

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 2.21.6702, 2.21.6703, 2.21.6708,) AMENDMENT
and 2.21.6709 pertaining to the)
Incentive Award Program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On April 12, 2010, the Department of Administration proposes to amend the above-stated rules pertaining to the Incentive Award Program.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Brent Reinhardt, Department of Administration, P.O Box 200127, Helena, Montana, 59620-0127; telephone (406) 444-3852; fax (406) 444-0703; Montana Relay Service 711 or TDD (406) 444-3852; or e-mail breinhardt@mt.gov.

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

2.21.6702 DEFINITIONS (1) The definitions provided in 2-18-1101, MCA, apply to this subchapter. ~~As used in this sub-chapter, the following definitions apply:~~

~~(1) "Agency head" means, as defined in 2-18-1101, MCA, "a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of a unit of the Montana university system."~~

~~(2) "Employee" means, as defined in 2-18-1101, MCA, "any employee of the executive, legislative, or judicial branch or the Montana university system."~~

~~(3) "Group or team of employees" means, as defined in 2-18-1101, MCA, "a group, team or work unit of employees working cooperatively."~~

AUTH: 2-18-1103, MCA

IMP: 2-18-1101, 2-18-1102, 2-18-1103, ~~2-18-1104~~, 2-18-1105, 2-18-1106,
MCA

STATEMENT OF REASONABLE NECESSITY: These definitions unnecessarily repeat statute, which is prohibited by the Montana Administrative Procedure Act. In addition, 2-18-1104, MCA, is being deleted as an implemented statute as it was repealed in 1993, but the rule does not reflect this change.

2.21.6703 POLICY AND OBJECTIVES (1) ~~It is the~~ The policy of the state of Montana ~~that is:~~

(a) ~~there be~~ an incentive award program ~~that recognizes~~ exists recognizing and monetarily ~~rewards~~ rewarding individual employees, groups, or teams of employees, and nonemployees, ~~as provided in 2-18-1105, MCA~~ for:

(i) "ideas, innovations, or prototypes ~~efforts~~ that significantly contribute to documented achievements or outcomes eliminating or reducing an agency's expenditures; or

(ii) improving the effectiveness or services of state government ~~or improving services to the public~~ by permitting more work to be accomplished within an agency without increasing the cost of governmental operations;"

(b) ~~each state agency~~ managers shall administer the incentive program in a fair and equitable manner and make reasonable accommodation for persons with disabilities who wish to participate in the incentive award program; and

(c) all documents and meetings related to ~~the~~ this program's administration of ~~this program~~ are public information ~~and any meetings called to administer this program is a public meeting.~~

(2) ~~It is the objective of this policy~~ The policy's objective is to:

(a) and (b) remain the same.

AUTH: 2-18-1103, MCA

IMP: 2-18-1101, 2-18-1102, 2-18-1103, ~~2-18-1104~~, 2-18-1105, 2-18-1106,
MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-18-1104, MCA, is being deleted as an implemented statute as it was repealed in 1993, but the rule does not reflect this change.

2.21.6708 PROGRAM ADMINISTRATION (1) through (2)(c) remain the same.

(3) To assist agencies in making incentive awards, as provided in 2-18-1103, MCA, the ~~d~~Department of aAdministration ~~may~~ shall develop the following materials, including, but not limited to:

(a) remains the same.

(b) a guide ~~to requirements of the program~~ to assist an agency head in evaluating the impact of outcomes and achievements or nominations and in determining a monetary value.

AUTH: 2-18-1103, MCA

IMP: 2-18-1103, MCA

2.21.6709 REPORTING REQUIREMENTS (1) ~~In order to comply with 2-18-1106, MCA, each~~ Each agency shall submit to the ~~d~~Department of aAdministration a list of including:

(a) the number of incentive awards granted; and

(b) to whom each award was granted; and

(c) the estimated value of each achievement or outcome; and

(d) the amount of each award.

(2) The information must be submitted ~~on~~ in a format prescribed by the department ~~with 30 days after the end of~~ by August 1 of each fiscal year.

AUTH: 2-18-1103, MCA

IMP: 2-18-1106, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Administration is reviewing and revising rules to conform to 2-4-314(1), MCA, which directs departments to conduct biennial review of their rules and modify and amend them if necessary. The last written update of this policy was in 1994. The department has also determined that it is necessary to update and revise the Incentive Award Program policy to support the Governor's initiative to encourage cost saving ideas, and to enhance readability. Although the material in these rules is available to state employees, nonemployees are also eligible for awards and recognition under this statute. There remains enough potential effect on the general public to preserve this information, and make it available, in administrative rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Brent Reinhardt, Department of Administration, P.O Box 200127, Helena, MT 59620; telephone (406) 444-3852; fax (406) 444-0703; or e-mail breinhardt@mt.gov; and must be received no later than 5:00 p.m., April 9, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above at the above address no later than 5:00 p.m., April 9, 2010.

6. If the department 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 has been determined to be approximately 1,200 persons based on the number of state employees.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding the State Human Resources Division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State March 1, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULE I, and the repeal of ARM)	PROPOSED ADOPTION AND
24.16.201, 24.16.202, 24.16.203,)	REPEAL
24.16.204, 24.16.205, and 24.16.206,)	
regarding employment of persons in)	
an executive, administrative, or)	
professional capacity)	

TO: All Concerned Persons

1. On April 2, 2010, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on March 26, 2010, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Pamila McDaniel, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-4663; fax (406) 444-7071; TDD (406) 444-0532; or e-mail pmcdaniel@mt.gov.

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

NEW RULE I EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES (1) As used in this rule, including in those materials incorporated by reference, the following definitions apply:

(a) "Act" means the minimum wage and overtime laws, as found at Title 39, chapter 3, part 4, MCA.

(b) "Administrator" means the administrator of the employment relations division of the department.

(c) "Commissioner" means the commission of labor and industry.

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

(2) In order to ease any disparity between state and federal requirements, and to make it easier for employers and employees to understand the wage and hour provisions applicable to bona-fide executive, administrative, professional employees, and for persons employed in an outside sales capacity, the commissioner finds that it is appropriate that Montana harmonize its treatment of those employees under state wage and hour laws with the federal treatment of those same classes of persons under the Fair Labor Standards Act, 29 USC 201, et seq.

(3) The following federal regulations are adopted by reference:

(a) 29 CFR part 541, subpart A, as in effect on July 1, 2009.

(b) 29 CFR part 541, subpart B, as in effect on July 1, 2009, except the dollar threshold amount in 29 CFR 541.100(a)(1) is changed to the amount specified in (5).

(c) 29 CFR part 541, subpart C, as in effect on July 1, 2009, except the dollar threshold amount in 29 CFR 541.200(a)(1) is changed to the amount specified in (5).

(d) 29 CFR part 541, subpart D, as in effect on July 1, 2009, except the dollar threshold amount in 29 CFR 541.300(a)(1) is changed to the amount specified in (5).

(e) 29 CFR part 541, subpart F, as in effect on July 1, 2003.

(f) 29 CFR part 541, subpart G, as in effect on July 1, 2009, except:

(i) the dollar threshold amount in 29 CFR 541.600(a) is changed to the amount specified in (5);

(ii) the amounts in 29 CFR 541.600(b) are adjusted to a comparable amount based on a minimum weekly salary of the amount specified in (5); and

(iii) the dollar threshold amount in 24 CFR 541.601(b) is changed to the amount specified in (5).

(g) 29 CFR part 541, subpart H, as in effect on July 1, 2009.

(4) Section 39-3-406, MCA, does not recognize a minimum wage or overtime exemption for certain computer employees, as described in 29 CFR part 541, subpart E. Accordingly, the references to exemptions for computer employees that are contained in the following rules do not apply in Montana:

(a) 29 CFR 541.600;

(b) 29 CFR 541.702;

(c) 29 CFR 541.705;

(d) 29 CFR 541.708; and

(e) 29 CFR 541.710.

(5) The dollar threshold amount to be used in each rule is a weekly salary rate equal to the state's average weekly wage, as established annually by the department.

(6) Copies of the regulations incorporated by reference are available as follows:

(a) A printed copy of the regulations incorporated by reference is available for inspection and purchase at cost from the department and the U.S. Government printing office. The address for the department is: Montana Department of Labor and Industry, Employment Relations Division, Labor Standard Bureau, 1805 Prospect Avenue, P.O. Box 201503, Helena, Montana, 59620-1503. The address of the U.S. Government printing office is: U.S. Government Bookstore, 710 North Capitol Street N.W., Washington, D.C.

(b) An electronic copy of the regulations incorporated by reference is available via the internet by following the links at the following web sites:

(i) <http://erd.dli.mt.gov/> (Montana Department of Labor and Industry web site); and

(ii) http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/toc.htm (U.S. Department of Labor web site).

AUTH: 39-3-403, MCA

IMP: 39-3-401, 39-3-406, 39-3-408, MCA

REASON: There is reasonable necessity to adopt NEW RULE I in order to harmonize Montana law regarding the treatment of persons employed in a bona fide capacity as executive, administrative, or professional employee, and of persons employed in an outside sales capacity with the treatment of those individuals as it exists under the federal Fair Labor Standards Act, 29 USC §§ 201, et. seq. ("the FLSA"). Montana's administrative treatment of these classes of workers has, until a few years ago, historically mirrored federal practices and regulations. The Montana Department of Administration is currently reviewing and revising a number of its policies. The proposed rule changes are made in response to the concerns recently expressed by the Department of Administration regarding the interplay between current federal FLSA regulations and the existing Montana administrative rules, particularly with respect to the Department of Administration's "salary basis policy."

The department notes that it is specifically not incorporating by reference the federal regulations found in 29 CFR part 541, subpart E, pertaining to computer professionals. Section 39-3-406(1)(j), MCA, does not include "computer employees", as described in 29 CFR part 541, as members of the class of persons exempted from Montana's minimum wage and overtime laws, and therefore the department believes that it lacks statutory authority to adopt by incorporation those federal "computer employees" regulations. There is reasonable necessity to make reference in NEW RULE I to clarify that other references to exemptions for "computer employees" in rules that are incorporated by reference do not apply in Montana, so as not to confuse or mislead employers or employees.

The department also notes that it is proposing to incorporate by reference the 2003 version of 29 CFR Part 541, subpart F, rather than the current version of the rules, due to the specific reference contained in § 39-3-406(1)(j) to persons employed "in an outside sales capacity, as defined in 29 CFR 541.5." In 2004, 29 CFR 541.5 was repealed, and the definition of "an employee employed in the capacity of an outside salesman" was moved from 29 CFR 541.5 to 29 CFR 541.500. While the department believes that the intent of pre-2004 definition is similar to the post-2004 definition in the federal rules, the department concludes it is constrained by the express statutory reference in Montana law to use the previous version of the federal regulations relating to outside sales employees.

The department concludes that there is reasonable necessity to adopt a higher minimum weekly salary than provided for under federal law in order to qualify as a bona fide executive, administrative, or professional employee who is exempt from Montana's minimum wage and overtime laws because the federal salary rate is based upon national 2002 wage data, which has not been adjusted for wage growth since that time. The Montana state's average weekly wage (for wage earners) applicable in state fiscal year 2010 is \$626, and represents an approximate 38% wage growth over the 2002 state's average weekly wage. Adjusting for wage growth by the same percentage, the federal rate would now equal \$627.39 per week, which is nearly identical to the state's average weekly wage. Accordingly the department finds that the state's average weekly wage reasonably approximates the amount of

wages which would be reflected if the federal rates had been adjusted by the percentage of wage growth.

The department also notes that the public policy of the state of Montana, as expressed in 39-3-401, MCA, is that its minimum wage and overtime laws are designed to:

- (1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;
- (2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and
- (3) sustain purchasing power and increase employment opportunities.

The department concludes that the public policy considerations of Montana minimum wage and overtime laws are furthered by limiting the exceptions from those laws to situations involving bona fide executive, administrative, and professional employees who are paid a weekly salary that is at least equal to the state's average weekly wage.

4. The department proposes to repeal the following rules:

24.16.201 EXECUTIVE, found at page 24-937 of the Administrative Rules of Montana (ARM).

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

24.16.202 ADMINISTRATIVE, found at ARM pages 24-937 and 24-938.

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

24.16.203 PROFESSIONAL, found at ARM pages 24-938 and 24-939.

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

24.16.204 EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY, found at ARM pages 24-939 through 24-955.

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

24.16.205 EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY, found at ARM pages 24-955 through 24-969.

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

24.16.206 EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY, found at ARM pages 24-969 through 24-977.

AUTH: 39-3-403, MCA
IMP: 39-3-406(1)(j), MCA

REASON: There is reasonable necessity to repeal the six existing rules so they do not conflict with the federal regulations proposed to be incorporated by reference in NEW RULE I. The rules proposed for repeal are based on (or repeat verbatim) pre-2004 versions of various federal regulations implementing the Fair Labor Standards Act.

5. A copy of the rules proposed for repeal can be obtained by contacting the person whose name and address are in paragraph 2, or via the internet at <http://www.mtrules.org/> by entering the rule number for each rule sought.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Pamila McDaniel, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to pmcdaniel@mt.gov, and must be received no later than 5:00 p.m., April 9, 2010.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark

Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State March 1, 2010

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of) NOTICE OF PUBLIC HEARING ON
24.114.403 business entity practice) PROPOSED REPEAL
and 24.114.405 branch offices)

TO: All Concerned Persons

1. On April 1, 2010, at 1:30 p.m., a public hearing will be held in room 430, 301 South Park Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects and Landscape Architects (board) no later than 5:00 p.m., on March 26, 2010, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdark@mt.gov.

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

GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to repeal ARM 24.114.403 and 24.114.405 that deal with business entity practice and branch offices. The board has the statutory authority to issue licenses to individuals but not firms, and therefore the board lacks the authority to enforce these rules against entities. The board recognizes that the issue of enforcement of these rules may be questioned during an audit and decided to repeal these rules.

24.114.403 ARCHITECT BUSINESS ENTITY PRACTICE found at ARM page 24-8024.

AUTH: 35-4-301, 35-8-1304, 37-1-131, 37-65-204, MCA
IMP: 35-4-205, 35-4-207, 35-4-208, 35-4-209, 35-4-301, 35-8-1301, 35-8-1304, 37-65-101, 37-65-302, MCA

24.114.405 QUALIFICATIONS REQUIRED FOR MONTANA BRANCH OFFICE found at ARM page 24-8024.

AUTH: 37-1-131, 37-65-204, MCA
IMP: 37-65-303, MCA

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; by facsimile to (406) 841-2309; or by e-mail to dlibsdark@mt.gov; and must be received no later than 5:00 p.m., April 9, 2010.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdark@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

/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 1, 2010

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

In the matter of the amendment of)
[Proposed New Rule IV, MAR Notice)
No. 24-155-1] definitions, and the)
adoption of NEW RULES I and II,)
pertaining to licensure requirements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 1, 2010, at 9:00 a.m., a public hearing will be held in room 430, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy (board) no later than 5:00 p.m., on March 26, 2010, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 451, Laws of 2009 (House Bill 662), creating the Board of Massage Therapy (board) and setting forth the requirements for the licensure and regulation of massage therapists. The bill was signed by the Governor and became effective on May 5, 2009.

The board determined it is reasonable and necessary to adopt new rules to further implement the legislation. New Rule I sets forth the requirements for licensure by endorsement. The board has already proposed requirements for licensure by examination and grandfather clause in MAR Notice No. 24-155-1, which was published January 28, 2010. The board is proposing New Rule II to specify acceptable curriculum guidelines for massage therapy programs to comply with 37-33-502, MCA, for applicants for licensure by examination.

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

[Proposed New Rule IV, MAR Notice No. 24-155-1] DEFINITIONS (1)
through (4) remain the same.

(5) "School-sanctioned activity" for purposes of 37-33-404, MCA, means an activity:

(a) that is approved, endorsed, or provided by the board-approved program in which the student is enrolled;

(b) the purpose of which is to allow students to practice their massage therapy skills under particular, limited circumstances; and

(c) that does not allow or facilitate a student to establish a massage therapy practice or avoid licensure.

(6) "Supervision," for the purposes of 37-33-404, MCA, means the oversight and review of the student's work to a degree necessary to ensure the protection of the health, safety, and welfare of the public, but not to a degree less than the immediate and constant availability of the supervisor via telephone, throughout the school-sanctioned activity.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-33-404, MCA

REASON: The board is amending this rule to further define terms used in 37-33-404, MCA. The board determined it is reasonably necessary to add definitions of school-sanctioned activity and supervision to clarify the exemption from licensure for massage therapy students.

4. The proposed new rules provide as follows:

NEW RULE I LICENSURE BY ENDORSEMENT (1) All applicants for licensure by endorsement shall submit a completed application on a form prescribed by the department.

(2) The application shall be deemed incomplete until all of the following are received by the board, in conjunction with the application:

(a) the appropriate fee;

(b) a copy of a certified transcript or certificate of completion sent directly from the official custodian of the record, evidencing to the board's satisfaction that the applicant has a high school diploma or its equivalent;

(c) proof that the applicant is eighteen years of age or older;

(d) two letters attesting to the good moral character of the applicant, submitted directly to the board office by individuals who are not the applicant's family members; and

(e) verification of an active license, certification, or registration in good standing from another state or jurisdiction, whose current requirements include each of the following:

(i) a minimum of 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the national commission for certifying agencies or its equivalent or successor; and

(ii) a passing score on either the MBLEx, NCETMB, or the NCETM examination, or a state examination deemed to be equivalent.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-131, 37-1-304, 37-33-502, MCA

NEW RULE II CURRICULUM GUIDELINES (1) The Board of Massage Therapy has recognized the program curriculum guidelines of the National Certification Board for Therapeutic Massage and Bodywork as meeting or exceeding the requirements of 37-33-502, MCA. The recognized curriculum guidelines are as follows:

(a) 200 hours of in-class and instructor-supervised massage and bodywork assessment, theory, and application instruction;

(b) 125 hours of instruction on the body systems (anatomy, physiology, and kinesiology);

(c) 40 hours of pathology;

(d) ten hours of business and ethics instruction (a minimum of six hours in ethics); and

(e) 125 hours of instruction in an area or related field that completes the massage program of study.

(2) Other curriculum guideline submissions will be evaluated by the board for compliance with 37-33-502, MCA, on a case-by-case basis.

AUTH: 37-1-131, 37-33-405, MCA

IMP: 37-1-131, 37-33-502, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., April 9, 2010.

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

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

Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdlmt@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on November 16, 2009, by telephone.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

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 1, 2010

BEFORE THE BOARD OF PRIVATE SECURITY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.182.301 definitions,)
24.182.401 fee schedule, 24.182.420)
firearms, 24.182.421 requalification,)
24.182.501 application, 24.182.503)
experience requirements, 24.182.505)
written examination, 24.182.507)
temporary permit, 24.182.511 trainee,)
24.182.520 firearms licensure, and)
24.182.2301 unprofessional conduct)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2010, at 9:00 a.m., a public hearing will be held in room 430, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Security (board) no later than 5:00 p.m., on March 30, 2010, to advise us of the nature of the accommodation that you need. Please contact Susan Wevley, Board of Private Security, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2334; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdp@mt.gov.

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

24.182.301 DEFINITIONS ~~As used in Title 37, chapter 60, MCA, and this chapter, the following definitions apply:~~

(1) and (2) remain the same.

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

(3) "POST" means the Montana Public Safety Officer Standards and Training Council.

~~AUTH: This rule is advisory only, but may be a correct interpretation of the law, 37-1-131, 37-60-202, MCA~~

IMP: 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding the definition for the Montana Public Safety Officer Standards and Training

Council or POST. The board is amending rules within this rulemaking project that include the abbreviated term.

At this time the board is also striking disclaimer language from the rulemaking authority citation, which was discovered during a review of the rules. The board determined that the advisory disclaimer likely applied to some interpretive definitions that are no longer included in this rule. The board concluded that since clear rulemaking authority exists for the board to implement statutes through the three existing definitions as well as the new definition proposed in this notice, the disclaimer language does not apply and is now unnecessary. Although the disclaimer language is not generally set forth in rule notices, the board determined it is reasonable and necessary to include it so the public is aware of the language and its removal.

24.182.401 FEE SCHEDULE (1) and (1)(a) remain the same.

(i) Company	\$200	<u>225</u>
(ii) Resident manager	400	<u>150</u>
(iii) Security guard, alarm installer, or alarm response runner	25	<u>75</u>
(iv) Branch office	25	<u>75</u>
(b) Private investigator	200	<u>225</u>
(c) Private investigator trainee	400	<u>125</u>
(d) Fire investigator		<u>200</u>
(d) Process server		<u>75</u>
(e) Certified firearms instructor	400	<u>125</u>
(f) Armed status <u>endorsement</u>	25	<u>30</u>
(2) and (2)(a) remain the same.		
(i) Company	400	<u>175</u>
(ii) Resident manager	75	<u>100</u>
(iii) Security guard, alarm installer, or alarm response runner	45	<u>75</u>
(iv) Branch office	25	<u>75</u>
(b) Private investigator	400	<u>150</u>
(c) Private investigator trainee	45	<u>75</u>
(d) Fire investigator		<u>100</u>
(d) Process server		<u>75</u>
(e) remains the same.		
(f) Armed status <u>endorsement</u>	25	<u>30</u>
(3) through (3)(b) remain the same.		
(c) Changes of employer, <u>supervisor</u> , address, or name		10
(d) List of licensees for continuing education purposes only		40
(e) (d) Training program certification (application and renewal)		50
<u>(4) Examination fees are as follows:</u>		
<u>(a) Process server</u>		<u>25</u>
<u>(b) All other exams</u>		<u>20</u>

~~(4)~~ (5) Fees for applicant fingerprint checks are set by the FBI and Montana Department of Justice, and are subject to change. Current fee amounts for fingerprint checks are available at the ~~board office~~ Montana Department of Justice.

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

AUTH: 37-1-134, ~~37-1-141~~, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

REASON: The 2009 Montana Legislature enacted Chapter 194, Laws of 2009 (House Bill 354), an act eliminating the definition of and references to fire investigators in laws governing private investigators and private security, eliminating the need for a separate fire investigation license, and including investigation of fires among a licensed private investigator's activities. The bill was signed by the Governor on April 9, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to amend this rule and ARM 24.182.503 to implement the legislation by eliminating fees and licensure requirements previously associated with the fire investigator license.

The 2007 Montana Legislature enacted Chapter 405, Laws of 2007 (Senate Bill 209), an act transferring the regulation of process servers to the board. The bill was signed by the Governor on May 3, 2007, and became effective July 1, 2007. The board is amending this rule to set commensurate fees for process server examination, initial registration, and renewal registration, which were previously set in statute and repealed by the legislation. The board estimates these new fees will affect approximately 195 persons and result in a \$7,270 increase in annual revenue.

After considerable review and discussion of the board's budget and income, the board determined that it is reasonably necessary to make the proposed fee changes to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the licensure and renewal fees are increased as proposed by fiscal year 2010, the board will have a negative cash balance and shortage of operating funds by 2010 fiscal year end. The board estimates that approximately 2308 persons will be affected by the proposed fee changes and annual revenue will be increased by \$78,960.

The board is amending (3) to clarify for licensees that armed status is an endorsement to the security guard and private investigator licenses. The board is also amending (3) to delete the fee for licensee lists as the fees are now contained in department rules. The board is striking the renewal provision from (3)(e) because training program certifications are not renewable. If a training program changes, licensees are required to reapply for certification.

The board is adding new (4) to set forth exam fees for process servers and the other license types that require examination by the board. These fees are commensurate with the costs of administering these licensure exams.

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

24.182.420 TYPE OF FIREARM (1) Upon receipt of armed endorsement, a licensee is ~~endorsed and~~ approved by the board to carry the firearm(s) ~~(by make and caliber)~~ with which the licensee is trained or qualified ~~with~~ through a board

~~approved licensed firearms~~ Montana POST certified instructor or a Montana licensed certified firearms instructor (CFI) and a board approved course.

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-60-202, 37-60-405, MCA

REASON: The board is amending this rule to remove the specification of armed endorsement by firearm make and caliber. The board discussed this issue at length and concluded that the board ensures the public's safety by reviewing and approving safe gun-handling courses. The board determined that endorsement for a particular weapon's caliber or make has nothing to do with safe handling and is amending the rule accordingly.

The board is amending this rule and ARM 24.182.421 in response to questions concerning the meaning of "board approved firearms instructor" and armed endorsement. The board concluded that applicants seeking original armed endorsement and those renewing must qualify and requalify with either a Montana Public Safety Officer Standards and Training Council (POST) certified instructor or a Montana licensed certified firearms instructor (CFI). The board determined that because Montana POST certified instructors focus on Montana laws and regulations in their training, they will better prepare licensees for armed endorsement in Montana than out-of-state POST instructors.

24.182.421 REQUALIFICATION REQUIRED ANNUALLY (1) Licensees with armed status shall requalify annually with a ~~board-approved firearms~~ Montana POST certified instructor or a Montana licensed certified firearms instructor (CFI) to maintain their firearm endorsement each year. Requalification will be based upon satisfactory completion of a ~~board-approved~~ board approved combat shooting course at least once during each year.

AUTH: 37-60-202, MCA
IMP: 37-60-202, 37-60-303, MCA

24.182.501 REQUIRED INFORMATION FOR APPLICATION (1) Prior to granting any license, the board shall verify the statements made in applications for licensure as deemed necessary to protect the public health, safety and welfare. ~~The board shall notify local law enforcement pursuant to 37-60-304, MCA.~~

(2) and (3) remain the same.

(4) Fingerprints required under Title 37, chapter 60, MCA, shall be submitted to the Federal Bureau of Investigation and the Montana Department of Justice for examination. ~~The board may issue a temporary practice permit upon receipt of the criminal history report from the Montana Department of Justice.~~ Final licensure is granted only following receipt and review of the Federal Bureau of Investigation report and any investigations thereof. A fingerprint report is valid for one year from date of receipt of the report from the Federal Bureau of Investigation.

(5) An applicant for private investigator, or resident manager ~~or qualifying agent~~ must list the names and telephone numbers of three references not related to the applicant by blood or marriage. Two of the three references must be:

(a) through (7) remain the same.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-304, MCA

REASON: The 2005 Montana Legislature enacted Chapter 126, Laws of 2005 (House Bill 203), an act generally revising laws relating to professional and occupational licensing. The bill was signed by the Governor on March 30, 2005, and became effective July 1, 2005. The board is amending (1) to further implement the legislation by striking a reference to a provision that was deleted from statute in the 2005 legislation, but was inadvertently omitted from previous rulemaking projects.

The board is amending (4) to adjust the rule to current licensure processes. The board notes that the criminal background results from the Montana Department of Justice are now received at the same time as those from the Federal Bureau of Investigation. Since there is no longer a time lag between the two results, the board is amending the rule accordingly to eliminate these temporary permits.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is amending (5) to further implement the legislation by striking a reference to the licensure of qualifying agents, which was deleted from statute in the 2007 legislation, but was missed from previous rulemaking projects.

24.182.503 EXPERIENCE REQUIREMENTS (1) through (3)(a)(i) remain the same.

(ii) employed as a private investigator or having held a certificate of authority to conduct a private investigative business; ~~or~~

(iii) having been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; ~~or~~

(iv) engaged in the fire investigative business or having been a fire investigator.

(b) and (c) remain the same.

~~(4) Experience requirements for fire investigators are as follows:~~

~~(a) three years full-time experience:~~

~~(i) engaged in the fire investigative business;~~

~~(ii) employed as a fire investigator or having held a certificate of authority to conduct a fire investigative business; or~~

~~(iii) having been a fire investigator or held a similar position acceptable to the board with a city, county, or state government or with the United States government.~~

~~(b) In determining experience qualifications for fire investigator licensure, "three years" means an accumulation of 5400 hours of experience. Self-employment must be verified by tax returns.~~

(5) and (6) remain the same but are renumbered (4) and (5).

(7) (6) A combination of experience, education, and training may be used to meet the experience requirement, but education and training may not exceed 1/2 one-half of the experience required.

AUTH: 37-1-131, 37-60-202, 37-60-303, MCA

IMP: 37-1-131, 37-60-301, 37-60-303, 37-60-304, MCA

24.182.505 WRITTEN EXAMINATION (1) An applicant for licensure as a private investigator, or a resident manager, ~~a firearms instructor, or a security alarm installer~~ shall take and pass a written examination.

(2) through (9) remain the same.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule and remove the written examination as a licensure requirement for firearms instructors and security alarm installers. The board notes that security alarm installers typically do not attend school in their profession, but obtain the experience through individualized on-the-job training. The board concluded that requiring passage of a standardized exam is therefore unrealistic and unnecessary.

The board is amending this rule and ARM 24.182.520 by removing the licensure examination requirement for firearms instructors. Certified firearms instructors (CFIs) are required to successfully complete a firearms instructor training course, which includes a written test, to qualify for licensure. In addition, CFIs must submit all proposed firearms courses for board approval prior to offering the courses. The board concluded that these requirements adequately ensure qualified instructors and courses and an additional licensure exam is unnecessary.

24.182.507 TEMPORARY PERMIT (1) through (3) remain the same.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-1-305, 37-60-302, 37-60-309, 37-60-310, ~~37-60-312, 37-60-407~~,
MCA

REASON: Implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete reference to a repealed statute.

24.182.511 PRIVATE INVESTIGATOR TRAINEE (1) through (4) remain the same.

(5) Trainee licenses may be renewed a maximum of four times.

(6) Private investigator trainees must take the private investigator licensure examination within one year from meeting the age and experience requirements.

(5) remains the same but is renumbered (7).

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-1-131, 37-60-202, MCA

REASON: The board is amending this rule to address renewals of private investigator trainee licenses. The board notes that some individuals have held trainee licenses for several years, without ever applying to become fully licensed as

a private investigator. The board determined that limiting trainee licenses to five total years and requiring trainees to test for private investigator licensure within a year after meeting the other minimum requirements furthers legislative intent and the public's protection.

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

24.182.520 REQUIREMENTS FOR FIREARMS INSTRUCTOR LICENSURE

(1) and (2) remain the same.

~~(3) An applicant must successfully pass any required written examination with a score of 70 percent or higher.~~

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

AUTH: 37-60-202, MCA

IMP: 37-1-131, 37-60-202, MCA

REASON: The board concluded that it is not necessary to require a written examination for firearms instructor licensure and is striking the requirement from ARM 24.182.505 in this notice. The board is amending this rule to align with the other rule changes.

24.182.2301 UNPROFESSIONAL CONDUCT ~~The term "unprofessional conduct" as used in 37-1-316 and 37-1-319, MCA, is defined to include the following:~~

(1) through (15) remain the same.

(16) Failing to account for funds received in connection with any services rendered or to be rendered; ~~and~~

(17) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose; ~~and~~

(18) Failure to respond to a board or department request or inquiry.

AUTH: 37-1-131, 37-1-319, 37-60-202, MCA

IMP: 37-1-131, 37-1-316, 37-60-202, 37-60-401, MCA

REASON: The board is amending this rule by adding to the actions the board considers being unprofessional conduct. The board concluded that a licensee's failure to provide response information to the board can adversely affect the board's ability to timely process applications or complete investigations. The board determined it is reasonably necessary to consider this type of nonresponse as unprofessional conduct. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority. The board is also removing unnecessary lead-in language from the rule in compliance with ARM formatting requirements.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to the Board of Private Security, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; by facsimile to (406) 841-2309; or by e-mail to dlibsdp@mt.gov; and must be received no later than 5:00 p.m., April 13, 2010.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 27, 2009, by telephone.

8. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE SECURITY
HOLLY DERSHEN-BRUCE,
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 1, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I,)
amendment of ARM 42.15.107, 42.15.108,)
42.15.109, 42.15.110, 42.15.112, 42.15.119,)
42.15.120, 42.15.204, 42.15.205, 42.15.206,)
42.15.213, 42.15.214, 42.15.215, 42.15.216,)
42.15.217, 42.15.218, 42.15.219, 42.15.220,)
42.15.221, 42.15.222, 42.15.301, 42.15.303,)
42.15.310, 42.15.312, 42.15.315, 42.15.316,)
42.15.317, 42.15.318, 42.15.319, 42.15.320,)
42.15.321, 42.15.322, 42.15.325, 42.15.326,)
42.15.327, 42.15.328, 42.15.401, 42.15.402,)
42.15.403, 42.15.407, 42.15.414, 42.15.427,)
42.15.510, 42.15.523, 42.15.524, 42.15.525,)
42.15.526, 42.15.601, 42.15.602, 42.15.603,)
42.15.604, 42.15.605, 42.15.802, 42.15.803,)
42.15.804, 42.15.805, 42.15.806, 42.15.807,)
42.15.903, 42.15.906, relating to individual)
income taxes

NOTICE OF PUBLIC
HEARING ON PROPOSED
ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On March 31, 2010, at 1:00 p.m., a public hearing will be held in the Reception Area (Third Floor) 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., March 22, 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) 444-4375; 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 APPROVAL OF INNOCENT SPOUSE RELIEF

(1) Reasonable grounds for granting innocent spouse relief must be demonstrated in writing.

(2) Relief may not be granted in excess of the relief granted by the IRS.

(3) The following requirements must be met, before the department may consider an application for innocent spouse relief:

(a) the innocent spouse relief applicant must make a written request stating the reasons and specific periods for which the relief is requested;

(b) the innocent spouse relief applicant must have received Innocent Spouse Relief under section 6015 of the IRC from the IRS to be eligible for consideration by Montana; and

(c) the innocent spouse relief applicant must provide the Department of Revenue with complete copies of all correspondence to and from the IRS, and documentation that relief has been granted by the IRS for those periods.

(4) The innocent spouse relief applicant shall provide a copy of any court order stating that the spouse or former spouse is responsible for paying the taxes.

(5) The taxpayer shall include on the application any other documents and information demonstrating the reasons why relief should be granted, as required in 15-30-2646, MCA.

(6) Upon request, the innocent spouse relief applicant requesting relief shall provide any additional information necessary to compute each spouse's separate Montana tax liability.

(7) When the review has been completed, the applicant will be advised of the decision of the department, and given the option to appeal if they disagree with the decision.

(8) The provisions of this rule only apply to individual income tax liabilities arising from a joint Montana return for tax years beginning after December 31, 2002.

AUTH: 15-30-2620, 15-30-2646, MCA

IMP: 15-30-2646, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I in order to implement the innocent spouse relief provision established by Senate Bill 418, (Ch. 470, L. 2009), which was passed by the 2009 Montana Legislature.

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

42.15.107 DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) remains the same.

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

IMP: ~~15-30-101~~, 15-30-2101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.107 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.108 DETERMINING TAX LIABILITY (1) through (7) remain the same.

(8) Unless otherwise specified below, rules that address itemized deductions are found in ARM Title 42, chapter 15, subchapter 5. As provided in ~~15-30-123~~, 15-30-2133, MCA, deductions for expenses associated with the excluded income described in (6) are not allowed. Additional rules related to itemized deductions include:

(a) a rule describing the calculation of itemized deductions that are limited to a percent of Montana adjusted gross income;

(b) a rule describing how certain itemized deductions must be computed when a married taxpayer filing a joint federal income tax return files a separate Montana return; and

(c) a rule describing calculation of the Montana net operating loss.

(9) remains the same.

(10) The tax rates set forth in ~~15-30-103~~, 15-30-2103, MCA, are applied to Montana taxable income. Tax brackets are adjusted annually for inflation. The Montana tax liability of a nonresident or part-year resident is determined by multiplying the calculated tax by the ratio of Montana source income to total income.

(11) remains the same.

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

IMP: ~~15-30-101, 15-30-102, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-137, 15-30-2101, 15-30-2102, 15-30-2103, 15-30-2104, 15-30-2110, 15-30-2114, 15-30-2131, 15-30-2153~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.108 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.109 RESIDENCY (1) As provided in ~~15-30-101~~, 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.

(2) and (3) remain the same.

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

IMP: ~~15-30-101~~, 15-30-2101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.109 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.110 TAXATION OF NONRESIDENTS (1) remains the same.

(2) Part-year residents and nonresidents must include all Montana source income on Schedule III IV of Form 2. Montana source income is defined in ~~15-30-401, 15-30-2101~~, MCA.

(3) and (4) remain the same.

AUTH: 15-30-105, 15-30-2104, MCA

IMP: 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-121, 15-30-122, 15-30-131, 15-30-132, 15-30-135, 15-30-136, 15-30-137, 15-30-138, 15-30-2101, 15-30-2103, 15-30-2104, 15-30-2110, 15-30-2111, 15-30-2114, 15-30-2131, 15-30-2132, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2154, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.110 to correct the schedule number, which is necessary for part-year residents and nonresidents. Part-year residents and nonresidents now complete Schedule IV instead of Schedule III when filing their Montana tax returns. The department is also proposing to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.112 NONRESIDENT MILITARY PERSONNEL (1) through (4) remain the same.

(5) An example of how the tax liability would be calculated is:

(a) A nonresident serviceperson and their nonresident spouse who are filing a joint return have the following income:

Military compensation	\$ 40,000
Spouse's - Montana source income	\$ 30,000
Interest income - Joint	\$ 500
Dividend income - Joint	\$ 1,000
Total Income	\$ 71,500

(b) The exempt military compensation is a subtraction that reduces Montana adjusted gross income:

Gross income:	\$ 71,000
	<u>71,500</u>
Less: Exempt military compensation	(\$ 40,000)
Montana adjusted gross income	\$ 31,500

(c) The Montana personal and dependent exemptions and either the standard deduction or itemized deductions are subtracted from Montana adjusted gross income to determine Montana taxable income:

Montana adjusted gross income	\$ 31,500
Less: Deduction and exemptions	(\$ 17,340)
Taxable income	\$ 14,160

(d) The tax, determined on the taxable income, is multiplied by the ratio of Montana source income to total income from all sources except the exempt military compensation:

Montana source income	\$ 30,000
Total income from all sources except military compensation (\$30,000 + 500 + 1,000) =	\$ 31,500
Ratio \$30,000/\$31,500 =	.9523

(e) If the tax determined on the taxable income were \$1,000, the taxpayers' Montana tax liability would be \$952, the Montana tax liability of \$1,000 multiplied by .9523, the ratio of \$30,000 to \$31,500.

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: ~~15-30-101~~, 15-30-2101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.112 to update the name of the schedule used to report Montana source income and to correct the misstatement of gross income in (5)(b) from \$71,000 to \$71,500. The gross income should correlate to the total income defined in (5)(a). The department is also proposing to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.119 ALTERNATIVE TAX (1) ~~Effective with taxable years beginning on and after January 1, 1971, a~~ A nonresident taxpayer whose only activities in Montana consist of making sales and do not include owning or renting real or tangible personal property and whose dollar volume of gross sales made in Montana during the taxable year does not exceed \$100,000, may elect to pay a tax of 1/2% on the gross volume of sales made in Montana during the taxable year. Such tax is in lieu of the tax based upon net income as described in ~~15-30-405~~ 15-30-2101(1), MCA.

(2) remains the same.

AUTH: ~~15-30-305~~, 15-30-2104, 15-30-2620, MCA
IMP: ~~15-30-105~~, 15-30-2104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.119 to eliminate the outdated reference to the enactment of the alternative tax as a part of general rule cleanup. The department is also proposing to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.120 INTENT (1) For purposes of individual income taxes, the department adopts by reference the rules contained in ARM Title 42, chapter 26 = Corporate Multistate Activities, subchapters 1, 2, 4, 6, 7, 8, and 9 1- General

Provisions, as it existed on December 21, 2001; 2 – Income Allocation and Apportionment, as they existed on December 27, 2002; 4 – Special Rules Related to Installment Sales, as they existed on December 21, 2001; 6 - Railroads, as they existed on December 21, 2001; 7- Trucking, as they existed on December 21, 2001; 8 - Airlines, as they existed on December 21, 2001; 9 - Special Rules for Construction Contracts, as they existed on December 21, 2001; 10 - Publishing Companies - Apportionment, as they existed on April 23, 2004; and 11- Television and Radio Broadcasting, as they existed on December 27, 2002 April 23, 2004.

(2) remains the same.

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

IMP: 15-1-601, 15-30-134, 15-30-2111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.120 to include the references to rules being adopted by reference contained in ARM 42, chapter 26. Those rules became effective on various dates and it is necessary to indicate the effective date that is applicable to this adoption by reference action. The names of the subchapters are also provided so that this administrative rule provides more information for the user. The department is also adding reference to subchapters 10 and 11, neither of which was available when the rule was first written. This will provide filing guidance to taxpayers in these circumstances as the department has done in the allocation and apportionment rules previously cited. The department is also proposing to amend ARM 42.15.120 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.204 DEFINITIONS (1) remains the same.

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

IMP: 15-30-116, 15-30-2117, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.204 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.205 REFUNDS OF FEDERAL INCOME TAX (1) If a taxpayer claims an itemized deduction for federal income taxes paid under ~~15-30-124~~ 15-30-2131(1)(b), MCA, in one tax period and subsequently receives a refund of those taxes paid in another tax period, the amount of refund that is taxable under ~~15-30-444~~ 15-30-2110(1)(b), MCA, is computed as though the taxpayer had paid the proper amount of federal tax and claimed the appropriate deduction during the period. A taxpayer whose deduction for federal income taxes was limited under ~~15-30-124~~ 15-30-2131(1)(b), MCA, for tax years beginning after December 31, 2004, would only report the portion of their refund that reduces their tax paid below the applicable limitation.

(2) The following examples illustrate the application of this rule:

(a) Example 1 - Taxpayer A pays \$15,000 in federal income taxes in 2005 year one, has no other itemized deductions, files as 'single' on his Montana state income tax return, and receives a federal refund in 2006 year two of \$8,000. If the taxpayer had paid the proper tax during 2005 year one, his federal taxes paid would have been \$7,000. Since his Montana deduction for federal taxes is limited to \$5,000 in both situations, none of the refund would be included in Montana taxable income.

(b) Example 2 - Married taxpayers B and C pay \$20,000 in federal income taxes in 2005 year one, have no other itemized deductions, file as 'joint' on their Montana state income tax return, and receive a federal refund in 2006 year two of \$12,500. If the taxpayers had paid the proper tax during 2005 year one, their federal taxes paid would have been \$7,500. Since their Montana deduction for federal income taxes was limited to \$10,000, only \$2,500 of their federal refund would be included in Montana taxable income.

(c) Example 3 - Taxpayer D pays \$6,500 in federal income taxes in 2005 year one, has other itemized deductions totaling \$4,500, files as 'single' on her Montana state income tax return, and receives a federal refund in 2006 year two of \$4,100. If the taxpayer had paid the proper tax during 2005 year one, her federal taxes paid would have been \$2,400. Since her Montana deduction for federal income taxes was limited to \$5,000, only \$2,600 of her federal refund would be included in Montana taxable income.

(d) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income. This provision does not affect any interest paid during tax years beginning before January 1, 2007, for which the deduction was not allowed on the Montana tax return.

(3) through (4)(a) remain the same.

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

IMP: 15-30-111, 15-30-121, 15-30-2110, 15-30-2131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.205 in order to keep the examples in (2) current and to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.206 ADDITIONS AND SUBTRACTIONS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS (1) Except as provided in (2) and (3), married taxpayers who file a joint federal return but separate Montana returns must compute their taxable income using the federal rules for married taxpayers filing separately. Items clearly attributable to one spouse must be claimed by that spouse. An item not clearly attributable to one spouse must be divided equally unless the spouses enter into a binding written agreement providing a different division.

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

(3) For tax years beginning on or after January 1, 2009, married taxpayers filing a joint federal return and separate Montana returns may elect to report their capital gains and losses using one of the following options:

(a) The couple may elect to allocate the net gain or loss reported on page 1 (line 10 on Form 1040A or line 13 on Form 1040) of their joint federal return based on their ownership percentage. For example, if the couple reports a net capital gain of \$10,000 on their joint federal return and they owned the asset equally, each spouse shall report \$5,000 on their separate Montana returns. If only one spouse owned the asset, that spouse shall report \$10,000 on the separate return. If the couple reports a net capital loss of \$3,000 on their joint federal return and they owned the asset equally, each spouse shall report \$1,500 on their separate Montana returns. If only one spouse owned the asset, that spouse shall report the \$3,000 on their return and the other spouse shall report \$0.

(b) The couple may elect to track their capital gains and losses individually and separately. If a federal net capital gain or loss is comprised of the capital gains attributable to one spouse offset by capital losses attributable to the other spouse, each spouse would report their separately calculated gain or loss. The maximum net capital loss deduction either spouse reporting a loss may claim would be limited to \$1,500.

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

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

REASONABLE NECESSITY: The department is proposing amendments to ARM 42.15.206 because of taxpayer questions that the department has encountered regarding how to report capital gains, it is proposing rules describing some helpful options for how to file. The department is also amending the rule to coordinate 42.15.206 with the changes to the capital gain credit proposed to ARM 42.4.502. The department is also proposing to amend ARM 42.15.206 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.213 SMALL BUSINESS CORPORATION DIVIDEND AND CAPITAL GAIN EXCLUSION (1) remains the same.

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

IMP: ~~15-33-103~~, 15-30-2103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.213 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) through (3) remain the same.

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

IMP: ~~15-30-101, 15-30-116~~, 15-30-2101, 15-30-2117, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.214 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.215 SENIOR INTEREST INCOME EXCLUSION (1) through (5) remain the same.

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

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.215 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.216 EXCLUSION OF INTEREST ON OBLIGATIONS OF UNITED STATES GOVERNMENT AND U.S. POSSESSIONS (1) and (2) remain the same.

(3) United States obligations that are exempt include:

- (a) series EE, F, G, and H savings bonds;
- (b) U.S. treasury bills;
- (c) U.S. government notes; and
- (d) U.S. government certificates.

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

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

REASONABLE NECESSITY: The department is proposing amendments to ARM 42.15.216 in order update the list of examples of United States obligations that are exempt from Montana income tax. The department is proposing to amend ARM 42.15.216 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.217 DISABILITY INCOME EXCLUSION (1) through (4) remain the same.

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

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.217 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter

30, Montana Code Annotated.

42.15.218 CAPITAL GAIN EXCLUSION FOR PRE-1987 SALES (1) and (2) remain the same.

(3) The capital gain from the sale or exchange of a capital asset is the sales price or fair market value less the ~~taxpayers~~ taxpayer's adjusted basis in the asset as determined for federal purposes prior to December 31, 1986.

(4) through (7) remain the same.

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

IMP: 15-30-110, 15-30-111, 15-30-131, 15-30-2110, 15-30-2111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.218 to correct the grammar in (3) and to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION (1) For tax years beginning before January 1, 2010, ~~the~~ pension and annuity exclusion is limited to the lesser of the pension and annuity income received or \$3,600 for a single person or married couple where only one person receives pension or annuity income.

(a) The exclusion in (1) is reduced \$2 for every \$1 over federal adjusted gross income of \$30,000.

(b) For tax years beginning after December 31, 2009, by November 1 of each year the department will multiply the exclusion amount in (1) and the federal adjusted gross income amount in (1)(a) by the inflation figure for the taxable year as prescribed in section 15-30-2110(14), MCA.

(2) When married taxpayers file a joint return and each receives pension and annuity income, their individual exclusion is limited to the lesser of each person's retirement income or ~~\$3,600~~ the amount allowed in (1). The total of both individuals' exclusion is phased out at the rate described in (1).

(3) When married taxpayers file separately, each spouse's exclusion and phase-out are computed independently and a spouse's exclusion begins to be phased out only when his or her federal adjusted gross income exceeds ~~\$30,000~~ the amount allowed in (1)(a). Examples for tax years beginning before January 1, 2010, are:

(a) Jane, a single taxpayer has federal adjusted gross income of \$20,000 which is made up of \$5,000 of pension income and \$15,000 of other income. Her pension and annuity exclusion for Montana purposes is \$3,600.

(b) Frank and Edith, a married couple, file a joint income tax return and both receive pension and annuity income. Frank's taxable pension included in federal adjusted gross income is \$5,600. Edith's taxable pension included in federal adjusted gross income is \$2,000. Their combined federal adjusted gross income is \$25,000. Their Montana pension and annuity exclusion is \$5,600 (the maximum \$3,600 for Frank and the full taxable amount of \$2,000 for Edith). Even though their combined federal adjusted gross income is below \$30,000, Edith is not entitled to a \$3,600 pension exclusion as the exclusion is limited to her taxable pension of \$2,000.

(c) John, a single taxpayer, has federal adjusted gross income of \$31,000.

This consists of \$8,000 of taxable pension income and \$24,000 of other income. John's Montana pension exclusion is \$1,600. ($\$3,600 - ((\$31,000 - \$30,000) \times 2)$).

(d) John and Barbara, a married couple, file a joint income tax return and both report federal taxable pension income. John's federal taxable pension is \$5,600 and Barbara's federal taxable pension income is \$3,000. Their combined federal adjusted gross income is \$33,000. Their combined Montana pension and annuity exclusion is \$600. ($\$6,600 - ((\$33,000 - \$30,000) \times 2)$).

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: ~~15-30-111~~, 15-30-2110, MCA

REASONABLE NECESSITY: The department is proposing amendments to ARM 42.15.219 in order to implement the changes made by House Bill 315 (Ch. 382, L. 2009), which was passed in the 2009 Legislature. The department is also proposing to amend the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.220 EXEMPTION OF CERTAIN INCOME OF ENROLLED TRIBAL MEMBERS (1) through (4) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: ~~15-30-101~~, 15-30-2101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.220 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.221 DEPENDENT CHILD UNEARNED INCOME EXCLUSION (1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: ~~15-30-111~~, 15-30-2110, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.221 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.222 RAILROAD RETIREMENT AND SOCIAL SECURITY BENEFIT EXCLUSION (1) and (2) remain the same.

(3) Federal modified adjusted gross income, determined as provided in section 86 of the IRC, must be:

(a) increased by the additions to federal adjusted gross income provided in ~~15-30-111~~ 15-30-2110, MCA, and any other additions to Montana taxable income provided in Title 15, MCA; and

(b) decreased by the reductions to federal adjusted gross income provided in ~~15-30-111~~ 15-30-2110, MCA, other than tax-exempt interest on United States obligations or interest on any state or county municipal bonds. In determining the taxable and excludable portions of social security benefits, a married person filing separately who has filed a joint federal income tax return must use one-half of the federal base and adjusted base amounts.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: ~~15-30-111, 15-30-2110, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.222 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.301 WHO MUST FILE RETURNS (1) through (3) remain the same.

AUTH: 15-1-201, ~~15-30-305, 15-30-2620, 15-31-501, MCA~~
IMP: ~~15-30-142, 15-30-143, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.301 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.303 RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN (1) and (2) remain the same.

AUTH: ~~15-30-305, 15-30-2620, MCA~~
IMP: ~~15-30-142, 15-30-2602, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.303 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.310 DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Injured spouse" means a taxpayer who does not owe a child support obligation, but who has reported income on a joint return with a taxpayer who does owe a past due child support obligation.

(2) "Innocent spouse relief applicant" means a taxpayer who has filed joint federal and Montana tax returns for the same tax year, has obtained relief from a joint and several federal tax liability under section 6015 of the IRC, and is requesting relief from a joint and several Montana income tax liability.

~~(2)~~(3) "Obligated spouse" means a taxpayer who is liable for a past due child

support obligation.

AUTH: 15-30-2104, 15-30-2620, 17-41-110, MCA
IMP: 15-30-2602, 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.310 in order to help implement the innocent spouse relief provision of Senate Bill 418, (Ch. 470, L. 2009), which was passed by the 2009 Montana Legislature by providing the definition of "innocent spouse relief applicant". The department is also proposing to amend the authority and implementing statutes to include statutes that apply to Title 15, chapter 30, MCA.

42.15.312 ACCEPTANCE OF REPRODUCED TAX FORMS (1) Subject to the following conditions and except as provided in (2), the department will accept paper reproductions copies of official tax return forms and other supporting documents. These forms must be:

- (a) facsimiles of the official form;
 - (b) ~~on paper the quality and weight of the official form;~~
 - (~~e~~) produced on paper which may readily and permanently be written upon and stamped with ink; and
 - (~~d~~)(c) of the same size as the official form.
- (2) The department will not accept reproductions of scannable payment coupons.

AUTH: ~~15-30-305, 15-30-2620, MCA~~
IMP: ~~15-30-144, 15-30-2604, MCA~~

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.312 to improve taxpayer ease and convenience by removing an unnecessary requirement regarding reproduced tax forms. The department is also proposing to amend ARM 42.15.312 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) through (4) remain the same.

(5) Late file and late pay penalties are assessed as required under 15-1-216 and ~~15-30-321~~ 15-30-2641, MCA, on the correct amount due on the original return.

(6) remains the same.

(7) If required by 15-1-216 and ~~15-30-321, 15-30-2641, MCA~~, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under ~~15-30-149~~ 15-30-2609 or ~~15-30-142, 15-30-2602, MCA~~, as of the due date in (1).

(8) through (10) remain the same.

AUTH: ~~15-30-305, 15-30-2620, MCA~~
IMP: 15-1-216, ~~15-30-142, 15-30-149, 15-30-241, 15-30-321, 15-30-2512, 15-~~

30-2602, 15-30-2609, 15-30-2641, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.315 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) For tax years beginning after December 31, 2004, and before January 1, 2010, A four-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the following conditions are met on or before the due date of the return:

(a) the taxpayer has applied for ~~a corresponding~~ an extension of time to file their federal income tax return; and

(b) the taxpayer has paid either through withholding, estimated tax payments, or a combination of withholding and estimated payments, either of the following:

(i) 90% of their current year's income tax liability; or

(ii) 100% of their prior year's income tax liability.

(2) remains the same.

(3) If a taxpayer does not meet either of the required payment thresholds as required by ~~15-30-144, 15-30-2604, MCA~~, late pay and late file penalties will be applied as provided in 15-1-216, MCA.

(4) Underpayment interest, as provided in ~~15-30-241, 15-30-2512, MCA~~, accrues to the original due date of the return. Interest from and after the original due date of the return accrues as provided in 15-1-216, MCA, whether or not the time for filing the return has been extended.

(5) remains the same.

(6) An additional two month extension is automatically allowed if the taxpayer has applied for ~~a corresponding~~ an extension of time to file their federal income tax return and made the payments required for the initial extension described in (1).

(7) For tax years beginning on or after January 1, 2010, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the conditions of (1)(b) are met on or before the due date of the return.

~~(7)~~(8) Taxpayers who are either first time filers, or have a zero or negative taxable income for the previous year, are considered to have paid 100% of the previous year's tax for purposes of meeting the threshold requirements in ~~15-30-144, 15-30-2604, MCA~~.

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

IMP: 15-1-201, 15-1-216, 15-30-144, 15-30-331, 15-30-2604, 15-30-2651, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.316 in order to implement the provisions of Senate Bill 418, (Ch. 470, L. 2009), which was passed by the 2009 Montana Legislature. The department is also amending ARM 42.15.316 to conform to current practice for extensions to file. Current Montana law allows separate four-month and two-month extensions with an outdated reference to similar federal extensions. Beginning with the 2005 tax year,

federal law allows one six-month extension. The amendments to the rule clarify that the requirement for both the four-month and two-month Montana extensions in effect for tax years 2009 and earlier is met if the taxpayer applied for the six-month federal extension. The department is also proposing the amendment of the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.317 FILING DATE (1) remains the same.

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

IMP: 15-30-204, 15-30-207, 15-30-2504, 15-30-2507, 39-71-2503, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.317 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.318 MONTANA NET OPERATING LOSSES (1) Net operating losses must be determined as provided in section 172 of the IRC. A taxpayer has a Montana net operating loss if their Montana taxable income, recomputed with the adjustments provided in section 172(d) of the IRC, is less than zero. In recomputing Montana taxable income, the following must be added back:

- (a) any net operating loss deduction;
- (b) any deduction for personal and dependent exemptions if the taxpayer is an individual, and the exemption provided in ~~15-30-136~~ 15-30-2152, MCA, if the taxpayer is an estate or trust;
- (c) any gain excluded from the sale or exchange of qualified small business stock pursuant to section 1202 of the IRC;
- (d) the amount by which a deduction for losses from sales or exchanges of capital assets exceeds the amount includable for gains from sales or exchanges of capital assets; and
- (e) the amount by which nonbusiness deductions exceed nonbusiness income.

(2) through (5) remain the same.

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

IMP: 15-30-117, 15-30-110, 15-30-2119, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.318 to correct the internal statute contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.319 DATE AND PLACE OF FILING AND PAYMENT (1) The due date for filing an individual income tax return and payment of the tax due is the 15th day of the 4th month following close of the tax year ~~and payment of the tax is the due~~

date prescribed for filing the return.

(2) A return may be filed by personal delivery, mail and, ~~in some cases,~~ electronically ~~or by telephone.~~

(a) A return may be filed by personal delivery to:
the Montana Department of Revenue,
3rd Floor, Sam W. Mitchell Building,
125 North Roberts,
Helena, Montana. 59620

(b) A return may be filed by mailing it postage prepaid by U.S. Postal Service First-Class or Priority mail to:

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805

(i) If a return is mailed as provided in this section, on or before the due date, and received by the department, the return is considered filed on the date mailed. A taxpayer is responsible for establishing the date a return is mailed.

(c) The rules for filing a return electronically ~~or by telephone~~ are located in ARM Title 42, chapter 5, subchapter 2.

(3) Every taxpayer must compute their tax liability and pay the balance of any tax due in full on or before the prescribed due date as stated in ~~15-30-142,~~ 15-30-2602, MCA. If the balance due is less than \$1, payment is not required. If full payment of the balance due is not made on or before the prescribed due date, interest and penalty accrue from the prescribed due date of the return until paid as provided in 15-1-216, MCA.

(a) If tax is paid by check or money order, the check or money order should be made payable to the "Montana Department of Revenue."

(b) The rules for paying a tax electronically are located in ARM Title 42, chapter 5, subchapter 2.

(c) The rules for paying a tax by credit card are located in ARM Title 42, chapter 5, subchapter 2.

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

IMP: 15-30-142, 15-30-144, 15-30-2602, 15-30-2604, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.319 to clarify the language regarding the due dates for filing a tax return and payment of any tax due. In addition, amendments are proposed because there is no longer the capability to file tax returns telephonically, to correct the address format, and to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.320 DEFICIENCY NOTICES AND PAYMENTS (1) and (2) remain the same.

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

IMP: 15-30-142, 15-30-144, 15-30-2602, 15-30-2604, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.320 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.321 JOINT RETURNS (1) through (3) remain the same.

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

IMP: ~~15-30-142~~, 15-30-2602, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.321 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS (1) through (6) remain the same

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

IMP: ~~15-30-111~~, ~~15-30-142~~, 15-30-2110, 15-30-2602, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.322 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.325 FAILURE TO FURNISH REQUESTED INFORMATION OR FILE A DELINQUENT RETURN (1) through (3) remain the same.

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

IMP: ~~15-30-145~~, 15-30-2605, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.325 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.326 REQUEST FOR ADJUSTMENT OF JOINT RETURN (1) through (3) remain the same.

(4) The provisions of this rule do not apply to a taxpayer requesting innocent spouse relief as provided under 15-30-2646, MCA. The rules for innocent spouse relief are located in [NEW RULE I].

AUTH: 15-1-201, ~~15-30-305~~, 15-30-2620, 17-4-110, MCA

IMP: 15-1-211, ~~15-30-142~~, 15-30-2602, 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.326 to coordinate the language in it with the provisions of New Rule I. The department is also proposing to amend the rule to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.327 STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT

RETURN (1) The written request for an adjustment of the joint tax return referenced in ARM 42.15.326, shall include a statement entitled "injured spouse statement." Before any adjustment can be considered, ~~¶~~ this statement must:

- (a) contain the identical social security numbers of both spouses in the same order as they appear on the original joint tax return;
 - (b) clearly indicate how any income, itemized deductions, exemptions, credits, and tax payments (as originally claimed) should be divided between the spouses;
 - (c) be signed by both spouses; and
 - (d) be mailed to:
~~the~~ Department of Revenue,
P.O. Box 5805,
Helena, Montana 59604-5805, ~~before any adjustment can be made.~~
- (2) and (3) remain the same.

AUTH: 15-1-201, ~~15-30-305,~~ 15-30-2620, 17-4-110, MCA

IMP: 15-1-211, ~~15-30-142,~~ 15-30-2602, 17-4-105, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.327 to correct the address format and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.328 FORM OF CLAIM FOR REFUND (1) remains the same.

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

IMP: ~~15-30-149,~~ 15-30-2609, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.328 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.401 DEFINITIONS The following definitions apply to rules found in this subchapter:

- (1) remains the same.
- (2) "Dependent" has the same meaning as "dependent" for purposes of determining dependent exemptions for federal income tax purposes, except as follows:

(a) The list of individuals in ~~15-30-143,~~ 15-30-2115, MCA, for whom a Montana dependent exemption is allowed is broader than the list of eligible relatives

for whom a federal dependent exemption is allowed. The list includes a cousin or other lineal descendant of the sister or brother of the mother or father of the taxpayer, if for the taxpayer's tax year the individual received institutional care because of physical or mental disability, and if, before receiving the institutional care, they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family.

(b) The list of individuals in ~~15-30-113~~, 15-30-2114, MCA, for whom a Montana dependent exemption is allowed is narrower than the eligible list of individuals for whom a federal dependent exemption is allowed and excludes a child placed for adoption, a foster child, and any other person who is not related to the taxpayer as provided in ~~15-30-113~~, 15-30-2114, MCA, unless:

(i) their gross income did not exceed the limits provided in this rule; and
(ii) they lived with the taxpayer in the taxpayer's home as a member of the taxpayer's family for the entire tax year.

(c) A federal dependent exemption may be claimed for a person under a multiple support agreement exception even if the taxpayer does not provide over half of their total support. Because Montana does not provide a multiple support agreement exception, a dependent exemption is not allowed for any person who does not receive over half of their total support from the taxpayer. See the definition of "support," however, for special rules for determining the support of a child of divorced or separated parents.

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

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

IMP: 15-30-112, 15-30-2114, 15-61-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.401 to correct the statutes contained in the internal rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.402 PERSONAL EXEMPTIONS (1) Each taxpayer is allowed one personal exemption for himself or herself. If the taxpayer is age 65 or older by the close of their tax year, they are entitled to an additional personal exemption. If the taxpayer is blind, as provided in ~~15-30-112~~, 15-30-2114, MCA, at the close of their tax year, they are entitled to an additional personal exemption. The additional exemptions are cumulative and a taxpayer who is at least 65 years old and blind by the close of the tax year is allowed three personal exemptions.

(2) through (3) remain the same.

(4) The amount allowed as a personal exemption is as follows:

(a) ~~for tax years beginning before December 31, 2004 the personal exemption is \$800, adjusted annually for inflation by November 1 or each year as provided in 15-30-112, MCA (temporary). The~~ For all tax years, the amount of the personal exemption, as adjusted for inflation for recent tax years, can be obtained by accessing past-year downloadable tax forms from the department's internet homepage web site located at: <http://www.mt.gov/revenue> revenue.mt.gov; and

(b) for tax years beginning after December 31, 2004, the personal exemption is \$1,900, adjusted annually for inflation by November 1 of each year as provided in ~~15-30-112~~, 15-30-2114, MCA (effective January 1, 2005).

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

IMP: 15-30-112, 15-30-2114, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.402 to more accurately state the amount of personal exemption allowed each tax year and to update the department's web site address. The department is also proposing to amend the rule to correct the statutes contained in the internal rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) through (2)(c) remain the same.

(3) Except as provided in ~~(7)~~ (6), in lieu of the dependent exemption described in (1), a taxpayer is allowed a dependent disabled child exemption as provided in this section and (4), (5), (6), and (7), ~~and (8)~~, equal in amount to twice the dependent exemption. The exemption is allowed for a child who receives over half of his or her support from the taxpayer if:

(a) the taxpayer's home is the dependent disabled child's principal place of abode;

(b) the dependent child has a permanent disability constituting 50% or more of the body as a whole; and

(c) a licensed physician has certified the qualifying disability.

~~(4) For each tax year beginning before December 31, 2002, a taxpayer claiming a dependent disabled child deduction must file a physician's certification of qualifying disability with their individual income tax return.~~

~~(5) For tax years beginning after December 31, 2002, filing an annual certification is not required, but the taxpayer must have a physician's certification of qualifying disability that they retain as a tax record and provide the department upon request. In addition, the taxpayer makes the following representations when filing a return claiming a dependent disabled child exemption:~~

~~(a) if the taxpayer has filed the physician's certification with a prior year's return, the taxpayer represents there is no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption; and~~

~~(b) if the taxpayer has not filed the physician's certification with a prior year's return, the taxpayer represents they have a copy of the certification of a licensed physician of a qualifying disability and there is no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption.~~

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

~~(8)~~(7) The amounts allowed as a dependent exemption:

~~(a) for tax years beginning before December 31, 2004, the dependent exemption is \$800, adjusted annually for inflation by November 1 or each year as provided in 15-30-112, MCA, (temporary); and For all tax years the amount of the~~

exemption, as adjusted for inflation for recent tax years, can be obtained by accessing past-year downloadable tax forms from the department's internet homepage web site located at: revenue.mt.gov.

~~(b) for tax years beginning after December 31, 2004, the dependent exemption is \$1,900, adjusted annually for inflation by November 1 of each year as provided in 15-30-112, MCA (effective January 1, 2005).~~

~~(9)(8)~~ A taxpayer claiming a dependent disabled child deduction for a tax year beginning after December 31, 2002, is required to notify the department if the child's physical circumstances have changed and the child no longer has a permanent disability constituting 50% or more of the whole body and of any other change in the child's eligibility for the dependent disabled child exemption. The notice must be in writing and mailed to:

~~the~~ Department of Revenue,
P.O. Box 5805,
Helena, MT 59604-5805.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-30-112, 15-30-2114, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.403 to more accurately state the amount of dependent exemption allowed for a disabled child each tax year. The department is also amending the rule to remove out-of-date provisions and to update the department's web site address. The department is also proposing to amend the rule to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.407 PERSONAL EXEMPTION FOR ESTATES AND TRUSTS

(1) remains the same.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-30-136, 15-30-2152, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.407 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.414 DEDUCTIONS FOR SMALL BUSINESS DONATIONS OF COMPUTER EQUIPMENT TO SCHOOLS (1) A taxpayer, who is a shareholder of an electing small business corporation, claiming a deduction for gifts of computer equipment as provided for in ~~15-30-126, 15-31-172, MCA~~, must attach the following information to the tax return claiming the deduction:

- (a) a complete description of all items donated;
- (b) a statement of the fair market value of each item donated;
- (c) the date of manufacture for each item donated;

- (d) the date the software was developed; and
- (e) a copy of the written statement from the donee in which the donee agrees to accept the property and represents that the property will not be transferred by the donee in exchange for money, other property, or services.

(2) For the purposes of the deduction allowed by ~~15-30-126~~, 15-31-172, MCA, apparatus intended for use with the computer shall include, but not be limited to, software provided that the software was not developed more than five years prior to the date of its donation to a school.

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

IMP: ~~15-30-126~~, 15-31-172, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.414 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.427 DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES (1) and (2) remain the same.

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

IMP: ~~15-30-121~~, 15-30-2131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.427 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.510 DEFINITIONS The following definitions apply to rules found in this subchapter:

(1) "Nonbusiness deduction" has the same meaning as nonbusiness deduction for federal income tax purposes when computing a net operating loss and includes the following Montana items:

(a) the standard deduction provided in ~~15-30-122~~, 15-30-2132, MCA;

(b) the deduction for federal income taxes provided in ~~15-30-121~~, 15-30-2131, MCA, to the extent not attributable to business profits;

(c) the deduction for political contributions provided in ~~15-30-121~~, 15-30-2131, MCA;

(d) the part of the deduction for expenses for organic and byproduct inorganic fertilizer provided in ~~15-30-121~~, 15-30-2131, MCA, that is not a trade or business expense;

(e) the deduction for payments for premiums for medical care and for premiums and certificates for long-term care provided in ~~15-30-121~~, 15-30-2131, MCA;

(f) the deduction for a light vehicle registration fee provided in ~~15-30-121~~, 15-30-2131, MCA, if it is not a trade or business expense;

(g) the deduction for the patriotic license plate surcharge provided in ~~15-30-154~~, 15-30-2142, MCA, if it is not a trade or business expense;

(h) the deduction for per capita livestock fees if they are not trade or business expenses; and

(i) the deductions for charitable contributions, including contributions to the child abuse and neglect prevention program provided in ~~15-30-124~~ 15-30-2131 and ~~15-30-156~~, 15-30-2143, MCA, donations of computer equipment to schools by small business corporations provided in ~~15-30-126~~, 15-31-172, MCA, and donations to the veterans' services account or the state veterans' cemetery program provided in ~~15-30-154~~, 15-30-2142, MCA.

(2) remains the same.

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

IMP: ~~15-30-101~~, ~~15-30-110~~, ~~15-30-117~~, ~~15-30-2101~~, ~~15-30-2119~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.510 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.523 STANDARD DEDUCTION (1) Except as provided in (3) and (4), a taxpayer who does not claim itemized deductions is allowed the standard deduction.

(2) The standard deduction is 20% of the taxpayer's Montana adjusted gross income subject to the following minimum and maximum amounts, which are adjusted annually for inflation: The amount of the standard deduction, as adjusted for inflation for recent tax years, can be obtained by accessing past-year downloadable tax forms from the department's internet homepage web site located at: revenue.mt.gov.

~~(a) Tax years beginning before December 31, 2004:~~

	<u>Minimum</u>	<u>Maximum</u>
Married filing a joint return —or head of household	\$ 1,300	\$ 3,000
Single or married filing a separate return	\$ 665	\$ 1,500

~~(b) Tax years beginning after December 31, 2004:~~

	<u>Minimum</u>	<u>Maximum</u>
Married filing a joint return or head of household	\$ 3,160	\$ 7,120
Single or married filing a separate return	\$ 1,580	\$ 3,560

(3) The following requirements govern the standard deduction of married

taxpayers who do not file a joint return with their spouse:

(a) A married taxpayer filing separately may claim the standard deduction only if his or her spouse does not file a Montana individual income tax return claiming itemized deductions;

(b) As provided in ~~15-30-134~~, 15-30-2113, MCA, a taxpayer who is legally separated from his or her spouse at the end of the tax year under a decree of divorce, legal separation, or separate maintenance is not considered married for purposes of this rule;

(c) In the event of death of one of the spouses, the restriction described in (3)(a) is applicable with respect to the tax year ending with death and the tax year of the surviving spouse in which the death occurs; and

(d) By filing a separate return claiming a standard deduction, a married taxpayer represents that the taxpayer's spouse did not or will not claim itemized deductions.

(4) remains the same.

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

IMP: 15-30-122, 15-30-2132, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.523 to remove outdated language describing the amount of the standard deduction allowed each tax year and to direct the taxpayer to the department's web site for these amounts, and to update the department's web site address. The department is also proposing to amend the rule to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.524 ITEMIZED DEDUCTIONS OF MARRIED TAXPAYERS

(1) through (3)(d) remain the same.

(4) Except as provided in ~~15-30-111~~, 15-30-2110, MCA, ARM 42.15.206 and (5), if a taxpayer files a Montana return claiming an itemized deduction that is allowed only to taxpayers claiming a specific federal filing status, the deduction is disallowed unless the taxpayer files their Montana income tax return using the same status.

(5) Married taxpayers who file separate Montana returns and are allowed a deduction for mortgage insurance premiums paid under ~~section 163 of the Internal Revenue Code IRC~~, 26 U.S.C. 163, are allowed the same deduction calculated using the federal rules for married taxpayers filing a joint return.

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

IMP: 15-30-111, 15-30-121, 15-30-2110, 15-30-2131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.524 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.525 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS (1) Except as provided in (2), when the deductions allowed under ~~15-30-121~~, 15-30-2131, MCA, are limited to a percent of adjusted gross income by reference to the IRC, Montana adjusted gross income must be used when calculating the deductions limitation for the Montana return. Montana adjusted gross income is defined in ~~15-30-111~~, 15-30-2110, MCA.

(2) Taxpayers who are allowed a deduction for mortgage insurance premiums paid under ~~section 163 of the Internal Revenue Code IRC~~, 26 U.S.C. 163, may use their federal adjusted gross income when computing the allowable amount for the Montana return.

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

IMP: ~~15-30-121~~, 15-30-2131, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.525 to correct the internal statutes contained in the rule and the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.526 SMALL BUSINESS LIABILITY FUNDS (1) Tax deductible administrative costs as provided by ~~15-30-127~~ 15-30-2141 and 15-31-117, MCA, are limited to those that are allowable under the Internal Revenue Code and are ordinary and necessary costs directly connected with or pertaining to the management or maintenance of the principal of the fund.

(2) through (4) remain the same.

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

IMP: ~~15-30-107~~, ~~15-30-127~~, 15-30-2118, 15-30-2141, 15-31-117, 15-31-118, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.526 to correct the internal statutes contained in the rule and to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.601 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) through (6) remain the same.

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

IMP: 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.601 to correct the authority statute to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code

Annotated.

42.15.602 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) through (12) remain the same.

(13) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 and ~~15-30-321~~, 15-30-2641, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: 15-61-202, 15-61-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.602 to correct the authority statute to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.603 MEDICAL SAVINGS ACCOUNT - WITHDRAWALS (1) The funds held in a medical savings account may be withdrawn by the account holder at any time during the year for eligible medical expenses paid during that year. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the 10% penalty.

(2) through (6) remain the same.

(7) Withdrawals made by January 15 by the account holder of a self-administered account for the purpose of reimbursing eligible medical expenses paid after December 1 of the previous year are qualifying withdrawals and are not subject to tax or the 10% penalty.

~~(7)~~(8) Except as provided in ~~(8)~~(9), all payments made from a medical account must be made payable to the account holder, to the eligible medical provider, or to the estate or to the legal guardian.

(8) and (9) remain the same but are renumbered (9) and (10).

AUTH: ~~15-30-305~~, 15-30-2620, MCA
IMP: 15-61-203, MCA

REASONABLE NECESSITY: For the taxpayer's ease and convenience, the department is proposing to amend ARM 42.15.603 to assist the taxpayer to be able to claim a withdrawal in a situation where an individual pays for eligible medical expenses at the end of the year but cannot withdraw funds for reimbursement from their Montana medical savings account until the next year as provided in 15-61-204(4), MCA. The department is also proposing to amend the rule to correct the authority statute to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.604 INDIVIDUAL LIABILITY (1) through (3) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-61-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.604 to correct the authority statute to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.605 DEFINITIONS (1) through (8) remain the same.

AUTH: 15-30-305, 15-30-2620, MCA
IMP: 15-30-112, 15-30-2114, 15-61-102, 15-61-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.605 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) through (3) remain the same.

AUTH: 15-30-305, 15-30-2620, 15-62-201, MCA
IMP: 15-30-111, 15-30-2110, 15-62-201, 15-62-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.802 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) through (9) remain the same.

AUTH: 15-30-305, 15-30-2620, 15-62-201, MCA
IMP: 15-30-111, 15-30-2110, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.803 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) through (7) remain the same.

AUTH: 15-30-305, 15-30-2620, 15-62-201, MCA
IMP: 15-30-111, 15-30-2110, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.804 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.805 DEFINITIONS (1) through (8) remain the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-62-201, MCA

IMP: ~~15-30-111~~, 15-30-2110, 15-62-103, 15-62-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.805 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.806 TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS (1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-62-201, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.806 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.807 EFFECTIVE DATE OF CONTRIBUTION FOR TAX PURPOSES (1) remains the same.

AUTH: ~~15-30-305~~, 15-30-2620, 15-62-201, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.807 to correct the authority and implementing statutes to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.903 ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) through (9)(c) remain the same.

(10) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 and ~~15-30-324~~ 15-30-2641, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: 15-1-201, MCA

IMP: 15-63-202, 15-63-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.903 to correct the internal statutes contained in the rule to reflect the changes made by the 2009 Legislature in House Bill 24, (Ch. 147, L. 2009), which recodified Title 15, chapter 30, Montana Code Annotated.

42.15.906 TAX EXEMPTION FOR FIRST-TIME HOME BUYER (1) through (3) remain the same.

(4) The amounts deposited into a first-time home buyer savings account is not considered principal until the year it is excluded from adjusted gross income pursuant to ~~45-30-114~~ 15-30-2110, MCA. For example, if a single individual who has never owned a home transfers \$15,000 from an existing savings account into a first-time home buyer account in Year 1 and purchases a qualifying home at the end of December in Year 3, the effect on their Montana returns will be as follows:

(a) ~~Example: In 2004, a single individual who has never owned a home transferred \$15,000 from an existing savings account into a first-time home buyer account. For 2004 year one, the individual reduced reduces the their state income by \$3,000 plus \$90 in interest earned on the \$3,000 principal only (\$90 at the rate of 3% of the \$3,000 principal). The remaining interest (\$360 at the rate of 3% of the \$12,000 carryover amount) is taxable in 2003 year one.~~

~~(i)(b)~~ In 2005 year two, the single individual is allowed a \$3,000 carryover reduction plus interest earned on \$6,090 (\$183 at the rate of 3% of the \$6,000 principal) for a total of \$3,183 reduction on the state income tax return. The remaining interest (\$281 at the rate of 3% of the \$9,360 carryover amount) is taxable in 2005 year two.

~~(ii)(c)~~ At the end of December in 2006 year three, the single individual buys a qualifying home. The individual is permitted the \$3,000 carryover reduction on the Montana income tax for ~~the year 2006 year three~~ plus interest earned to the date of purchase (\$278 at the rate of 3% on \$9,273) for a total of \$9,551. The taxpayer must spend at least \$9,551 for eligible first-time home buyer expenses. The amount includes \$9,000 that qualifies for the reduction (\$3,000 for 2004 year one; \$3,000 for 2005 year two; \$3,000 for 2006 year three) plus the tax deferred interest for \$551 earned during 2004 year one, 2005 year two, and 2006 year three.

~~(iii)(d)~~ Once the taxpayer purchases the home, the taxpayer can no longer claim the carryover reduction for the portion of the \$15,000 (\$6,000 plus interest) that the taxpayer did not claim as a reduction in prior years.

AUTH: 15-1-201, MCA

IMP: 15-63-203, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.906 in order to clarify the example and omit references to specific years so that the years remain current and do not have to be updated in the future, reducing administrative costs.

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) 444-4375; or e-mail canderson@mt.gov and must be received no later than April 9, 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 sponsors for Senate Bill 418, Senator Gary Branae and House Bill 315, Representative Anders Blewett were contacted on July 14, 2009 by regular mail. The primary bill sponsor for House Bill 24, Representative Penny Morgan was contacted on October 14, 2009, by regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State March 1, 2010

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.6.111 pertaining to fees) PROPOSED AMENDMENT
charged by the Business Services)
Division for the Farm Bill Master List)

TO: All Concerned Persons

1. On April 1, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on March 25, 2010, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.6.111 LIENS APPEARING ON THE FARM BILL MASTER LIST AND FEES FOR OBTAINING THE FARM BILL MASTER LIST (1) An effective financing statement lien that meets the requirements set forth in ARM 44.6.109 and has been submitted with the appropriate filing fee(s) will appear on the farm bill master list.

(2) The Secretary of State shall charge and collect for the following for providing the farm bill master list:

- (a) on CD ROM, per month \$ 20.00
- (b) on paper, per farm product category 5.00
- (for any report over 50 pages, the buyer will pay the vendor directly for any third party printing and shipping costs)
- ~~(i) over 50 pages, per additional page .10~~
- (c) on microfiche, per farm product category 5.00
- ~~(i) over 25 pages, per additional page .20~~

AUTH: ~~30-9A-525~~ 30-9A-526, MCA
IMP: 30-9A-525, MCA

REASON: The rule amendment is reasonably necessary to meet the requirement for paying at the time of service, to avoid invoicing, to facilitate the ease payment, and to reduce confusion to registered buyers by providing them with a set monthly fee.

This change does not increase fee revenue, but reduces what would be charged should the Farm Bill Master List exceed the number of pages/jackets indicated. The rule authority statute was reviewed and updated.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., April 8, 2010.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 1st day of March, 2010.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	CORRECTED NOTICE OF
17.50.403, 17.50.410, 17.50.501)	ADOPTION
through 17.50.503, 17.50.508,)	
17.50.509, and 17.50.513; the adoption)	(SOLID WASTE)
of New Rules I through LI; and the)	
repeal of ARM 17.50.505, 17.50.506,)	
17.50.510, 17.50.511, 17.50.526,)	
17.50.530, 17.50.531, 17.50.542,)	
17.50.701, 17.50.702, 17.50.705)	
through 17.50.710, 17.50.715,)	
17.50.716, and 17.50.720 through)	
17.50.726 pertaining to the licensing and)	
operation of solid waste landfill facilities)	

TO: All Concerned Persons

1. On February 26, 2009, the Department of Environmental Quality published MAR Notice No. 17-284 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 164, 2009 Montana Administrative Register, issue number 4. On August 13, 2009, the department published MAR Notice No. 17-284 regarding an amended notice of public hearing and extension of comment period on proposed amendment, adoption, and repeal at page 1326, 2009 Montana Administrative Register, issue number 15. On February 11, 2010, the department published the notice of amendment, adoption, and repeal at page 317, 2010 Montana Administrative Register, issue number 3. The rules were amended, adopted, and repealed as proposed, but with numerous changes.

2. This corrected notice of adoption is being published to correct an internal reference in New Rule XXXIV (ARM 17.50.1205(2)). ARM 17.50.1204(4) was deleted in the Notice of Amendment, Adoption, and Repeal, but the internal reference in ARM 17.50.1205(2) was not amended to reflect that deletion. That section should have been amended, in the Notice of Amendment, Adoption, and Repeal, as follows:

NEW RULE XXXIV (17.50.1205) ADDITIONAL DESIGN CRITERIA - CLASS II AND CLASS IV LANDFILL UNITS (1) through (1)(b) remain as adopted.

(2) An owner or operator of a new Class II or Class IV landfill facility shall submit to the department for approval each landfill unit design plan, including any design specifications or applicable plans or documents developed pursuant to this chapter. The design plan must demonstrate compliance with the standards of ARM 17.50.1204(1) and (4).

(3) through (7) remain as adopted.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER
Director

Certified to the Secretary of State, March 1, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I-V pertaining to the)
administration of an emergency)
medical service grant)

TO: All Concerned Persons

1. On January 14, 2010 the Department of Transportation published MAR Notice No. 18-123 pertaining to the proposed adoption of the above-stated rules at page 18 of the 2010 Montana Administrative Register, Issue Number 1.

2. The department has adopted the above-stated rules as proposed: New Rule I (ARM 18.14.301), New Rule II (ARM 18.14.302), New Rule III (ARM 18.14.303), New Rule IV (ARM 18.14.304), New Rule V (ARM 18.14.305) exactly as proposed.

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Jim Lynch
Jim Lynch
Director
Dept. of Transportation

Certified to the Secretary of State March 1, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.9.103 pertaining to)
Distributor's Statements)

TO: All Concerned Persons

1. On January 14, 2010 the Department of Transportation published MAR Notice No. 18-125 pertaining to the proposed amendment of the above-stated rule at page 22 of the 2010 Montana Administrative Register, Issue Number 1.

2. The department has amended the above-stated rule as proposed.

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

COMMENT # 1: A comment was received by the department from Debra Benton of Moore Oil Inc. stating: 1) if her company purchased software and then paid maintenance fees for a program to assemble reports to file in the three states in which this company operates, it would be expensive for a company their size; 2) the reasoning for the proposed rule--to reduce errors, save penalties and interest--are not sufficient reasons since her company has few errors and had only one penalty in the last twenty years of filing tax returns; and 3) the threshold separating those required to file electronically and those who do not seems low. The comment questioned whether there any distributors that qualify under the threshold.

RESPONSE # 1: The department acknowledges Moore Oil's comment and has taken it into consideration. The department's responses to the remarks are: 1) the department is not requiring any company to purchase software. Instead, a distributor can file electronically through the department's internet web-based filing program. This is free to licensed distributors; 2) overall, distributors who converted from paper to filing electronically on the department's web-based application have found it saves penalties, interest, and reduces errors. The application also verifies that a tax return has been received. If a tax return has not been verified there is an e-mail reminder sent by the department to the distributor prompting them to file timely; 3) there are in excess of thirty distributors that do not lift more than a combination of 99,999 gallons a year of diesel and gas fuel, and thus are under the threshold the rule sets for electronic filing.

/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 1, 2010.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.171.602 guide or) ADOPTION
professional guide license,)
24.171.604 emergency guide license,)
24.171.2301 unprofessional conduct,)
and the adoption of NEW RULE I)
guide to hunter ratio)

TO: All Concerned Persons

1. On September 24, 2009, the Board of Outfitters (board) published MAR Notice No. 24-171-28 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1616 of the 2009 Montana Administrative Register, issue no. 18.

2. On October 16, 2009, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the October 23, 2009, 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: Several commenters supported the proposed amendments to ARM 24.171.602, 24.171.604, and 24.171.2301.

RESPONSE 1: The board appreciates all comments made during the rulemaking process, and each commenter is thanked for the time and effort taken to review and comment on the proposed rule amendments.

COMMENT 2: Several comments were made in general support of New Rule I.

RESPONSE 2: The board appreciates all comments made during the rulemaking process, and each commenter is thanked for the time and effort taken to review and comment on the proposed new rule.

COMMENT 3: One commenter stated that he could safely serve at least five hunters. The commenter asked that the board consider amending New Rule I to allow five hunters per guide and consider the different circumstances a guide in western Montana faces, in comparison to a guide in eastern Montana.

RESPONSE 3: After careful consideration of this comment, the board thanks the commenter for the time and effort taken to review and comment on New Rule I. However, the board maintains that a minimum of a 1:4 guide-to-hunter ratio is a

reasonable requirement for all types of hunts in all parts of Montana and is adopting the rule exactly as proposed.

COMMENT 4: A commenter said that after outfitting the same area for 58 years, he is very capable of supervising six to eight hunting clients, and that New Rule I would have a serious economic impact on his business, which has already suffered a 40% decline from 2008.

RESPONSE 4: After careful consideration of this comment, the board thanks the commenter for the time and effort taken to review and comment on proposed New Rule I. However, the board respectfully disagrees with the opposing commenter. The protection of the health, safety, and welfare of the public, including the clients being served, is the primary purpose of this new rule, and that purpose outweighs the economic concerns raised by the commenter. The board is adopting the new rule exactly as proposed.

4. The board has amended ARM 24.171.602, 24.171.604, and 24.171.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.171.409) exactly as proposed.

BOARD OF OUTFITTERS
LEE KINSEY, 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 1, 2010

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to minimum filing)
requirements for approval of natural)
gas production or gathering resources)

TO: All Concerned Persons

1. On December 10, 2009, the Department of Public Service Regulation published MAR Notice No. 38-2-206 pertaining to the proposed adoption of the above-stated rule at page 2362 of the 2009 Montana Administrative Register, Issue Number 23.

2. A public hearing was held on January 20, 2010, to consider the proposed adoption. One comment was received by the January 20, 2010 deadline. The written comment received is summarized as follows along with the response of the department:

COMMENT NO. 1: John Alke, representing Montana-Dakota Utilities Co., stated although the department's intent is clearly stated in the explanatory section of the rule notice, the rule as proposed lacks the necessary qualification of applicability. The provisions of HB 294 and the regulations of the department implementing the legislation have no application to a utility such as Montana-Dakota Utilities that is not a restructured natural gas utility. The department needs to match the language of the proposed rule to the purpose of the proposed rule. Therefore, he recommends that the department insert the language "restructured gas" in front of utility applications in the rule title.

RESPONSE NO. 1: The department agreed with the commenter and is amending New Rule I accordingly.

3. The department adopts New Rule I with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE I (38.5.7101) MINIMUM FILING REQUIREMENTS FOR
RESTRUCTURED GAS UTILITY APPLICATIONS FOR APPROVAL OF NATURAL
GAS PRODUCTION OR GATHERING RESOURCES (1) remains as proposed.

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 1, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 42.17.203, 42.17.204,)	REPEAL
42.17.218, 42.17.219, 42.17.221,)	
42.17.222, 42.17.223 and repeal of)	
ARM 42.17.206, 42.17.207,)	
42.17.208, 42.17.209, 42.17.210)	
relating to withholding taxes)	

TO: All Concerned Persons

1. On January 14, 2010, the department published MAR Notice No. 42-2-818 regarding the proposed amendment and repeal of the above-stated rules at page 54 of the 2010 Montana Administrative Register, issue no.1.

2. A public hearing was held on February 11, 2010, to consider the proposed amendments and repeal. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.17.203, 42.17.204, 42.17.218, 42.17.219, 42.17.221, 42.17.222, 42.17.223 and repeals ARM 42.17.206, 42.17.207, 42.17.208, 42.17.209, and 42.17.210 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 1, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.19.401 relating to the)
Property Tax Assistance Program)

TO: All Concerned Persons

1. On January 14, 2010, the department published MAR Notice No. 42-2-819 regarding the proposed amendment of the above-stated rule at page 60 of the 2010 Montana Administrative Register, issue no. 1.

2. A public hearing was held on February 4, 2010, to consider the proposed amendment. No one appeared at the hearing and no written comments were received. However, to help improve public understanding and clarify the process for the applicants, the department further amends the rule as follows:

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make application through the local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be made on a form available from the local county appraisal/assessment office in the year for which the benefit is sought.

~~(a) For tax years previous to 2009, applications postmarked after March 15, will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.~~

~~(b) For tax year 2009, applications were required to be postmarked by no later than 30 days after the taxpayer received their assessment notice. Applications postmarked after that date will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.~~

~~(c) For tax year the 2010 and subsequent tax years, applications postmarked after April 15 will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.~~

~~(2) through (4) remain as proposed.~~

~~(5) Income must be reported by the applicant as follows:~~

~~(a) For the 2009 tax year, the applicant is required to report their federal adjusted gross income as reported on their federal income tax return for the preceding calendar year. An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file.~~

~~(b) For the 2010 and subsequent tax years, the applicant is required to list total household income, which is the income as reported on the tax return or returns required by Title 15, chapters 30 or 31, MCA, for the year in which the assistance is~~

~~being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income attributable to all owner occupant(s) who are applying for the Property Tax Assistance Program.~~

~~(6) An applicant that is not required to file income tax for the preceding calendar year must determine what their federal adjusted gross income would have been had they been required to file. If the applicant is required to file an income tax return, a copy of the income tax return must be attached. If the applicant is not required to file an income tax return, they must complete the appropriate portion of the application and submit the appropriate documentation, as requested.~~

~~(7) The applications described in (5)(a) and (b) require a copy of the appropriate form to be attached.~~

AUTH: 15-1-201, MCA

IMP: 15-6-134, MCA

3. Therefore, the department amends ARM 42.19.401 with the amendments listed above.

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 1, 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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