership in the corporation.~~

~~(5)(7) If the employer is a partnership qualifies for the credit, the credit must be attributed to the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.~~

~~(6)(8) Form HI, Health Insurance for Uninsured Montanans Credit, must be completed for the year the credit is claimed and attached to Montana form 2, for an individual taxpayer, and to form CLT-4, for a C corporation the appropriate tax return.~~

~~(7)(9) A taxpayer who files a tax return electronically must complete form HI and retain the form and submit it to the department upon request.~~

~~(10) The Health Insurance for Uninsured Montanans Credit is referred to in 15-31-132 and 15-30-2367, MCA, as the credit for providing disability insurance for employees. Disability insurance is defined in 33-1-207, MCA.~~

AUTH: 15-31-501, MCA

IMP: ~~15-30-129,~~ 15-30-2367, 15-31-132, 33-1-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.2802 to describe the relationship between the "Health Insurance for Uninsured Montanans Credit" that is administered by the department and is the subject of the rule, and the "Insure Montana Credit" that is administered by the Commissioner of Insurance, because both are allowed for employer-provided health insurance and taxpayers are confused about how they interrelate and how they are different.

The definition of "disability insurance" is being stricken because the department has renamed the rule to refer to the tax credit by its commonly used name, "Health Insurance for Uninsured Montanans". Most people do not associate the term "disability insurance" as health insurance, and this has caused confusion about the type of insurance that is eligible for the credit. A reference to the definition of disability insurance has been included in (10) because that statute reference in Title 33, MCA, where disability insurance is defined as health insurance, was deleted in 2001.

The department is also proposing amendments to address taxpayer questions about how the 36-consecutive-month credit limit and the 10-year period of ineligibility apply when there are months during the 36-month period when insurance is not provided or the credit is not claimed.

The department is also proposing general amendments to update the tax credit form name and references to the tax form and to make nonsubstantive changes in style.

The amendment to the implementation citation is necessary to reflect recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.2902 COMPUTATION OF THE TAX CREDIT FOR THE PRESERVATION OF HISTORIC PROPERTIES (1) Except as provided in (3), Montana's tax credit for the preservation of historic buildings is to be computed using the federal credit allowed by 26 USC 47 which is a component of the federal general business credit. No other component of the federal general business credit may be used to compute Montana's credit for the preservation of historic buildings.

(2) remains the same.

(3) For tax years beginning January 1, 2002, through December 31, 2011, an alternative credit may be claimed for placing a conservation easement on historically significant property equal to 20% of the cost of creating the conservation easement and the diminution in value of the historically significant property. Qualified costs used in computing the credit for creating a conservation easement are those direct costs incurred in connection with the creation of the conservation easement and do not include the cost of acquiring the property or for improvements made to the property unless they are directly related to creating the conservation easement. ~~This section applies to tax years beginning January 1, 2002 through December 31, 2011, as stated in 15-30-180, MCA.~~

AUTH: 15-30-305, 15-30-2620, 15-31-501, MCA

IMP: ~~15-30-180~~ 15-30-2342, 15-31-151, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2902 includes changes to improve the taxpayer's understanding of the time limitations and amount of the credit.

The rule is further amended to update the statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2903 COMPUTATION OF TAX CREDIT FOR PRESERVATION OF HISTORIC PROPERTY FOR MARRIED TAXPAYERS (1) through (4) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-30-180, 15-30-2342, 15-31-151, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.2903 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.2904 OWNERSHIP OF HISTORIC PROPERTY (1) The credit is allowed to owners of the property who make qualified rehabilitation expenditures.

(2) A lessee that makes its own qualified rehabilitation expenditures to a certified historical building for which it is allowed a federal rehabilitation credit in its own right under IRC 47(c)(2)(B)(vi) when the initial lease term is longer than the building's IRC 168(c) recovery period is allowed to claim the Montana rehabilitation credits based on its own investment.

(3) Third parties to whom the federal rehabilitation credit is transferred may not claim the Montana credit and, correspondingly, transfer of the federal credit by a person entitled to claim the Montana credit does not disqualify them from claiming the Montana credit.

(4) A credit for the preservation of historic property generated by property jointly owned by more than one individual must be allocated between owners based on each owner's share of ownership in the property. Unless specified otherwise when the property is purchased, percentage of ownership will be considered equal between to 100% divided by the number of owners.

(5) A credit for the preservation of historic property owned by an S corporation must be allocated to its shareholders based on their pro rata share of ownership in the corporation.

(6) A credit for the preservation of historic property owned by a partnership must be attributed to the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-30-180, 15-30-2342, 15-31-151, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.4.2904 are necessary to address questions that arose from taxpayers regarding who may or may not claim the credit when the corresponding federal credit is transferred. The rule also addresses the issue of how the credit is allocated to pass-through entity owners.

The rule is further amended to update the statutes to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24, (Ch. 147, L. 2009).

42.4.3003 CLAIMING THE INFRASTRUCTURE USER FEE CREDIT

(1) remains the same.

(2) When claiming the credit, the taxpayer must attach to their tax return a completed copy of the form ~~provided by the department~~ IUFC, Infrastructure User Fee Credit. This form must be certified by the county, verifying the amount of the infrastructure user fee paid and that the fee has been paid timely.

(3) remains the same.

(4) The credit is nonrefundable. Any excess credit must first be carried back to each of the three preceding taxable periods, reducing the tax liability to zero, and then carried forward to each of the seven taxable periods following the taxable period of the credit. The credit cannot be carried back to any tax years beginning prior to January 1, 1995. The current year credit must be applied first before any carry back will be allowed.

AUTH: 15-1-201, MCA

IMP: 17-6-309, 17-6-316, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.3003 as form IUFC has recently been developed and this form is now used to report the infrastructure credit.

In addition, the reference to tax years beginning prior to January 1, 1995, has been deleted because that tax year is no longer applicable because the date is a stale reference. For example, in tax year 2009 the carry back can only go back to 2006. The remaining rule language and statute are clear as to the carry back and carry forward requirements and this language is not necessary.

42.4.3102 CREDIT FOR CONTRACTOR'S GROSS RECEIPTS TAX - INDIVIDUAL INCOME TAX (1) A resident or a nonresident taxpayer is allowed a credit against the taxpayer's Montana income tax liability for public contractor's gross receipts tax paid pursuant to the provisions of 15-50-205 and 15-50-206, MCA. The credit is allowed with respect to the taxpayer's Montana income tax liability determined for the taxable year in which the net income from contracts subject to the gross receipts tax is reported. If the taxpayer reports income from contracts on a percentage of completion basis, the credit must be allocated accordingly. The amount of credit allowable is the net public contractor's gross receipts tax (after personal property tax credit) actually imposed and paid by the taxpayer but not in excess of the taxpayer's Montana income tax liability. Any excess credit may be carried forward for up to five taxable periods.

(2) In the event the public contractor's gross receipts tax is paid by a ~~joint venture,~~ partnership, S corporation, limited liability company, or limited liability partnership, the members, partners, or shareholders ~~shall be~~ are entitled to the credit for the tax as the respective interests appears.

AUTH: ~~15-50-103~~ 15-1-201, MCA

IMP: 15-50-205, 15-50-206, 15-50-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3102 to delete the reference to "joint venture" because a joint venture is a form

of partnership.

In order to help taxpayers have a better understanding of the carry forward provision provided in 15-50-207, MCA, the department is proposing to add language to ARM 42.4.3102 to explain that taxpayers may carry any excess contractor's gross receipts tax credit forward for up to five tax periods.

The amendment to the authority citation is necessary because 15-50-103, MCA, was renumbered 37-71-103, MCA, and then subsequently repealed. The authority citation is now the department's general rulemaking authority that provides for implementing rules that supervise the administration of all revenue laws of the state and assist in their enforcement.

The proposed amendment supports the statutory change made by the 2005 Legislature in SB 323, (Ch. 454, L. 2005).

42.4.3202 CREDIT FOR INCREASING RESEARCH ACTIVITIES

(1) and (2) remain the same.

(3) Form RSCH may be obtained from the department upon request or is available on the department's web site under the downloadable forms at www.discoveringmontana.com/revenue revenue.mt.gov.

(4) Form RSCH must be filed with the tax return ~~and~~.

(a) For individual taxpayers, including single member limited liability companies that are owned by an individual and are disregarded for income tax purposes, if the tax return is filed by paper, the return and form RSCH must be mailed to:

Department of Revenue,
P.O. Box 5805,

Helena, Montana 59604-5805 ~~for individual taxpayers and~~

(b) For corporations, partnerships, and entities taxed as corporations or partnerships, if the tax return is filed by paper, the return and form RSCH must be mailed to:

Department of Revenue
P.O. Box 8021,

Helena, Montana 59604-8021 ~~for corporations, small business corporations, partnerships, limited liability partnerships and limited liability companies.~~

(c) If the tax return is filed electronically, form RSCH must be kept in the taxpayer's records and a copy provided to the department upon request.

AUTH: 15-30-2620, 15-31-150, 15-31-501, MCA

IMP: 15-30-2358, 15-31-150, MCA

REASONABLE NECESSITY: The department is proposing to update ARM 42.4.3202 to reflect the department's new web site address and to add information to reflect electronic filing of the tax return.

In addition, the authority and implementing cites for individual income taxes were added.

42.4.3303 SUBMISSION OF COSTS AND APPLICATION FOR TAX CREDIT (1) ~~Upon notification from the Department of Commerce that a production~~

company has been granted state certification, the department will send a Film Production Credit form to the production company along with the instructions for completing the form.

(2) At the conclusion of the principal photography, the statement of expenditures and compensation paid to Montana residents referred to in 15-31-905, MCA, shall be sent to the department on form FPC-PP, Film Production Credit - Principal Photography. However, when the production company ultimately files its application to receive the tax credit(s), it may supplement this statement of expenditures and compensation with an updated statement that reflects expenditures and compensation paid to Montana residents arising after principal photography is complete.

~~(3)~~(2) When the production company files its tax return, it shall complete ~~the application referred to in (1)~~, form FPC, Film Production Credit, with supporting documentation and return it to the department along with form FPC-AF, Film Production Credit - Application Fee, and the appropriate fee as provided in 15-31-906, MCA, and supporting documentation.

~~(4)~~(3) Allowed credits shall be claimed against the tax imposed under ~~15-30-403~~, 15-30-2103 or 15-31-121, MCA, for the income year in which the production expenses or costs were incurred.

AUTH: 15-30-2105, 15-31-911, MCA

IMP: 15-30-2103, 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3303 to delete the reference that the department sends the Film Production Credit form to the production company because the applicable forms are sent by the Department of Commerce.

Other amendments bring the rule into conformance with the applicable statutory language found in 15-31-905, MCA, and clarify the appropriate forms required to be filed.

Amendments to the authority and implementing cites are necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.3304 CERTIFICATION FOR EMPLOYMENT PRODUCTION TAX CREDIT (1) through (5) remain the same.

AUTH: 15-31-911, MCA

IMP: 15-30-401, 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.3304 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.3305 QUALIFIED EXPENDITURES (1) through (7) remain the same.

AUTH: 15-31-911, MCA

IMP: ~~15-30-101~~, 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.3305 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.3306 PENALTY AND INTEREST (1) and (2) remain the same.

AUTH: 15-31-911, MCA

IMP: ~~15-30-101~~, 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.3306 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than April 30, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices regarding particular subject matter or matters. 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 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have

been fulfilled. The primary bill sponsor for HB 21 (2009), Representative Dickenson was contacted by regular mail on July 14, 2009 and the primary sponsor for HB 24 (2009), Representative Morgan was contacted on October 14, 2009 by electronic mail. The primary bill sponsor for SB 150 (2007), Senator Gillan was notified of the initial changes to the rules relating to that bill on November 1, 2007. No substantive changes are being proposed which require further notification for that bill at this time. The primary bill sponsor for SB 323 (2005), Senator Black was notified on March 6, 2010, by electronic mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
42.4.301, 42.4.302, 42.4.303, 42.4.401,)
42.4.402, 42.4.403, 42.4.404, 42.4.501,)
42.4.502, 42.4.601, 42.4.602, 42.4.603,)
42.4.702, 42.4.703 relating to individual)
taxpayer's tax credits)

NOTICE OF PUBLIC
HEARING ON PROPOSED
AMENDMENT

TO: All Concerned Persons

1. On April 22, 2010, at 11:00 a.m., a public hearing will be held in the (Third Floor) Reception Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., April 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Gross household income" as defined under ~~15-30-171~~, 15-30-2337,

MCA, is further defined as:

(a) through (4) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA

IMP: ~~15-30-171, 15-30-172, 15-30-173, 15-30-176, 15-30-177, 15-30-178, 15-30-2337, 15-30-2338, 15-30-2340~~, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.301 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.302 COMPUTATION OF RESIDENTIAL PROPERTY ELDERLY HOMEOWNER/RENTER TAX CREDIT FOR ELDERLY (1) When the taxpayer owns the dwelling but rents the land or owns the land and rents the dwelling, the

taxpayer shall add the rent-equivalent tax paid on the rented property to the property tax billed on the owned property. The total shall then be reduced as provided by ~~45-30-176,~~ 15-30-2340, MCA. The tax credit will be the reduced amount or \$1,000, whichever is less.

(2) through (7) remain the same.

AUTH: ~~45-30-305,~~ 15-30-2620, MCA

IMP: ~~45-30-176,~~ 15-30-2340, 50-5-101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.302 in order to match the name of the credit used on the Montana form where the credit is claimed. This change will help the taxpayer find the rule that applies to the credit. The amendment to the statutory authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.303 CLAIMING AN ELDERLY HOMEOWNER/RENTER TAX CREDIT

(1) The elderly homeowner credit may be claimed by an eligible individual or, if an eligible individual dies before making a claim, by the personal representative of their estate, and must be made on ~~Form~~ form 2EC, Montana Elderly Homeowner/Renter Credit.

(2) The time for, and manner of making, a claim for the credit depends on whether or not the qualified individual (or the personal representative for them) files an individual income tax return for the year for which the credit is claimed.

(a) If an eligible individual files or is required to file an individual income tax return for the year for which the credit is claimed, the claim must be filed with the return on or before the due date of the return, including extensions. ARM 42.15.301 sets forth the rules for determining whether an individual is required to file a return. If a return is made by or for an eligible individual without making a claim for the credit, the credit may be claimed by filing an amended return within five years after the due date of the return, not including extensions.

(b) If an eligible individual is not required to, ~~and does not,~~ file an individual income tax return, no later than April 15th of the fifth year following the claim year the claim must be:

(i) mailed to the department at the address set forth in ARM 42.1.101;

(ii) or delivered to: the department at the

Department of Revenue

Sam W. Mitchell Building,

Third floor, 125 N-orth Roberts,

Helena, MT Montana no later than April 15th of the fifth year following the

claim year; or

(iii) filed electronically through the department's web site at: revenue.mt.gov.

(c) If an eligible individual is required to, but did not, file an individual income tax return the claim must be made by filing an individual income tax return with completed form 2EC as provided in (2)(a).

(d) If the taxpayer claiming the credit files their tax return electronically, he or she represents that they have completed ~~Form~~ form 2EC and have all the required

documentation. The form and required documentation are tax records the taxpayer must retain and provide to the department on request.

(3) The following are examples showing how this rule is applied:

(a) Taxpayer is required to file an individual income tax return for ~~2003~~ 2008 and, although eligible, neglects to claim the credit by filing ~~Form form~~ 2EC with their ~~2003~~ 2008 individual income tax return which they file April 6, ~~2004~~ 2009. Taxpayer may claim the credit by filing an amended ~~2003~~ 2008 individual income tax return with completed ~~Form form~~ 2EC on or before April 15, ~~2009~~ 2014.

(b) Taxpayer, who is not required to file an individual income tax return for ~~2003~~ 2008, dies in February ~~2004~~ 2009. The taxpayer's Personal personal representative, appointed June ~~2004~~ 2009, may at any time before April 15, ~~2009~~ 2014, either file a ~~2003~~ 2008 individual income tax return for the taxpayer with completed ~~Form form~~ 2EC or file ~~Form form~~ 2EC without filing a ~~2003~~ 2008 return.

(c) Taxpayer is required to, but does not file an individual income tax return for ~~2007~~ 2009. Taxpayer or, if the taxpayer has died, the personal representative of the taxpayer's estate, may claim the credit by filing a ~~2007~~ 2009 individual income tax return with completed ~~Form form~~ 2EC on or before April 15, ~~2013~~ 2015.

~~AUTH: 15-30-149, 15-30-305, 15-30-2609, 15-30-2620, MCA~~

~~IMP: 15-30-149, 15-30-174, 15-30-175, 15-30-2609, 15-30-2339, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.303 to update the tax years included in the examples, making the rule more relevant to the taxpayer. In addition, the department would like to provide additional information regarding the name of the form that needs to be filed and the electronic filing provision now available to taxpayers. Some language has been rewritten only to make the rule clearer for the taxpayer. The amendment to the statutory authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.401 DEFINITIONS (1) through (5) remain the same.

~~AUTH: 15-30-305, 15-30-2620, MCA~~

~~IMP: 15-30-124, 15-30-2302, MCA~~

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.401 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.402 CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE OR COUNTRY (1) A Montana resident is allowed a nonrefundable credit against the resident's Montana income tax liability for:

(a) income taxes they paid to another state or foreign country on income which is also subject to Montana income tax;

(b) ~~tax years beginning after December 31, 2000, the resident shareholder's~~ pro rata share of income taxes paid by an S corporation ~~in which the resident is a~~

shareholder to another state or foreign country on income, which that is subject to Montana income tax as provided in Title 15, chapter 30, MCA; and

(c) ~~tax years beginning after December 31, 2002, the resident partners'~~ distributive share, ~~stated separately or non-separately,~~ of income taxes paid by a partnership, ~~which is~~ to another state or foreign country on income, which that is subject to Montana income tax as provided in Title 15, chapter 30, MCA.

(2) The credit is allowed under the following conditions and limitations:

(a) the credit is allowed only with respect to an income tax imposed by law and actually paid. An income tax is a tax measured by and imposed on net income and, in the case of an S corporation or partnership, includes an excise tax or franchise tax that is imposed on and measured by the net income of the entity. The credit is not allowed for other taxes such as, but not limited to, franchise or license taxes or fees not measured by net income, gross receipts taxes, gross sales taxes, capital stock taxes, or property, transaction, sales, or consumption taxes. The credit is not allowed for penalty or interest paid in connection with an income tax;

(b) in the case of a taxpayer who either becomes or ceases to be a Montana resident during the taxable year, the credit is allowed only with respect to income earned during the fractional part of the year the taxpayer was a resident of this state;

(c) the credit is allowed only with respect to an income tax, which that the taxpayer does not claim as a deduction in determining Montana taxable income; and

(d) the credit is allowed only if the state or foreign country imposing the income tax liability does not allow the taxpayer a credit for Montana income tax liability incurred with respect to the income derived within such state or foreign country; and

(e) the credit is allowed for taxes paid to a foreign country only to the extent the taxes paid exceed either:

(i) the amount claimed under IRC section 904(a) plus any carryback and carryover amount allowed under IRC section 904(c); or

(ii) the amount claimed under IRC section 904(k).

(3) The credit against income taxes is claimed on the Montana tax return for the same year that the taxpayer reports the income associated with the tax paid to the other state or country. Because the Montana credit is nonrefundable and any unused credit may not be used in another tax year, taxes that for federal income tax purposes are deemed paid or accrued in a carryback or carryover year must be removed before calculating the Montana foreign tax credit.

(4) If a taxpayer amends the amount of income reported to the other state or a foreign country on which the Montana credit was based, the taxpayer shall file an amended Montana tax return to recalculate the credit allowed.

AUTH: ~~15-30-305,~~ 15-30-2620, MCA

IMP: ~~15-30-124,~~ 15-30-2302, MCA

REASONABLE NECESSITY: The amendments to ARM 42.4.402 are necessary to provide for the application of the credit limitation imposed by the 2005 Montana Legislature when it amended 15-30-124 (15-30-2302 now), MCA. The purpose of the rule is to carry out the legislative intent to ensure that there is fundamental fairness to all taxpayers by preventing some taxpayers from being able

to deduct a credit twice, both federally and in Montana. The rule provides that the Montana income tax credit for taxes paid to a foreign country cannot be claimed to the extent a foreign tax credit is claimed for federal income tax purposes. The rule explains that a taxpayer needs to include federal carryback and carryover amounts in determining the limit for calculating the Montana credit. This prevents income and credit mismatching – the Montana credit has no carryover feature and failure to include federal carryovers could result in multiple credit claims based on the same income.

The rule is also being amended to clarify the tax year in which the credit is claimed and to provide guidance when a taxpayer amends a return that changes the foreign tax on which the Montana credit was computed.

The amendment of the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.403 COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY (1) ~~The~~ In determining the tax credit allowed, the following computations in this rule must be made separately for each state or foreign country's income tax with respect to which a credit is claimed:

~~(a)~~(2) ~~if~~ if the claim for credit does not include the taxpayer's share of income tax paid to another state or country by an S corporation or partnership in which the taxpayer is a shareholder or partner:

~~(i)~~(a) determine the amount of income ~~from~~ taxable by the other state or foreign country that is included in Montana adjusted gross income (AGI), but do not include income that is exempt in Montana;

~~(ii)~~(b) determine the amount of tax paid to the other state or foreign country on income that is not exempt in Montana by multiplying the tax paid to the other state or foreign country by a fraction;

~~(i)~~ the numerator of which is the amount of income ~~from~~ taxable by the other state or foreign country that is included in Montana ~~adjusted gross income~~ AGI (excluding income exempt in Montana); and

~~(ii)~~ the denominator of which is the total amount of income ~~from~~ taxable by the other state or foreign country (including income exempt in Montana); and

~~(iii)~~(c) ~~multiply~~ determine the proportionate amount of the Montana income tax attributable to income taxed by the other state or foreign country by multiplying the Montana income tax liability, as determined without the credit, by a fraction;

~~(i)~~ the numerator of which is the taxpayer's income ~~from~~ taxable by the other state or foreign country that is included in the taxpayer's Montana ~~adjusted gross income~~ AGI; and

~~(ii)~~ the denominator of which is the taxpayer's total Montana ~~adjusted gross income~~ AGI.

~~(b)~~(d) the ~~allowable~~ credit allowable is the lower of the:

(i) the amount of income tax reported and paid to the other state or foreign country;

(ii) the amount of the income tax reported and paid to the other state or foreign country on income that is not exempt in Montana, the result of the calculation in ~~(1)(a)(ii)-(2)(b)~~; or

(iii) the proportionate amount of the Montana income tax attributable to income ~~paid to~~ taxed by the other state or foreign country, the result of the calculation in ~~(1)(a)(iii)-(2)(c)~~.

~~(2)(3)~~ If the claim for credit does include the taxpayer's ~~pro-rata~~ share of income tax paid to another state or country by an S corporation or ~~the distributive share stated separately or non-separately of income taxes paid by a partnership,~~ which is to another state or foreign country, on income which that is subject to Montana income tax:

(a) increase the taxpayer's Montana ~~adjusted gross income~~ AGI for the tax year the entity paid deducted the income taxes by the taxpayer's share of the entity's deduction for taxes paid to the other state or foreign country for which the entity intends to claim the credit;

(b) calculate the Montana income tax liability taking the increase in Montana ~~adjusted gross income~~ AGI into account;

(c) determine the taxpayer's share of the amount of net entity income that is included in Montana ~~adjusted gross income~~ AGI (do not include income that is exempt in Montana);

(d) determine the taxpayer's share of the amount of income tax reported and paid to the other state or foreign country by the entity on income that is not exempt in Montana by multiplying the share of the amount of tax reported and paid to the other state or foreign country by the entity by a fraction;

(i) the numerator of which is the share of the amount of the entity's net income included in the Montana ~~adjusted gross income~~ AGI (excluding income exempt in Montana); and

(ii) the denominator of which is the share of the total amount of the entity's net income (including income exempt in Montana); and

(e) multiply the recalculated Montana income tax liability by a fraction, the numerator of which is the taxpayer's share of income of the entity included in the taxpayer's Montana ~~adjusted gross income~~ AGI, adjusted as provided in ~~(2)(3)(a)~~, and the denominator of which is the taxpayer's total Montana ~~adjusted gross income~~ AGI, adjusted as provided in ~~(2)(3)(a)~~;

~~(3)(f)~~ The ~~the~~ credit allowable is the lower of:

~~(a)(i)~~ the share of the amount of income tax reported and paid by the entity to the other state or foreign country;

~~(b)(ii)~~ the share of the amount of the income tax reported and paid to the other state or foreign country by the entity on the share of income that is not exempt in Montana, the result of the calculation in ~~(2)(3)(d)~~; or

~~(c)(iii)~~ the proportionate amount of the Montana income tax attributable to the share of income of the entity paid reported to the other state or foreign country, the result of the calculation in ~~(2)(3)(e)~~.

(4) Examples of how to calculate these credits paid to another state or country are outlined in (a) through (c):

(a) Example 1 - Taxpayer, a full-year Montana resident, sold real property in ~~Idaho~~ State X in ~~2002~~ 2008. ~~Idaho~~ State X does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In ~~2003~~ 2009, the taxpayer was legally required to, and did, file a ~~2002~~ 2008 ~~Idaho~~ State X income tax return reporting the transaction and paying ~~Idaho~~ State X an income tax of \$700.

The taxpayer's \$5,000 gain on the sale of the ~~Idaho~~ State X property was included in the taxable income reported on the ~~2002~~ 2008 Montana income tax return. The taxpayer's ~~2002-2008~~ Montana income tax liability was \$3,400. The taxpayer's total ~~2002~~ 2008 Montana adjusted gross income AGI was \$23,000, which included the \$5,000 gain on the sale of property in State X. The taxpayer calculates the amount of credit the taxpayer may claim against the ~~2003~~ 2008 Montana income tax liability as follows: is \$700, the smaller of the amounts in (i) through (iii):

$$\$3,400 \times \$5,000 / \$23,000 = \$739$$

~~Montana income tax liability multiplied by taxpayer's income from the other state or foreign country included in the taxpayer's Montana adjusted gross income divided by taxpayer's total Montana adjusted gross income. Lower of tax paid (\$700) or result of calculation (\$739) = \$700. The taxpayer may claim a credit of up to \$700 against the 2003-2008 Montana income tax liability.~~

(i) The amount of income tax paid to State X is \$700;

(ii) The amount of income tax paid to State X on income that is not exempt in Montana is \$700. This amount is determined by multiplying the tax paid to State X (\$700) by a fraction, the numerator of which is the amount of income from State X that is included in Montana AGI (\$5,000), and the denominator of which is the total amount of income from State X, including any income that is exempt in Montana. The calculation is \$700 x (\$5,000/\$5,000) = \$700;

(iii) The proportionate amount of the Montana income tax attributable to income taxed by State X is \$739. This amount is determined by multiplying the Montana income tax liability without the credit (\$3,400) by a fraction, the numerator of which is the income from State X included in Montana AGI (\$5,000), and the denominator of which is total Montana AGI (\$23,000). The calculation is \$3,400 x (\$5,000/\$23,000) = \$739.

(b) Example 2 - Taxpayer, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in ~~2002~~ 2009. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a ~~2002~~ 2009 income tax return with State X in ~~2003~~ 2010 and paid a tax measured by its net income of \$132,000, \$121,000 by estimated payments made in ~~2002~~ 2009 and the balance of \$11,000 in ~~2003~~ 2010 when it filed its ~~2002~~ 2009 return;

(ii) The S corporation paid \$15,000 tax to State X for tax year ~~2004~~ 2008 when it filed its ~~2004~~ 2008 return in ~~2002~~ 2009. The S corporation's non-separately stated and separately stated items for tax year ~~2002~~ 2009 were as follows, of which the Montana resident shareholder's share was 10%:

(A) An ordinary income of \$2,000,000 from banking business includes a deduction of \$136,000 for ~~Minnesota~~ State X taxes paid in ~~2002~~ 2009, \$121,000 for estimated payments in ~~2002~~ 2009, and \$15,000 for ~~2004~~ 2008 taxes paid in ~~2002~~ 2009;

Tax exempt interest income

\$1,200,000

Ordinary dividends 300,000

(B) The taxpayer's total ~~2002~~ 2009 Montana ~~adjusted gross income (AGI)~~ was \$500,000, which included 10% of the S corporation's ordinary dividends, or \$30,000, and 10% of the ordinary income from its banking business, or \$200,000;

(C) The shareholder's \$200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for \$136,000 income taxes paid to State X in ~~2002~~ 2009, or by \$13,600 (had the shareholder paid the shareholder's 10% share of the ~~Minnesota~~ State X's taxes rather than the S corporation, the shareholder's 10% pro rata share of the S corporation's ordinary income for ~~2002~~ 2009 would have been \$213,600);

(D) The shareholder's 10% share of the S corporation's tax-exempt interest, or \$120,000, is exempt from Montana individual income tax ~~and~~ but is ~~not~~ subject to tax by ~~both~~ State X ~~and~~ Montana; and

(E) Assume the taxpayer's ~~2002~~ 2009 Montana tax liability would be \$50,000 if the credit were not claimed;

(iii) The taxpayer calculates the Montana income tax liability and the amount of credit the taxpayer may claim against the ~~2002~~ 2009 income tax liability as follows:

(A) The taxpayer's Montana taxable income is increased by the pro rata share of the S corporation's deduction for State X taxes paid for which the taxpayer claims the credit;

Montana AGI:	\$500,000
Reverse deduction:	<u>13,600</u>
Adjusted MT AGI:	\$513,600

(B) The taxpayer's ~~Montana income tax liability is recalculated. Tax on adjusted Montana AGI of \$513,600: \$56,500 (assumed result). The taxpayer's pro rata share of the amount of net S corporation income that is included in Montana adjusted gross income is determined and the pro rata share of the S corporation's income tax paid allocated to income taxed in Montana~~ pro rata share of the tax reported and paid to State X by the S corporation for 2009 (\$13,200) is multiplied by the proportion of the taxpayer's pro rata share of the S corporation income taxed in State X that is not exempt in Montana (\$230,000) to the taxpayer's pro rata share of the amount of income that is taxable in State X, including income that is exempt in Montana (\$350,000):

Ordinary income from banking operations	\$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

~~Pro rata share of S corporation tax~~ Taxpayer's share of income tax reported and paid to State X on income that is not exempt in Montana:

~~\$13,600~~ \$13,200 x \$230,000 / \$350,000 = ~~\$8,937~~ \$8,674

(C) The taxpayer's Montana income tax liability is recalculated. Tax on

adjusted Montana AGI of \$513,600: \$56,500 (assumed result). The recalculated Montana income tax liability (\$56,500) is multiplied by the ratio of S corporation net income included in Montana AGI, increased by the pro rata share of the S corporation deduction for the income taxes paid (\$200,000 + \$30,000 + \$13,600 = \$243,600) to the taxpayer's total adjusted gross income Montana AGI, increased by the pro rata share of the S corporation deduction for income taxes paid (\$513,600).

Montana income tax attributable to income that is taxed in both states:
 $\$56,500 \times \$243,600 / \$513,600 = \text{\$26,824 } \underline{\text{\$26,798}}$

(D) The allowable credit is ~~\$8,937~~ \$8,674, the lower of:

(I) pro rata share of the income tax reported and paid by the S corporation, ~~\$13,600~~ \$13,200;

(II) pro rata share of the amount of the income tax reported and paid to the other state or foreign country by the S corporation on their pro rata share of income that is not exempt in Montana, ~~\$8,937~~ \$8,674; and

(III) proportionate amount of the Montana income tax attributable to their pro rata share of income of the S corporation ~~paid~~ reported to the other state or foreign country, ~~\$26,824~~ \$26,798.

(c) Example 3 – A full-year Montana resident pays \$1,000 in income taxes to a foreign country. For federal income tax purposes, the taxpayer elects to claim the federal foreign credit for those taxes rather than a deduction. The amount of the foreign federal tax credit is \$800, \$500 of which the taxpayer claims currently and \$300 of which is allowed to be carried back and forward under IRS 904(c). In calculating the Montana credit for taxes paid to the foreign country, the taxpayer must use \$200 rather than \$1,000 as the amount of taxes paid to the foreign country.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-124, 15-30-2302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.403 in order to reduce unnecessary wording and expand on the examples to make the rule about these complicated transactions easier to read. There has been confusion among taxpayers about the amount of tax paid to the other state that should be included in the calculation, and changes have been made to clarify that the amount reported on that state's return is the amount that is used to calculate the credit, even if it is paid in another year. An example was added to show the computation of the credit when there is a carryover of the federal tax credit. The years in the examples were updated to make them more relevant to the reader.

The amendment of the authority and implementing cites is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.404 DEDUCTIONS NOT ALLOWED WHEN CREDIT CLAIMED

(1) and (2) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-111, 15-30-2110, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.404 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.501 DEFINITIONS (1) through (3) remain the same.

AUTH: 15-30-303, 15-30-2618, MCA

IMP: 15-30-103, 15-30-105, 15-30-183, 15-30-2103, 15-30-2104, 15-30-2301, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.501 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.502 CAPITAL GAIN CREDIT (1) For the applicable tax years shown below, an individual may claim a credit against their Montana individual income tax of up to 1% of their net capital gain. For tax years beginning after December 31, 2006, an individual may claim a credit against their Montana individual income tax of up to 2% of their net capital gain. The credit is based on the net capital gain as shown on the individual's Montana individual income tax return. Spouses who file a joint return for federal income tax purposes but a separate return for Montana income tax and who elect to claim the same amount of capital loss deduction as shown on their joint federal income tax return as provided in 15-30-2110, MCA, for tax years beginning after December 31, 2006, must compute the capital gain credit consistently. The credit is nonrefundable and may not be carried back or carried forward to any other tax year. The credit must be applied before any other credit.

(2) remains the same.

(3) For an estate or trust filing a form FID-3, Montana fiduciary return, the credit is calculated on the net capital gains reported minus any net capital gains distributed to any beneficiary.

(3)(4) Married taxpayers filing separately must compute and report their capital gains and losses as provided in ARM 42.15.206. For tax years beginning after December 31, 2006, spouses who have filed a joint federal return and are filing a separate Montana return, may not, except as provided in (5), calculate the credit based on their separate gains and losses, but must net gains and losses and calculate the credit on the net capital gain shown on their joint federal return, allocating the resulting credit between them.

(5) For tax years beginning after December 31, 2008, spouses may elect to report all of their capital gains and losses separately for the current and future tax years. An election is made by claiming a capital gains credit calculated on a net capital gain amount that is different from the net capital gain shown on the taxpayer's joint federal income tax return, or claiming a capital loss deduction that is greater than the amount that would be allowed for federal income tax purposes if the taxpayer had filed a separate federal income tax return.

(4)(6) The following are examples of how the credit is applied:

(a) Example: For tax year 2005, John and Barbara file a joint 2005 federal income tax return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to \$80 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	(\$ 3,000)
Fed. adjusted gross income	\$90,000	\$58,000	\$32,000
Montana adjustment for capital loss limit			\$ 1,500
Montana adjusted gross income	\$91,500	\$58,000	\$33,500
Capital loss carryover			(\$ 1,500)

(b) Example: For tax year 2006, John, a single Montana resident with \$1,300 of net capital gain, is entitled to an elderly homeowner credit of \$500. His Montana tax, before credits, is \$400. He may claim the \$13 capital gain credit before determining the amount of his refundable elderly homeowner tax credit.

Montana tax before credits	\$ 400
Capital gain credit	<u>(\$ 13)</u>
Montana tax after capital gain credit	\$ 387
Elderly homeowner credit	<u>(\$ 500)</u>
Refund	\$ 113

(c) Example: For tax year 2006, Mary has wages of \$80,000 and has \$50,000 of net capital gain, \$30,000 of which was realized from an investment in a small business investment corporation that is exempt from Montana income tax as provided in 15-33-106, MCA. Mary is entitled to a capital gain credit of \$200, 1% of the \$20,000 net capital gain included in her Montana adjusted gross income.

(d) Example: For tax year 2006, Patrick, a nonresident, has wages of \$50,000, net capital gain of \$8,000, and a distributive share of \$10,000 of ordinary income from an S corporation. In this example, The the \$10,000 ordinary income from the S corporation is Montana source income. The wages and capital gain are not Montana source income. Assume that his Montana tax, computed as if he were a resident, on his taxable income after Montana exemptions, exclusions, and deductions, is \$3,000. The capital gain credit of \$80 is applied against the tax determined as if he were a resident.

Montana tax determined as if resident	\$3,000
Capital gain credit	<u>(\$ 80)</u>
Tax to which nonresident ratio applied	\$2,920

Ratio of Montana source income to income from all sources (\$10,000/\$68,000)	.147
Montana tax (\$2,920 x .147)	\$ 429

(e) Example: For tax year 2007, John and Barbara file a joint 2007 federal income tax return reporting \$5,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to \$160 ($\$8,000 \times 2\%$) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 5,000	\$ 8,000	\$(3,000)
Fed. adjusted gross income	<u>\$90,000</u>	<u>\$58,000</u>	<u>\$32,000</u>
Montana adjusted gross income	\$90,000	\$58,000	\$32,000

(f) Example: For tax year 2009, John and Barbara file a joint 2009 federal income tax return reporting \$2,000 of net capital gain. John's income consists of \$50,000 in wages and \$8,000 of net capital gain. Barbara's income consists of \$35,000 in wages and \$6,000 of net capital loss. If they file separately rather than jointly for Montana, unless they elect to separately report their capital gains and losses for this and future years as provided in (5), their capital gain credit is 2% of their net capital gain of \$2,000, or \$40.

(g) Example: Assume the same facts as the example in (f) except that the spouses do elect to separately report their capital gains and losses as provided in subsection (5). John may claim a capital gain credit of up to \$160 ($\$8,000 \times 2\%$) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	<u>Federal Return</u>	<u>Montana Return</u>	
		<u>Column A</u>	<u>Column B</u>
Wages	\$85,000	\$50,000	\$35,000
Sch. D capital gain (loss)	\$ 2,000	\$ 8,000	\$(6,000)
Fed. adjusted gross income	<u>\$87,000</u>	<u>\$58,000</u>	<u>\$32,000</u>
Montana adjustment for capital loss limit			\$ 4,500
Montana adjusted gross income	\$94,500	\$58,000	\$36,500
Montana capital loss carryover			(\$ 4,500)

AUTH: 15-30-303, 15-30-2618, MCA

IMP: 15-30-103, 15-30-105, 15-30-183, 15-30-2104, 15-30-2106, 15-30-2301,

MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.502 because taxpayers were claiming the capital gains credit twice, once on the fiduciary return and again on the beneficiary's return. The rule clarifies that trusts and estates can only claim the capital gains credit on capital gains taxable to the estate or trust and not capital gains distributed to beneficiaries.

In addition, the department has had several questions about how the credit is claimed when spouses file jointly on their federal return and separately on their Montana return. The rule ensures that taxpayers report and classify the credit the same way they reported the gains and losses related to the credits for Montana income tax purposes. The rule provides for consistency in reporting and therefore ensures fundamental fairness for all taxpayers.

Minor changes in wording have been done to make the rules easier to read.

The statutory amendment to the authority and implementing cites is necessary because the 2009 Legislature recodified those statutes with HB 24 (Ch. 147, L. 2009).

42.4.601 DEFINITIONS (1) through (5)(b) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA

IMP: 15-30-188, 15-30-189, 15-30-2154, 15-30-2370, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.601 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.602 RURAL PHYSICIAN'S CREDIT – QUALIFICATIONS --

LIMITATIONS (1) The credit has been repealed effective December 31, 2010, and only physicians who began qualifying rural practice before April 1, 2007, can qualify for the credit. If the requirements described in (2) are met, a licensed physician who commences practice in a rural area is eligible for a credit against the physician's individual income tax liability of up to \$5,000 a year for four successive years (up to \$20,000 total) beginning in the year the practice commences. Each annual credit is subject to recapture and must be repaid as provided in ARM 42.4.603 if the physician ceases practice in the rural area within four years after the tax year the credit is allowed.

(2) and (3) remain the same.

AUTH: 15-30-191, 15-30-2372, MCA

IMP: 15-30-190, 15-30-2370, 15-30-2371, MCA

REASONABLE NECESSITY: The 2007 Legislature in SB 553, (Ch. 361 L. 2007), prospectively repealed the credit effective December 31, 2010, and limited it to physicians whose qualifying practice begins before January 1, 2008. Because the physician is required to maintain the practice for at least nine months of the tax year for which the credit is claimed, the physician would be required to maintain a

qualifying practice prior to April 1, 2007. The department is amending ARM 42.4.602 to give taxpayers notice of this repeal.

The statutory amendments to the authority and implementing cites are necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.603 RURAL PHYSICIAN'S CREDIT - REPAYMENT (1) through (4) remain the same.

AUTH: 15-30-191, 15-30-2372, MCA

IMP: 15-30-190, 15-30-2371, MCA

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.603 is necessary to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.702 QUALIFYING FOR THE 2007 PROPERTY TAX CREDIT UNDER 15-30-2336, MCA (1) The 2007 Legislature enacted a refundable credit against individual income tax that is calculated on the tax paid on \$20,000 of market value of a taxpayer's principal residence multiplied by a "relief multiple" that is zero unless changed by the Legislature. The 2007 legislation provided a method for determining the credit for 2007. The 2009 Legislature amended the statute to remove the reference to the 2007 calculation but did not enact legislation changing the relief multiple, which remains at zero so that no credit is available for any tax year except 2007 at this time.

(2) If a taxpayer or When taxpayers changed change principal Montana residences during 2007 the tax year for which the credit is claimed, the department may consider the ownership and occupancy of the successive residence as a principal residence when determining whether the taxpayer or taxpayers they qualify for the seven month minimum term of residence for the property tax credit as provided in 15-30-140, 15-30-2336, MCA.

(2)(3) For the successive residence to be considered as a principal residence for purposes of a minimum term of residence for the property tax credit as stated in 15-30-140, 15-30-2336, MCA, the taxpayer or taxpayers must, during the tax year:

(a) move out of the primary principal residence in Montana and into the successive principal residence in Montana; and

(b) have paid Montana property taxes on either or both residences for at least seven months.

(3)(4) The taxpayer or taxpayers may only make a claim for a credit under 15-30-140 15-30-2336, MCA, for one of the residences.

(4)(5) Ad-valorem taxes and fees paid for trailers and other recreational vehicles do not qualify for this credit.

AUTH: 15-1-201, 15-30-105, 15-30-140, 15-30-2104, 15-30-2336, MCA

IMP: 15-1-201, 15-30-140, 15-30-2336, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.4.702

are necessary to clarify that the credit is not limited to 2007 and to explain the effect of the 2009 legislative amendments that left the relief multiple at zero. The practical effect is that there is no credit available to taxpayers through this provision of law at this time.

The authority and implementing statutes are amended to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

42.4.703 CALCULATION OF THE 2007 REFUNDABLE INDIVIDUAL INCOME TAX CREDIT UNDER 15-30-2336, MCA (1) ~~Section 15-30-140, MCA,~~ provides that the The amount of the 2007 refundable income tax credit is to be determined by applying a factor known as "the relief multiple" to the amount of property taxes that would otherwise be owed by class four residential property owners on \$20,000 of market value of their qualifying principal residence, for the elementary school mills levied under 20-9-331, the high school mills levied under 20-9-333, and the state school equalization mills levied under 20-9-360, MCA, for tax year 2007. This calculation requires determination of, first, the value of the relief multiple; and, second, the amount of property taxes that would be owing on \$20,000 of market value of class four residential property for the school mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007. The product of these two amounts determines the individual income tax credit amount for tax year 2007.

(2) ~~The base value of 0 is established in 15-30-140, MCA, as the relief multiple, and further provides that, for tax year 2007 only, this value shall be increased by 0.1 for each \$1,000,000 of unaudited general fund revenue received in fiscal year 2007 in excess of a threshold amount of \$1,802,000,000. As required by 15-30-140, MCA, the Department of Administration certified the unaudited general fund revenue to be \$1,838,053,331 in a July 27, 2007, memorandum addressed to the Budget Director from the Director of the Department of Administration. Based on this certified amount, and the formula provided for in statute, the Unless amended by the Legislature, the relief multiple is zero. The relief multiple for tax year 2007 is determined to be was 3.6, calculated as follows:~~

Certified fiscal 2007 unaudited general fund revenue:	\$1,838,053,331
Revenue threshold contained in HB9:	\$1,802,000,000
Revenue in excess of threshold:	\$ 36,053,331
Excess revenue rounded down to nearest million:	\$ 36,000,000
Rounded excess revenue expressed in millions:	36
Relief multiple for each \$1,000,000 of excess revenue:	0.1
Relief multiple for tax year 2007:	3.6

(3) The amount of tax year 2007 property taxes owing on \$20,000 of market value for a class four residential property owner depends on the applicable tax year 2007 must also take into account any exemptions that apply, including the homestead exemption percentage provided in 15-6-222, MCA, and the taxable valuation rate provided in 15-6-134, MCA; and the number of mills levied under 20-

~~9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007.~~

~~(4) As provided in 15-6-222, MCA, For 2007 the homestead exemption for tax year 2007 is was 33.2%. Alternatively, this means, meaning that only 66.8% of the market value of class four property is was subject to property tax for tax year 2007. Also as provided in 15-6-134, MCA, the taxable valuation rate for tax year 2007 is was 3.07%, and. Finally, a total of 95 basic school mills are were levied under 20-9-331, 20-9-333, and 20-9-360, MCA, for tax year 2007. These statutory parameters resulted in a net property tax of \$38.96 being levied on \$20,000 of class four residential property for tax year 2007, calculated as follows:~~

Market value:	\$20,000
Taxable market value factor:	<u>66.8%</u>
Taxable market value:	\$13,360
Taxable valuation percentage:	<u>3.07%</u>
Taxable valuation:	\$410.15
Multiply by 95 mills:	<u>0.095</u>
Tax credit per unit of relief multiple:	\$ 38.96

~~As shown above, the total value of the individual income tax credit provided to Montana homeowners for tax year 2007 is the product of:~~

~~(a) the amount of tax year 2007 tax liability on \$20,000 of class four residential property associated with the 95 mills levied under 20-9-331, 20-9-333, and 20-9-360, MCA; and~~

~~(b) the relief multiple as calculated above.~~

~~(5) The tax credit for tax year 2007 is was \$140 when rounded to the nearest whole dollar ($38.96 \times 3.6 = 140$);.~~

Property tax on \$20,000 of market value (95 mills):	\$38.96
Tax year 2007 relief multiple:	<u>3.6</u>
Tax year 2007 individual income tax credit amount (rounded to nearest whole dollar):	\$ 140

~~AUTH: 15-30-140, 15-30-2336, MCA~~

~~IMP: 15-6-134, 15-6-222, 15-30-140 15-30-2336, MCA~~

REASONABLE NECESSITY: The proposed amendment to ARM 42.4.703 is necessary to remove unnecessary specific detail related to computation of the credit for 2007 and to clarify that the credit is currently zero. In practical terms, the credit is not available to taxpayers through this provision of law at this time.

The amendments to the authority and implementing statutes are amended to reflect the recodification of the statutes in Title 15, chapter 30, MCA, enacted by the 2009 Legislature in HB 24 (Ch. 147, L. 2009).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696;

or e-mail canderson@mt.gov and must be received no later than April 30, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices regarding particular subject matter or matters. 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 person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for HB 439 of the 2005 Legislature, Representative Wiseman, was notified on March 6, 2010, by electronic mail; the primary bill sponsor for HB 9 of the May Special Session of the 2007 Legislature, Representative Sonju, was notified on March 6, 2010, by electronic mail; and the primary bill sponsor for HB 24 of the 2009 Legislature, Representative Morgan, was contacted on July 14, 2009, by regular mail; the primary sponsor for SB 553 of the 2007 Legislature, Senator Black, was notified on March 6, 2010, by electronic mail; the primary sponsor for SB 7 of the 2009 Legislature, Senator Gebhardt, was notified on March 6, 2010, by electronic mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I) NOTICE OF PUBLIC
relating to property tax assessment reviews) HEARING ON PROPOSED
) ADOPTION

TO: All Concerned Persons

1. On April 19, 2010 at 11:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rule.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., April 12, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I EXTENSION OF STATUTORY DEADLINE FOR ASSESSMENT REVIEWS (1) For tax year 2010, the department will accept requests for informal assessment reviews for classes three, four, and ten. The owner of any land and improvements who:

- (a) missed the 2009 assessment notice appeal deadline; and
- (b) is dissatisfied with the 2009 appraisal or classification of the land or improvements, may request an informal review of the assessment notice by submitting a request for information review form (AB-26) to the local Department of Revenue office in the county in which the property is located, on or before June 30, 2010.

(2) Adjustments to taxable value will be reflected only in tax year 2010. There will be no adjustments to the taxable value for tax year 2009.

(3) After June 30, 2010 the department will only accept those AB-26 requests for informal reviews that are filed within 30 days of receipt of an assessment notice.

AUTH: 15-1-201, MCA

IMP: 15-7-102, MCA

REASONABLE NECESSITY: The department is not required to mail a notice after the first year of a reappraisal cycle as stated in 15-7-102(1)(b), MCA. Tax year 2010 is the second year of the current reappraisal cycle. In the past the department has accepted AB-26 requests for informal reviews annually through the 1st Monday in June. The department has determined, based upon a review of the statutes that govern informal reviews that this practice does not comport with law. However, because the department has received and accepted AB-26 requests for information reviews for tax year 2010, and taxpayers have relied on the department's past practice, the department has determined that it will accept AB-26 requests for informal reviews for tax year 2010 until June 30, 2010.

The department proposes New Rule I to allow taxpayers who missed the deadline for filing an AB-26 last year for their 2009 reappraisal values on class three, four, and ten to get a second chance to file an AB-26 for the 2010 tax year. The department proposes this new rule due to the implementation of a new computer system that resulted in a delay of mailing assessment notices and the fact that an agricultural land and forest land reappraisal had not been conducted in almost 40 years. Any adjustments to taxable value as a result of accepting AB-26 forms for an informal review will be applied in tax year 2010 only. The department will not accept AB-26 forms for the remainder of the current cycle unless those forms are filed with the department within 30 days of receipt of an assessment notice.

The department is currently developing rules that establish a process to allow taxpayers to review the information contained in their property record card for accuracy. Once developed, those rules will establish a process for the department to review that information and make corrections.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than April 23, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices regarding particular subject matter or matters. 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 person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC
42.13.101 relating to the sale of alcohol to a) HEARING ON PROPOSED
minor and sale to intoxicated persons) AMENDMENT

TO: All Concerned Persons

1. On May 26, 2010, at 9:30 a.m., a public hearing will be held in Room 303 of the State Capitol Building, at Helena, Montana, to consider the amendment of the above-stated rule.

Individuals planning to attend the hearing shall enter the Capitol building and take the stairs or elevator on the east side of the building to the third floor to the Old Supreme Court Chambers.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 17, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. Montana citizens and business owners have shown extensive interest in the Department of Revenue's proposed change to the penalty schedule for liquor licensees who train their employees on responsible alcohol sale and service. This interest has included numerous testimonials at a previous rule hearing and several newspaper editorials.

As a result, the department will hold a public hearing as stated above and request comments on the schedule of penalties charged to liquor licensees as provided in ARM 42.13.101. These penalties are based on the type of violation, including a sale to a minor and/or a sale to an intoxicated person.

The state of Montana's purpose in regulating the distribution and sales of alcoholic beverages is primarily to protect the public health and safety including but not limited to preventing sales to minors and intoxicated persons. In the context of this public health and safety purpose, the department seeks public comments specifically on the following questions and any related issues:

(a) Is the current penalty schedule effective in deterring sales to minors or intoxicated persons?

(b) Are there any circumstances in Montana that justify generally lower levels of penalties for sales to minors or intoxicated persons as compared to nearby states?

(c) Should the penalty schedule be changed and if so, how? Should the current penalty schedule be maintained and if so, why?

(d) Are there any other tools available to the state of Montana, in its regulatory authority with regard to alcohol beverage distribution or sales, to more effectively prevent the sale of alcohol to minors and/or intoxicated persons?

When considering these questions please keep in mind that it costs the state of Montana approximately \$400 in administrative costs on average for every contested sale to minor case violation.

For reference, the chart below compares Montana's penalty schedule to those of Idaho, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

<u>Current Penalty Schedules for Sale to Minor</u>				
<u>State</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>	<u>4th Offense</u>
Montana	\$250	\$1,000	\$1,500	Revocation
Idaho	\$1,000	30 day suspension	6 month suspension	Revocation
Oregon	\$1,650 or 10 day suspension	\$4,950 or 30 day suspension	30 day suspension	Revocation
Washington	\$500	7 day suspension	30 day suspension	Cancelation of License
Utah	\$1,200	\$1,000 to \$9,000 and/or 10-90 day suspension	Up to Revocation	Revocation
South Dakota	\$1,000* fine can be reduced in half if violator is trained	\$2,000*	Suspension	Revocation
Wyoming	Varies by Government-penalties up to \$1,000, suspension/revoke at commissioner's discretion			
North Dakota	5 day suspension with 1-3 invoked	Within 1 year, invoked days + 15 suspension with 1-15 invoked	Within 1 year, possible revocation, suspension	Revocation

Current Penalty Schedules for Sale to Intoxicated Persons

<u>State</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>	<u>4th Offense</u>
Montana	\$250	\$1,000	\$1,500	Revocation
Idaho	\$1,000	30 day suspension	6 month suspension	Revocation
Oregon	\$1,650 or 10 day suspension	\$4,950 or 30 day suspension	30 day suspension	Revocation
Washington	\$500	\$2,500	\$5,000	Revocation
Utah	\$1,000 - \$25,000 Up to Revocation			
South Dakota	No Standards			
Wyoming	Varies by Government-penalties up to \$1,000, suspension/revoke at commissioner's discretion			
North Dakota	5 day suspension with 1-3 invoked	Within 1 year, invoked days + 15 suspension with 1-15 invoked	Within 1 year, possible revocation, suspension	Revocation

4. The department is not proposing any specific rule language changes in this notice. The intent of the rule hearing is to gain public comments regarding this subject in an effort to assist the department with the decision of amending the rule at a later date.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than June 28, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

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 notices regarding particular subject matter or matters. 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 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 8.99.901, 8.99.902, 8.99.903,)	
8.99.904, 8.99.905, 8.99.907,)	
8.99.908, 8.99.910, 8.99.911,)	
8.99.912, 8.99.914, and 8.99.915)	
pertaining to the award of grants and)	
loans under the Big Sky Economic)	
Development Program)	

TO: All Concerned Persons

1. On January 28, 2010, the Department of Commerce published MAR Notice No. 8-99-81 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 192 of the 2010 Montana Administrative Register, Issue Number 2.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ G. MARTIN TUTTLE
 G. MARTIN TUTTLE
 Rule Reviewer

/s/ ANTHONY J. PREITE
 ANTHONY J. PREITE
 Director
 Department of Commerce

Certified to the Secretary of State March 15, 2010.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 12.11.3215 regarding) NOTICE OF AMENDMENT
recreational water use on Holter Lake)

TO: All Concerned Persons

1. On November 25, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-353 regarding the proposed amendment of the above-stated rule at page 2240 of the 2009 Montana Administrative Register, Issue No. 22.

2. The commission has amended ARM 12.11.3215 as proposed.

3. The following comments were received and appear with the commission's responses. The commission received comments from six individuals. Every person who commented was in favor of the proposed amendment.

Comment 1: Five people stated they were in support of the proposed language.

Response 1: The commission appreciates the interest in this rulemaking process.

Comment 2: Three people stated the commission should limit the entire canyon to a no wake speed for all boats.

Response 2: The commission believes the modified towing restrictions through the canyon along with other statutes regarding distances a motorized vessel must maintain from other recreationists address user conflicts and provides for public safety.

Comment 3: One person stated the commission should provide all night parking access near the Gates of the Mountain boat docks for year round public use.

Response 3: This comment is outside the scope of this rulemaking process. However, the commission and the Department of Fish, Wildlife and Parks (department) continue to seek opportunities for public parking, ramps, and access on Holter Lake and other bodies of water.

Comment 4: One person stated that people should be hired as parking lot attendants and also to clean the day use areas and campgrounds.

Response 4: Day use and camping areas in the area are all owned and operated by federal agencies (Bureau of Land Management and the United States

Forest Service) and private entities and therefore outside the scope of the department's and commission's authority and this rulemaking process.

Comment 5: One person stated the number of fishing guides should be limited and wardens need to enforce the daily limit on Holter Lake.

Response 5: The commission has not limited the number of fishing guides on Holter Lake but this issue is outside the scope of this rulemaking process. Wardens will continue to maintain a presence on Holter Lake to ensure compliance with all rules and regulations.

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk
Rule Reviewer

Certified to the Secretary of State March 15, 2010.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 12.6.2205 regarding) NOTICE OF AMENDMENT
noncontrolled species)

TO: All Concerned Persons

1. On December 24, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-359 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2419 of the 2009 Montana Administrative Register, Issue No. 24.

2. The commission has amended ARM 12.6.2205 as proposed, but with the following changes from the original proposal, stricken matter interlined, new matter underlined:

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES

(1) and (2) remain as proposed.

~~(a)~~ (c) Hyperoliidae family; and

~~(b)~~ (d) Leptodactylidae family;

~~(e)~~ (b) Eritrea clawed frog - *Xenopus clivii*; and

~~(d)~~ (a) Cameroon volcano frog - *Xenopus amietii*;

(3) and (4) remain as proposed.

3. The following comments were received and appear with the commission's responses. The commission received comments from 28 individuals.

Comment 1: Five people supported the rule as proposed.

Response 1: The commission appreciates the interest in this rulemaking process.

Comment 2: Two people opposed listing the *Xenopus* frogs as noncontrolled. One person stated the *Xenopus laevis* (African clawed frog) remains prohibited when the differences between the species in the genus of *Xenopus* are largely of size, color, and shape not behavior in the wild.

Response 2: The committee evaluated the ability of the two *Xenopus* species in question to survive in Montana and any potential impacts they might have on Montana's wildlife species. While in the same genus as the currently prohibited *Xenopus laevis* (African clawed frog), their ability to survive in Montana's climate is less than that of the African clawed frog. The African clawed frog has the ability to estivate during colder weather and has been found in climates similar to Montana's as feral populations. The African clawed frog also grows to a much greater size, has

increased reproductive capacity, and has potential for significant impacts due to its voracious feeding habits.

Comment 3: The department needs to thoroughly justify why some frogs in the genus *Xenopus* are noncontrolled while others are prohibited.

Response 3: Please see Response 2.

Comment 4: Eleven people, including a representative of the Humane Society of the United States, opposed listing the Eritrea clawed frog and Cameroon volcano frog as noncontrolled. Opposition was based on risks to public health due to the spread of salmonella associated with pet frogs and the welfare of native wildlife due to competition, predation, and the spread of disease including chytrid fungus. One person stated the Eritrea clawed frog and Cameroon volcano frog should be placed on the prohibited list.

Response 4: See Response 2 regarding risk to native wildlife through competition and predation. The committee did not find that "this species has shown the ability to survive in a broad range of aquatic habitats." In fact, environmental conditions, namely Montana's fall, winter, and spring environment, will prevent its potential survival. Regarding disease concerns, the chytrid fungus has been found in native Montana amphibian populations. Export of *Xenopus clivii* or *Xenopus amieti* into Montana will be limited to breeding facilities that can document their chytrid free status at the facility. None of the *Xenopus clivii* or *Xenopus amieti* imported into Montana will come from wild populations. Any of the reptiles or amphibians currently kept as pets in Montana households have potential human health issues related to salmonella exposure. The Chief Medical Officer from the Department of Public Health and Human Services did not feel that these species presented any risk of salmonella than species of reptiles or amphibians that are currently noncontrolled and allowed for private pet ownership.

Comment 5: Nine people oppose allowing the possession and sale of the three exotic species as a commercial commodity. These people feel that proper care and feeding of these animals is likely to be temporary resulting in dumping unwanted animals that could pose dangers to native wildlife.

Response 5: Pet ownership of any kind requires a responsible commitment to proper care of the animal. Any release of "unwanted" animals into the environment is prohibited by law and individuals found doing so will be cited.

Comment 6: One person asked for a public campaign to raise awareness of the dangers that these and other exotic species pose.

Response 6: The commission and the Department of Fish, Wildlife, and Parks (department) are aware that public education is essential in preventing the spread and introduction of exotic species. The department is involved in several awareness campaigns including the national Habitattitude campaign which

emphasizes that unwanted pets and fish do not get released into the environment. The department is also launching the Invasive Species Public Information Campaign beginning spring 2010.

Comment 7: One person is opposed to all noncontrolled exotic species because control of exotic species is costly.

Response 7: The commission recognizes that the control and eradication of invasive species can be very costly. The purpose of the Exotic Wildlife Program is to prevent harmful impacts by exotics. All exotic species being classified are reviewed for their potential impacts and associated costs if they were to become released and established in the wild.

Comment 8: One person stated introduction of exotic species for the pet trade could lead to the release of animals and potential competition with native species. The commenter asserts there are several examples of this in the Billings area. Another person cited problems in Flathead Lake and the Missouri Reservoirs.

Response 8: The commission is uncertain as to the specific examples being referred to in the two comments. The commission recognizes the potential impacts that can be caused by exotic species if they were to be released into the wild. All exotic wildlife species being classified are reviewed for potential impacts if they were to become released and established in the wild.

Comment 9: Three people submitted general opposition to the rule proposal.

Response 9: The commission appreciates the interest in this rulemaking process and incorporates Response 2 through Response 8 to address these comments.

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk, Rule Reviewer
Department of Fish, Wildlife and Parks

Certified to the Secretary of State March 15, 2010.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.11.501, 12.11.2204, and)
12.11.3106 pertaining to no wake)
zones on Echo Lake and Swan Lake)

To: All Concerned Persons

1. On January 28, 2010, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-360 pertaining to the proposed amendment of the above-stated rules at page 197 of the 2010 Montana Administrative Register, Issue Number 2.

2. The commission has amended ARM 12.11.501, 12.11.2204, and 12.11.3106 as proposed.

3. No comments were received.

/s/ Bob Ream
Bob Ream, Chair
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State March 15, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.40.206 pertaining to examinations)
) (PUBLIC WATER AND SEWAGE
) (SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On February 11, 2010, the Department of Environmental Quality published MAR Notice No. 17-301 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 266, 2010 Montana Administrative Register, issue number 3.

2. The department has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, March 15, 2010.

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.101.413 renewal dates, and) ADOPTION
the adoption of NEW RULES I)
through VII pertaining to massage)
therapy)

TO: All Concerned Persons

1. On January 28, 2010, the Board of Massage Therapy (board) published MAR Notice No. 24-155-1 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 207 of the 2010 Montana Administrative Register, issue no. 2.

2. On February 18, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the February 26, 2010, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Nearly 30 comments were directed to fees or renewal periods as proposed in New Rule V and the proposed amendments to ARM 24.101.413. These comments opposed the amount of the fee or the frequency of the renewal period for various reasons. Collectively, these comments suggested that the proposed fee should be applicable to a two-year period, that the proposed fee should be no more than the fees required of other professions such as cosmetologists and chiropractors, or that fee should be reduced to reflect the income of a massage therapist. An objection was also raised to the proposed fee because of the mistaken belief that the board members were paid "salaries" from licensing fees.

RESPONSE 1: The board recognizes that the proposed fee amount is more than what is required of a few other license types. However, the board is required by law to ensure that fees are commensurate with costs, and the proposed fee is necessary based upon the estimated costs the board will incur and the expected number of licensees who will pay the proposed fee. Many costs are fixed or vary based on factors independent of the number of licensees. In addition, the number of licensed massage therapists is estimated to be relatively small in comparison to the number of licensees governed by other boards.

As a result, the massage therapist fee will be more than the fee that is required of some professions that have more licensees to share the costs of licensure. An annual renewal period and an annual fee are beneficial for purposes of administration, especially with respect to a new board. A two-year license cycle

would mean that the fee would likely be twice the amount proposed. Also, annual license renewal is a common and acceptable practice in this state and elsewhere.

While board members are reimbursed for some of their costs and their time for serving on the board, their service is otherwise voluntary and without compensation. Reimbursements to board members are a very minor part of the board's overall costs. The board has amended ARM 24.101.413 and adopted New Rule V exactly as proposed.

COMMENT 2: A few commenters voiced disapproval of documentary requirements contained in New Rule VI and VII regarding licensure by grandfathering and examination. The commenters argued that the documentary requirements have little or no use or are an unnecessary burden on license applicants.

RESPONSE 2: The board respectfully disagrees with the argument that the letters regarding good moral character are useless. Letters attesting to good moral character are similar to letters of recommendation, which are commonly used and generally viewed as valuable in connection with employment decisions. The letters have a benefit in that there is an additional witness of the applicant's good moral character, and this requirement does not represent an unnecessary barrier to applicants.

Arguments for and against documentary support required by New Rules VI and VII, including the suggestion that a photocopy of records would be sufficient, have been thoroughly discussed throughout the rulemaking process. The board has determined that the proposed documentary requirements are appropriate and reasonable requirements, leading the board to adopt New Rules VI and VII exactly as proposed.

COMMENT 3: The board received a few comments addressing issues not included in the original rulemaking notice, such as national certification, continuing education, unprofessional conduct, and insurance coverage for massage therapy.

RESPONSE 3: Because these comments are outside the scope of this rulemaking notice, the board would need to address the issues at future meetings and through future rulemaking projects.

5. The board has amended ARM 24.101.413 exactly as proposed.

6. The board has adopted NEW RULE I (24.155.201), NEW RULE II (24.155.202), NEW RULE III (24.155.203), NEW RULE IV (24.155.301), NEW RULE V (24.155.401), NEW RULE VI (24.155.601), and NEW RULE VII (24.155.604) exactly as proposed.

BOARD OF MASSAGE THERAPY
MICHAEL EAYRS, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 15, 2010

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.210.674 pertaining to)
brokers and salespersons)
CORRECTED NOTICE OF
AMENDMENT

TO: All Concerned Persons

1. On June 11, 2009, the Board of Realty Regulation (board) published MAR Notice No. 24-210-34 regarding the public hearing on the proposed amendment of the above-stated rule, at page 928 of the 2009 Montana Administrative Register, issue no. 11. On December 10, 2009, the board published the notice of amendment of MAR Notice No. 24-210-34 at page 2373 of the 2009 Montana Administrative Register, issue no. 23.

2. On October 15, 2009, the Board of Realty Regulation (board) published MAR Notice No. 24-210-35 regarding the proposed amendment of the above-stated rule, at page 1748 of the 2009 Montana Administrative Register, issue no. 19. On February 25, 2010, the board published the notice of amendment of MAR Notice No. 24-210-35 at page 532 of the 2010 Montana Administrative Register, issue no. 4.

3. In MAR Notice No. 24-210-34, ARM 24.210.674(5) was renumbered (6) effective December 11, 2009. As a result, this corrected notice of amendment is being published to correct a numbering discrepancy with MAR Notice No. 24-210-35. The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE
APPROVAL (1) through ~~(5)(b)~~ (6)(b) remain as amended.
(c) and (d) remain as amended.

4. The replacement page noting the correction will be submitted to the Secretary of State's office on March 31, 2010.

BOARD OF REALTY REGULATION
CINDY WILLIS, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.301.161, model energy code)

TO: All Concerned Persons

1. On October 29, 2009, the Department of Labor and Industry (department) published MAR Notice No. 24-301-239 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1844 of the 2009 Montana Administrative Register, issue no. 20.

2. On November 30, 2009, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the December 14, 2009, 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: Numerous verbal and written comments were received in response to the proposed adoption of the International Code Council's 2009 edition of the International Energy Conservation Code (IECC). Nearly all the comments were in favor of the proposal to adopt the 2009 IECC code, but advocated more stringent building requirements aimed at energy efficiency requirements than those set forth by the 2009 IECC.

RESPONSE 1: The Montana Legislature, under 50-60-203, MCA, requires the department to adopt rules that relate to the conservation of energy that are consistent with and properly balance the public policy considerations set forth 50-60-801, MCA, namely, to protect and improve economic and environmental well-being and energy security, while recognizing the basic need for safe and affordable shelter. The department, through stakeholder meetings, has struck that balance and will continue to cultivate stakeholder input for future determinations in energy code development.

COMMENT 2: Of the comments in favor of the adoption of the 2009 code mentioned above, there were six areas of focus. Numerous commenters joined in support of the specific recommendations submitted by Jim Baerg of Montana Energy+Design (herein, "ME+D") and addressed by subject area below:

a. Basement Walls: The current rule allowed a delay in the insulation of basement walls, until such time as the basement was actually finished for occupancy. The proposed rule eliminates this so-called "basement exception" and will now require insulation of basement walls to be completed at the time of construction and at an R-value of 15 continuous or 19 cavity, as set forth in the 2009 IECC.

A majority of comments supported insulating the basement sooner, rather than later. Others asked that a "more stringent" R-value be imposed, without specifying what that would be. A commenter stated that that "the highest possible basement insulation requirements" would result in an "optimum balance of energy conservation, construction costs, and reasonable economic payback period." Another commenter stated that a minimum of R-20 should be required on basement and crawlspace walls, rim bands, and under basement slabs.

Response: The 2009 IECC allows two methods of basement insulation: R-15 applied continuous or R-19 applied in cavities. These R-values represent consideration for currently available manufactured products and allow for the two methodologies most often used in field construction. As manufacturing products change and more varieties in field installation methods become apparent, the department will evaluate those processes to allow a greater expansion of products, methods, and R-values.

b. Walls: The 2009 IECC requires R-20 code values for wall insulation. The department proposes to increase that value to R-21. The ME+D urged setting the value at R-25.

Response: The 2009 IECC dictates an R-value of wood framed walls to be R-20 (cavity). The department evaluated stakeholder input, including the study calling for increases to R-25. The department concluded that moving to R-21 was most prudent now, due to the manufacturer's product line being most conducive to this R-21 value. As code development processes move forward, including stakeholder input, the department will monitor the available products and methods becoming available and gauge those products and R-value assemblies against the department's responsibility for public welfare, as well as the financial impact such code requirements have on construction costs and other economic factors.

c. Ceilings: Section 1(e) of the proposed rule change reduces the amount of ceiling that is allowed to have a lower R-value (R-30) than that required in attic space (R-49). Numerous commenters supported the proposal to reduce the ceiling space, and also supported the ME+D proposal to increase the ceiling space to R-49.

Response: The department recognizes the value of this comment and the increase in code requirement, proposed by the department, is a great example of cultivating and embracing informed comment on the subject. Presently, the 2009 IECC allows 500 square feet or 20 percent of the total insulated ceiling area to be reduced to R-30, if the roof/ceiling assembly does not allow sufficient space.

The department, based on stakeholder input, struck a compromise between current code language and the requested zero square feet or zero percent area of reduced R-value. The department's result will still allow 250 square feet of reduced R-value or ten percent of insulated ceiling area; this change results in a 100 percent increase in area, now required to have full R-49 ceiling insulation.

d. Windows: The 2009 IECC requires a U-factor of 35 for windows. BCB proposed to require U-33. The ME+D proposal requested "tuned" windows, which would specify window type and performance based on orientation of the window, with relation to North, South, East or West. A commenter urged mandatory use of U-30 or less.

Response: After hearing stakeholder comment on this issue, the department determined that setting window performance criteria for each side of the house would be too confusing and troublesome for builders and homeowners. The department was pleased that the Building Codes Council offered a compromise in the form of a reduced U-factor specification to 0.33. The department concluded that this is a good balance and feels that window manufacturers will have product available in that U-factor.

e. Allowable Air Exchange: The 2009 IECC sets allowable air changes to 7ACH50 and allows a prescriptive list option. The proposed rule sets the allowable air changes to 4ACH50 and proposed no changes to the prescriptive list. The ME+D comment initially supported 4ACH50 at the hearing and requested an improved prescriptive list.

In subsequent written comments, ME+D amended its comment to set allowable air changes to 5ACH50, rather than 4ACH50, stating that the allowable air change threshold would be a significant improvement if testing was available and that the prescriptive option will be used in almost all cases, but relies on vigilant building inspectors and builders.

A commenter recommended mandatory 3ACH50 air exchange. Another commenter urged the department to set maximum acceptable blower door test results at 5ACH50, rather than the proposed 4ACH50, to increase the number of builders who will select this option from the code, rather than the visual inspection option in 402.4.2.2. A little more than half of the comments advocated for an energy efficiency or performance test (such as a blower door test) to be added as a code requirement for newly built homes.

Response: The department derived the original proposal of 4ACH based on strong stakeholder input. Until a good supply of blower door test units become available to owners and builders, and their use is considered regular, the tighter specification of 4ACH is valid. Once these blower door units become more available and used, the department will be very interested in evaluating the suggested ACH parameter based on stakeholder input.

f. Ventilation: The 2009 IECC does not require mechanical ventilation. The department proposed the same. However, the ME+D proposal requested mechanical ventilation per ASHREA 60.2.

Response: The department evaluated the use of the additional standard (ASHREA) for ventilation. Neither the 2009 IECC nor the code development committees embraced the ASHREA 60.2 as a referenced standard. The department has amended, after stakeholder request, the 2009 edition of the International Mechanical

Code to require all single family houses to have a minimum benchmark for ventilation through mechanical means and controlled by timer or humidistat.

COMMENT 3: A commenter asked that the department adopt residential energy codes to exceed IECC standards by at least 20 percent.

RESPONSE 3: The department's role is to balance the increases in code requirements with that of welfare and economic considerations. The U.S. Department of Energy estimates that the 2009 IECC increases energy efficiency and conservation 15 to 18 percent, over that of the 2006 edition. The department, through this adoption proposal process, has also increased other energy code requirements above those mandated in the 2009 IECC; thereby adding to the increases in energy efficiency and conservation above 15 to 18 percent.

COMMENT 4: A small group of commenters urged to adopt the rules as proposed, but suggested that the Building Codes Council explore or encourage possible solutions to the problem of lack of enforcement.

RESPONSE 4: The energy code is applicable to almost all buildings per statute. Enforcement of the energy code is limited to inspection by local jurisdictions certified by the department and a "self-certification" process detailed in statute. Changes to the current enforcement scenario will require direct intervention by the legislature.

COMMENT 5: A small group of commenters stated that there should be no building code requirement at all, stating "a person should be allowed to build a house out of plywood and heat it with solar electricity," and "building codes are supposed to be for safety and integrity, not efficiency or sustainability."

RESPONSE 5: The department will maintain building code requirements that incorporate energy efficiency standards under the rationale provided to Response 1.

4. The department has amended ARM 24.301.161 exactly as proposed.

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 15, 2010

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.5.1411, pertaining to medical)
emergencies)

TO: All Concerned Persons

1. On September 24, 2009, the Department of Public Service Regulation published MAR Notice No. 38-2-204 pertaining to the proposed amendment of the above-stated rule at page 1647 of the 2009 Montana Administrative Register, Issue Number 18. On November 25, 2009, the department published a Notice of Extension of Hearing Request and Comment Period on Proposed Amendment at page 2242 of the 2009 Montana Administrative Register, Issue Number 22.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.5.1411 MEDICAL EXCEPTIONS (1) Except as provided herein, service may not be terminated to a residence where a licensed health care professional certifies to the utility that the absence of service will aggravate an existing medical condition which would threaten the health of any permanent resident. A licensed health care professional means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse provided for in ARM 37.106.2805 and Title 37, MCA. All certifications must be in writing, and the certificate must provide the name and address of the person with the medical condition that would be aggravated by a termination of service. The certification must include the printed name, signature, and the office address, and telephone number of the certifying licensed health care professional. ~~All written certifications must be signed by the licensed health care professional.~~ A medical condition certificate is valid for 180 days from the date it is signed and dated by the licensed health care professional, and may be renewed on a semiannual basis.

(2) remains as proposed.

(3) The utility must provide written notice of the initiation of disconnection proceedings to the customer. If the missed payments are not received no resolution has been reached within ten days of mailing, the utility must send a second notice. From the date of the second notice the customer must pay at least one-third of the delinquent charges to avoid termination of service. The second notice must be sent by the utility at least ten days prior to the date of the proposed termination. All written notices must be sent by first class or certified mail. Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise the customer of the proposed action. If telephone or personal contact is not made, the utility employee shall leave notice in a place conspicuous to the customer that service will be terminated on the next business

day. If the required payment is made, a new payment arrangement will be recalculated consistent with (2). Under no circumstances shall disconnection proceedings occur on accounts with an arrearage of less than \$500. Nothing in this rule prevents a utility from continuing service to a delinquent medically protected account.

(4) and (5) remain as proposed.

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT NO. 1: NorthWestern Energy (NWE) and Montana-Dakota Utilities (MDU) commented that written medical certifications should also include the printed name of the certifying medical professional.

RESPONSE NO. 1: The department agreed with the commenters and is amending ARM 38.5.1411 accordingly.

COMMENT NO. 2: Both NWE and MDU request that the department consider changing the proposed minimum arrearage before a payment plan is required to be based on a time period in arrears such as 60-90 days rather than the \$500.00 amount contained in the proposed rule. NWE argues that it would be more fair and equitable for all customers and would be less burdensome administratively.

RESPONSE NO. 2: The purpose of revising the rule was to specifically prevent the accumulation of substantial arrearages. The rule, as written, will require past substantial arrearages to be paid down and will limit future arrearages from building up. Switching to a 90-day arrearage deadline would result in department involvement in accounts that may not have substantial arrearages. Based on the statistics provided by NWE and MDU, only a small number of additional accounts would be impacted if a 90-day deadline was used. Nothing in this rule prevents the utility from pursuing collection efforts on debts under \$500. In fact, it requires the utilities to negotiate a payment plan prior to the arrearage getting to that amount. The department appreciates these comments but determines that the rule meets the goal of limiting the accumulation of substantial arrearages.

COMMENT NO. 3: NWE comments that resolution within ten days, as described in paragraph three, is not entirely clear. NWE argues that this language leaves room for interpretation as to what an acceptable resolution is. NWE would support, at a minimum, payment of the missed portion of the initial agreement and agree to continue original payment requirements. NWE indicates that broken payment arrangements should be limited to no more than one occurrence to limit potential misuse by customers. NWE requests provisions indicating that once the process has been initiated, it should be carried out to a complete resolution and should not revert back if the account falls under the \$500 threshold. MDU requests that if the arrangements made pursuant to 38.5.1411(2), are broken, that only one 10-day notice of disconnect be required to pursue disconnection of service.

RESPONSE NO. 3: The department agrees with NWE that the rule should be re-worded to state that if the missed payments are not received within ten days of mailing the first written notice, the utility must send a second notice. The department disagrees with the commenters to limit the payment arrangement to no more than one occurrence. The payment arrangements proposed require customers to continue to reduce their outstanding balances each month which will limit potential misuse by customers without making any additional changes. Allowing customers to renegotiate the agreement if they fall behind provides additional safeguards to prevent disconnection in cases where circumstances warrant additional protection.

COMMENT NO. 4: NWE recommends e-mail be accepted as proper written notification to the department upon initiation of the disconnection process.

RESPONSE NO. 4: The department determines that the rule itself does not need to be revised to address e-mail notification. The department finds that acceptable written notification process can be clarified by department policy.

COMMENT NO. 5: MDU suggests that subparagraph (4) is not necessary as the customer may request that the commission intervene in establishing a payment arrangement without adding this rule.

RESPONSE NO. 5: Staff disagrees with the commenter that the entire paragraph is not necessary. The department wants the rule to clearly indicate to customers that the department can intervene in establishing payment arrangements as circumstances warrant.

COMMENT NO. 6: NWE feels the initial or additional payment requirements should be applicable at any time during the year. If the agreements made should end in default during the period of November 1 to March 31, and the account qualifies for protection from disconnect during the winter months, termination would proceed pursuant to subparagraph (3) on April 1.

RESPONSE NO. 6: The department determines that no clarification of the rule is necessary. This rule makes it clear that the winter disconnect rules, if applicable, override the disconnection provisions of the medical exception rule, and disconnection cannot occur during the winter moratorium period.

DEPARTMENT OF PUBLIC SERVICE REGULATION

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

Certified to the Secretary of State, March 15, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I (42.13.203) and II (42.13.405)) NOTICE OF ADOPTION AND
and amendment of ARM 42.13.101,) AMENDMENT
42.13.111, 42.13.201, 42.13.301,)
42.13.402, 42.13.404 relating to)
regulations for liquor licensees)

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-810 regarding the proposed adoption and amendment of the above-stated rules at page 1896 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 18, 2009, to consider the proposed adoption and amendment. Oral and written testimony was received at the hearing and prior to the date set for close of comment.

3. The comments and media coverage regarding the proposed amendments to ARM 42.13.101, which pertained to violations for the sale to a minor, were extensive. Approximately 225 comments in opposition to this proposed amendment were timely filed by opponents. Therefore, based on these comments and further review of the rule, the department will not amend ARM 42.13.101 at this time. Instead, the department is filing MAR Notice 42-2-825, also contained in 2010 Montana Administrative Register, issue no. 6 which schedules a new public hearing to obtain comments and information pertaining to the schedule of penalties charged to liquor licensees as set in ARM 42.13.101 for "sales to minor" and "sale to intoxicated persons" violations which were raised by attendees at the November 2009 hearing.

The comments regarding the other rules contained in this notice are summarized along with the department responses as follows:

COMMENT NO. 1: Mr. Neil Peterson, representing the Gaming Industry Association stated some concern with the definition of "patio/deck" as shown in the proposed amendment to ARM 42.13.111. He stated this is a substantial change for a lot of locations in that the patio/deck area would need to be completely enclosed by at least a three foot fence or wall, and immediately adjacent and only accessible from the licensed premises. There are a lot of decks that have been preapproved but don't meet these requirements and the association would hope that if the department goes ahead with this amendment, those folks would be grandfathered into the process.

Mr. Peterson further stated that it is his understanding that local fire code regulations require an exit off that deck, so if the only entrance or exit is through the premises, it would not comply with local fire regulations.

RESPONSE NO. 1: The department appreciates Mr. Peterson's comments. The definition of "patio/deck" in these rules applies to breweries and wineries and

does not apply to the all-beverage licensee who is a member of the Gaming Industry Association. The department concurs that the fire code regulations may not have been considered. The department is further amending ARM 42.13.111(6), as shown below, to address this concern and, with this amendment believes the rule will conform to local fire codes.

4. Based on the comments received, the department amends ARM 42.13.111 as follows, stricken matter interlined, new matter underlined:

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain the same but are renumbered (2) through (5).

~~(5)~~(6) "Patio/Deck" means a specific area designated on a floor plan which shall be completely enclosed by at least a 3-foot fence or wall, immediately adjacent to and ~~only~~ accessible from inside the licensed premises.

(6) through (8) remain as proposed but are renumbered (7) through (9).

~~(9)~~(1) "~~Responsible server~~ Alcohol beverage service training" means any server training program conducted by the department or the department designee, or a qualified server training program that has been preapproved in writing by the department.

(10) "Sale to a minor ~~violation~~" means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under the age of 21.

(11) remains as proposed.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-6-104, MCA

5. Therefore, the department amends ARM 42.13.111 with the amendments listed above and adopts New Rule I (42.13.203) and II (42.13.405) and amends ARM 42.13.201, 42.13.301, 42.13.402, and 42.13.404 as proposed. The department has chosen not to amend ARM 42.13.101.

6. An electronic copy of this adoption notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I (42.31.406), II (42.31.407), III) AMENDMENT
(42.31.408), IV (42.31.409) and)
amendment of ARM 42.31.401)
relating to telecommunications 9-1-1)

TO: All Concerned Persons

1. On October 29, 2009, the department published MAR Notice No. 42-2-817 regarding the proposed adoption and amendment of the above-stated rules at page 1999 of the 2009 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 23, 2009, to consider the proposed adoption and amendment. Oral and written comments were received at and subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Geoff Feiss, General Manager of Montana Telecommunications Association (MTA) testified at the hearing in support of the proposed rules and presented a letter that had been sent to Director Dan Bucks on September 14, 2009. Mr. Feiss' letter addresses his participation in the negotiated rulemaking process for these rules whereby he was representing the member-owned telephone cooperatives and shareholder-owned commercial telecom companies serving rural Montana consumers.

He stated that MTA members have invested hundreds of millions of dollars in Montana's telecommunications infrastructure and continue to invest tens of millions each year in new facilities and advanced services including broadband Internet service to over three-quarters, and often nearly 100% of their customers.

Among the services Montana's rural telecom providers are particularly proud to offer is a statewide, state-of-the-art 9-1-1 service platform serving 37 of Montana's PSAPs. Montana's 9-1-1 network provides vital emergency services to people living, working, and visiting in Montana. To help fund this critical network infrastructure, MTA members assess a \$1.00 monthly fee on all their subscribers, and remit these 9-1-1 fee revenues to the department, pursuant to Title 10, chapter 4 of the Montana Code Annotated. Prepaid wireless telecommunications providers, however, have not been collecting and remitting these 9-1-1 fees.

MTA encourages the department to establish rules by which prepaid wireless providers will collect and remit 9-1-1 fees for the support of Montana's 9-1-1 network and, most importantly, its consumers.

Consumers are increasingly subscribing to prepaid wireless services. The current economic recession has accelerated the rate at which consumers have dropped existing wireless (and wireline) service plans and subscribed to prepaid plans. Anecdotal evidence indicates that between ten and as much as 20 percent of all wireless subscribers currently subscribe to prepaid plans. Moreover, prepaid

wireless providers aggressively are promoting service to consumers utilizing federal low income universal service support, further accelerating the rate at which prepaid wireless plans are being adopted. As more consumers migrate to prepaid plans, more money that would have been collected by carriers complying with existing law and should be collected for the support of Montana's 9-1-1 network and its consumers is not collected. It's important to note that the users of prepaid services have access to and frequently use the existing 9-1-1 network despite the fact that their service provider does not provide any support of the underlying network. Obviously, these calls result in cost to Montana's 9-1-1 network. One must ask if it is fair to ask Montanans who are assessed the lawful rate to foot the bill for prepaid customers simply because it's inconvenient for the prepaid carrier to assess the fee.

Mr. Feiss also presented three charts showing low income support mechanisms. The first one represents TracFone disbursements by state and month from September 2008 through September 2009; the second one represents a percentage of total disbursements made by TracFone; and the third one represents distribution of low income disbursements between TracFone and other ETCs from September 2008 through September 2009.

RESPONSE NO. 1: The department appreciates the comments and assistance that Mr. Feiss and the Montana Telecommunication Association have provided throughout this process. The department is responsible for administering the 9-1-1 fee in a fair and equitable manner. The implementation of these rules is consistent with that responsibility.

COMMENT NO. 2: Ms. Bonnie Lorang, General Manager of the Montana Independent Telecommunication Systems (MITS), stated that she represents telephone companies stretching literally from border to border in the state, both wire line companies and some with affiliated wireless providers. She stated that MITS supports the rules as written. She further stated that MITS participated in the prepaid wireless negotiated rulemaking process and would like to go on the record supporting the testimony of Geoff Feiss.

Ms. Lorang stated that they are open to proposals of other alternatives, but from MITS perspective providers of telecommunication services, regardless of the technology used, should be contributing to the 9-1-1 program and the 9-1-1 fund. Public safety is important for every single Montana consumer regardless of whether they are dialing for services using a prepaid wireless, a landline, or a traditional wireless. In terms of the prepaid wireless it has been the experience of those in the industry, including MITS members that provide wireless telecommunication services, that it really is not a type of a service that is in its infancy. It is a rapidly growing part of the wireless communications industry. Not only industry, monthly periodicals such as Consumer Reports recently have had articles that indicate the extreme rapid growth and accelerated growth of the prepaid industry. It seems fair and equitable that a rule be designed to ensure that all those utilizing telecommunications services contribute to the fund.

RESPONSE NO. 2: The department appreciates the comments and assistance that Ms. Lorang and the Montana Independent Telecommunication

Systems have provided throughout this process.

COMMENT NO. 3: Ms. Becky Berger, Program Manager for the Department of Administration's 9-1-1 Program stated she continues to support the rules as proposed. She stated that the 9-1-1 dispatch centers across the state struggle to even provide the basic 9-1-1 systems and will continue that struggle as the state moves forward to meet the needs of the public. She presented a chart showing the projected revenues that were not received from a particular service provider when they were not remitting but had started withholding the revenue in 2004. From these projections, the 9-1-1 program was able to calculate what should have been received during the period of 2004-2009. This figure is just short of \$700,000. That was revenue that should have been going to the local systems for 9-1-1 service.

Ms. Berger stated for these reasons she supports the rules as drafted and looks for passage of these rules soon.

RESPONSE NO. 3: The department appreciates the comments and assistance that Ms. Berger and the Department of Administration have provided throughout this process.

COMMENT NO. 4: Stacey Sprinkle, Vice President for State Tax Policy, Verizon Wireless (Verizon), presented a letter that had been sent to the department during the negotiated rulemaking process dated December 23, 2008, as written comments regarding these rules.

Ms. Sprinkle's letter questioned whether there is sufficient authority for the department to initiate the proposed rulemaking. She stated that the current statute imposing the monthly E-9-1-1 fee on wireless telephone service subscribers has not been amended to specifically include prepaid wireless service subscribers in the E-9-1-1 base. Given the nature of the way prepaid wireless services are sold and provided, and the statute's clear direction that the fee is meant to be collected directly from the end consumer, one would question the applicability of 10-4-201, MCA to prepaid wireless subscribers. In fact, during the 2007 legislative session HB 33 was advanced seeking to address this very issue by clearly including prepaid wireless customers in the E-9-1-1 base. However, HB 33 failed to pass. If the statute does not apply, then Verizon questions under what authority the department is lawfully engaging in the proposed rulemaking.

Ms. Sprinkle further stated that none of the options outlined in the rule adequately provide a mechanism for prepaid wireless providers to collect the E-9-1-1 fee directly from all prepaid wireless subscribers in accordance with the statute. Section 10-4-201, MCA, makes it clear that the subscriber of wireless services is the one liable for payment of the E-9-1-1 fee.

Unlike the traditional wireless customers who are billed for their service on a monthly basis, most prepaid wireless services are sold "over-the-counter" by third-party retailers such as Wal-Mart, Target, Radio Shack, and other large and small retailers. These retailers are not "wireless providers" and have no ongoing billing relationship with the wireless customer. Since wireless prepaid customers have no bills, no regular interval for paying for service, and no relationship with the retailer from whom they purchased their service, the traditional method of billing the fee on a

monthly basis does not work.

Proposed New Rule III identifies two methods a carrier can elect to "collect" and remit the fee from prepaid wireless subscribers. The first method identified is what is commonly referred to as the decrement or "sufficient positive balance" method. While this method may appear to be a simple approach on the surface, significant public policy and compliance problems result from the use of this method so much so that it is clearly not the right answer to collection E-9-1-1 fees equitably from all prepaid wireless users.

The decrement method does not resolve the policy concerns of developing a method that will ensure equitable funding of 9-1-1 systems from all prepaid wireless consumers since it is only imposed upon those customers that have a sufficient balance in their account at the end of the month. As knowledge of this process spreads it provides prepaid customers with an attractive means to avoid imposition of the fee altogether by simply timing the use of their services so that the account is depleted at the end of each month. The decrement process by its nature provides prepaid customers with an easy way to avoid application of the fee.

Section 10-4-201, MCA requires the fee to be collected from the subscriber. Since prepaid services can be sold anywhere, disclosing the state specific fee that will be collected at the end of each month cannot be done when the service is sold. Since no additional billing or communication takes place with the prepaid subscriber allowing the provider the opportunity to clearly disclose to the subscriber the "collection" of the fee and for what governmental program it is funding has been raised as a concern with some state Attorney General's offices across the country regarding violating fair trade practices.

Because of these deficiencies, this is not a method supported by the wireless industry as an equitable solution to collecting E-9-1-1 fees from all prepaid wireless subscribers.

The second method provided for in the proposed rule is what is commonly known as the "ARPU" (average revenue per user) method. This method is a calculation method and provides no solution to how a provider is supposed to collect the fee from the subscriber as required in 10-4-201, MCA. The method is used to calculate an estimate of the number of prepaid wireless subscribers and then requires the carrier to pay the fee directly, violating the clear intent of the statute. While one might question why a carrier cannot just embed the fee in the cost of its service, again since these services are sold on a national basis, carriers cannot build an estimate cost for each state's and or local jurisdiction's 9-1-1 fee into its service pricing without risking exposure to class action lawsuits for charging customers a fee for a jurisdiction within which they do not reside. Again, this method does not provide an equitable solution to "collection" of E-9-1-1 fees from all prepaid wireless subscribers.

The long term solution to collecting E-9-1-1 fees on prepaid wireless consumers is to collect the fee directly from the customer when the service is sold and the fee can be clearly communicated to the consumer. The wireless industry has been working nationally with the general retail community, as well as public safety, to devise a retail point-of-sale (POS) solution that will work for all parties involved and ensure equitable contributions for E-9-1-1 funding are made by all prepaid wireless consumers. The industry is currently working on draft legislation to

implement the retail POS solution in Montana and will forward the bill draft to the department as soon as it has been finalized within the next few weeks. Implementing any solution other than the retail POS solution would put the state at risk for being in violation of the statutory provisions set forth in 10-4-201, MCA.

She stated in the December 23, 2008 letter, that it is Verizon's hope that the department will work with the industry to pursue the POS solution during the 2009 legislative session.

In a separate document Ms. Sprinkle reiterated the statements contained in the December 23, 2008, letter and further stated that it is not Verizon's position that prepaid wireless consumers should be excluded from E-9-1-1 fees. She stated that they are a significant provider of postpaid wireless services as well and collect and remit the E-9-1-1 fees on behalf of those customers as required by statute. When there is a specific fee imposed upon communications users to fund E-9-1-1, to be equitable, we believe that prepaid wireless consumers should bear their fair share to support the emergency communications system in the state just like any other user of communication services. However, there are many complexities surrounding how prepaid services are provided and sold that warrant additional consideration in this arena, specifically in defining a method that will provide for the collection of the E-9-1-1 fee directly from the prepaid customer.

She further stated that contrary to what others have asserted, Verizon's opposition to the proposed rules has not been "simply because it's inconvenient for the prepaid carrier to assess the fee," it has been due to the fact that no workable method has been put forth to assess/collect the fee directly from the prepaid customer. That is why the wireless industry has been working very hard over the last several years to develop a long-term solution that will allow E-9-1-1 fees to be collected directly from the prepaid wireless consumers. Those efforts have led to the development of the retail POS method that would collect the fee from the customer when the financial transaction takes place which is when the customer purchases the service. This solution would involve collection of these fees by prepaid wireless carriers as well as by general retailers who sell 80% of this product. Model legislation implementing the retail POS solution has been endorsed by the National Conference of State Legislatures at its annual meeting in July and was supported by the National Emergency Number Association in the three states where this proposed solution was enacted in 2009. This solution has also been supported by Wal-Mart, one of the largest general retailers selling prepaid wireless services.

Verizon recommends that the rulemaking process be deferred and instead ask the stakeholders to continue to work together to develop the legislative changes necessary to include prepaid wireless customers in the E-9-1-1 base with the retail POS method clearly identified as the method to collect these fees from prepaid wireless customers. She stated that they believe that instituting the statutory changes needed to accomplish both of these goals will yield the most effective, uniform, and equitable method to imposing E-9-1-1 fees on prepaid wireless customers and will provide the much needed certainty in the revenues that will be received from this segment of communications users to support E-9-1-1 services in Montana.

RESPONSE NO. 4: The department appreciates the assistance that Ms.

Sprinkle and Verizon Wireless provided in this rule hearing process. The department offers the following responses to Ms. Sprinkle's comments:

The department's authority to adopt rules is found in 10-4-203, MCA, which states,

"Every provider responsible for the collection of the fee imposed by 10-4-201, MCA shall keep record, render statements, make returns, and comply with the rules adopted by the Department of Revenue with respect to the fee."

Section 10-4-201, MCA clearly states the provider shall collect the fees. All wireless providers fall within the definition of a provider as stated in 10-4-101, MCA. Therefore, all wireless providers are required to collect and remit the E-9-1-1 fees. Any other interpretation would create an unfair competitive advantage to prepaid providers. A service provider's billing relationship with its subscribers does not change the requirement that a service provider must collect and remit the E-9-1-1 fees to the department.

The department will not speculate on the passage or nonpassage of HB 33 from the 2007 legislative session as an affirmation or denial of applying the E-9-1-1 fees on prepaid providers. The department's responsibility at this point is to administer the law as written.

The department recognizes the need to provide a mechanism for prepaid providers to collect and remit the E-9-1-1 fees in a manner that is consistent with the statutory purpose for the equitable application of the E-9-1-1 fee on all providers. The two methods being proposed to calculate and collect E-9-1-1 fees, conforms to methods adopted by 24 other states. The department has repeatedly stated that it is willing to review any other options of calculating and collecting the E-9-1-1 fees, so long as the collection methods are within the authority of the current law.

The department is willing to review any point-of-sale legislation that may be proposed by Verizon. However, any future legislation does not provide a solution for the existing statutory requirement that all providers are required to collect the E-9-1-1 fee.

COMMENT NO. 5: Ms. Mona Jamison, Attorney representing OnStar testified at the hearing and Mr. Thomas Jeffers, Vice President for Public Policy for OnStar presented written comments stating that OnStar is the world's leading provider of telematics services, as a good corporate citizen OnStar is very supportive of 9-1-1 service providers, and has been collecting and remitting 9-1-1 fees in Montana since 2002. The problem is that OnStar cannot comply with the proposed New Rule III, pertaining to collection and determination of fees for prepaid subscribers. The first reason they cannot comply is that OnStar, a nonfacilities based reseller of prepaid wireless communication services, does not know how many active hands-free calling (HFC) customers they have at the end of each month, or the number of minutes remaining per customer because the minutes reside within the vehicle. This is a significant concern. Second, when a customer calls to order the HFC minutes, OnStar then has an opportunity, at the point of sale, to collect all the taxes, fees, and

surcharges associated with that transaction. OnStar does not bill on a monthly basis. All transactions must reasonably occur at the point of sale. Third, since OnStar is a reseller of minutes rather than the provider of cell services, they cannot differentiate between intra versus interstate revenue in order to use the formula in proposed New Rule III(2)(a)(ii), unless OnStar can use the FCC safe harbor percentage for each HFC transaction. Fourth, normally when a subscriber purchases HFC minutes from OnStar, they are good for one year. OnStar has no control over how or when a subscriber will deplete their supply. The subscriber could use all the minutes that they have purchased in the same day, the same week, the same month, or over a year. Therefore, OnStar currently charges HFC subscribers 9-1-1 fees, which they do support, on each retail transaction at the point of sale.

Ms. Jamison and Mr. Jeffers offered an option that would allow for one-time collection of the 9-1-1 emergency telephone service fee at the point of sale, either as a flat fee per transaction or as a percentage of gross sales using the FCC safe harbor formula per transaction or as a percentage of gross sale using the ARPU methodology for each HFC transaction.

RESPONSE NO. 5: The department appreciates Ms. Jamison's and Mr. Jeffers' assistance in this rule hearing process. The department's proposed rules offer two methods that a prepaid provider may collect and remit the E-9-1-1 fee to the state. The two methods proposed for calculating the E-9-1-1 fee are already adopted and used in 24 other states. The OnStar representatives provide no information indicating that they were failing to comply with requirements in other states. To the contrary, they noted that they were complying with Montana's 9-1-1 fees. The FCC Safe Harbor rule is not applicable under the current fee structure when determining Montana state revenues. The department would review how the FCC Safe Harbor rule might be applied to calculating the E-9-1-1 fee if OnStar can provide additional information on how the FCC Safe Harbor rule could be currently applied to the E-9-1-1 fee.

COMMENT NO. 6: Ms. Margaret Morgan, representing Alltel Communications (Alltel), stated that Alltel currently pays the 9-1-1 fees on their prepaid services. She stated that they believe that the rules, as proposed, are actually more onerous than what they are currently doing. The most equitable way to collect 9-1-1 fees on prepaid service is through the point of sale. She stated that most states are moving towards that process, and if indeed we need legislation to do so, then they would help make that happen.

Ms. Morgan stated that the rules, as written, create additional problems for Alltel even though they are currently paying 9-1-1 fees on prepaid. For those reasons Ms. Morgan stated Alltel was in opposition to the rules as proposed. She further stated that Alltel would be interested in working on legislation to provide for a more equitable way to collect the fees.

RESPONSE NO. 6: The department appreciates Ms. Morgan's time and assistance in this process.

The department disagrees with the statement that these new rules are actually more onerous than current practice. The proposed rule allows a provider to

utilize the method prescribed by statute or one of the methods prescribed by the rules. These proposed rules are the same methods already adopted by 24 other states and are currently in use to determine the amount of TDD Telecommunication Service Fee that is remitted by Alltel to the department.

The department is willing to review any point-of-sale legislation that may be proposed. However, any future legislation does not provide a solution for the existing statutory requirement that all providers are required to collect the E-9-1-1 fee.

COMMENT NO. 7: Mr. Mike Green, Attorney, representing Tracfone presented testimony at the hearing stating that the proposed rules do not provide any mechanism for prepaid carriers to calculate the fee and pass it through to their customer. The rules are drafted to anticipate an end-of-the-month calculation based on interstate revenue and there is no way to pass that through to the customer based on the calculation methodology in these rules. He stated that Tracfone too, would prefer a point-of-sale methodology, and would also support the idea of bringing in the third party retailers who are involved in this process.

Mr. Leighton Lang, Senior Vice President and Assistant General Counsel for Tracfone stated that the current statute imposes three fees totaling \$1.00 "a month" on "each service subscriber". The subscriber "is liable for the fees imposed by this section." The statute provides that the provider shall pay the fee based on the "net amount billed" for the service. In the case of a prepaid wireless reseller like TracFone, the customers do not purchase service on a monthly basis and there are no bills. Prepaid customers purchase wireless service on a "pay-as-you-go" basis, mainly from third party independent retailers. There is no opportunity for the prepaid wireless provider to collect a monthly fee from such customers. Clearly, the Legislature did not contemplate unbilled, pay-as-you-go prepaid services sold by independent retailers when the statute was enacted. The department itself has said that, even though the vast majority of prepaid wireless sales in Montana are made by independent retailers, these retailers have no obligation to collect 9-1-1 fees.

The department's proposed rule would establish different methods for computing and remitting fees that contradict and go beyond what the statute authorizes. The Legislature in 2007 considered legislation to extend the statute to cover prepaid subscribers and to adopt the remittance methods in the proposed rule, but this bill was not adopted.

TracFone does not believe the department has the statutory authority to adopt and enforce the proposed rule as currently drafted.

Current law provides that the department (of administration) "may adopt rules to implement the provisions of this chapter), i.e., the chapter that governs administration and funding of the state emergency 9-1-1 system. The Department of Administration would be the appropriate agency to engage in rulemaking on 9-1-1 service fees, not the Department of Revenue.

The statute defines "wireless provider" to mean an entity that is "authorized by the federal communications commission to provide facilities-based commercial mobile radio service . . ." As a nonfacilities-based reseller, TracFone does not fall within this definition. The department does not have the statutory authority to expand this definition to encompass resellers.

New Rule III(1) provides that it is the subscriber who is subject to the fee, and this would be consistent with the statute. However, New Rule III(2)(ii) provides a method for computing the amount of 9-1-1 fees to be remitted, but provides no method to actually collect the fee from a prepaid subscriber on a monthly basis. Such a provision should not be adopted.

New Rule III(2)(a)(i) provides for collection from prepaid customers with an account balance "equal to or greater than the fees . . ." This provision has a troubled history in other states that have adopted it. It contemplates that prepaid usage, fully paid for by the customer, will be reduced or taken back from the customer's prepaid account. Few, if any, prepaid wireless providers in Montana, including TracFone, have the technical capability to track prepaid customer accounts and to take back minutes from the customer each month. This method has no statutory basis, is unfair to customers, and in any case fails to collect a fee from the substantial number of prepaid accounts that do not have a balance equal to or greater than the fee at the end of the month.

New Rule IV(2) provides for remittances of fees upon activation and replenishment of prepaid accounts. Since no sales transaction takes place at activation and replenishment, no feasible means exist to collect a monthly fee under such circumstances. There is no statutory authority for this provision.

The proposed rules provide no practicable methods for collecting monthly fees from prepaid customers who (1) do not make monthly purchases, (2) do not receive bills, and (3) purchase the prepaid service mainly from retailers within Montana. Furthermore, the methods offered are not consistent with the statute, which contemplates a monthly fee on customers who are billed by service providers.

Although the Legislature in 2007 rejected legislation to extend coverage to prepaid, partly because the collection methods proposed had proved impracticable and ineffective in other states, TracFone recommends that the department support legislation to collect 9-1-1 fees from prepaid wireless customers at the retail point of sale (POS). This method has been endorsed by CTIA, major wireless carriers (including TracFone), the National Council of State Legislatures, consumers groups, various public safety organizations and many others. POS has been successfully implemented in Wisconsin and West Virginia. POS goes into effect in Maine and Louisiana on January 1, 2010, and in Texas on June 1, 2010. Stakeholders are working to get POS passed in additional states in 2010. Montana should join in this effort.

RESPONSE NO. 7: The department is amending New Rule I to remove the word "wireless" from the definition of "Intrastate Monthly Revenues." Wireless provider is defined in 10-4-101, MCA, which utilizes the definition of wireless provider in determining wireless cost recovery in 10-4-115, MCA. Wireless provider is not utilized anywhere in 10-4-201, MCA et.seq.

With regard to the other issues raised by Mr. Green and Mr. Lang, these issues are addressed in Response No. 4.

3. As a result of the comments received the department amends New Rule I (42.31.406) with the following changes:

NEW RULE I (42.31.406) DEFINITIONS The following definitions apply to terms used in this subchapter:

- (1) remains the same.
- (2) "Intrastate monthly revenue" is defined as the prepaid service provider's revenue derived from services provided by a wireless provider to subscribers with a Montana area code.
- (3) through (5) remain the same.

AUTH: 10-4-203, 10-4-212, 15-1-201, MCA

IMP: 15-4-101, MCA

3. Therefore, the department adopts and amends New Rule I (42.31.406) with the amendments listed above, adopts New Rule II (42.31.407), III (42.31.408), and IV (42.31.409) and amends ARM 42.31.401 as proposed.

4. An electronic copy of this adoption notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 15, 2010

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 September 30, 2009. This table includes those rules adopted during the period October 1, 2009, through December 31, 2009, and any proposed rule action that was pending during the past six-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 September 30, 2009, 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 2009 and 2010 Montana Administrative Register.

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- 24.101.413 and other rule - Renewal Dates - Requirements - Fee Schedule, p. 200
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- 24.126.301 and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923, 2152

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- 24.168.401 and other rules - Fee Schedule - Licensure Requirements - Continuing Education - Licensure By Endorsement, p. 298

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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 February 2010 appear. Vacancies scheduled to appear from April 1, 2010, through June 30, 2010, 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 March 1, 2010.

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 FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Housing (Commerce)			
Rep. Sheila Rice Great Falls	Governor	Moyer	2/24/2010 1/1/2011
Qualifications (if required): public representative			
Board of Medical Examiners (Labor and Industry)			
Ms. Eileen Sheehy Billings	Governor	Cetrone Levy	2/24/2010 9/1/2013
Qualifications (if required): public representative			
Board of Public Education (Higher Education)			
Ms. Erin Williams Missoula	Governor	reappointed	2/10/2010 1/1/2017
Qualifications (if required): resident of District 1 and identifies herself as a Democrat			
Board of Regents (Higher Education)			
Ms. Angela McLean Anaconda	Governor	Taylor	2/10/2010 2/1/2017
Qualifications (if required): resident of District 1 and identifies herself as a Democrat			
Butte NRD Restoration Council (Justice)			
Mr. Larry Curran Butte	Governor	not listed	2/5/2010 0/0/0
Qualifications (if required): public representative			
Sen. Steve Gallus Butte	Governor	not listed	2/5/2010 0/0/0
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Butte NRD Restoration Council (Justice) cont. Mr. David Schultz Butte Qualifications (if required): public representative	Governor	not listed	2/5/2010 0/0/0
Children's Trust Fund (Public Health and Human Services) Rep. Rosalie Buzzas Missoula Qualifications (if required): public representative	Governor	reappointed	2/24/2010 1/1/2013
Ms. JoAnn Eder Red Lodge Qualifications (if required): public representative	Governor	reappointed	2/24/2010 1/1/2013
Ms. Mary Gallagher Helena Qualifications (if required): agency representative	Governor	reappointed	2/24/2010 1/1/2013
Ms. Betty Hidalgo Great Falls Qualifications (if required): public representative	Governor	reappointed	2/24/2010 1/1/2013
Ms. Nancy Wikle Helena Qualifications (if required): agency representative	Governor	reappointed	2/24/2010 1/1/2013

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)			
Rep. Bob Ream Helena	Governor	Colton	2/24/2010 1/1/2013
Qualifications (if required): resident of District 1			
Lottery Commission (Administration)			
Mr. Thomas M. Keegan Helena	Governor	reappointed	2/5/2010 1/1/2014
Qualifications (if required): attorney			
Ms. Beth O'Halloran Missoula	Governor	reappointed	2/5/2010 1/1/2014
Qualifications (if required): public member			
Montana Noxious Weed Management Advisory Council (Agriculture)			
Mr. Kurt Myllymaki Stanford	Director	Roeder	2/22/2010 6/30/2011
Qualifications (if required): representative of consumer group			
State-Tribal Economic Development Commission (Commerce)			
Mr. Russell Boham Great Falls	Governor	Doney	2/5/2010 6/30/2012
Qualifications (if required): representative of the Little Shell Band of Chippewa			
Ms. Delina Cuts The Rope Harlem	Governor	Brown	2/5/2010 6/30/2012
Qualifications (if required): representative of the Fort Belknap Community			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State-Tribal Economic Development Commission (Commerce) cont.			
Ms. Yolanda Old Dwarf Crow Agency	Governor	not listed	2/5/2010 6/30/2012
Qualifications (if required): representative of the Crow Tribe			
Mr. Randy Randolph Havre	Governor	Boham	2/5/2010 6/30/2012
Qualifications (if required): representative of the Little Shell Band of Chippewa			
Mr. Shawn Real Bird Garryowen	Governor	reappointed	2/5/2010 6/30/2012
Qualifications (if required): representative of the Crow Tribe			
Mr. Loren Stiffarm Harlem	Governor	Stiffarm	2/5/2010 6/30/2012
Qualifications (if required): representative of the Fort Belknap Community			
Traumatic Brain Injury Advisory Council (Public Health and Human Services)			
Mr. Ian Elliot Billings	Governor	reappointed	2/24/2010 1/1/2013
Qualifications (if required): brain injury survivor			
Mr. James Hunt Helena	Governor	reappointed	2/24/2010 1/1/2013
Qualifications (if required): advocate brain injured			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice)			
Mr. Tim Brurud Havre	Governor	Young	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Mr. Donald Cox Jr. Havre	Governor	Gournay	2/9/2010 2/9/2011
Qualifications (if required): youth representative			
Mr. Larry Dunham Condon	Governor	Houde	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Ms. Donna Falls Down Hardin	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): representative of law enforcement			
Mr. Glen Granger Butte	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): representative of law enforcement			
Judge Pedro Hernandez Billings	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): representative of law enforcement			
Ms. Pamela A. Hillery Havre	Governor	Carbonari	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mayor Pamela B. Kennedy Kalispell	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Ms. Penny Kipp Pablo	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Ms. Jennifer Kistler Missoula	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): youth representative			
Mr. Ted Lechner Billings	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Mr. Spencer Love Helena	Governor	not listed	2/9/2010 2/9/2011
Qualifications (if required): youth representative			
Ms. Joy Mariska Billings	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Mr. Richard T. Montgomery Helena	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mr. Wayne Stanford Stevensville	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Mr. Matt Thompson Helena	Governor	Miller	2/9/2010 2/9/2011
Qualifications (if required): having competency in addressing problems facing youth			
Ms. Katie Yother Champion Bozeman	Governor	reappointed	2/9/2010 2/9/2011
Qualifications (if required): youth representative			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Hail Insurance (Agriculture) Mr. Jim Schillinger, Baker Qualifications (if required): public member</p>	Governor	4/18/2010
<p>Board of Nursing Home Administrators (Labor and Industry) Ms. Linda Sandman, Helena Qualifications (if required): Nursing Home Administrator</p>	Governor	5/28/2010
<p>Board of Plumbers (Labor and Industry) Mr. Timothy E. Regan, Miles City Qualifications (if required): master plumber</p>	Governor	5/4/2010
<p>Mr. Olaf Stimac, Great Falls Qualifications (if required): journeyman plumber</p>	Governor	5/4/2010
<p>Board of Real Estate Appraisers (Labor and Industry) Mr. Dennis Hoeger, Bozeman Qualifications (if required): real estate appraiser</p>	Governor	5/1/2010
<p>Ms. Jennifer McGinnis, Polson Qualifications (if required): real estate appraiser</p>	Governor	5/1/2010
<p>Ms. Marilyn K. Rose, Great Falls Qualifications (if required): public representative</p>	Governor	5/1/2010
<p>Board of Realty Regulation (Labor and Industry) Ms. Judith Peasley, Seeley Lake Qualifications (if required): public representative</p>	Governor	5/9/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Regents (Higher Education) Mr. Robert Barnosky, Billings Qualifications (if required): student	Governor	6/30/2010
Commission on Practice of the Supreme Court (Supreme Court) Mr. Gary Davis, Helena Qualifications (if required): none specified	elected	4/1/2010
District Court Council (Justice) Mr. Glen Welch, no city listed Qualifications (if required): none specified	nominated	6/30/2010
Family Support Services Advisory Council (Public Health and Human Services) Ms. Sylvia Danforth, Miles City Qualifications (if required): provider representative	Governor	4/9/2010
Mr. Ted Maloney, Missoula Qualifications (if required): personnel preparation representative	Governor	4/9/2010
Mr. Dan McCarthy, Helena Qualifications (if required): agency representative	Governor	4/9/2010
Ms. Sandi Marisdotter, Helena Qualifications (if required): provider representative	Governor	4/9/2010
Ms. Cristin Volinkaty, Missoula Qualifications (if required): provider representative	Governor	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Sen. Gerald Pease, Lodge Grass Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): language therapist	Governor	4/9/2010
Ms. Sandy McGennis, Great Falls Qualifications (if required): representative of the School for the Deaf and Blind	Governor	4/9/2010
Ms. Novelene Martin, Miles City Qualifications (if required): parent representative	Governor	4/9/2010
Mr. Ronald Herman, Helena Qualifications (if required): agency representative	Governor	4/9/2010
Ms. Diana Colsgrove, Eureka Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Mary Huston, Richland Qualifications (if required): parent representative	Governor	4/9/2010
Rep. George Groesbeck, Butte Qualifications (if required): legislator	Governor	4/9/2010
Ms. Laurie Frank, Simms Qualifications (if required): parent representative	Governor	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. April Ganser, Bozeman Qualifications (if required): parent representative	Governor	4/9/2010
Ms. Michelle Danielson, Helena Qualifications (if required): health care representative	Governor	4/9/2010
Ms. Priscilla Halcro, Great Falls Qualifications (if required): family support specialist	Governor	4/9/2010
Ms. Cindy Sinclair, Havre Qualifications (if required): early Head Start representative	Governor	4/9/2010
Ms. Barbara Stefanic, Billings Qualifications (if required): special education representative	Governor	4/9/2010
Ms. Mary Runkel, Helena Qualifications (if required): agency representative	Governor	4/9/2010
Ms. Paula Sherwood, Missoula Qualifications (if required): quality improvement specialist	Governor	4/9/2010
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services experience	Governor	6/16/2010
Ms. Patty Stevens, Ronan Qualifications (if required): prevention programs/services experience	Governor	6/16/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Disabilities Advisory Council (Administration) Ms. June Hermanson, Billings Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. John Pipe, Wolf Point Qualifications (if required): disabilities community representative	Governor	4/25/2010
Ms. Susie McIntyre, Great Falls Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. William Neisess, Helena Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. Brian Roat, Red Lodge Qualifications (if required): public representative	Governor	4/25/2010
Ms. Patti Scruggs, Whitefish Qualifications (if required): public representative	Governor	4/25/2010
Ms. Marie Pierce, Sidney Qualifications (if required): disabilities community representative	Governor	4/25/2010
Mr. Terry Galle, Deer Lodge Qualifications (if required): public representative	Governor	4/25/2010
Ms. Bryher Herak, Basin Qualifications (if required): disabilities community representative	Governor	4/25/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Interagency Disabilities Advisory Council (Administration) cont. Ms. Margaret Elson, Bozeman Qualifications (if required): disabilities community representative</p>	Governor	4/25/2010
<p>Ms. Martha Carstensen, Billings Qualifications (if required): disabilities community representative</p>	Governor	4/25/2010
<p>Ms. Robin Ray, Missoula Qualifications (if required): disabilities community</p>	Governor	4/25/2010
<p>Mr. Jim Brown, Billings Qualifications (if required): public representative</p>	Governor	4/25/2010
<p>Library Commission (State Library) Ms. Marsha Hinch, Choteau Qualifications (if required): public representative</p>	Governor	5/22/2010
<p>Montana Cherry Commodity Advisory Committee (Agriculture) Mr. Oliver Dupuis, Polson Qualifications (if required): none specified</p>	Director	5/3/2010
<p>Mr. Barry Hansen, Polson Qualifications (if required): none specified</p>	Director	5/3/2010
<p>Montana Election and Technology Advisory Council (Secretary of State) Ms. Bonnie Ramey, Boulder Qualifications (if required): Jefferson County Election Administrator</p>	Secretary of State	4/9/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Election and Technology Advisory Council (Secretary of State) cont.		
Ms. Vickie Zeier, Missoula Qualifications (if required): Missoula County Election Administrator	Secretary of State	4/9/2010
Ms. Janice Hoppes, Conrad Qualifications (if required): Pondera County Election Administrator	Secretary of State	4/9/2010
Ms. Sandi Boardman, Chinook Qualifications (if required): Blaine County Election Administrator	Secretary of State	4/9/2010
Ms. JoAnn Johnson, Fort Benton Qualifications (if required): Chouteau County Election Administrator	Secretary of State	4/9/2010
Mr. Duane Winslow, Billings Qualifications (if required): Yellowstone County Election Administrator	Secretary of State	4/9/2010
Ms. Kathy Newgard, Polson Qualifications (if required): Lake County Election Administrator	Secretary of State	4/9/2010
Ms. Jeri Custer, Forsyth Qualifications (if required): Rosebud County Election Administrator	Secretary of State	4/9/2010
Ms. Penni Lewis, Sidney Qualifications (if required): Richland County Election Administrator	Secretary of State	4/9/2010
Montana Heritage Preservation and Development Commission (Commerce)		
Mr. Randy Hafer, Billings Qualifications (if required): business person	Governor	5/23/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Preservation and Development Commission (Commerce) cont. Ms. Marilyn Ross, Twin Bridges Qualifications (if required): historic preservation representative	Governor	5/23/2010
Mr. Colin Mathews, Virginia City Qualifications (if required): public representative	Governor	5/23/2010
Mr. Philip Maechling, Florence Qualifications (if required): community planner	Governor	5/23/2010
Montana Potato Commodity Advisory Committee (Agriculture) Mr. John Venhuizen, Manhattan Qualifications (if required): not listed	Director	5/20/2010
Mr. Don Steinbeisser Jr., Sidney Qualifications (if required): not listed	Director	5/20/2010
Montana State University Local Executive Board (University System) Ms. Sharon McDonald, Melville Qualifications (if required): public representative	Governor	4/15/2010
Montana State University Local Executive Board - Billings (University System) Ms. Kris Carpenter, Billings Qualifications (if required): public representative	Governor	4/15/2010
Montana State University Local Executive Board - Northern (University System) Mr. Darrell Briese, Havre Qualifications (if required): public representative	Governor	4/15/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State University-Great Falls College of Technology Local Executive Board (University System) Ms. Joan Bennett, Great Falls Qualifications (if required): public representative	Governor	4/15/2010
Montana-Canadian Provinces Relations Advisory Council (Commerce) Rep. Hal Jacobson, Helena Qualifications (if required): Legislative representative	Governor	4/9/2010
Lt. Governor John Bohlinger, Helena Qualifications (if required): Lieutenant Governor	Governor	4/9/2010
Sen. Trudi Schmidt, Great Falls Qualifications (if required): Legislative representative	Governor	4/9/2010
Rep. Wayne Stahl, Saco Qualifications (if required): Legislative representative	Governor	4/9/2010
Rep. Kendall Van Dyk, Billings Qualifications (if required): Legislative representative	Governor	4/9/2010
Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roger A. Noble, Kalispell Qualifications (if required): representative of the petroleum services industry	Governor	6/30/2010

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Environmental Quality) cont.		
Mr. Greg Cross, Billings Qualifications (if required): representative of the independent petroleum marketing industry	Governor	6/30/2010
Mr. Karl Hertel, Moore Qualifications (if required): insurance industry representative	Governor	6/30/2010
Postsecondary Scholarship Advisory Council (Higher Education)		
Ms. Connie Wittak, Flaxville Qualifications (if required): having experience in secondary education	Governor	6/20/2010
Southwestern Montana State Veterans' Home Site Selection Committee (Public Health and Human Services)		
Rep. Robert "Bob" Pavlovich, Butte Qualifications (if required): resident of Silver Bow County and honorably discharged veteran	Governor	4/1/2010
Mr. Bill Willing, Anaconda Qualifications (if required): resident of Deer Lodge County and honorably discharged veteran	Governor	4/1/2010
Mr. Larrey Lattin, Boulder Qualifications (if required): resident of Jefferson County and honorably discharged veteran	Governor	4/1/2010
Mr. Lyle Gillette, Deer Lodge Qualifications (if required): resident of Powell County and honorably discharged veteran	Governor	4/1/2010
Ms. Susan Cobb, Twin Bridges Qualifications (if required): resident of Madison County and an honorably discharged veteran	Governor	4/1/2010

State-Tribal Economic Development Commission (Commerce)

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Ms. Emorie Davis-Bird, Browning Qualifications (if required): alternate representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Walter White Tail Feather, Poplar Qualifications (if required): alternate representative of the Fort Peck Assiniboine & Sioux Tribes	Governor	6/30/2010
Mr. Rodney Miller, Wolf Point Qualifications (if required): representative of the Fort Peck Assiniboine and Sioux Tribes	Governor	6/30/2010
Ms. Lola Wippert, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Ronald (Smiley) Kittson, Browning Qualifications (if required): alternate representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Ronald (Smiley) Kittson, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2010
Mr. Jerry Lamb, Helena Qualifications (if required): representative of the Governor's Office of Economic Development	Governor	6/30/2010
University of Montana Local Executive Board (University System) Ms. Ann Boone, Missoula Qualifications (if required): public representative	Governor	4/15/2010

University of Montana Local Executive Board - Western (University System)

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2010 THROUGH JUNE 30, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mr. William Kriegel, Dillon Qualifications (if required): public representative	Governor	4/15/2010
University of Montana-Helena College of Technology Local Executive Board (University System) Mr. Pat Clinch, Helena Qualifications (if required): public representative	Governor	4/15/2010
University of Montana-Montana Tech Local Executive Board (University System) Mr. Tony Laslovich, Anaconda Qualifications (if required): public representative	Governor	4/15/2010
Western Interstate Commission for Higher Education (Higher Education) Sen. Dan W. Harrington, Butte Qualifications (if required): legislator	Governor	6/19/2010