

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 PUBLIC HEARING ON  
ARM 2.21.4022 and 2.21.4028 ) PROPOSED AMENDMENT  
pertaining to equal employment )  
opportunity, nondiscrimination, and )  
harassment prevention )

TO: All Concerned Persons

1. On December 21, 2012, at 9:00 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 14, 2012, to advise us of the nature of the accommodation needed. Please contact John Pavao, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT 59620-0127; telephone (406) 444-3984; Montana Relay Service 711; FAX (406) 444-0703; or e-mail [jpavao@mt.gov](mailto:jpavao@mt.gov).

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

2.21.4022 CONFIDENTIALITY REQUIREMENTS (1) Agency managers shall make every attempt to protect the privacy of individuals involved in the complaint process; however, individual privacy cannot be guaranteed.

~~(2) Employees involved in the complaint process (e.g., complainant, accused, witnesses, etc.) may not discuss the complaint or investigation with anyone other than management, the EEO officer, ADA coordinator, human resources manager, investigator, union representative, or legal counsel. Discussing the complaint or investigation with individuals who do not have an official need to know may result in disciplinary action under the ARM Title 2, chapter 21, subchapter 65, Discipline Policy.~~

(2) Agency managers may not prohibit employees from discussing a complaint or ongoing investigation with coworkers unless management conducts an individualized assessment and demonstrates that one of the following factors exists:

- (a) there are witnesses in need of protection;
- (b) evidence is in danger of being destroyed;
- (c) testimony is in danger of being fabricated; or
- (d) there is a need to prevent a cover-up.

(3) Agency managers shall document their rationale for requiring that employees refrain from discussing a complaint or ongoing investigation.

(3)(4) The human resource staff shall maintain the investigative report and supporting documents in a secure, confidential case file separate from the regular employee file.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes amending this rule to promote consistency with a July 30, 2012, National Labor Relations Board (NLRB) decision, *Banner Health System d/b/a/ Banner Estrell Medical Center and James A. Navarro*, 358 NLRB No. 93. The NLRB held that an employer violated employees' right to engage in concerted activities for their mutual aid and protection under the National Labor Relations Act (NLRA) by maintaining a rule prohibiting employees from discussing ongoing investigations of employee misconduct. The NLRA and the Montana Collective Bargaining for Public Employees Act give employees the right to organize, form, join, or assist a labor union, to bargain collectively, or to engage in other concerted activities for mutual aid or protection (39-31-201, MCA). The NLRB concluded, before prohibiting an employee from discussing a pending investigation, an employer must conduct an individualized assessment and be able to demonstrate that a legitimate business reason outweighs the employee's rights under the NLRA. The employer must consider whether (1) there are witnesses in need of protection; (2) evidence is in danger of being destroyed; (3) testimony is in danger of being fabricated; or (4) there is a need to prevent a cover-up. Employers cannot make blanket rules and must consider these factors before requiring that employees refrain from discussing the complaint or pending investigation.

2.21.4028 INITIATING AN EXTERNAL COMPLAINT (1) In addition to the internal complaint process, complaints may be filed with the following agencies:

(a) Montana Human Rights Bureau (~~HRB~~), 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807, TTY (406) 444-0532; or email <http://ord.dli.mt.gov/humanright/hrhome.asp>; or

(b) United States Equal Employment Opportunity Commission (EEOC) San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260, (800) 669-4000, TTY (800)-669-6820; or email [www.eeoc.gov](http://www.eeoc.gov).

(2) Jurisdiction may vary based on the nature of the complaint. For example, neither the ~~HRB~~ Human Rights Bureau nor the EEOC considers complaints based on sexual orientation, culture, social origin or condition, or ancestry.

(3) The ~~HRB~~ Human Rights Bureau or ~~EEOC~~ must receive the complaint within 180 days of when the alleged incident discriminatory practice occurred or when first was discovered unless the person has filed an internal complaint. ~~If the complainant uses the internal complaint process, they will have 300 days from the alleged incident to file a complaint with the HRB or EEOC.~~ A person who files an internal complaint under these rules has 180 days from the conclusion of the internal investigation to file a complaint with the Human Rights Bureau if management completes the investigation within 120 days of when the alleged discriminatory practice occurred or was discovered. If management does not complete the

investigation within 120 days, the person must file a complaint with the Human Rights Bureau within 300 days of when the alleged discriminatory practice occurred or was discovered.

(4) The EEOC must receive the complaint within 300 calendar days from the date the discrimination took place if the Human Rights Bureau enforces a law prohibiting employment discrimination against the same protected class. Otherwise, the complaint must be filed with the EEOC in 180 days.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes changes to this rule to provide greater detail and clarity concerning the timelines for filing complaints with the Human Rights Bureau and EEOC. Timelines for filing complaints with the Human Rights Bureau vary by when the alleged discrimination occurred or was discovered and whether a charging party filed an internal complaint. The current rule does not cover the various scenarios in sufficient detail to address each potential situation.

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 John Pavao, Department of Administration, PO Box 200127, Helena, Montana 59620; telephone (406) 444-3796; fax (406) 444-0703; or e-mail [jpavao@mt.gov](mailto:jpavao@mt.gov), and must be received no later than 5:00 p.m., December 21, 2012.

5. John Pavao, Department of Administration, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 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.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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.

8. 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 November 13, 2012.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 6.6.2403, pertaining to Group ) PROPOSED AMENDMENT  
Coordination of Benefits )

TO: All Concerned Persons

1. On December 13, 2012, at 10:00 a.m., the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the 2nd floor conference room, at the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The CSI 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 CSI no later than 5:00 p.m., December 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

6.6.2403 DEFINITIONS As used in these rules, these words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) through (11)(b)(vi) remain the same.

(vii) Medicare or other governmental benefits, as permitted by law, except as provided in (11)(c)~~(viii)~~. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program.

(c) the term does not include:

(i) excepted benefits pursuant to 33-22-140(8)(a), (b), (c), (d), (e), (f), (g), (h), (j), and (k) ~~hospital indemnity coverage benefits or other fixed indemnity coverage;~~

~~(ii) accident-only coverage;~~

~~(iii) specified disease or specified accident coverage;~~

~~(iv) limited benefit health coverage, if the commissioner determines pursuant to 33-22-140 that the coverage qualifies as an "excepted benefit";~~

(v) remains the same, but is renumbered (ii).

~~(vi)~~ (iii) benefits provided in long-term care insurance policies for nonmedical services, for example: personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services; or

~~(vii) Medicare supplement policies;~~

~~(viii) a state plan under Medicaid;~~



~~(ix)~~ (iv) a governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan; ~~or~~  
~~(x) third party automobile liability coverage.~~

(d) these policies, contracts, or certificates may be delivered, or issued for delivery in this state only if the outline of coverage is completed and delivered as required by this part, and the policy or certificate is clearly labeled as a limited benefit policy or certificate.

(12) through (14) remain the same.

AUTH: 33-1-313, MCA

IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

4. STATEMENT OF REASONABLE NECESSITY: The amendment is necessary to incorporate the full intent of the NAIC model act concerning coordination of benefits. The NAIC model act permits the exclusion of limited benefit health coverage for accident and sickness, but is not intended to exclude dental and vision benefits. However, under the original rule, dental and vision benefits were excluded from coordination because they were excepted benefits under 33-22-140, MCA. Therefore, a change in the rule is necessary to allow such coordination. Another proposed modification would remove duplicative language already included within the definition of "excepted benefits" under 33-22-140, MCA.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Brett O'Neil, Staff Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail BO'Neil@mt.gov, and must be received no later than 5:00 p.m., December 21, 2012.

6. Brett O'Neil, staff attorney, has been designated to preside over and conduct this hearing.

7. The CSI maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, Office of the Commissioner of Securities and Insurance, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the CSI.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. Pursuant to 2-4-302, MCA, the bill sponsor contact requirements do not apply.

/s/Brett O'Neil  
Brett O'Neil  
Rule Reviewer

/s/Jesse Laslovich  
Jesse Laslovich  
Chief Legal Counsel

Certified to the Secretary of State November 13, 2012.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

|   |                             |
|---|-----------------------------|
| In the matter of the amendment of ARM ) | NOTICE OF PUBLIC HEARING ON |
| 17.36.340 and 17.36.605 pertaining to ) | PROPOSED AMENDMENT          |
| lot sizes: exemptions and exclusions )  |                             |
| )                                       | (SUBDIVISIONS/ON-SITE       |
| )                                       | SUBSURFACE WASTEWATER       |
| )                                       | TREATMENT)                  |

TO: All Concerned Persons

1. On December 14, 2012, at 9:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment 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 Elois Johnson, Paralegal, no later than 5:00 p.m., December 3, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.340 LOT SIZES: EXEMPTIONS (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.

(a) remains the same.

(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973, and for alteration of lots created before April 15, 2003, as provided in (1)(b)(i), and only after approval by the local health department. To qualify for a waiver, the applicant shall provide adequate evidence as set out in (1)(b)(ii) and (iii) to demonstrate that water quality is protected.

(i) For purposes of this rule, "alteration" of lots created before April 15, 2003, means ~~combining lots by eliminating common boundaries~~, redefining lots by relocating common boundaries, ~~or a combination of both~~. An alteration of lots under this rule must also meet the following requirements:

(A) through (e)(iv) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The amendment to ARM 17.36.340 removes "eliminating common boundaries" from the definition of "alteration" of lots. Under the proposed new ARM 17.36.605(3) below, aggregations of parcels (i.e., eliminating common boundaries) are not considered new subdivisions. Removal of this language from the lot size requirements in ARM 17.36.340 is necessary to implement the proposed amendments to ARM 17.36.605.

17.36.605 EXCLUSIONS (1) The exclusions in this rule are in addition to the exclusions set out in 76-4-111 and 76-4-125(2), MCA. A subdivision excluded under 76-4-111 or 76-4-125(2), MCA, is subject to review under 76-4-130, MCA, if the subdivision causes facilities previously approved under Title 76, chapter 4, part 1, MCA, to deviate from the conditions of approval.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:

(a) a parcel that has no existing facilities for water supply, wastewater disposal, storm drainage, and or solid waste disposal, if no new facilities will be constructed on the parcel;

(b) a parcel that has ~~no existing facilities for water supply, wastewater disposal, or solid waste disposal other than those that were previously approved by the reviewing authority~~ a previous approval issued under Title 76, chapter 4, part 1, MCA, ~~or that were exempt from such review, if:~~

(i) no new facilities other than those previously approved exist or will be constructed on the parcel; and

(ii) ~~the division of land will not cause approved facilities to violate any conditions of approval, and will not cause exempt facilities to violate any conditions of exemption~~ deviate from the conditions of approval, in violation of 76-4-130, MCA;

(c) a parcel that has facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, if:

(i) no new facilities will be constructed on the parcel;

(ii) existing facilities complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and

(iii) the local health officer determines that existing facilities are adequate for the proposed use. As a condition of the exemption, the local health officer may require evidence that:

(A) existing septic tanks have been pumped within the previous three years;  
and

(B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield.

(3) Aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

**REASON:** The proposed amendment of ARM 17.36.605(1) clarifies that subdivisions that are excluded from review under 76-4-111 or 76-4-125(2)(a), MCA, must still be reviewed under 76-4-130, MCA, if the excluded division of land causes facilities that were previously approved by the department to deviate from the conditions of approval. In those cases, 76-4-130, MCA, prohibits the deviation until it has been approved by the department. The proposed amendment is necessary to clarify the application of 76-4-130, MCA, in those circumstances.

ARM 17.36.605(2)(a), the "no facilities exclusion," excludes parcels that have no sanitation facilities if none will be constructed on the parcel. The proposed amendments remove the term "existing," because that term does not add meaning. The use of "existing" has also caused confusion about whether this exclusion applies to the re-division of a parcel that has approved facilities that have not yet been constructed. As discussed below, ARM 17.36.605(2)(b) applies in those cases. The proposed amendments also add storm drainage to the list of sanitation facilities. The Sanitation Act requires that the department review plans for storm water drainage. Section 76-4-104(6)(e), MCA. This amendment is necessary to ensure that a new parcel that has only storm drainage features (e.g., a parcel for rental storage units) will be subject to review under the Sanitation Act.

The proposed amendments to ARM 17.36.605(2)(b)(i) and (ii) remove the exclusion for prior exempt parcels and move it, in modified form, to new ARM 17.36.605(2)(c). The amendments also make minor wording changes to clarify that the previous approval for the parcel must be one that was issued under the Sanitation Act, that the exemption does not apply if alteration of the parcel causes facilities to violate the conditions of the approval in violation of 76-4-130, MCA, and that the exemption can apply to a parcel that has approved facilities that have not yet been constructed. The amendments are necessary to clarify the application of the exclusion in those circumstances.

Proposed new ARM 17.36.605(2)(c) rewords the current exclusion in ARM 17.36.605(2)(b) for "previously exempt" parcels. This applies to parcels that were not subject to Sanitation Act review when they were created, but whose boundaries are now proposed to be altered. The amendments state that the new parcel is excluded if no new facilities are proposed, existing facilities complied with state and local laws and regulations, including permit requirements that were applicable at the time of installation, and the local health officer determines that existing facilities are adequate for the proposed use. The local health officer, as a condition of the exemption, may require evidence that existing septic tanks were pumped within the previous three years, and may require identification of an area for a replacement drainfield. The effect of the amendment will be to expand the exclusion to exclude parcels where the original basis for exemption no longer applies (e.g., grandfathered parcels), but where no Sanitation Act review is necessary. The proposed amendments are necessary to eliminate review of parcels where no Sanitation Act issues exist.

Proposed new ARM 17.36.605(3) excludes aggregations of parcels from review under the Sanitation Act. The current rules include aggregations at ARM 17.36.340. This was based on the former designation of aggregations as "divisions of land" under the Montana Subdivision and Platting Act (MSPA). The similar definitions of "subdivision" in the MSPA and the Sanitation Act call for similar

treatment of aggregations under both definitions. However, amendments to the MSPA in 2009 clarified that aggregations were distinct from divisions of land. Sec. 12, Ch. 446, L. 2009; § 76-3-207, MCA. The proposed amendment is necessary to implement a corresponding change in the interpretation of the Sanitation Act. The amendment clarifies that aggregations are not subdivisions and are reviewed only under 76-4-130, MCA, which applies when a parcel included in an aggregation has a prior approval under the Sanitation Act. In those cases the prior approval must be rewritten to reflect the new parcel name and dimensions.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., December 21, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. David Dennis, attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Richard H. Opper

RICHARD H. OPPER, Director

Certified to the Secretary of State, November 13, 2012.

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

|   |   |                          |
|---|---|--------------------------|
| In the matter of the amendment of       | ) | AMENDED NOTICE OF PUBLIC |
| ARM 24.101.413 renewal dates and        | ) | HEARING ON PROPOSED      |
| requirements, 24.171.401 fees,          | ) | AMENDMENT, ADOPTION, AND |
| 24.171.408 outfitter records,           | ) | REPEAL                   |
| 24.171.701 NCHU categories,             | ) |                          |
| transfers, and records, 24.171.2101     | ) |                          |
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| I incomplete outfitter and guide        | ) |                          |
| license applications, and the repeal of | ) |                          |
| 24.171.409 guide to hunter ratio and    | ) |                          |
| 24.171.605 provisional guide license    | ) |                          |

TO: All Concerned Persons

1. On October 25, 2012, the Board of Outfitters (board) published MAR notice no. 24-171-32 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 2107 of the 2012 Montana Administrative Register, issue no. 20. A public hearing was scheduled in the notice to be held on November 19, 2012, in Helena.

2. It was subsequently discovered that an error had occurred and the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and is rescheduling the public hearing as shown below.

3. On December 18, 2012 at 1:30 p.m. a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

4. 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 Outfitters no later than 5:00 p.m., on December 12, 2012, to advise us of the nature of the accommodation that you need. Please contact Trudy Phippen, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

5. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:



24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(w) remain the same.

|     |            |   |                                  |   |
|-----|------------|---|----------------------------------|---|
| (x) | Outfitters | Outfitter<br>Professional Guide<br>Guide (including<br>provisional guide) | Annually<br>Annually<br>Annually | December 31<br>December 31<br>December 31 |
|-----|------------|---|----------------------------------|---|

(y) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: The board is amending this rule and ARM 24.171.401, and repealing ARM 24.171.605, because after passage of a full licensing year, the board concluded the rule is not fulfilling its intended purpose of allowing outfitters to license up to three guides a year on inactive status, but not pay any fees until activating the licenses. It is also apparent that there is no need within the industry, as the board has not issued any inactive guide licenses since the initial adoption of the rule on August 27, 2010.

6. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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

~~(f) Guide license~~

~~(i) initial~~

(f) Initial and renewal guide license 150

~~(ii) initial processing of inactive guide license~~ 50

~~(iii) activation of inactive guide license~~ 100

~~(iv) renewal of inactive guide license~~ 50

(g) through (k)(iii) remain the same.

~~(iv) activating inactive guide license~~ 125

(l) remains the same.

AUTH: 37-1-131, 37-1-134, ~~37-1-319~~, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, ~~37-1-319~~, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-318, MCA

REASON: Authority and implementation cites are amended to align with the elimination of the inactive guide license.

24.171.408 OUTFITTER RECORDS (1) remains the same.

(2) Outfitter records shall be maintained on forms prescribed by the board and shall contain information as required by the board. The information required shall include, ~~but not be limited to:~~

(a) through (f) remain the same.

(g) the actual leased acreage unused by clients during that year; and

(h) tally sheets reflecting the number of clients served per NCHU category as defined in ARM 24.171.701 each year shall be maintained and submitted to the board during the renewal of the license or when the outfitter's license is lapsed; and

(i) remains the same, but is renumbered (h).

(3) Amendments to logs shall be made immediately when errors are discovered. Amendments that only supplement records with information that arose after license renewal are always proper. However, cases of amendments to records for any other reason shall be brought to the screening panel for a decision as to whether an investigation should follow.

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

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-47-301, MCA

REASON: The board determined it is reasonably necessary to amend (2) so that all the information required on the board forms is presented in rule. Without the amendment, the board is able to amend the forms and change what must be reported without providing notice to licensees. The board has received numerous complaints regarding the amount of record-keeping required on the forms, as some of the information requested is not called for by statute or rule. The board is deleting the NCHU tally sheets in (h), because the information required on the sheets is already reported in client logs, and the tally sheet forms request information not required by rule or statute.

In conjunction with the amendment to ARM 24.171.2101, the board is amending (3) to require that licensees amend client logs as soon as errors are discovered. It is the board's intent that this is an ongoing licensee obligation, and is specifying that amendments for any reason other than to supplement records with updated information will be reviewed by the screening panel. This amendment is reasonably necessary to address recent situations that convinced the board of the need to monitor amendments to outfitter records to avoid abuse.

#### 24.171.701 NCHU CATEGORIES, TRANSFERS, AND RECORDS

(1) through (8) remain the same.

(9) An outfitter who is subject to an adjustment of NCHU under 37-47-316, MCA, that would otherwise occur on or before December 4 ~~31, 2013~~ 2014, shall have up to and including December 4 ~~31, 2013~~ 2014, to establish the NCHU. The category definitions under this rule may be applied retroactively for purposes of establishing NCHU.

(10) and (11) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: Net client hunter use (NCHU) received in a transfer that occurred during the time period set forth in 37-47-316, MCA, and this rule, is subject to loss if not used within the prescribed time. When this provision was originally effective on October 14, 2011, licensees were expected to receive the results of a recently

concluded board audit of NCHU, so they would have three hunting seasons to use any NCHU that might otherwise be subject to loss. The audit was not completed until after the 2011 hunting season had ended, leaving licensees only two years to use the NCHU that was at risk, according to the audit. The board is extending the timeline to maintain the original intent of the rule and allow licensees three hunting seasons after the publication of the audit results to use NCHU that might otherwise be subject to loss.

24.171.2101 RENEWALS (1) through (2)(c) remain the same.

(d) a copy of the licensee's current insurance certificate with the licensee as the named insured; and

(e) complete client report logs; and

~~(f) fishing and/or hunting statistical outfitter use level sheets, depending on the services provided by the outfitter in the preceding license year.~~

(3) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, 37-47-318, MCA

REASON: The board is deleting certain required records from this rule as the information is no longer necessary and such tally sheets are being deleted from ARM 24.171.408.

7. The proposed new rule provides as follows:

NEW RULE I INCOMPLETE OUTFITTER AND GUIDE LICENSE

APPLICATIONS (1) Applications received by the board will be reviewed for completeness. If an application is not complete when first received by the board, the applicant will be mailed a letter stating that the application is incomplete. The board may indicate which documents or information is missing in this letter. However, the applicant remains responsible for ensuring all required information and documents are timely submitted. If the application is not completed within one year from the date the incomplete application first arrived, the application expires, and the applicant shall be required to submit a new application and fees before being considered for licensure.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: The board will occasionally receive an application that will remain active, but not complete, for an extended period of time. Open applications require additional time and resources to maintain. The board is proposing this rule to establish a procedure to close application files that do not progress to licensure within a reasonable period of time, which the board has determined to be within one year of beginning the process. This rule is not intended to affect the department's

practice of refusing incomplete applications when no fee accompanies the application.

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

24.171.409 GUIDE TO HUNTER RATIO found at ARM page 24-18525.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-402, MCA

REASON: The board is repealing this unnecessary rule, as it no longer serves any purpose following the elimination of outfitter-sponsored licenses.

24.171.605 PROVISIONAL GUIDE LICENSE found at ARM page 24-18573.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA

IMP: 37-1-131, 37-1-319, 37-47-201, 37-47-301, 37-47-303, 37-47-307,  
MCA

9. 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 Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsout@mt.gov](mailto:dlibsout@mt.gov), and must be received no later than 5:00 p.m., December 26, 2012.

10. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at [www.outfitter.mt.gov](http://www.outfitter.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.

11. 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 Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana

59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsout@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

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

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 November 13, 2012

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT  
RESIDENTIAL OR OUTDOOR PROGRAMS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.181.301 definitions and ) PROPOSED AMENDMENT  
24.181.2101 renewals )

TO: All Concerned Persons

1. On December 17, 2012, at 10:00 a.m., a public hearing will be held in room 439, 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 Alternative Adolescent Residential or Outdoor Programs (board) no later than 5:00 p.m., on December 12, 2012, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpap@mt.gov.

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

24.181.301 DEFINITIONS (1) "Adjunct ministry" means a charitable facility that meets all of the following criteria:

(a) is founded directly by the existing church or its officers and wholly owned and operated by the existing church, which is incorporated by the state;

(b) expresses and communicates, as an integral part of the adjunct ministry, the mission of the existing church;

(c) funding for is derived solely from the budget of the existing church;

(d) is accredited by the National Independent Private Schools Association (NIPSA), Council on Accreditation (COA), Commission on Accreditation of Rehabilitation Facilities (CARF), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(e) complies with the standards established by other governmental entities, including building codes for those structures used as a residence for program participants, health and sanitation requirements, and other standards adopted by the board by rules; and

(f) informs the public that the adjunct ministry is exempt from the licensure requirements in any advertisement.

(1) remains the same, but is renumbered (2).

~~(2)~~ (3) "Average daily census" means the arithmetical average of the number of participants served daily by the program, calculated over a calendar year. This number is calculated by adding the total number of service days, as defined in (2), provided by the program during the last calendar year, and divided by 365 days.

(3) through (6) remain the same, but are renumbered (4) through (7).

~~(7)~~ (8) "Direct care staff" means program personnel who directly participate in the care, supervision, and guidance of program ~~participant~~ participants in a program.

~~(8)~~ (9) "Number of service days" means any portion of a ~~24~~ 24-hour period in which service is provided to one participant, multiplied by the number of actual participants on that day.

(9) and (10) remain the same, but are renumbered (10) and (11).

~~(11)~~ (12) "Significant ~~Change~~ change to ~~Plan~~ plan of ~~Operation~~ operation" means a major addition or deletion of advertised services or location or change of services offered by the program.

AUTH: 37-1-131, 37-48-103, 37-48-113, MCA

IMP: 37-1-131, 37-48-102, 37-48-103, MCA

REASON: After considering the "adjunct ministry" status of a few programs as justification for not requiring licensure, the board determined it is reasonably necessary to define the term to provide guidance on the exemption that exists in statute. Section 37-48-102(6), MCA, defines the private alternative adolescent residential or outdoor programs that must be licensed by the board. The statute also provides six types of programs, schools, or camps that are exempt from the licensure requirement, including organizations or schools that are adjunct ministries of a church incorporated in Montana. The board is proposing to define "adjunct ministry" at this time to clearly set forth the board's intent regarding the parameters of the licensure exemption.

Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority. Additional nonsubstantive changes are necessary to comply with the formatting requirements of the Secretary of State.

24.181.2101 RENEWALS (1) through (7) remain the same.

(8) The board will conduct random audits of up to 25 percent of renewed licensees to determine if licensees comply with certification requirements for first aid and cardiopulmonary resuscitation.

AUTH: 37-1-131, 37-48-103, 37-48-113, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-48-103, 37-48-113, MCA

REASON: The board is amending this rule to establish a random audit procedure as allowed in 37-1-131, MCA. Licensed programs are required to have staff certified in first aid and CPR to ensure the health and safety of the program participants. Having completed several renewal cycles and noting the potential for program staff turnover, the board determined that annual audits following renewal are necessary

to ensure that programs are remaining compliant with these certification requirements.

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

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 Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdpap@mt.gov](mailto:dlibsdpap@mt.gov), and must be received no later than 5:00 p.m., December 28, 2012.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at [www.paarp.mt.gov](http://www.paarp.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 Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdpap@mt.gov](mailto:dlibsdpap@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. Cyndi Breen, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE  
ADOLESCENT RESIDENTIAL OR  
OUTDOOR PROGRAMS  
DR. JOHN SANTA, 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 November 13, 2012

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.70.406, 37.70.408, and ) PROPOSED AMENDMENT  
37.70.601 pertaining to annual )  
update to LIEAP )

TO: All Concerned Persons

1. On December 13, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.406 INCOME STANDARDS (1) Households with one through seven members with annual gross income at or below 60% of the estimated state median income for federal fiscal year (FFY) ~~2012~~ 2013 are eligible for low income energy assistance on the basis of income. Households with eight or more members are eligible for low income energy assistance on the basis of income only if the household's annual gross income is at or below 150% of the ~~2011~~ 2012 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) remains the same.

(3) The table of income standards for households of various sizes for the ~~2012~~ 2013 heating season may be accessed at the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov), or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(4) Households at or below 60% of the estimated state median income amount for FFY ~~2012~~ 2013 for the household's size are eligible for LIEAP client education and outreach activities.

AUTH: 53-2-201, MCA  
IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year ~~2012~~ 2013, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$40,089~~ 10,392 for a single person, ~~\$15,137~~ 15,591 for two persons, and an amount equal to ~~\$15,137~~ 15,591 plus ~~\$1,009~~ 1,039 for each additional household member, up to a maximum of ~~\$20,182~~ 20,786 per household. In addition, the household may have business assets whose equity value does not exceed \$25,000.

(5) remains the same.

AUTH: 53-2-201, MCA  
IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) through (1)(b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

| # BEDROOMS | NATURAL           |                   |                   |                    |                   |                   |
|------------|-------------------|-------------------|-------------------|--------------------|-------------------|-------------------|
|            | GAS               | ELECTRIC          | PROPANE           | FUEL OIL           | WOOD              | COAL              |
| ONE        | <del>\$ 395</del> | <del>\$ 596</del> | <del>\$ 946</del> | <del>\$1,209</del> | <del>\$ 540</del> | <del>\$ 365</del> |
| TWO        | 575               | 866               | 1,375             | 1,757              | 786               | 534               |
| THREE      | 783               | 1,180             | 1,874             | 2,394              | 1,070             | 723               |
| FOUR       | 1,077             | 1,624             | 2,578             | 3,294              | 1,473             | 995               |

| # BEDROOMS | NATURAL       |               |                 |                |               |               |
|------------|---------------|---------------|-----------------|----------------|---------------|---------------|
|            | GAS           | ELECTRIC      | PROPANE         | FUEL OIL       | WOOD          | COAL          |
| ONE        | <u>\$ 473</u> | <u>\$ 896</u> | <u>\$ 1,165</u> | <u>\$1,804</u> | <u>\$ 678</u> | <u>\$ 674</u> |
| TWO        | <u>688</u>    | <u>1,302</u>  | <u>1,694</u>    | <u>2,623</u>   | <u>986</u>    | <u>980</u>    |
| THREE      | <u>937</u>    | <u>1,775</u>  | <u>2,308</u>    | <u>3,574</u>   | <u>1,343</u>  | <u>1,335</u>  |
| FOUR       | <u>1,289</u>  | <u>2,441</u>  | <u>3,176</u>    | <u>4,917</u>   | <u>1,848</u>  | <u>1,836</u>  |

(ii) MULTI-FAMILY

| # BEDROOMS | NATURAL |          |         |          |        |        |
|------------|---------|----------|---------|----------|--------|--------|
|            | GAS     | ELECTRIC | PROPANE | FUEL OIL | WOOD   | COAL   |
| ONE        | \$ 334  | \$ 504   | \$ 800  | \$1,285  | \$ 456 | \$ 308 |
| TWO        | 503     | 759      | 1,205   | 1,935    | 687    | 464    |
| THREE      | 739     | 1,114    | 1,768   | 2,839    | 1,008  | 682    |
| FOUR       | 863     | 1,301    | 2,066   | 3,317    | 1,178  | 796    |

| # BEDROOMS | NATURAL |          |         |          |        |        |
|------------|---------|----------|---------|----------|--------|--------|
|            | GAS     | ELECTRIC | PROPANE | FUEL OIL | WOOD   | COAL   |
| ONE        | \$ 400  | \$ 758   | \$ 985  | \$1,918  | \$ 573 | \$ 569 |
| TWO        | 602     | 1,141    | 1,484   | 2,888    | 862    | 857    |
| THREE      | 884     | 1,674    | 2,178   | 4,238    | 1,265  | 1,258  |
| FOUR       | 1,033   | 1,956    | 2,544   | 4,951    | 1,478  | 1,469  |

(iii) MOBILE HOME

| # BEDROOMS | NATURAL |          |         |          |        |        |
|------------|---------|----------|---------|----------|--------|--------|
|            | GAS     | ELECTRIC | PROPANE | FUEL OIL | WOOD   | COAL   |
| ONE        | \$ 333  | \$ 502   | \$ 797  | \$1,068  | \$ 455 | \$ 308 |
| TWO        | 487     | 734      | 1,165   | 1,561    | 666    | 450    |
| THREE      | 646     | 973      | 1,545   | 2,070    | 882    | 596    |
| FOUR       | 721     | 1,086    | 1,724   | 2,310    | 985    | 666    |

| # BEDROOMS | NATURAL |          |         |          |        |        |
|------------|---------|----------|---------|----------|--------|--------|
|            | GAS     | ELECTRIC | PROPANE | FUEL OIL | WOOD   | COAL   |
| ONE        | \$ 399  | \$ 755   | \$ 982  | \$1,594  | \$ 571 | \$ 568 |
| TWO        | 583     | 1,104    | 1,436   | 2,330    | 835    | 830    |
| THREE      | 772     | 1,463    | 1,903   | 3,089    | 1,107  | 1,101  |
| FOUR       | 862     | 1,633    | 2,124   | 3,448    | 1,236  | 1,228  |

(d) through (2) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.70.406, 37.70.408, and 37.70.601 pertaining to Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program

to help low income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP.

ARM 37.70.406

Because LIEAP is a needs-based assistance program, only households with income and assets below specified limits are eligible to receive LIEAP benefits. ARM 37.70.406 contains the maximum income standards used to determine eligibility for LIEAP. These income standards are computed as a specified percentage of the federal poverty guidelines (FPG) issued annually by U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2011.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long-standing practice of the department to amend ARM 37.70.406 annually to provide that the updated version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The department uses the updated version of the guidelines because they are usually higher than the guidelines for the previous year. If the department did not use the updated guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. Thus, ARM 37.70.406 is now being amended to provide that the 2012 rather than the 2011 poverty guidelines will be used for the 2012-2013 heating season.

ARM 37.70.408

In determining eligibility for LIEAP, the department considers not only income but also assets (known as "resources") the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. ARM 37.70.408(4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year 2012. ARM 37.70.408(5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation, so it is necessary to amend ARM 37.70.408(4) to increase the dollar amounts for fiscal year 2013. ARM 37.70.408(5) specifies that the revised nonbusiness resource limits will be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The increase in the CPI for calendar year 2011 was 3.2%, so the dollar amounts in ARM 37.70.408(4) would increase by 3% from FY 2012 to 2013. Therefore, in accordance with the formula provided in ARM 37.70.408(5), ARM 37.70.408(4) must be amended to increase the maximum amounts of nonbusiness resources a total of 3% from FY 2012 to FY 2013.

ARM 37.70.601

ARM 37.70.601 governs the computation of benefits for eligible households. ARM 37.70.601(1)(a) provides that an eligible household's benefit is computed by multiplying the applicable amount in the table of benefits in ARM 37.70.601(1)(c) by the applicable multiplier from the table of income/climatic adjustment multipliers in ARM 37.70.601(1)(d). The benefit amounts in ARM 37.70.601(1)(c) vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding and the number of households expected to receive benefits in a given heating season. The benefit amounts in the tables are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2012-2013 heating season as well as fuel cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the 2012-2013 heating season. The revised benefit amounts in ARM 37.70.601(1)(c) for 2012-2013 are based on the department's estimate that 24,000 households will qualify for LIEAP benefits for the current heating season and based on the department's estimates of the federal LIEAP funds it will receive.

### Fiscal Impact

LIEAP is 100% federally funded. Congress has not yet appropriated funds for LIEAP for the 2012 - 2013 heating season, but based on the information available at this time the department estimates that Montana will receive LIEAP funds of approximately \$19.9 million for the current heating season. This compares to LIEAP funding of \$19.9 million for the 2011-2012 heating season. Benefit levels for households using all types of heating fuel and for all dwelling types will be comparable to the 2010-2011 heating season. It is estimated that 24,000 households will qualify for LIEAP benefits this year, which is comparable to last year.

5. The department intends the proposed rule changes to be applied effective October 1, 2012. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 21, 2012.

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

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

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Barbara B. Hoffman  
Rule Reviewer

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

Certified to the Secretary of State November 13, 2012.

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

In the matter of the adoption New ) NOTICE OF PUBLIC HEARING ON  
Rules I through VI pertaining to ) PROPOSED ADOPTION  
targeted case management services )  
for substance use disorders )

TO: All Concerned Persons

1. On December 13, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I TARGETED CASE MANAGEMENT SERVICES FOR  
SUBSTANCE USE DISORDERS, DEFINITIONS (1) "Adult" means a person 21 years of age or older.

(2) "Assessment" and "periodic reassessment" means determining the need for any medical, educational, social, or other services. These assessment activities include the following:

(a) taking client history;

(b) identifying the needs of the individual and completing related documentation;

(c) gathering information from other sources, such as family members, medical providers, social workers, and educators (if necessary) to form a complete assessment of the eligible individual.

(3) "Case Planning" means the development and periodic revision of a specific care plan based on the information collected through the assessment, that includes the following:

(a) specifies the goals and actions to address the medical, social, education, and other services needed by the eligible individual.



(b) includes activities such as ensuring the active participation of the eligible individual and working with the individual, the individual's authorized health care decision maker, if appropriate, or others to develop those goals.

(c) identifies a course of action to respond to the assessed needs of the eligible individual.

(4) "Coordination, referral, and related activities" means activities that help the eligible individual obtain needed services. The activities include ones that help link the individual with medical, social, and educational providers or other programs and services that are capable of providing needed services to address identified needs and achieve goals specified in the care plan.

(5) "Monitoring and follow-up activities" means activities and contacts necessary to ensure the care plan is effectively implemented and adequately addresses the needs of the eligible individual. These activities may be with the person, family members, service providers, or other entities or individuals and conducted as frequently as necessary to help determine whether the following conditions have occurred:

- (a) services are being furnished in accordance with the person's care plan;
- (b) services in the care plan are adequate to meet the needs of the person;

or

- (c) change(s) occurred in the needs or status of the person.

(6) "SSA" means Social Security Act.

(7) "Substance Abuse" means a person meets requirements in DSM-IV-TR for diagnosis of: 305.00; 305.20; 305.30; 305.40; 305.50; 305.60; 305.70; or 305.90.

(8) "Substance Dependency" means a person meets requirements in DSM-IV-TR for diagnosis of: 303.90; 304.20; 304.30; 304.40; 304.60; 304.70; 304.80; 305.50; or 307.90.

(9) "Substance Use Disorders" means a person who has either a diagnosis of substance abuse and/or substance dependency.

(10) "TCM" means Targeted Case Management.

(11) "Youth" means a person from birth up to and including 20 years of age.

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

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

NEW RULE II TARGETED CASE MANAGEMENT SERVICES FOR SUBSTANCE USE DISORDERS, ELIGIBILITY (1) TCM services are available under [New Rule I through VI] only to persons who meet the following criteria:

(a) Youth who are 20 years of age or younger with a diagnosis of substance dependency or substance abuse.

(b) Adults who are 21 years of age or older with a diagnosis of substance dependency.

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

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

NEW RULE III TARGETED CASE MANAGEMENT SERVICES FOR SUBSTANCE USE DISORDERS, SERVICE COVERAGE (1) TCM services must meet all requirements found in ARM 37.86.3301 through 37.86.3306.

(2) TCM services for substance use disorders include those indicated in [New Rule I] (2) through (5).

(3) TCM services for substance use disorders are provided by state-approved chemical dependency treatment programs in accordance with these rules and the provisions of ARM 37.27.901 through ARM 37.27.912, and 53-24-208, MCA.

(4) TCM services may include contacts with noneligible individuals for purposes related to identification of the person's needs, accessing needed services, identifying needs and supports to assist in obtaining identified services, providing case managers with useful feedback, and alerting case managers to changes in the person's needs.

(5) TCM does not include:

(a) direct delivery of medical, educational, social, or other services to which a person has been referred;

(b) when activities are an integral and inseparable component of another covered Medicaid service;

(c) duplicate payments made to public agencies or private entities under the State Plan and other program authorities;

(d) writing, recording, or entering case notes for the person's file;

(e) coordination of the investigation of suspected abuse, neglect, and/or exploitation cases;

(f) travel to and from activities, with or without the person;

(g) any service that does not incorporate the allowable TCM components, even if written into the individualized TCM case plan;

(h) Medicaid determination and redetermination (arranging for appointments, monitoring completion of needed steps for determination are eligible TCM services); and

(i) activities for which a person may be eligible that are integral to the administration of another nonmedical program such as guardianship, child welfare/child protective services, parole, probation, foster care services, or specialized education programs except for case management that is included in an individualized education program or individualized family service plan consistent with SSA section 1903c for services furnished to a child with a disability or to an infant or toddler with a disability.

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

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

NEW RULE IV TARGETED CASE MANAGEMENT SERVICES FOR SUBSTANCE USE DISORDERS, SERVICE REQUIREMENTS (1) Persons receiving TCM services are allowed the freedom of choice of any qualified Medicaid provider for targeted case management services.

(2) TCM service providers cannot restrict a person's access to other Medicaid services.

(3) TCM services will not duplicate payments made to public agencies or private entities under the Medicaid program and other program authorities.

(4) A person cannot be compelled to receive TCM services as a condition of receipt of other Medicaid services or condition receipt of other Medicaid services on receipt of TCM services.

(5) TCM services must be supported by narrative documentation of all services provided.

(6) TCM services must be provided according to a TCM plan which must:

(a) be developed jointly by the case manager and the person;

(b) identify measurable objectives;

(c) specify strategies to achieve defined objectives;

(d) identify agencies and contacts which will assist in meeting the objectives;

(e) be incorporated into the treatment plan;

(f) identify natural and community supports to be utilized and developed; and

(g) include an objective to serve the person in the least restrictive and most culturally appropriate therapeutic environment possible for the person. The TCM plan should also be directed toward facilitating preservation of the person in the family unit, preventing out-of-community placement, or facilitating the person's return from inpatient or residential care.

(7) Objectives in a TCM plan must have an identified date of review no more than 90 days after the plan date. Plans will be revised to reflect changes in personal goals and needs, and services provided to the person.

(8) TCM services must be delivered in accordance with the person's needs.

(9) Comprehensive TCM services must be provided on a one-to-one basis, to one person, and through one case manager.

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

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

NEW RULE V TARGETED CASE MANAGEMENT SERVICES FOR SUBSTANCE USE DISORDERS, PROVIDER REQUIREMENTS

(1) The requirement in (2) is in addition to those requirements contained in rules generally applicable to Medicaid providers.

(2) TCM services for substance use disorders must be provided by a state-approved substance use disorder treatment program that is enrolled in the Montana Medicaid program.

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

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

NEW RULE VI TARGETED CASE MANAGEMENT SERVICES FOR SUBSTANCE USE DISORDERS, REIMBURSEMENT

(1) TCM services for substance use disorders will be reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is a period of 15 minutes.

(2) The department may, in its discretion, designate a single provider to provide targeted case management services in a designated geographical region. Any provider designated as the sole case management provider for a designated

geographical region must, as a condition of such designation, agree to serve the entire designated geographical region.

(3) The department will pay the lower of the following for TCM services:

(a) the provider's actual submitted charge for services; or

(b) the amount specified in the State Approved Chemical Dependency Program Manual.

(4) Providers may bill TCM services for persons transitioning from an institution to a community setting as follows:

(a) With a covered inpatient stay, the person receiving services may be eligible for TCM services during the last 14 days prior to discharge to the community.

(b) TCM activities must be coordinated with and not duplicate inpatient discharge planning.

(c) Amount, duration, and scope of the case management activities will be documented in a person's plan of care including activities prior to and post-discharge, to facilitate a successful transition to community living.

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through VI to implement Medicaid Targeted Case Management for adults diagnosed with a substance use disorder dependency or youth diagnosed with substance use disorder abuse or dependency.

The Montana Medicaid program is administered by the department to provide health care to Montana's qualified low income and disabled residents. In order to provide health care services to these Montana residents, services need to be defined, limitations or qualifications provided, and requirements outlined. These rules are necessary to specify eligibility, service coverage, provider requirements, and reimbursement for Medicaid targeted case management services for substance use disorders.

The department is seeking federal matching funds through the Medicaid program. In order to provide targeted case management services to a specific population such as an individual with a substance use disorder, the department must provide a rule structure to ensure federal regulations governing targeted case management is in place. The structure needs to include: defining terms; stating who is eligible to receive such services; what type of service can and cannot be provided; conditions and documentation is required to justify or satisfy the service meets criteria; who can provide services; and how services will be reimbursed.

The approaches taken for writing these proposed rules are as follows:

1. The current code of federal regulations was reviewed.

2. Current administrative rules governing all Medicaid targeted case management were requested and reviewed.
3. Program personnel from other Medicaid targeted case management programs were informed of these proposed rules.
4. A Chemical Dependency Bureau focus group made up of six state-approved chemical dependency program providers including one urban provider; three urban/frontier providers; one frontier provider; and one Native American program provider; was convened to discuss criteria required for Medicaid funding, current regulations, and allow discussion and provider input.
5. Draft rules were written and sent via e-mail to the focus group for further input, comments, and corrections.
6. One telephone conference call was completed to allow discussion.
7. The final draft of the rule was e-mailed to the focus group allowing them one last opportunity to provide comment or input prior to filing.

#### New Rule I

This rule is necessary to define the terms used in Medicaid targeted case management services for substance use disorders.

#### New Rule II

This rule is necessary to state client eligibility requirements and to define the specific population for Medicaid targeted case management services for substance use disorders.

#### New Rule III

This rule is necessary to define what Medicaid targeted case management services for substance use disorders includes and does not include.

#### New Rule IV

This rule is necessary to state the criteria for client participation and documentation of Medicaid targeted case management services for substance use disorders.

#### New Rule V

This rule is necessary to state the provider requirements to participate in Medicaid targeted case management services for substance use disorders.

New Rule VI

This rule is necessary to state the criteria by which reimbursement can be made for Medicaid targeted case management services for substance use disorders.

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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 21, 2012.

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

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

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

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State November 13, 2012.

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 37.36.604 pertaining to ) AMENDMENT  
updating the federal poverty index for )  
the Montana telecommunications ) NO PUBLIC HEARING  
access program ) CONTEMPLATED

TO: All Concerned Persons

1. On January 5, 2013, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2009~~ 2012 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2009~~ 2012 annual poverty guidelines for families of various sizes are shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

| FAMILY SIZE | 250% OF ANNUAL POVERTY GUIDELINE    |
|-------------|-------------------------------------|
| One         | <del>\$27,075</del> <u>\$27,925</u> |
| Two         | <del>36,425</del> <u>37,825</u>     |
| Three       | <del>45,775</del> <u>47,725</u>     |
| Four        | <del>55,125</del> <u>57,625</u>     |
| Five        | <del>64,475</del> <u>67,525</u>     |

|                             |                                 |
|-----------------------------|---------------------------------|
| Six                         | <del>73,825</del> <u>77,425</u> |
| Seven                       | <del>83,175</del> <u>87,325</u> |
| Eight                       | <del>92,525</del> <u>97,225</u> |
| Each Additional Person, Add | <del>9,350</del> <u>9,900</u>   |

(3) There is no asset test to be eligible for a loan of specialized telecommunications equipment.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.36.604 to reflect the 2012 current Federal Poverty Index (FPI). Each time the FPI changes, it impacts the Montana Telecommunications Access Program (MTAP) income guidelines. It is a change we do in response to the FPI change to maintain compliance with the FPI. The proposed amendments to ARM 37.36.604 aligns MTAP income guidelines with the federal level.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 3, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphslegal@mt.gov](mailto:dphslegal@mt.gov).

6. The department intends to apply these rules retroactively to July 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., January 3, 2013.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be five persons based on the number of applications denied in Fiscal Year (FY) 2012.



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

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

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

/s/ Shannon L. McDonald  
Rule Reviewer

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

Certified to the Secretary of State November 13, 2012.

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

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| In the matter of the amendment of | ) | NOTICE OF PROPOSED |
| ARM 38.5.2202 and 38.5.2302,      | ) | AMENDMENT          |
| pertaining to pipeline safety     | ) |                    |
|                                   | ) | NO PUBLIC HEARING  |
|                                   | ) | CONTEMPLATED       |

TO: All Concerned Persons

1. On December 27, 2012, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 4:00 p.m. on December 13, 2012, to advise us of the nature of the accommodation you need. Please contact Aleisha Solem, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail ASolem@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~September 30, 2011~~ October 30, 2012. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA  
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~September 30, 2011~~ October 30, 2012. A copy of the referenced CFRs is available from the United States Department of Transportation,

Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=3e139b8fe42796ca0335e22c595fab2a&r=PART&n=49y3.1.1.1.7>.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail [asolem@mt.gov](mailto:asolem@mt.gov) and must be received no later than 5:00 p.m. December 24, 2012.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Justin Kraske, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail [jkraske@mt.gov](mailto:jkraske@mt.gov) to be received no later than 5:00 p.m., December 24, 2012.

7. If the PSC receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 2 entities based on the 27 entities affected.

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

person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Aleisha Solem at (406) 444-7618, e-mailed to ASolem@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. An electronic copy of this proposal notice is available on the PSC's web site and also 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. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ DENNIS LOPACH

Dennis Lopach  
Rule Reviewer

/s/ TRAVIS KAVULLA

Travis Kavulla  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State, November 13, 2012.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 42.11.105, 42.11.211, 42.11.245, )  
42.11.402, 42.11.409, and 42.13.804 )  
relating to liquor stores, vendors, )  
licensees, and distilleries )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 17, 2012, at 3:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., December 3, 2012, 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. As part of the biennial review of all its administrative rules, the department proposes to amend current rules to increase the public's and liquor industry's understanding of liquor laws. The goal of the proposed amendments is to reduce confusion, enhance the readability, and add clarity to the rules.

The proposed amendments seek to improve the definition of product to ensure a consistent use of the term throughout Chapter 11. The proposed amendments clarify the requirements for the registration of representatives and enhance the readability of approved advertising specialties by removing cumbersome language.

The proposed amendments seek to add clarity to the inventory policy governing distilled spirits. Distilled spirits are a mature product category and therefore should be marketed in an appropriate and responsible manner. In order to protect the public health, welfare, and safety of the people of Montana, it is necessary to have clear, concise rules to prevent unwarranted products from entering the market.

The department also seeks to add consistency within the rules by aligning ARM 42.11.409 and 42.11.421 with regard to overstocked inventory. Finally, the proposed amendments seek to clarify reporting periods for domestic distilleries.

4. The rules proposed to be amended provide as follows, stricken matter

interlined, new matter underlined:

42.11.105 DEFINITIONS As used in ~~this~~ subchapters 1, 2, and 4, the following definitions apply:

(1) through (13) remain the same.

(14) "Product" means a ~~brand of liquor item~~, identified by a unique identification number or stock-keeping unit.

(15) through (22) remain the same.

AUTH: 16-1-103, 16-1-104, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.11.105, to expand the word "subchapter" to include two other subchapters in this chapter because the terms defined in the rule also apply to terms used in those other subchapters.

The department further proposes to amend (14) to better define and ensure a consistent use of the term "product" throughout Chapter 11. Amending the definition is intended to enhance the liquor industry's understanding of the term and eliminate any potential confusion as it is referenced throughout the chapter.

42.11.211 REGISTRATION OF REPRESENTATIVES (1) and (2) remain the same.

~~(3) In considering an application for registration of a representative, the department shall consider all matters pertaining to the residency, qualifications, experience, and character (including criminal record, if any) of the representative to be registered.~~ Individuals seeking registration as a representative must submit a properly completed application to the department and supply proof of residency, as per 16-3-107, MCA. The completed application, proof of residency, and the requirements in (2) will be reviewed by the department for the purpose of approving a registration of representative.

(4) remains the same.

~~(5) Individuals seeking registration as a representative must submit a properly completed application to the department.~~

~~(6) Registration of a representative is effective upon approval by the department.~~

~~(7)~~(6) In addition to the definition of "resident" found in ARM Title 42, chapter 2, evidence of residency includes:

(a) qualification to vote in a Montana election;

(b) filing a Montana income tax return; or

(c) having a current Montana ~~drivers~~ driver's license.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-103, 16-3-107, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.11.211 to enhance potential liquor representatives' understanding of the requirements necessary to have their registration application approved, to add 16-3-103, MCA, as an implementing statute, and correct punctuation.

42.11.245 ADVERTISING SPECIALTIES (1) Registered representatives are allowed to distribute point of sale advertising materials and consumer advertising specialties to a retailer as set forth in Title 27 of the Code of Federal Regulations, regulation number 6.84 of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR as revised on April 1, 2006, which is incorporated by reference as fully set forth as the regulations for consumer advertising specialties and retailer advertising specialties. Copies may be obtained at the United States Treasury web site located at [www.ttb.gov/Regulations](http://www.ttb.gov/Regulations)  
[www.ttb.gov](http://www.ttb.gov).

(2) remains the same.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 2-4-307, 16-3-103, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend to amend ARM 42.11.245 to remove the date reference of the Code of Federal Regulations (CFR). Continuing to reference the year of the CFR revision in the rule is unnecessary because the CFR is updated each calendar year. Striking the revision date will also eliminate the administrative burden of amending the rule annually in the future. The department further proposes to revise cumbersome phrasing to enhance the readability of the rule and to update a web site address.

42.11.402 INVENTORY POLICY (1) and (2) remain the same.

(3) ~~Products will not be made available in the state of Montana through the state liquor warehouse if the container, flavor, label, or advertising emphasizes the features that are normally associated with nonalcoholic products and minimizes the products' alcohol content~~ Liquor products are a mature product category, restricted by law to only consumers age 21 or older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. These include, but are not limited to, products The department, in its discretion and on a case-by-case basis, will not approve a liquor product that:

(a) ~~appear to appeal to underage consumers~~ blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling, packaging and/or containers that emphasize features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

(i) aerosol cans;

(ii) gelatin cups;

(iii) hollow candies; or

- ~~(iv) mason jars that contain fruit;~~
- ~~(b) blur the distinction between an alcoholic and nonalcoholic product;~~
- ~~(c) reference Santa Claus, cartoon type characters, or other child like figures;~~
- ~~(d) use uses flavors that are most commonly targeted toward children such as, for example, associated with underage persons, such as:~~
- ~~(i) bubble gum; or~~
  - ~~(ii) cotton candy;~~
  - ~~(e)(c) are candies filled with liquor in liquid form; or contains graphics or elements that:~~
  - ~~(i) are most commonly associated with underage persons;~~
    - ~~(ii) minimizes, fails to identify, or disguises the product's alcohol content; or~~
    - ~~(iii) alludes to or suggests irresponsible, excessive, or underage consumption;~~
- ~~(f)(d) require requires specialized handling requirements such as frozen or refrigerated products.~~
- (4) remains the same.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.11.402 to add clarity to the product approval process for liquor. Liquor is a unique product that requires high standards in the way it is marketed in order to protect the public health, welfare, and safety of the people of Montana.

The department proposes to add language into the rule which will provide the public and industry with examples of specific types of containers, labels, and/or packaging that will not be approved for sale in the state of Montana.

The department is further proposing to amend the rule to make consistent reference to individuals under the legal drinking age as "underage persons" rather than as "children."

42.11.409 REVISED LISTING, CLOSEOUT, AND OVERSTOCK (1) and (2) remain the same.

(3) Inventory in excess of ~~the projected 12 months of sales~~ a historical 12-week case demand for a product will be treated as overstock in accordance with ARM 42.11.104.

(4) through (6) remain the same.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: As part of the biennial review of all its administrative rules, the department is proposing to amend ARM 42.11.409 to correct an error in (3). As per ARM 42.11.421, the maximum level of inventory to be maintained in the bailed warehouse is a historical twelve-week case demand of the



product. Any inventory over this maximum would be considered excess. Amending this rule will create continuity with ARM 42.11.421 and eliminate potential confusion.

42.13.804 DOMESTIC DISTILLERY - MONTHLY REPORTS (1) Each distillery shall file with the department a monthly tax report, as required by 16-1-424, MCA, showing the following information:

(a) the total number of proof gallons manufactured, distilled, rectified, bottled, or processed and sold nationwide during the current calendar year;

(b) the total amount of liquor provided to consumers for on-premise consumption with or without charge at the distillery; and

(c) the total number of bottles sold to consumers at retail for off-premise consumption.

(2) remains the same.

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

IMP: 16-1-404, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: As part of the biennial review of all its administrative rules, the department is proposing to amend ARM 42.13.804 to enhance distillers' knowledge by specifying the period of time for which they are required to report their monthly sales information. The proposed amendment is intended to eliminate any potential confusion and to ensure that distillers will understand the importance of consistently and timely reporting their sales information.

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](mailto:canderson@mt.gov) and must be received no later than January 4, 2013.

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 is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above, or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 13, 2012

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 42.15.107, 42.15.110, 42.15.213, )  
42.15.216, 42.15.315, 42.15.316, )  
42.15.318, 42.15.403, 42.15.605, )  
42.15.901, 42.15.902, and 42.15.903 )  
relating to income tax )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 17, 2012, at 3:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the 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 p.m., December 3, 2012, 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 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) "Part-year resident" means an individual who either was a Montana resident at the start of the year that established residency in another state during the year, or who was a nonresident at the start of the year that established residency in Montana during the year. The term does not include individuals such as:

(a) retirees, commonly referred to as "snowbirds," who are residents of Montana but live in another state for a portion of each year;

(b) a resident of another state who works in Montana on a seasonal basis, but does not establish residency in Montana; or

(c) a Montana resident attending an out-of-state college who has not established residency elsewhere.

~~(1)~~(2) "Permanent place of abode" means a dwelling place habitually used by an individual as the individual's home, whether or not owned by the individual or a dwelling the individual may someday leave.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.107 in order to help taxpayers determine the correct residency status to use when filing their Montana tax return. Some individuals mistakenly believe that because they maintain and occupy dwellings in two or more states, or because they work in multiple states for extended periods of time, that they should file their Montana income tax return using the residency status of "part-year resident."

The proposed amendments will add detail to make it clear that a part-year resident is someone who actually changed their residency status from one state to another during the tax year.

42.15.110 TAXATION OF PART-YEAR RESIDENTS AND NONRESIDENTS

(1) ~~Nonresidents and part-year residents~~ Part-year residents and nonresidents are subject to the same filing requirements as residents unless otherwise expressly exempted in statute.

(2) and (3) remain the same.

(4) Part-year resident and Nonresident nonresident estates and trusts are subject to the same filing requirements set forth in (1) through (3) unless otherwise expressly exempted in statute.

AUTH: 15-30-2104, MCA

IMP: 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 proposes revising the title of ARM 42.15.110 from "Taxation of Nonresidents" to "Taxation of Part-Year Residents and Nonresidents" in order to better reflect the content of the rule and, therefore, provide better information to individuals looking to the rules for guidance. The department also proposes to amend the rule content to use consistent language in regard to references to part-year resident and nonresident.

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

AUTH: ~~15-30-2620~~ 15-33-105, MCA

IMP: ~~15-33-2103~~ 15-33-106, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.15.213 to correct errors in the statutory citations that support the rule.

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

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.216 to provide taxpayers with additional information on which interest earned from United States obligations is exempt from Montana income tax.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) remains the same.

(2) Original returns are Montana Forms 2, 2M, 2EZ, and FID-3 only. ~~Form 2S is also used for tax years prior to 2006 as an original return.~~

(3) through (11) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, 15-30-2641, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.15.315 to remove a reference to a tax form that is no longer in use.

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) through (7) remain the same.

(8) For tax years beginning after December 31, 2011, an individual whose income tax liability for the current year is \$200 or less, and who pays the entire tax liability and files his or her return on or before the extended due date provided for in 15-30-2604(3)(a), will not be charged interest or the penalties for late filing and late payment.

~~(8)~~(9) 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 percent of the previous year's tax for purposes of meeting the threshold requirements in 15-30-2604, MCA.

AUTH: 15-30-2620, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.316 to outline a new means by which taxpayers can receive an extension to file their income tax return, and to implement a provision included in Senate Bill 166 (SB166) as passed by the 2011 Montana Legislature. Taxpayers, such as college students and some retirees, may have a straightforward tax return but are not able to file by April 15 for some reason. It may not occur to these individuals that they still may need to make a payment in order to have an extension to file. Montana law

requires the assessment of a penalty for late filing at the lesser of \$50 or the amount of tax owed. Some of these individuals are charged a penalty which can be as much as the tax, effectively doubling the amount they owe.

Effective with the passage of SB166, L. 2011, for tax years beginning after December 31, 2011, individuals with a tax liability of \$200 or less are relieved of interest and the penalties for filing late and paying late if they file their return and pay the tax owed within six months of when the return and tax were originally due.

42.15.318 MONTANA NET OPERATING LOSSES (1) through (4) remain the same.

(5) The election to waive the carryback of a net operating loss on the federal return does not waive the carryback for Montana purposes and a separate election must be made. A taxpayer may elect to waive the carryback of a net operating loss even if the taxpayer has not made the election to waive the carryback on the federal return. The election to waive the carryback is made on Form NOL, Montana Net Operating Loss.

~~(5)~~(6) An election to waive the carryback of the net operating loss is irrevocable. If a taxpayer elects to waive the carryback, the election must be made by the due date (including extensions of time) for filing the taxpayer's return for the tax year of the net operating loss.

AUTH: 15-30-2620, MCA

IMP: 15-30-2119, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.318 to inform individuals of an option regarding the treatment of their net operating losses which provides some flexibility in managing their taxes. Montana law allows individuals to elect to waive the carryback of a net operating loss regardless of the election they made on the federal return. The amendment outlines this and explains the appropriate manner for making the election.

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) through (3) remain the same.

~~(4) For tax years beginning after December 31, 2002, the~~ 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.

(5) through (7) remain the same.

(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 percent 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:

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

AUTH: 15-30-2620, MCA

IMP: 15-30-2114, 15-30-2152, ~~15-30-2641,~~ MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.15.403 to remove references to older tax years. The proposed amendments will not change the content of the rule. The department further proposes to remove an incorrect implementing statute.

42.15.605 DEFINITIONS The following definitions apply to this subchapter:

(1) and (2) remain the same.

~~(3) "Descendant" means a lineal descendant and a collateral descendant related by blood. Sections 72-11-102, 72-11-103, and 72-11-104, MCA, describe how kinship and degrees of kinship are determined.~~

~~(4) "Immediate family member" means any individual who is a lineal descendent of the account holder and also includes their spouse. Stepchildren are considered lineal descendents if that relationship was created before the child's eighteenth birthday.~~

(5) through (8) remain the same but are renumbered (3) through (6).

AUTH: 15-30-2620, MCA

IMP: 15-30-2114, 15-61-102, 15-61-201, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.15.605 to remove definitions of terms not referred to in the applicable statutes for the Medical Care Savings Account set forth in Title 15, Chapter 61, nor included with the administrative rules that were promulgated in support of these statutes.

42.15.901 DEFINITIONS The following definitions apply to this subchapter:

(1) ~~"Montana form Form FTB"~~ means the Montana first-time home buyer's savings account form containing annual reporting information for self-administered individual accounts.

~~(2) "Montana form FTB-P" means the Montana first-time home buyer's~~

savings account form used to report penalties assessed for nonqualified withdrawals made other than on the last business day of the tax year of the account holder.

(3)(2) "Self-administered account holder" is synonymous with that of an account holder as defined in 15-63-102, MCA, but a self-administered account holder may also be an account administrator. For purposes of these rules, the term may be used in place of account administrator.

AUTH: 15-1-201, MCA

IMP: 15-63-102, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.15.901 to make a capitalization revision and to remove a reference to the discontinued Form FTB-P. For taxpayer convenience, the two forms related to the tax administration of the first-time home buyer's saving account have been combined. The penalty information previously included on Form FTB-P is now reported as a separate section on Form FTB.

#### 42.15.902 FIRST-TIME HOME BUYER ACCOUNT ADMINISTRATOR

REGISTRATION (1) Every account administrator, except a self-administered account holder, is required to register on form FTB, which is provided by with the department.

(2) The registration form does not need to be in a specific format but it must contain the following information:

(a) the name, address, identification number of the entity, and the names of the owners or officers for a business; or

(b) the name, address, and social security number for a sole proprietorship or partnership.

(3) and (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-63-102, 15-63-204, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.902 to simplify the registration process for account administrators. An account administrator can submit a registration in any format as long as the required information is provided.

#### 42.15.903 ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS

(1) through (7) remain the same.

(8) Each self-administered account holder must file the information required in (1) either on a Montana ~~form~~ Form FTB provided by the department or any means available, so long as the necessary information is provided and remitted with the individual income tax form for the corresponding tax year.



(9) Self-administered account holders or account administrators who withhold penalties on monies used for items other than eligible expenses must submit the penalties to the department.

(a) Account administrators, other than self-administered account holders, must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceeds \$500.

(b) Account administrators, other than self-administered account holders, whose total penalties withheld during the calendar year are less than \$500 must remit the penalties on or before January 31 of the following year to the department.

(c) Self-administered account holders must complete and file Montana ~~form FTB-P~~ Form FTB and remit the penalty shown on Montana ~~form FTB-P~~ Form FTB with the individual income tax return (Montana ~~form Form 2~~ Form 2).

(10) remains the same.

AUTH: 15-1-201, MCA

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

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.15.903 to make a capitalization revision and to remove discontinued Form FTB-P, as the penalty information it contained is now included in a separate section on Form FTB.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than January 4, 2013.

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

6. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which

includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 166, L. 2011, Senator Joe Balyeat, was notified by regular mail on July 25, 2011. Senator Balyeat was subsequently notified on October 23, 2012.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 13, 2012

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|   |   |                             |
|---|---|-----------------------------|
| In the matter of the adoption of New    | ) | NOTICE OF PUBLIC HEARING ON |
| Rules I and II, the amendment of ARM    | ) | PROPOSED ADOPTION,          |
| 42.4.104, 42.4.201, 42.4.202, 42.4.208, | ) | AMENDMENT, AND REPEAL       |
| 42.4.209, 42.4.303, 42.4.402,           | ) |                             |
| 42.4.1608, 42.4.1702, 42.4.2403,        | ) |                             |
| 42.4.2404, 42.4.2704, 42.4.2706,        | ) |                             |
| 42.4.2802, 42.4.2905, 42.4.3003,        | ) |                             |
| 42.4.3103, 42.4.3202, 42.4.3303,        | ) |                             |
| 42.4.4106, and 42.4.4107, and the       | ) |                             |
| repeal of 42.4.2707 relating to tax     | ) |                             |
| credits                                 | ) |                             |

TO: All Concerned Persons

1. On December 17, 2012, at 9 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the adoption, amendment, and repeal 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 p.m., December 3, 2012, 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 rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Eligible employee" means an employee who works at least 20 hours a week but does not work for the business as a temporary or seasonal employee.

(2) "Seasonal employee" means an employee whose length of employment is expected to and actually lasts 120 days or fewer during the year. An employee would not be considered seasonal if they were not employed by the business for 120 days for reasons such as retirement or layoff. Examples of seasonal employees include extra retail clerks hired exclusively for holiday seasons and food and beverage workers hired for the summer tourist season.

AUTH: 15-1-201, 15-31-150, MCA  
IMP: 15-31-132, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I to define terms used in proposed New Rule II.

NEW RULE II DETERMINING NUMBER OF EMPLOYEES (1) In determining whether an employer has met the requirement in 15-31-132, MCA, that they have employed 20 or fewer employees working at least 20 hours a week, the following calculation will apply:

- (a) add the total hours worked and hours for which payment is made or due for reasons such as sick leave, vacation, or paid holiday by all eligible employees but do not include more than 2,080 hours for an employee;
- (b) divide the total hours by 2,080; and
- (c) if the result in (b) is more than 20 but less than 21, round the result down to 20.

AUTH: 15-1-201, 15-31-150, MCA  
IMP: 15-30-2367, 15-31-132, 33-1-207, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule II in response to inquiries from businesses and tax return preparers. The Health Insurance for Uninsured Montanans tax credit is available to businesses that employ 20 or fewer employees, who each work at least 20 hours a week. Questions have arisen about how to determine whether a business has exceeded 20 employees due to factors such as seasonal employees and turnover. The calculation outlined by the proposed rule follows the calculation concept used for the federal Small Business Health Insurance credit to determine the number of employees of a business. The proposed Montana calculation provides fewer specifics because the provisions of the federal credit require a more accurate calculation of the number of employees and has a phase out provision.

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

42.4.104 ENERGY GENERATING SYSTEMS (1) Various tax benefits are allowed for investments in "recognized nonfossil forms of energy generation." The term "recognized nonfossil forms of energy generation" is defined in 15-32-102, MCA, and ARM 42.4.110. The term does not include commercial ~~or net metering~~ systems, which may be eligible for a separate credit as described in subchapter 41 of this chapter. In this rule, the term "alternative energy generating systems" is used generically to describe all of the recognized nonfossil forms of energy generation listed in ARM 42.4.110.

(2) The tax benefits for installing an alternative energy generating system are:

- (a) a credit against their individual income tax liability to resident individuals

who install the generating system to provide heat energy for their principal dwelling (equal to the cost of the system, including installation costs, less grants received, not to exceed \$500) as provided in 15-32-201, MCA;

(b) if the system uses a "low emission wood or biomass combustion device" as defined in 15-32-102, MCA, and ARM 42.4.110, that a resident individual installs to provide heat for their principal dwelling, a credit against their individual income tax equal to the cost of the system, including installation, not to exceed \$500, as provided in 15-32-201, MCA;

(c) if the energy generating system is a geothermal system that transfers energy from the ground by way of a closed loop or from ground water by way of an open loop that a resident individual installs in their principal dwelling to heat or cool the dwelling, a credit against their individual income tax equal to a portion of the installation costs of the system, not to exceed \$1,500, as provided in 15-32-115, MCA;

(d) if the energy generating system is a geothermal system described in ~~subsection~~ (2)(c), that is installed by a builder constructing a new residence to heat or cool the dwelling, a credit against the builder's individual or corporation license tax liability, as applicable, equal to a portion of the installation costs of the system, not to exceed \$1,500, as provided in 15-32-115, MCA;

(e) a property tax exemption for a portion of the appraised value of a capital investment in the alternative energy generating system for ten years after installation, as described in 15-6-224, MCA, and ARM 42.19.1104 (the system may be installed in a residential dwelling or a commercial structure); and

(f) a property tax exemption for machinery and equipment used in qualifying small electric generating systems that are powered by an alternative renewable energy source, as described in 15-6-225, MCA, and ARM 42.4.4105.

(3) A taxpayer "completes installation of an energy system using a recognized nonfossil form of energy generation" as outlined in 15-32-201, MCA, when the following components of a system have been installed and placed in service:

(a) a source of alternative energy production, such as:

(i) solar photovoltaic modules;

(ii) solar thermal collectors;

(iii) a wind turbine;

(iv) a hydropower turbine; or

(v) a geothermal ground loop;

(b) a point of interconnection to the dwelling's electrical, heating, or hot water system; and

(c) if the source of alternative energy production does not produce energy in a usable form, a means of converting energy to a usable form, such as:

(i) for electrical energy systems, an inverter; or

(ii) for thermal energy systems, a heat exchanger.

(4) The cost for repair or replacement of a component installed in an existing system is not eligible for the credit regardless of whether the repair or replacement changes the output of the energy system.

(5) The cost of additional components installed to expand the output of an existing system is eligible for the credit provided that the additional components do

not repair or replace any portion of the existing system.

(3) through (5) remain the same, but are renumbered (6) through (8).

~~(6)(9)~~ The credits against individual income tax liability described in (2)(a) and (2)(b) are claimed on ~~form~~ Form ENRG-B, Alternative Energy System Credit. The credits for the geothermal systems described in (2)(c) and (2)(d) are claimed on ~~form~~ Form ENRG-A, Geothermal System Credit.

AUTH: 15-1-201, 15-32-105, 15-32-203, MCA

IMP: 15-6-224, 15-6-225, 15-32-102, 15-32-105, 15-32-115, 15-32-201, 15-32-202, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.104 to provide additional information that will help individuals better determine if their investment will qualify for the Alternative Energy Systems credit.

First, the department proposes removing the term "net-metering" as its use in the rule may lead some to believe that the system they installed will not qualify for the credit simply because net-metering was part of the system.

Second, the department proposes changing the word "heat" to "energy" in (2)(a) because using the term "heat" creates an unreasonably restrictive requirement. Systems using wind turbines or photovoltaic cells generate energy and cannot directly generate heat. Restricting the credit to systems that create heat creates an inequity.

Third, questions have arisen about when an individual has completed installation of an alternative energy system and the eligibility of certain components for the credit. The proposed amendments explain when that has occurred and further explain that replacing parts or repairing an existing system do not qualify for the credit. However, additional components installed to expand the output of an existing system are eligible for the credit. Such additional components will be considered "an energy system" for purposes of the credit.

Finally, in accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.4.104 to make capitalization revisions.

42.4.201 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain the same.

~~(4) "Dwelling" means a building or unit that is habitually occupied as a residence. It does not include a guest house or vacation home that is occupied only occasionally. It does include a guest house or vacation home if they are usually occupied as someone's residence.~~

(5) through (18) remain the same but are renumbered (4) through (17).

~~(19) "SHGC" refers to the solar heat gain coefficient, and is a measure of how well a window blocks heat from sunlight. The SHGC is the fraction of the heat from the sun that enters through a window.~~

(20) remains the same, but is renumbered (18).

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.201 to remove the definition of the terms "dwelling" and "SHGC."

The department proposes removing the definition of "dwelling" from subchapter 2 because it is not consistent with requirements for the credit for energy-conserving expenditures provided for in 15-32-109, MCA. While a credit may not be allowed for capital investment in a building or other structure whose energy consumption is negligible because the investment is considered "impractical or ineffective" under 15-32-106, MCA, the definition is vague and too restrictive. The term more appropriately applies to the credit for Alternative Energy Systems provided for in 15-32-201, MCA, and a definition for "principal dwelling" can be found in ARM 42.4.110.

Also, based on a recommendation from the Department of Environmental Quality, the department is proposing to amend ARM 42.4.209 to remove the requirement that doors, windows, and skylights meet a minimum SHGC rating. As a result, the term "SHGC" will no longer be used in subchapter 2 and, therefore, does not need to remain in this definitions rule.

42.4.202 INDIVIDUAL INCOME TAX CREDIT FOR ENERGY CONSERVING EXPENDITURES (1) A credit against individual income tax for energy-conserving expenditures provided in 15-32-109, MCA, is claimed by filing an Individual Income Tax Return with Form ENRG-C. The credit is not allowed unless the return and ~~form~~ Form ENRG-C, providing the information prescribed in the form, are filed with the Department of Revenue. A return claiming the credit may be filed electronically even if the software used does not include an electronic version of the form. The individual should complete a copy of the form and keep it and all supporting documents with the other tax records for that year. If the department wishes to verify the credit, the individual shall, upon request, provide a copy of the form and all supporting information. The return, Form ENRG-C and supporting information can also be mailed to: P.O. Box 5805, Helena, Montana 59604-5805.

AUTH: 15-1-201, MCA

IMP: 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.202 to inform taxpayers that they can still take advantage of the benefits of filing their return electronically while also claiming the credit for energy-conserving expenditures.

42.4.208 ANNUAL UPDATE OF CAPITAL INVESTMENTS QUALIFYING FOR THE ENERGY CONSERVATION CREDIT (1) and (2) remain the same.

(3) The following standards for items that do not qualify for the credit will be applied in the annual review of capital investments. The examples under each standard are provided to aid the public in understanding the type of items that do not qualify for the credit.

(a) Components of conventional buildings will typically not qualify for the energy conservation credit. Examples of such components that do not qualify for the

credit include:

- (i) carpeting, carpet padding, or other flooring of any type;
- (ii) paint;
- (iii) roof vents;
- (iv) awnings that are not a component of a qualified "passive solar system";
- (v) garage doors, whether insulated or not, that are installed in an existing or new building that does not consume any energy other than for lighting and the operation of items such as appliances or power tools; or

- (vi) any item with an R-value of less than 1.

(b) Expenditures for maintenance and repairs to a building do not qualify for the credit. Examples of such expenditures include:

- (i) patching holes;
- (ii) replacing a foundation;
- (iii) replacing siding;
- (iv) replacing or resingling a roof; or
- (v) replacing existing asbestos insulation around heating pipes with other insulation.

(c) Items that are not improvements to real property do not qualify for the credit. Examples of such items include:

- (i) space heaters;
- (ii) portable air conditioners;
- (iii) appliances such as ovens, stoves, refrigerators, dishwashers, clothes washers, and dryers that are not attached fixtures are not capital expenditures, and therefore do not qualify for the credit.

(d) Any item that requires periodic human action, whether on a regular or irregular basis, to achieve energy savings, does not qualify for the credit. Examples of such items include:

- (i) nonprogrammable thermostats;
- (ii) moveable shades;
- (iii) decks; and
- (iv) outdoor grills installed as fixtures to the real estate.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.208 to enhance the example of a nonqualifying investment involving garage doors. The additional description reinforces the main point of the example that installing tighter doors or adding insulation to an unheated structure adds little to its overall energy efficiency; therefore the investment would not qualify for the credit.

42.4.209 STANDARDS AND RATINGS (1) For investments in products installed on or after July 1, 2010, the following applicable specification must be met or exceeded to qualify for the credit:

- (a) Exterior windows and skylights-U factor and ~~SHGC~~ less than or equal to 0.30;



- (b) Storm windows-U factor ~~and SHGC~~ less than or equal to 0.30 when measured in combination with the exterior window over which it is installed;
- (c) Exterior doors-U factor ~~and SHGC~~ less than or equal to 0.30;
- (d) Storm doors-U factor ~~and SHGC~~ less than or equal to 0.30 when measured in combination with the exterior window over which it is installed;
- (e) Split system central air conditioning-EER greater than or equal to 13 and SEER greater than or equal to 16;
- (f) Package system central air conditioning-EER greater than or equal to 12 and SEER greater than or equal to 14;
- (g) Split system air source heat pumps-HSPF greater than or equal to 8.5, EER greater than or equal to 12.5 and SEER greater than or equal to 15;
- (h) Package system air source heat pumps-HSPF greater than or equal to 8, EER greater than or equal to 12.5 and SEER greater than or equal to 14;
- (i) Natural gas or propane furnace-AFUE greater than or equal to 95;
- (j) Oil furnace-AFUE greater than or equal to 90;
- (k) Hot water boiler-AFUE greater than or equal to 90;
- (l) Advanced main air circulating fan-no more than 2% percent of total energy use;
- (m) Heat recovery ventilators-CSA C439-00 standard;
- (n) Gas, oil, or propane water heater-energy factor greater than or equal to 0.82 or thermal efficiency of at least 90% percent;
- (o) Electric heat pump water heater-energy factor greater than or equal to 2.0.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.209 based on a recommendation from the Department of Environmental Quality (DEQ). "SHGC" or "solar heat gain coefficient" is a measure of how well a window blocks the heat from sunlight passing into a structure. Based on information from DEQ, windows installed in structures in Montana should not be required to meet a minimum rating for this measure because the energy demands to cool a home are minor when compared to the demands for heating. Removing the SHGC rating eliminates an unnecessary requirement for individuals wanting to qualify for the credit.

42.4.303 CLAIMING AN ELDERLY HOMEOWNER/RENTER TAX CREDIT

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

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

(a) If an eligible individual files or is required to file an individual income tax return for the year for which the credit is claimed, the claim must be filed with the

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

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

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

(ii) delivered to:

Department of Revenue

Sam W. Mitchell Building

Third floor, 125 North Roberts

Helena, Montana; or

(iii) filed electronically through the department's web site at:

[www.revenue.mt.gov](http://www.revenue.mt.gov).

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

(d) If the taxpayer claiming the credit files their tax return electronically, he or she represents that they have completed ~~form~~ Form 2EC and have all the required documentation. The form and required documentation are tax records the taxpayer must retain and provide to the department on request.

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

(a) Taxpayer is required to file an individual income tax return for ~~2008~~ 2011 and, although eligible, neglects to claim the credit by filing ~~form~~ Form 2EC with their ~~2008~~ 2011 individual income tax return which they file April 6, ~~2009~~ 2012. Taxpayer may claim the credit by filing an amended ~~2008~~ 2011 individual income return with completed ~~form~~ Form 2EC on or before April 15, ~~2014~~ 2017.

(b) Taxpayer, who is not required to file an individual income tax return for ~~2008~~ 2011, dies in February ~~2009~~ 2012. The taxpayer's personal representative, appointed June ~~2009~~ 2012, may at any time before April 15, ~~2014~~ 2017, either file a ~~2008~~ 2011 individual income tax return for the taxpayer with completed ~~form~~ Form 2EC or file ~~form~~ Form 2EC without filing a ~~2008~~ 2011 return.

(c) Taxpayer is required to, but does not file an individual income tax return for ~~2009~~ 2012. Taxpayer or, if the taxpayer has died, the personal representative of the taxpayer's estate, may claim the credit by filing a ~~2009~~ 2012 individual income return with completed ~~form~~ Form 2EC on or before April 15, ~~2015~~ 2018.

AUTH: 15-30-2609, 15-30-2620, MCA

IMP: 15-30-2609, 15-30-2339, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.303 to make capitalization revisions and update the dates in the examples.

42.4.402 CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE OR COUNTRY (1) through (3) remain the same.

(4) The credit cannot be claimed by an individual for taxes paid to another state or country by an estate or trust.

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

AUTH: 15-30-2620, MCA

IMP: 15-30-2302, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.402 in response to a recurring question from preparers regarding the credit for taxes paid to another state in relation to income from estates and trusts. In some states, the tax on a nonresident individual beneficiary's share of the trust's income is paid by the trust. The proposed amendment specifies that 15-30-2302, MCA, does not allow the individual to claim the credit based on taxes paid by the trust.

42.4.1608 SUBMISSION OF EMPLOYEE LISTS (1) remains the same.

(2) In applicable instances, an expanding corporation shall submit five years of lists in order that an average employment figure can be determined and the number of new employees discovered. If a corporation has not done business for a five-year period, employee lists for all years of operation shall be submitted. A new corporation shall be exempt from this requirement.

(3) remains the same.

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

IMP: 15-31-125, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes amending ARM 42.4.1608 to correct a grammatical error by inserting a missing word in (2).

42.4.1702 CREDIT FOR TEMPORARY EMERGENCY LODGING

(1) through (5) remain the same.

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

(7) through (9) remain the same.

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

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

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.1702 to make a capitalization revision.

42.4.2403 REDUCTION OF DEDUCTIONS ALLOWED FOR INSURANCE

CLAIMS (1) An employer is not allowed to claim both a Montana credit and a deduction for the same insurance premium dollars paid.

(a) If the employer is not claiming a federal small business health insurance credit, the deduction claimed on the federal return is reduced by an amount equal to twice the Insure Montana credit claimed by the taxpayer when arriving at income for Montana purposes. For example, an employer determined to be eligible for \$4,000 in tax credit must reduce their deduction for premiums by \$8,000 ( $\$4,000 \times 2$ ).

(b) If the employer is claiming a federal small business health insurance tax credit, their federal deduction may be reduced or completely eliminated. When the federal deduction is reduced for this reason, the deduction only needs to be further reduced for Montana purposes if the federal reduction is less than the Montana reduction that would otherwise be called for in (1)(a). For example, if an employer reduced their federal deduction by \$5,000 and they are claiming an Insure Montana credit of \$3,000, the reduction on the Montana return is \$1,000 ( $\$3,000 \times 2 = \$6,000$  gross reduction less \$5,000 federal reduction).

(c) The reduction of the deduction by an employer that is a C corporation must be made by entering the appropriate amount on ~~form~~ Form CLT-4, line 2, "Additions".

(d) The reduction of the deduction by an employer that is a sole proprietor, must be made by entering the appropriate amount on ~~form~~ Form 2, Schedule I, "Montana Additions to Income Federal Adjusted Gross ~~Income.~~ Income".

(e) The reduction of the deduction by an employer that is an S corporation must be made by entering the appropriate amount on ~~form~~ Form CLT-4S, line 15c, "Other additions", and on the Montana Schedule K-1s of the shareholders, line 13, "~~Other additions.~~ Other additions".

(f) The reduction of the deduction by an employer that is a partnership or a limited liability company that is taxed as a partnership must be made by entering the appropriate amount on ~~form~~ Form PR-1, ~~line 16.c, "Other additions,"~~ line 16c, "Other additions", and on the partners' or members' Montana Schedule K-1s, line 3, "~~Other additions.~~ Other additions".

(2) remains the same.

AUTH: 15-30-2104, MCA

IMP: 15-30-2368, 15-31-130, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.2403 to make capitalization and punctuation revisions.

42.4.2404 COORDINATION WITH OTHER HEALTH INSURANCE CREDITS

(1) remains the same.

(2) An employer may not claim both the Insure Montana credit and the Health Insurance for Uninsured Montanans credit, ~~form H~~ Form HI, provided in 15-30-2367 and 15-31-132, MCA.

AUTH: 15-30-2104, MCA  
IMP: 15-30-2367, 15-30-2368, 15-31-130, 15-31-132, 33-22-2006, 33-22-2007, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.2404 to make capitalization and punctuation revisions, and to correct an incomplete reference to a form name.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) The credit allowed the corporation, ~~partnership, limited liability company~~, estate, trust, or individual against its tax liability for a contribution of a planned gift is the percentage, as shown in the following table, of the present value of the allowable contribution as defined in ARM 42.4.2701. The credit allowed against the tax liability of the corporation, ~~partnership, limited liability company~~, estate, or trust for a direct contribution is equal to 20% percent of the charitable contribution. The maximum credit that may be claimed in one year is \$10,000 per donor. A contribution made in a previous tax year cannot be used for a credit in any subsequent tax year.

Planned Gifts by Individuals or Entities

| <u>Planned Gift Date</u> | <u>Present Value Percent of Present Value</u> | <u>Used to Calculate Maximum Credit</u> | <u>Maximum Credit Per Year</u> |
|--------------------------|---|---|--------------------------------|
| 1/1/97 - 12/31/01        | 50%   | \$20,000                                | \$10,000                       |
| 1/1/02 - 8/27/02         | 40%   | \$25,000                                | \$10,000                       |
| 8/28/02 - 6/30/03        | 30%   | \$22,000                                | \$ 6,600                       |
| 7/1/03 - 12/31/13        | 40%   | \$25,000                                | \$10,000                       |

(2) The credit allowed against the corporate, estate, trust, or individual tax liability for a charitable gift made by a corporation, small business corporation, estate, trust, partnership, or limited liability company directly to a qualified endowment is the percentage, as shown in the following table, of the allowable contribution as defined in ARM 42.4.2701.

~~Non-Planned~~ Unplanned Gifts by Eligible Entities

| <u>Qualified Charitable Gift Date</u> | <u>Percent of Allowable Contribution</u> | <u>Allowable Contribution Used to Calculate Maximum Credit</u> | <u>Maximum Credit Per Year</u> |
|---------------------------------------|--|--|--------------------------------|
| 1/1/97 - 12/31/01                     | 50%                                      | \$20,000   | \$10,000                       |

|                              |                  |                     |                     |
|------------------------------|------------------|---------------------|---------------------|
| <del>1/1/02 - 8/27/02</del>  | <del>20%</del>   | <del>\$50,000</del> | <del>\$10,000</del> |
| <del>8/28/02 - 6/30/03</del> | <del>13.3%</del> | <del>\$49,624</del> | <del>\$ 6,600</del> |
| <del>7/1/03 - 12/31/13</del> | <del>20%</del>   | <del>\$50,000</del> | <del>\$10,000</del> |

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

(a) ~~Examples of~~ Example of an Allowable Deductions Deduction When a Planned Gift is Used for the Qualified Endowment Credit:

| <u>Time Period</u>           | <u>Present Value</u> | <u>Maximum Credit</u>         | <u>Credit Percentage</u> | <u>Allowable Deduction</u> |
|------------------------------|----------------------|-------------------------------|--------------------------|----------------------------|
| <del>1/1/97 - 12/31/01</del> | <del>\$50,000</del>  | <del>(\$10,000 / .50) =</del> |                          | <del>\$30,000</del>        |
| <del>1/1/02 - 8/27/02</del>  | <del>\$50,000</del>  | <del>(\$10,000 / .40) =</del> |                          | <del>\$25,000</del>        |
| <del>8/28/02 - 6/30/03</del> | <del>\$50,000</del>  | <del>(\$ 6,600 / .30) =</del> |                          | <del>\$28,000</del>        |
| <del>7/1/03 - 12/31/13</del> | <del>\$50,000</del>  | <del>(\$10,000 / .40) =</del> |                          | <del>\$25,000</del>        |

(b) ~~Examples of~~ Example of an Allowable Deductions Deduction When an Outright Gift is Used for the Qualified Endowment Credit:

| <u>Time Period</u>           | <u>Market Value</u> | <u>Maximum Credit</u>                    | <u>Credit Percentage</u> | <u>Allowable Deduction</u>       |
|------------------------------|---------------------|--|--------------------------|----------------------------------|
| <del>1/1/97 - 12/31/01</del> | <del>\$50,000</del> | <del>(\$10,000 / .50) =</del>            |                          | <del>\$30,000</del>              |
| <del>1/1/02 - 8/27/02</del>  | <del>\$50,000</del> | <del>(\$10,000 / .20) =</del>            |                          | <del>\$ -0-</del>                |
| <del>8/28/02 - 6/30/03</del> | <del>\$50,000</del> | <del>(\$ 6,600 / .133) =</del>           |                          | <del>\$ 376</del>                |
| <del>7/1/03 - 12/31/13</del> | <del>\$50,000</del> | <del>\$55,000 - (\$10,000 / .20) =</del> |                          | <del>\$ -0-</del> <u>\$5,000</u> |

(4) through (6) remain the same.

(7) The rate a beneficiary will use to calculate their credit for an allowable contribution passed to them by an estate will be based on the nature of the gift made by the estate. For example, if an estate makes an outright gift to a qualified endowment on July 17, 2012 and the contribution is passed to a beneficiary, the beneficiary will calculate their credit using the 20 percent rate.

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

~~(8)~~(9) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, ~~2008~~ 2012. The allowable contribution made by the couple is \$30,000. That couple is eligible to take a credit of up to \$12,000, with each claiming a credit of \$6,000.

(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, ~~2008~~ 2012, which result in an allowable contribution of \$20,000 for each person. They each would be eligible to take a credit of up to \$8,000.

(9) remains the same, but is renumbered (10).

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

IMP: 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2704 to delete the reference to partnerships and limited liability companies being allowed to claim the credit against their tax liability. The only income tax that pass-through entities might incur is a composite tax, but the qualified endowment credit is not allowed against that liability. This is consistent with ARM 42.9.203, as revised in 2011, which affirmed that tax credits may not be taken against composite tax.

The department also proposes amendments to help individuals determine the appropriate rate to use when computing the qualified endowment credit. An estate may make either a planned gift or outright gift eligible for the qualified endowment credit. If the contribution is not used by the estate to calculate the credit and it passes to the individual, the rate they will use to calculate will be based on the nature of the contribution as it was made by the trust.

The department further proposes to remove examples with very outdated years, update the years in more current examples, and make another remaining example more informative.

Finally, the department proposes amendments to improve readability and make punctuation revisions.

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

(a) a receipt acknowledging the amount of the allowable contribution from the:

(i) tax-exempt organization under 26 USC 501(c)(3) holding the qualified endowment receiving the contribution;

(ii) trustee of the trust administering the planned gift; or

(iii) bank or trust company holding a qualified endowment on behalf of a tax exempt organization.

(b) the date of the contribution to the qualified endowment or the planned gift;

(c) the name of the organization incorporated or established in Montana holding the qualified endowment fund or the name of the tax exempt organization on behalf of which the qualified endowment fund is held;

(d) in the case of a charitable trust where the charity is yet to be named, the donor shall include a copy of the disposition clause of the charitable trust which gives evidence that a qualified endowment fund has been created; ~~and~~

(e) a description of the type of gift, i.e. outright gift, charitable remainder unitrust, charitable gift annuity, etc.; and

(f) in the case of an outright gift, the receipt in (a) must state that the

contribution was placed in a permanent irrevocable fund as defined in ARM 42.4.2701.

(2) remains the same.

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

IMP: 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.2706 to inform taxpayers of information required to be filed with the tax return when an outright gift is made to a qualified endowment. The department currently requires that the information be submitted when claiming the credit in order to verify that the gift was placed in a permanent, irrevocable fund as required by law. The proposed amendments simply add this to the rules so they better inform taxpayers about the documentation necessary when claiming the credit.

42.4.2802 HEALTH INSURANCE FOR UNINSURED MONTANAN'S CREDIT (1) through (8) remain the same.

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

(10) remains the same.

AUTH: 15-31-501, MCA

IMP: 15-30-2367, 15-30-2368, 15-31-132, 33-1-207, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.2802 to make a capitalization revision and to add a missing implementing citation.

42.4.2905 CLAIMING THE HISTORIC PRESERVATION CREDIT

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

(2) remains the same.

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

AUTH: 15-30-2620, MCA



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

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.2905 to make capitalization revisions.

42.4.3003 CLAIMING THE INFRASTRUCTURE USER FEE CREDIT

(1) remains the same.

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

(3) remains the same.

(4) The credit is nonrefundable. Any excess credit must first be carried back to each of the three preceding taxable periods, reducing the tax liability to zero, and then carried forward to each of the seven taxable periods following the taxable period of the credit. The current year credit must be applied first before any carry back or carry forward will be allowed.

AUTH: 15-1-201, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3003 to delete unnecessary language in (2), as there is no requirement that the form be certified by the county. The department is also proposing amendments to the application of the credit by adding the carried forward provision which is allowed by statute, and a final amendment to make a capitalization revision.

42.4.3103 CREDIT FOR CONTRACTOR'S GROSS RECEIPTS TAX - CORPORATION LICENSE TAX (1) and (2) remain the same.

(3) In the event the public contractor's gross receipts tax is paid by a joint venture or a partnership, the members thereof shall be entitled to the credit for the tax as their respective interests appear. ~~If the tax is paid by a corporation electing partnership type tax treatment under 15-31-202, MCA, the credit is passed through to its shareholders according to their respective interest in the corporation's common stock issued and outstanding.~~

(4) If the public contractor's gross receipts tax is paid by an S corporation, the credit must be attributed to shareholders using the same proportion used to report the corporation's income or loss for Montana income tax purposes.

AUTH: 15-31-501, MCA

IMP: 15-50-207, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.4.3103 to remove a reference to a repealed statute. The department also proposes amendments to update the language describing how the credit is attributed

to shareholders of an S corporation, to be consistent with the language used in similar laws and rules.

42.4.3202 CREDIT FOR INCREASING RESEARCH ACTIVITIES (1) A credit for increases in qualified research expenses and basic research payments that occurred prior to January 1, 2011, is allowed to a qualified corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company. Except as specifically limited by Montana law, 15-31-150, MCA, this credit is determined in accordance with 26 USC 41 as that section read on July 1, 1996.

(2) For tax years beginning after December 31, 2010, no current year credit may be claimed. Only unused amounts available as a carry forward under 15-31-150, MCA, may be claimed for the 15 succeeding tax years.

~~(2)~~(3) A taxpayer must file ~~form~~ Form RSCH providing information as prescribed on the form, which includes a copy of the form filed with the IRS to claim the federal credit for increasing research activities. If amounts paid or incurred do not apply to the federal credit after a termination date provided in 26 USC 41, a taxpayer whose expenses qualify for the Montana credit after the termination date must submit with ~~form~~ Form RSCH the information required on the federal form for the tax year immediately preceding the tax year in which the termination occurred.

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

~~(4)~~(5) Form RSCH must be filed with the tax return.

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

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

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

Department of Revenue  
P.O. Box 8021  
Helena, Montana 59604-8021

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

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

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

REASONABLE NECESSITY: The department proposes amending ARM 42.4.3202 to reflect the current status of the credit for increasing research activities. For tax years starting after December 31, 2010, per statute (15-31-150, MCA), taxpayers are only allowed to claim the credit based on unused amounts carried forward from credits generated prior to January 1, 2011. The proposed amendments explain this and provide a reference to the relevant statute in the rule.

The department further proposes to make capitalization revisions.

42.4.3303 SUBMISSION OF COSTS AND APPLICATION FOR TAX

CREDIT (1) ~~At~~ Within 60 days of the conclusion of the principal photography, the statement of expenditures and compensation paid to Montana residents referred to in 15-31-905, MCA, shall be sent to the department on ~~form~~ Form FPC-PP, Film Production Credit - Principal Photography. However, ~~when~~ the production company ultimately files its application to receive the tax credit(s), it may supplement this statement of expenditures and compensation with an ~~updated~~ a new statement that reflects expenditures and compensation paid to Montana residents arising after principal photography is complete. The company should complete a new Form FPC-PP, indicate that it is a supplement to a prior form, and submit it within 60 days of the completion of the additional photography.

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

(3) remains the same.

AUTH: ~~15-30-2105~~ 15-30-2620, 15-31-911, MCA

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

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.3303 in order to make the process for obtaining the credit more efficient. The department appreciates that a production company may incur additional costs for filming that occurs after the close of principal photography. By having information about those costs submitted earlier, the department can determine the allowable credit amount in a timelier manner. When the company files its return, it will be processed more quickly and efficiently. The department also proposes amendments to correct an MCA reference and make capitalization revisions.

42.4.4106 APPEAL RIGHTS (1) remains the same.

(2) For energy-related income tax credits, an applicant individual or entity claiming the credit may appeal the department's ~~decision to the Office of Dispute Resolution denial or other adjustment of the credit~~ in accordance with ~~ARM 42.2.314 through 42.2.326~~ within 30 days of receiving notice from the department ARM 42.2.510 and 42.2.613 through 42.2.621.

AUTH: 15-1-201, MCA

IMP: 15-1-211, 15-2-302, 15-31-501, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.4.4106 in order to more accurately represent the appeal process for claims for the tax credit. The rule contemplates a process where a claim for the credit would be submitted and reviewed independently from the tax return such as the case with the Film Production and Expenditures credits. Currently, taxpayers claim the credit by completing Form AEPC and including it with their tax return. The department

then either reviews the form and return when they are initially received or at a later date if the return is selected for audit. The proposed amendments will provide that any appeal of a denial of or adjustment to a claim for the credit will follow the standard appeal process.

42.4.4107 COMMERCIAL USE AND OTHER REQUIREMENTS FOR COMMERCIAL AND NET METERING SYSTEMS ELIGIBLE FOR THE INCOME TAX CREDIT (1) The credit against individual income and corporation license taxes provided in 15-32-402, MCA, is limited to 35% percent of the eligible costs for investments in depreciable commercial systems and net metering systems. Property placed in service for personal use does not qualify for this credit, but may qualify for the alternative energy system credit provided in 15-32-201, MCA, and ARM 42.4.104.

(2) The credit may not be claimed against taxes generally, but can only be applied against taxes due as a result of Montana taxable or net income produced by certain manufacturing plants, energy sales to new or expanded business facilities, or the alternative energy generating equipment itself. The determination of this income and associated tax is made on ~~form~~ Form AEPC, Alternative Energy Production Credit. Examples of qualification for the credit are:

(a) Company A manufactures windmills in Montana. Company A invests in and installs windmills to supplement the electricity needs of its manufacturing plant. Company A can claim the credit to offset taxes on income from sale of the windmills.

(b) Company B invests in a windmill farm. Company C is a new manufacturing plant in Montana. Company B enters into a direct sales contract to sell electricity to Company C. Company B is eligible to claim the credit to offset taxes on income from the sale of electricity to Company C.

(c) Company D invests in a windmill farm. Company D sells the electricity generated by its windmill farm to the power grid. The credit is available for Company D to offset taxes on income from the sale of the electricity.

(3) remains the same.

AUTH: 15-30-2620, 15-31-501, 15-32-407, MCA

IMP: 15-32-402, 15-32-404, 15-32-406, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to amend ARM 42.4.4107 to make capitalization and punctuation revisions.

5. The department proposes to repeal the following rule:

42.4.2707 QUALIFIED ENDOWMENT CREDIT FOR CORPORATIONS  
which can be found on page 42-594 of the Administrative Rules of Montana.

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

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

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department proposes to repeal ARM 42.4.2707, because it has become redundant and unnecessary due to the subsequent amendment and/or repeal of other rules it had adopted by reference.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: 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 January 4, 2013.

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

8. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions - Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 13, 2012

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|   |   |                             |
|---|---|-----------------------------|
| In the matter of the amendment of       | ) | NOTICE OF PUBLIC HEARING ON |
| 42.25.501, 42.25.512, 42.25.513,        | ) | PROPOSED AMENDMENT AND      |
| 42.25.514, 42.25.1801, 42.25.1809,      | ) | TRANSFER                    |
| 42.25.1813, and the transfer of ARM     | ) |                             |
| 42.32.101, 42.32.102, 42.32.103,        | ) |                             |
| 42.32.104, 42.32.105, 42.32.106, and    | ) |                             |
| 42.32.107, relating to natural resource | ) |                             |
| taxes                                   | ) |                             |

TO: All Concerned Persons

1. On December 17, 2012, at 11 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the amendment and transfer 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 p.m., December 3, 2012, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.25.501 DEFINITIONS The following definitions apply to this subchapter: (1) through (6) remain the same.

AUTH: 15-23-108, MCA

IMP: ~~Title 15, Ch. 23, part 7,~~ 15-23-701, 15-23-702, 15-23-703, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.501 to make the rule conform to the Secretary of State's current ARM formatting preference to list the applicable individual implementing statutes in place of a general chapter and section reference.

42.25.512 IMPUTED VALUATION (1) through (1)(b) remains the same.

~~(3)~~(2) The department will maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.

AUTH: 15-23-108, MCA

IMP: 15-23-701, 15-23-702, 15-35-107, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.512 to correct a numbering error.

42.25.513 TAXABLE VALUATION (1) remains the same.

~~(2) In arriving at a taxable valuation the department will apply 45% for strip mines and 33-1/3% for underground mines to the contract sales price or imputed valuation.~~

AUTH: 15-23-108, MCA

IMP: 15-23-702, 15-23-703, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.513.

The proposed amendment will strike all of (2), because it has been determined that the language, which previously provided counties with direction for nontax purposes, is no longer needed in rule. The current statute, 15-23-703(2), MCA, provides the counties with the necessary direction for such nontax purposes. Additionally, the department is adding this statute as an implementing citation since the language previously contained in the rule is now in that statute.

42.25.514 RIGHT TO AUDIT (1) and (2) remain the same.

AUTH: 15-23-108, MCA

IMP: ~~Title 15, Ch. 23, part 7~~ 15-23-701, 15-23-702, 15-23-703, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.514. The proposed amendment will make the rule conform to the Secretary of State's current ARM formatting preference of listing the applicable individual implementing statutes, in place of a general chapter and section reference.

42.25.1801 DEFINITIONS In addition to the definitions found in 15-36-303, MCA, the following definitions apply to terms used in this chapter:

(1) through (4) remain the same.

(5) "Lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal ~~estate~~ interest in the land so

described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. A lease may contain one or more wells. One operator shall be named as the lease operator and shall be responsible for filing the oil and natural gas production tax return.

(6) through (13) remain the same.

AUTH: 15-36-322, MCA

IMP: 15-1-101, 15-36-301, 15-36-302, 15-36-303, 15-36-304, 15-36-305, 15-36-309, 15-36-310, 15-36-311, 15-36-312, 15-36-313, 15-36-314, 15-36-315, 15-36-319, 15-36-321, 15-36-326, 82-1-111, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.1801 to revise the wording in the definition of the term "lease." The amendment will not change the meaning or application of the definition, but will make it more understandable and maintain consistency with the statute.

42.25.1809 TAX RATES (1) Table I reflects the tax rates effective on ~~July 1, 2005~~ October 1, 2006, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (Board of Oil and Gas). The rate is subject to change by the Board of Oil and Gas.

Table I - Effective ~~7/1/2005~~ 10/1/2006

| <u>Type of Production</u>                               | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|---|-------------------------|----------------------------|
| (a) Natural gas   |                         |                            |
| (i) Primary recovery production                         |                         |                            |
| (A) First 12 months of production                       | .76%                    | 15.06%                     |
| (B) Pre-1999 wells after first 12 months of production  | 15.06%                  | 15.06%                     |
| (C) Post-1999 wells after first 12 months of production | 9.26%                   | 15.06%                     |
| (ii) Stripper wells (averaging < 60 MCF/day)            |                         |                            |
| (A) Pre-1999 wells                                      | 11.26%                  | 15.06%                     |
| (iii) Horizontally completed well production            |                         |                            |
| (A) First 18 months of qualifying production            | .76%                    | 15.06%                     |
| (B) After 18 months                                     | 9.26%                   | 15.06%                     |
| (b) Oil   |                         |                            |
| (i) Primary recovery production                         |                         |                            |
| (A) First 12 months of production                       | .76%                    | 15.06%                     |
| (B) Pre-1999 wells after first 12 months of production  | 12.76%                  | 15.06%                     |
| (C) Post-1999 wells after first 12 months of production | 9.26%                   | 15.06%                     |
| (ii) Stripper wells (averaging < 15 bbls/day)           |                         |                            |



|   |        |        |
|---|--------|--------|
| (A) Pre-1999 and post-1999 wells first 1-10 bbls          | 5.76%  | 15.06% |
| (B) Pre-1999 and post-1999 over 10 bbls                   | 9.26%  | 15.06% |
| (C) Pre-1999 and post-1999 stripper well exemption        | .76%   | 15.06% |
| (D) Pre-1999 and post-1999 stripper well bonus production | 6.26%  | 15.06% |
| (iii) Horizontally drilled                                |        |        |
| (A) Pre-1999 and post-1999 wells first 18 months          | .76%   | 15.06% |
| (B) Pre-1999 wells after 18 months                        | 12.76% | 15.06% |
| (C) Post-1999 wells after 18 months                       | 9.26%  | 15.06% |
| (iv) Incremental production                               |        |        |
| (A) New or expanded secondary recovery production         | 8.76%  | 15.06% |
| (B) New or expanded tertiary production                   | 6.06%  | 15.06% |
| (v) Horizontally recompleted wells                        |        |        |
| (A) Pre-1999 and post-1999 wells first 18 months          | 5.76%  | 15.06% |
| (B) Pre-1999 wells after 18 months                        | 12.76% | 15.06% |
| (C) Post-1999 wells after 18 months                       | 9.26%  | 15.06% |

Table II - Effective 7/1/2001

| <u>Type of Production</u>  | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|--|-------------------------|----------------------------|
| <del>(a) Natural gas</del>   |                         |                            |
| <del>(i) Primary recovery production</del>                         |                         |                            |
| <del>(A) First 12 months of production</del>                       | <del>.76%</del>         | <del>15.06%</del>          |
| <del>(B) Pre-1999 wells after first 12 months of production</del>  | <del>15.06%</del>       | <del>15.06%</del>          |
| <del>(C) Post-1999 wells after first 12 months of production</del> | <del>9.26%</del>        | <del>15.06%</del>          |
| <del>(ii) Stripper wells (averaging &lt; 60 MCF/day)</del>         |                         |                            |
| <del>(A) Pre-1999 wells</del>                                      | <del>11.26%</del>       | <del>15.06%</del>          |
| <del>(iii) Horizontally completed well production</del>            |                         |                            |
| <del>(A) First 18 months of qualifying production</del>            | <del>.76%</del>         | <del>15.06%</del>          |
| <del>(B) After 18 months</del>                                     | <del>9.26%</del>        | <del>15.06%</del>          |
| <del>(b) Oil</del>   |                         |                            |
| <del>(i) Primary recovery production</del>                         |                         |                            |
| <del>(A) First 12 months of production</del>                       | <del>.76%</del>         | <del>15.06%</del>          |
| <del>(B) Pre-1999 wells after first 12 months of production</del>  | <del>12.76%</del>       | <del>15.06%</del>          |
| <del>(C) Post-1999 wells after first</del>                         |                         |                            |

|   |        |        |
|---|--------|--------|
| 12 months of production                       | 9.26%  | 15.06% |
| (ii) Stripper wells (averaging < 15 bbls/day) |        |        |
| (A) Pre-1999 and post-1999 wells              |        |        |
| first 1-10 bbls                               | 5.76%  | 15.06% |
| (B) Pre-1999 and post-1999 over               |        |        |
| 10 bbls                                       | 9.26%  | 15.06% |
| (C) Pre-1999 and post-1999                    |        |        |
| stripper well exemption                       | .76%   | 15.06% |
| (iii) Horizontally drilled                    |        |        |
| (A) Pre-1999 and post-1999 wells              |        |        |
| first 18 months                               | .76%   | 15.06% |
| (B) Pre-1999 wells after 18 months            | 12.76% | 15.06% |
| (C) Post-1999 wells after 18 months           | 9.26%  | 15.06% |
| (iv) Incremental production                   |        |        |
| (A) New or expanded secondary                 |        |        |
| recovery production                           | 8.76%  | 15.06% |
| (B) New or expanded tertiary                  |        |        |
| production                                    | 6.06%  | 15.06% |
| (v) Horizontally recompleted wells            |        |        |
| (A) Pre-1999 and post-1999 wells              |        |        |
| first 18 months                               | 5.76%  | 15.06% |
| (B) Pre-1999 wells after 18 months            | 12.76% | 15.06% |
| (C) Post-1999 wells after 18 months           | 9.26%  | 15.06% |

(2) Table II reflects the tax rates effective on July 1, 2001, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (Board of Oil and Gas). The rate is subject to change by the Board of Oil and Gas.

Table III - Effective 1/1/2000

| <u>Type of Production</u>         | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|-----------------------------------|-------------------------|----------------------------|
| (a) Natural gas                   |                         |                            |
| (i) Primary recovery production   |                         |                            |
| (A) First 12 months of production | .8%                     | 15.1%                      |
| (B) Pre-1999 wells after first    |                         |                            |
| 12 months of production           | 15.1%                   | 15.1%                      |
| (C) Post-1999 wells after first   |                         |                            |
| 12 months of production           | 9.3%                    | 15.1%                      |
| (ii) Stripper wells (averaging    |                         |                            |
| < 60 MCF/day)                     |                         |                            |
| (A) Pre-1999 wells                | 11.3%                   | 15.1%                      |
| (iii) Horizontally completed      |                         |                            |
| well production                   |                         |                            |
| (A) First 18 months of qualifying |                         |                            |
| production                        | .8%                     | 15.1%                      |
| (B) After 18 months               | 9.3%                    | 15.1%                      |

|  |                  |                  |
|--|------------------|------------------|
| <del>(b) Oil</del>   |                  |                  |
| <del>(i) Primary recovery production</del>                         |                  |                  |
| <del>(A) First 12 months of production</del>                       | <del>.8%</del>   | <del>15.1%</del> |
| <del>(B) Pre-1999 wells after first 12 months of production</del>  | <del>12.8%</del> | <del>15.1%</del> |
| <del>(C) Post-1999 wells after first 12 months of production</del> | <del>9.3%</del>  | <del>15.1%</del> |
| <del>(ii) Stripper wells (averaging &lt;15 bbls/day)</del>         |                  |                  |
| <del>(A) Pre-1999 and post-1999 wells first 1-10 bbls</del>        | <del>5.8%</del>  | <del>15.1%</del> |
| <del>(B) Pre-1999 and post-1999 over 10 bbls</del>                 | <del>9.3%</del>  | <del>15.1%</del> |
| <del>(C) Pre-1999 and post-1999 stripper well exemption</del>      | <del>.8%</del>   | <del>15.1%</del> |

Table III - Effective 1/1/2000

| <u>Type of Production</u>                                    | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|--|-------------------------|----------------------------|
| <del>(iii) Horizontally drilled</del>                        |                         |                            |
| <del>(A) Pre-1999 and post-1999 wells first 18 months</del>  | <del>.8%</del>          | <del>15.1%</del>           |
| <del>(B) Pre-1999 wells after 18 months</del>                | <del>12.8%</del>        | <del>15.1%</del>           |
| <del>(C) Post-1999 wells after 18 months</del>               | <del>9.3%</del>         | <del>15.1%</del>           |
| <del>(iv) Incremental production</del>                       |                         |                            |
| <del>(A) New or expanded secondary recovery production</del> | <del>8.8%</del>         | <del>15.1%</del>           |
| <del>(B) New or expanded tertiary production</del>           | <del>6.1%</del>         | <del>15.1%</del>           |
| <del>(v) Horizontally recompleted wells</del>                |                         |                            |
| <del>(A) Pre-1999 and post-1999 wells first 18 months</del>  | <del>5.8%</del>         | <del>15.1%</del>           |
| <del>(B) Pre-1999 wells after 18 months</del>                | <del>12.8%</del>        | <del>15.1%</del>           |
| <del>(C) Post-1999 wells after 18 months</del>               | <del>9.3%</del>         | <del>15.1%</del>           |

~~(3) Table III reflects the tax rates effective on January 1, 2000, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (Board of Oil and Gas). The rate set under 82-11-131, MCA, is at the maximum allowable rate of .3 percent of value. The rate is subject to change by the Board of Oil and Gas.~~

Table IV - Effective 7/1/1999 through 12/31/1999

| <u>Type of Production</u> | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|---------------------------|-------------------------|----------------------------|
|---------------------------|-------------------------|----------------------------|

|   |                   |                  |
|---|-------------------|------------------|
| (a) Natural gas   |                   |                  |
| (i) <del>Pre-1985 wells</del>                                       | <del>18.85%</del> | <del>15.1%</del> |
| (ii) <del>Post-1985 wells (qualifying production)</del>             |                   |                  |
| (A) <del>First 12 months</del>                                      | <del>.8%</del>    | <del>15.1%</del> |
| (B) <del>After first 12 months, but less than first 25 months</del> | <del>12.8%</del>  | <del>15.1%</del> |
| (C) <del>After first 24 months</del>                                | <del>15.45%</del> | <del>15.1%</del> |
| (iii) <del>Stripper wells (averaging &lt; 60 MCF/day)</del>         |                   |                  |
| (A) <del>Pre-1985 and post-1985 wells</del>                         | <del>11.3%</del>  | <del>15.1%</del> |
| (iv) <del>Post-1999 wells</del>                                     |                   |                  |
| (A) <del>First 12 months of qualifying production</del>             | <del>.8%</del>    | <del>15.1%</del> |
| (B) <del>After 12 months</del>                                      | <del>9.3%</del>   | <del>15.1%</del> |
| (v) <del>Horizontally-completed well production</del>               |                   |                  |
| (A) <del>First 18 months of qualifying production</del>             | <del>.8%</del>    | <del>15.1%</del> |
| (B) <del>After 18 months</del>                                      | <del>9.3%</del>   | <del>15.1%</del> |
| (b) Oil   |                   |                  |
| (i) Primary recovery production                                     |                   |                  |
| (A) <del>Pre-1985 wells</del>                                       | <del>14.2%</del>  | <del>17.2%</del> |
| (ii) <del>Stripper wells (averaging &lt; 15 bbls/day)</del>         |                   |                  |
| (A) <del>Pre-1985 and post-1985 wells first 1-10 bbls</del>         | <del>5.8%</del>   | <del>15.1%</del> |
| (B) <del>Pre-1985 and post-1985 over 10 bbls</del>                  | <del>9.3%</del>   | <del>15.1%</del> |
| (C) <del>Pre-1985 and post-1985 stripper well exemption</del>       | <del>.8%</del>    | <del>15.1%</del> |
| (iii) <del>Horizontally drilled</del>                               |                   |                  |
| (A) <del>Post-1985 wells</del>                                      |                   |                  |
| (I) <del>First 18 months</del>                                      | <del>.8%</del>    | <del>15.1%</del> |
| (II) <del>After 18 months, but less than first 25 months</del>      | <del>7.8%</del>   | <del>12.8%</del> |
| (III) <del>After 24 months</del>                                    | <del>12.8%</del>  | <del>12.8%</del> |
| (B) <del>Post-1999 wells</del>                                      |                   |                  |
| (I) <del>First 18 months</del>                                      | <del>.8%</del>    | <del>15.1%</del> |
| (II) <del>After 18 months</del>                                     | <del>9.3%</del>   | <del>15.1%</del> |

Table IV - Effective 7/1/1999 through 12/31/1999

| <u>Type of Production</u>     | <u>Working Interest</u> | <u>Nonworking Interest</u> |
|-------------------------------|-------------------------|----------------------------|
| (iv) Incremental production   |                         |                            |
| (A) New or expanded secondary |                         |                            |

|   |                  |                  |
|---|------------------|------------------|
| recovery production                           |                  |                  |
| (I) <del>Pre-1985 wells</del>                 | <del>8.8%</del>  | <del>16.3%</del> |
| (II) <del>Post-1985 wells</del>               | <del>8.8%</del>  | <del>10.8%</del> |
| (III) <del>Post-1999 wells</del>              | <del>8.8%</del>  | <del>15.1%</del> |
| (B) <del>New or expanded tertiary</del>       |                  |                  |
| production                                    |                  |                  |
| (I) <del>Pre-1985 wells</del>                 | <del>6.1%</del>  | <del>15.3%</del> |
| (II) <del>Post-1985 wells</del>               | <del>6.1%</del>  | <del>9.8%</del>  |
| (III) <del>Post-1999 wells</del>              | <del>6.1%</del>  | <del>15.1%</del> |
| (v) <del>Horizontally recompleted wells</del> |                  |                  |
| (A) <del>First 18 months of qualifying</del>  |                  |                  |
| production                                    |                  |                  |
| (I) <del>Post-1985 wells</del>                | <del>5.8%</del>  | <del>5.8%</del>  |
| (II) <del>Post-1999 wells</del>               | <del>5.8%</del>  | <del>15.1%</del> |
| (B) <del>After 18 months</del>                |                  |                  |
| (I) <del>Post-1985 wells</del>                | <del>12.8%</del> | <del>12.8%</del> |
| (II) <del>Post-1999 wells</del>               | <del>9.3%</del>  | <del>15.1%</del> |

~~(4)(2) Table IV reflects the tax rates effective on July 1, 1999, through December 31, 1999, and includes the rates contained in 15-36-304, MCA, and ARM 36.22.1242 (Board of Oil and Gas). The rate of tax set under 82-11-131, MCA, is at the maximum allowable rate of .3 percent of value. The rate is subject to change by the Board of Oil and Gas.~~

~~AUTH: 15-36-322, MCA  
IMP: 15-36-304, 82-11-131, MCA~~

~~REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.1809 to update and remove outdated language that no longer applies.~~

~~42.25.1813 APPLICABILITY (1) through (3) remain the same.~~

~~AUTH: 15-36-322, MCA  
IMP: 15-1-501, 15-36-324 15-36-331, 15-36-332, MCA~~

~~REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.25.1813 to remove and replace repealed implementing statutes with current applicable statutes.~~

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

42.32.101 DEFINITIONS which can be found on page 42-3205 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA  
IMP: 15-38-103, 15-38-105, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.101. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.102 APPLICABILITY which can be found on page 42-3205 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA  
IMP: 15-38-105, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.102. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.103 COMPUTATION OF TAX which can be found on page 42-3205 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA  
IMP: 15-38-105, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.103. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.104 RESPONSIBILITY FOR FILING FORMS AND PAYING TAX which can be found on page 42-3205 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA  
IMP: 15-38-104, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.104. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.105 SUPPLEMENTAL INFORMATION which can be found on page 42-3206 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-38-105, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.105. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.106 MINIMUM TAX AND ANNUAL EXEMPTION which can be found on page 42-3206 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-38-104, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.106. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

42.32.107 COMPUTATION OF GROSS VALUE which can be found on page 42-3206 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 15-38-104, 15-38-105, MCA

REASONABLE NECESSITY: In accordance with 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to transfer ARM 42.32.107. The proposed transfer will place all rules relative to natural resource taxes in a single location within Chapter 25.

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](mailto:canderson@mt.gov) and must be received no later than January 4, 2013.

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 is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Locate "Laws and Rules" in the left hand column, select the "Rules" link and view the options under the "Current Rule Actions - Published Notices" heading. 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.

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. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State November 13, 2012



BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF DECISION ON  
ARM 20.7.801, 20.7.810, and ) PROPOSED RULE ACTION  
20.7.813 pertaining to Eastmont )  
Chemical Dependency Treatment )  
Center )

TO: All Concerned Persons

1. On November 8, 2012 the Department of Corrections published MAR Notice No. 20-7-55 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2239 of the 2012 Montana Administrative Register, Issue Number 21.

2. The department is withdrawing the proposed rule amendments and cancelling the public hearing that was scheduled for December 11, 2012, at 6:00 p.m., at the Community Room of Dawson County Library, at Glendive, Montana.

/s/ Diana L. Koch  
Diana L. Koch  
Rule Reviewer

/s/ Mike Ferriter  
Mike Ferriter  
Director  
Department of Corrections

Certified to the Secretary of State November 13, 2012.

BEFORE THE BOARD OF ATHLETIC TRAINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.118.402 fee schedule and ) ADOPTION  
the adoption of NEW RULES I and II )  
applications and NEW RULE III )  
renewals )

TO: All Concerned Persons

1. On July 12, 2012, the Board of Athletic Trainers (board) published MAR notice no. 24-118-3 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1312 of the 2012 Montana Administrative Register, issue no. 13.

2. On August 7, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the August 14, 2012, deadline.

3. The board has amended ARM 24.118.402 exactly as proposed.

4. The board has adopted NEW RULE I (24.118.501), II (24.118.502), and III (24.118.2101) exactly as proposed.

BOARD OF ATHLETIC TRAINERS  
CHRIS HEARD, 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 November 13, 2012

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

In the matter of the adoption New ) NOTICE OF ADOPTION  
Rules I through IV pertaining to )  
documentation for admission to )  
Montana state hospital )

TO: All Concerned Persons

1. On September 20, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-602 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1835 of the 2012 Montana Administrative Register, Issue Number 18.

2. The department has adopted New Rule I (37.66.201), II (37.66.203), III (37.66.205), and IV (37.66.207) 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: One commenter stated Rule I (37.66.201) represented good additions to current definitions 53-21-102, MCA.

RESPONSE #1: The department concurs with the respondent's assessment.

COMMENT #2: One commenter recommended adding "justice of the peace" to the definition of a "court of competent jurisdiction," to help the courts improve jurisprudence and ease some of the workload and documentation requirements asked for in New Rule II (37.66.203).

RESPONSE #2: The department does not agree that a justice of the peace is a "court of competent jurisdiction" for commitment purposes. Under 53-21-122(3), MCA, a justice of the peace does not have any authority to commit or detain a person at Montana State Hospital (MSH). A justice of the peace has only limited authority to conduct a preliminary hearing with reading of rights, when specifically requested to do so by a district judge after a petition for involuntary commitment has been filed in district court under 53-21-121, MCA. Only a district court may issue an order of commitment. Any change in the authority of a justice of the peace to permit commitment or detention would require legislative change. No change is made to the proposed rule.

COMMENT #3: One commenter endorsed New Rule II (37.66.203), stating that "Full medical and mental health exams are necessary for good patient care and to satisfy legal criteria."

RESPONSE #3: The department acknowledges this endorsement.

COMMENT #4: One commenter agreed with much of the rationale, particularly in regards to the admission of forensic (criminal) patients.

RESPONSE #4: The department concurs with this comment.

COMMENT #5: One commenter expressed concern about "patients arriving at MSH from distant counties without the correct legal paperwork or without any advance notice," leaving the state hospital staff with "an inappropriate burden as fact finders, not to mention potential legal liabilities."

RESPONSE #5: The department acknowledges this concern. This is one of the situations the proposed rule is designed to address.

COMMENT #6: One commenter cited "different beliefs and cultures" and practices that differ from county to county, and describes the rules as a "call upon professional persons to be more attentive in supplying documentation to MSH in a timely and consistent manner."

RESPONSE #6: The department agrees with this comment. This is one of the issues the proposed rule is designed to address.

COMMENT #7: One commenter suggested that "mental health transfers deserve the same attention" as physical medical emergencies and that, as an example, jail inmates should be medically examined before transport for treatment at MSH. The commenter recommends a new rule be adopted or 53-21-129, MCA be amended to include provision for emergency medical examination along with emergency mental evaluation.

RESPONSE #7: The department appreciates this comment. The current rule will require all professional persons, referring potential patients from any county, including jail inmates, to make contact with MSH staff and provide appropriate information. The rule does not mandate that an examination take place; decisions about what information is required for appropriate treatment of a given patient are best addressed by clinical professionals on a case-by-case basis. The federal Emergency Medical Treatment and Active Labor Act (EMTALA) already requires an emergency medical screening, which covers both physical and psychiatric emergency medical conditions, when the patient is in a hospital emergency department.

COMMENT #8: One commenter suggested that the MSH voluntary admission screening forms are outdated, and should be improved by MSH. The commenter had specific suggestions.

RESPONSE #8: The department appreciates this comment, and the specific

suggestions. MSH does intend to update its forms, and this does not require rulemaking.

COMMENT #9: Several commenters suggested that the requirements of New Rule II (37.66.203) are burdensome, time consuming, costly, and unduly burdensome for professional persons. One commenter noted that professional persons who are not physicians have little or no access to medical information. One commenter suggested that MSH pay professional persons for providing medical information to MSH when they refer a patient for admission.

RESPONSE #9: The department concludes that calling MSH admitting staff and providing medical information creates only a negligible burden for a professional person, because under an appropriate standard of care, the information that causes a professional person to decide that inpatient psychiatric hospital care is necessary should be well documented and already in the hands of the referring professional. If the professional person does not have possession of the patient's medical records, he or she should be able to provide sufficient information so that MSH admitting staff can obtain them quickly, directly from the source.

COMMENT #10: One commenter stated that Rule II (37.66.203) would duplicate records already required in statutes regarding commitment proceedings in Title 53, chapter 21, part 1, MCA.

RESPONSE #10: The cited statutes address only the legal aspects of admission or commitment. They do not address preadmission documentation to MSH. Although some of the same information may also be needed in court proceedings, physical and psychiatric medical information is a vital aspect of admission to a hospital.

COMMENT #11: One commenter suggested that the requirement for a professional person to contact MSH prior to making contact with the county attorney is inconsistent with the authority of a county attorney to make detention arrangements with a mental health facility under 53-21-129, MCA.

RESPONSE #11: The department concludes that there is no inconsistency under 53-21-129(2), MCA, only a professional person may authorize the emergency detention of a person suspected of having a mental disorder and danger to self or others, until the next business day. Under the statute, the professional person is not required to contact the county attorney until the next business day. Nothing in the statute requires that prior arrangements for emergency detention at MSH are made by the county attorney, or that a request for emergency detention come from a county attorney.

COMMENT #12: One commenter was concerned with New Rule II's (37.66.203) reference to less restrictive alternatives to detention at MSH, because such alternatives are not always available. The commenter stated that "Since local counties are responsible for emergency detention costs, I don't see how MSH can tell counties how to conduct government business."

RESPONSE #12: 53-21-120(1), MCA, requires that detention be in the least restrictive environment. Thus, documentation sufficient to establish whether alternative, less restrictive and medically appropriate alternatives are available is highly relevant to the proper treatment of the patient. New Rule II (37.66.203) is directed to professional persons, and does not affect counties. It is designed to ensure that the medical staff at MSH has adequate medical information about a person referred for admission. No change has been made to the proposed rule.

COMMENT #13: One commenter stated that new Rule II (37.66.203) "appears as another barrier and obstacle," if MSH admission staff will be asking the professional person during this telephone call if other placements were considered or available, "while the professional person is attempting to calm an acutely psychotic suicidal patient in an under staffed emergency room."

RESPONSE #13: The rule is designed to improve coordination of care to ensure the most appropriate care is provided for the patient. Detention in the least restrictive environment is a statutory requirement under 53-21-120(1), MCA. When a patient is in an emergency room, this rule is consistent with the requirements of EMTALA, which requires the sending facility (emergency department) to provide relevant medical records to MSH, as part of the transfer process described in EMTALA.

COMMENT #14: One commenter expressed concerns about conflicts between the prospective patient, the professional person, the emergency department physician, and MSH staff about what information and exams may or may not be available and needed for the MSH admission process.

RESPONSE #14: The proposed rule requires the professional person to initiate contact with MSH and provide information "as requested." The information requested will naturally depend on the circumstances. In a referral from an emergency department, EMTALA already requires the hospital emergency department to conduct a medical screening of the patient which covers both physical and psychiatric emergency conditions, and send records to MSH prior to any transfer. MSH would not have a need for the professional person to duplicate information being provided by another entity.

COMMENT #15: One commenter suggested that the new rules specify the credentials of the "person responsible for admissions" at MSH.

RESPONSE #15: The phrase "person responsible for admissions" refers to the staff member assigned to the duty of coordinating the initial intake process at the time the call comes in. The assignment will vary depending on the time of day. Admission privileges are granted as provided by state and federal law and "Montana State Hospital Medical Staff" bylaws.

COMMENT #16: One commenter suggested several changes to existing code.

RESPONSE #16: This is beyond the reach of administrative rulemaking as these issues are within the exclusive authority of the legislative branch.

COMMENT #17: One commenter suggested outreach education for professional persons, public defenders, and doctors across the state.

RESPONSE #17: The department appreciates this comment, and agrees that statewide stakeholder education will help in implementing the new rules.

COMMENT #18: The testimony of John Glueckert, Superintendent of MSH, described receiving an unwritten suggestion that Rule IV (37.66.207) be expanded to permit transmitting documentation of court commitment orders by scan and e-mail.

RESPONSE #18: The department has found that these orders frequently contain highly confidential psychiatric information about the respondent, which is protected from public disclosure by the constitutional right of privacy. The department considers unsecured e-mail using the internet as insufficiently protective of such information. All of the courts defined by the rule as "courts of competent jurisdiction" have access to fax technology using land lines, which is considered a secure method of transmission. Since this technology is readily available and more protective of the individual right of privacy, no change will be made to Rule IV (37.66.207).

4. These rule amendments are effective January 1, 2013.

/s/ Paulette Kohman  
Rule Reviewer

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

Certified to the Secretary of State November 13, 2012.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 1.2.419 regarding the )  
scheduled dates for the 2013 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On September 6, 2012, the Secretary of State published MAR Notice No. 44-2-184 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1759 of the 2012 Montana Administrative Register, Issue 17.
2. On October 11, 2012, the Secretary of State published an Amended Notice of Public Hearing on Proposed Amendment and Extension of Comment Period at page 2039 of the 2012 Montana Administrative Register, Issue Number 19.
3. The Secretary of State has amended the above-stated rule as proposed.
4. No further comments or testimony were received.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 13th day of November, 2012.



## **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<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2012. This table includes those rules adopted during the period July 1, 2012, through September 30, 2012, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2012, 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 2012 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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- 42.12.101 and other rules - Liquor License Application General Regulation - Premises Suitability Requirements, p. 961, 1846
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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2012 appear. Vacancies scheduled to appear from December 1, 2012, through February 28, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2012

| <u>Appointee</u>   | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| <b>Board of Barbers and Cosmetologists</b> (Labor and Industry)  |                     |                 |                             |
| Mr. Thayne Orton<br>Florence<br>Qualifications (if required): barber                                   | Governor            | reappointed     | 10/1/2012<br>10/1/2017      |
| Ms. Angela Printz<br>Livingston<br>Qualifications (if required): Cosmetologist                         | Governor            | reappointed     | 10/1/2012<br>10/1/2017      |
| <b>Board of Medical Examiners</b> (Labor and Industry)   |                     |                 |                             |
| Dr. Dean Center<br>Bozeman<br>Qualifications (if required): doctor of medicine                         | Governor            | reappointed     | 10/15/2012<br>9/1/2016      |
| Mr. Charles Farmer<br>Cut Bank<br>Qualifications (if required): volunteer emergency medical technician | Governor            | Burke           | 10/15/2012<br>9/1/2013      |
| <b>Board of Outfitters</b> (Labor and Industry)  |                     |                 |                             |
| Mr. Robin Cunningham<br>Gallatin Gateway<br>Qualifications (if required): fishing outfitter            | Governor            | Kinsey          | 10/31/2012<br>10/1/2015     |

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2012**

| <u>Appointee</u>  | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| <b>Board of Outfitters</b> (Labor and Industry) cont.                             |                     |                 |                             |
| Mr. Shawn McNeely<br>Bozeman  | Governor            | reappointed     | 10/31/2012<br>10/1/2015     |
| Qualifications (if required): fishing and hunting outfitter                       |                     |                 |                             |
| <b>Board of Radiologic Technologists</b> (Labor and Industry)                     |                     |                 |                             |
| Ms. Kelli Bush<br>Butte   | Governor            | reappointed     | 10/12/2012<br>7/1/2015      |
| Qualifications (if required): radiologic technician                               |                     |                 |                             |
| Ms. Sharlett Dale<br>Harlowton  | Governor            | reappointed     | 10/12/2012<br>7/1/2015      |
| Qualifications (if required): radiologic technician                               |                     |                 |                             |
| <b>Burial Preservation Review Board</b> (Administration)                          |                     |                 |                             |
| Mr. Henry Anderson<br>Helena  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the Little Shell Tribe            |                     |                 |                             |
| Mr. Morris Belgard<br>Hays  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the Fort Belknap Indian Community |                     |                 |                             |



## BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2012

| <u>Appointee</u>  | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| <b>Burial Preservation Review Board</b> (Administration) cont.                                    |                     |                 |                             |
| Mr. Terry Bullis<br>Hardin  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the coroner's association                         |                     |                 |                             |
| Mr. Conrad Fisher<br>Busby  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the Northern Cheyenne Tribe                       |                     |                 |                             |
| Dr. Ruthann Knudson<br>Great Falls  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): archaeological association  |                     |                 |                             |
| Mr. Videl Stump Sr.<br>Box Elder  | Governor            | reappointed     | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the Chippewa Cree Historic Preservation Committee |                     |                 |                             |
| Mr. Richard White Clay Sr.<br>Crow Agency   | Governor            | Big Day         | 10/31/2012<br>8/22/2014     |
| Qualifications (if required): representative of the Crow Tribe                                    |                     |                 |                             |
| <b>District Court Council</b> (Justice)   |                     |                 |                             |
| Judge Gregory R. Todd<br>Billings   | nominated           | reappointed     | 10/23/2012<br>6/30/2015     |
| Qualifications (if required): none specified  |                     |                 |                             |

## BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2012

| <u>Appointee</u>   | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|--|---------------------|-----------------|-----------------------------|
| <b>Economic Development Advisory Council (Commerce)</b>  |                     |                 |                             |
| Mr. Jim Atchison<br>Colstrip<br>Qualifications (if required): public representative                | Governor            | reappointed     | 10/31/2012<br>7/23/2015     |
| Ms. Elizabeth Marchi<br>Polson<br>Qualifications (if required): public representative              | Governor            | reappointed     | 10/31/2012<br>7/23/2015     |
| Mr. Joe Menicucci<br>Belgrade<br>Qualifications (if required): public representative               | Governor            | reappointed     | 10/31/2012<br>7/23/2015     |
| Mr. Richard Sangrey<br>Box Elder<br>Qualifications (if required): tribal government representative | Governor            | reappointed     | 10/31/2012<br>7/23/2015     |
| Mr. Wade Sikorski<br>Baker<br>Qualifications (if required): public representative                  | Governor            | reappointed     | 10/31/2012<br>7/23/2015     |
| <b>Historical Preservation Review Board (Historical Society)</b>                                   |                     |                 |                             |
| Ms. Lesley M. Gilmore<br>Gallatin Gateway<br>Qualifications (if required): historic architect      | Governor            | reappointed     | 10/15/2012<br>10/1/2016     |

**BOARD AND COUNCIL APPOINTEES FROM OCTOBER, 2012**

| <u>Appointee</u>  | <u>Appointed by</u> | <u>Succeeds</u> | <u>Appointment/End Date</u> |
|---|---------------------|-----------------|-----------------------------|
| <b>Historical Preservation Review Board</b> (Historical Society) cont.            |                     |                 |                             |
| Mr. Charles McLeod<br>Missoula<br>Qualifications (if required): archaeologist     | Governor            | Light           | 10/15/2012<br>10/1/2016     |
| Mr. Jon Axline<br>Helena<br>Qualifications (if required): architectural historian | Governor            | reappointed     | 10/15/2012<br>10/1/2016     |
| <b>Water and Wastewater Operators' Advisory Council</b> (Environmental Quality)   |                     |                 |                             |
| Mr. Andrew Loudermilk<br>Kalispell<br>Qualifications (if required): Loudermilk    | Governor            | reappointed     | 10/15/2012<br>10/16/2018    |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Alternative Livestock Advisory Council</b> (Fish, Wildlife and Parks)  |                     |                 |
| Ms. Linda Nielsen, Nashua<br>Qualifications (if required): representative of the Board of Livestock                       | Governor            | 1/1/2013        |
| Mr. Ron Moody, Lewistown<br>Qualifications (if required): representative of the Board of Livestock                        | Governor            | 1/1/2013        |
| <b>Board of Aeronautics</b> (Transportation)  |                     |                 |
| Rep. Ted Schye, Fort Peck<br>Qualifications (if required): member of the Montana Pilots Association                       | Governor            | 1/1/2013        |
| Mr. Fred Leistiko, Kalispell<br>Qualifications (if required): representative of the Montana Airport Managers Association  | Governor            | 1/1/2013        |
| Ms. Tricia McKenna, Bozeman<br>Qualifications (if required): representative of the Montana Chamber of Commerce            | Governor            | 1/1/2013        |
| Mr. Roger Lincoln, Gildford<br>Qualifications (if required): member of the Montana Aerial Applicators Association         | Governor            | 1/1/2013        |
| Mr. Bill Hunt Jr., Shelby<br>Qualifications (if required): attorney and member of the Montana League of Cities and Towns  | Governor            | 1/1/2013        |
| <b>Board of Chiropractors</b> (Labor and Industry)  |                     |                 |
| Dr. Cathleen Fellows, Billings<br>Qualifications (if required): practicing chiropractor with at least one year experience | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Board of Crime Control</b> (Justice)<br>Mr. Harold F. Hanser, Billings<br>Qualifications (if required): public representative                 | Governor            | 1/1/2013        |
| Chief Lyndon Erickson, Glasgow<br>Qualifications (if required): local law enforcement representative   | Governor            | 1/1/2013        |
| Mr. James R. Cashell, Bozeman<br>Qualifications (if required): local law enforcement representative  | Governor            | 1/1/2013        |
| Mr. Steve McArthur, Butte<br>Qualifications (if required): community corrections representative  | Governor            | 1/1/2013        |
| Ms. Mikie Hajek, Great Falls<br>Qualifications (if required): community organization representative  | Governor            | 1/1/2013        |
| Commissioner Mike Anderson, Havre<br>Qualifications (if required): public member   | Governor            | 1/1/2013        |
| Mayor Pamela B. Kennedy, Kalispell<br>Qualifications (if required): local government representative and the Youth Justice Council representative | Governor            | 1/1/2013        |
| Mr. Nickolas C. Murnion, Jordan<br>Qualifications (if required): local law enforcement representative  | Governor            | 1/1/2013        |
| Atty. General Steve Bullock, Helena<br>Qualifications (if required): representative of state law enforcement                                     | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Board of Crime Control</b> (Justice) cont.<br/>                     Commissioner Laura Obert, Townsend<br/>                     Qualifications (if required): local government representative</p>                       | Governor            | 1/1/2013        |
| <p><b>Board of Environmental Review</b> (Environmental Quality)<br/>                     Mr. Marvin Miller, Butte<br/>                     Qualifications (if required): background or expertise in environmental science</p> | Governor            | 1/1/2013        |
| <p>Mr. William Rossbach, Missoula<br/>                     Qualifications (if required): attorney</p>   | Governor            | 1/1/2013        |
| <p>Ms. Robin Shropshire, Helena<br/>                     Qualifications (if required): background or expertise in hydrology</p>   | Governor            | 1/1/2013        |
| <p>Mr. Joseph Whalen, Miles City<br/>                     Qualifications (if required): background or expertise in local government planning</p>  | Governor            | 1/1/2013        |
| <p>Mr. Larry Anderson, Great Falls<br/>                     Qualifications (if required): attorney</p>  | Governor            | 1/1/2013        |
| <p><b>Board of Horseracing</b> (Livestock)<br/>                     Sen. Dale Mahlum, Missoula<br/>                     Qualifications (if required): industry representative</p>   | Governor            | 1/20/2013       |
| <p>Ms. Susan Austin, Kalispell<br/>                     Qualifications (if required): resident of District 5</p>  | Governor            | 1/20/2013       |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Board of Horseracing</b> (Livestock) cont.   |                     |                 |
| Mr. Charles (Al) Carruthers, Butte<br>Qualifications (if required): industry representative   | Governor            | 1/20/2013       |
| Mr. Shawn Real Bird, Garryowen<br>Qualifications (if required): resident of District 2        | Governor            | 1/20/2013       |
| Mr. Ray "Topper" Tracy, Stevensville<br>Qualifications (if required): industry representative | Governor            | 1/20/2013       |
| Mr. Ralph Young, Columbus<br>Qualifications (if required): industry representative            | Governor            | 1/20/2013       |
| <b>Board of Housing</b> (Commerce)  |                     |                 |
| Ms. Audrey Black Eagle, Lodge Grass<br>Qualifications (if required): public representative    | Governor            | 1/1/2013        |
| Mr. J.P. Crowley, Helena<br>Qualifications (if required): public representative               | Governor            | 1/1/2013        |
| Mr. Jeff Rupp, Bozeman<br>Qualifications (if required): public representative                 | Governor            | 1/1/2013        |
| Ms. Elizabeth Scanlin, Red Lodge<br>Qualifications (if required): an attorney                 | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Board of Investments</b> (Commerce)   |                     |                 |
| Mr. David E. Ageson, Gilford<br>Qualifications (if required): representative of the agriculture community            | Governor            | 1/1/2013        |
| Mr. James Turcotte, Helena<br>Qualifications (if required): representative of the Teachers' Retirement Board         | Governor            | 1/1/2013        |
| Rep. Mark E. Noennig, Billings<br>Qualifications (if required): business person                                      | Governor            | 1/1/2013        |
| Mr. Jack Prothero, Great Falls<br>Qualifications (if required): representative of the financial community            | Governor            | 1/1/2013        |
| Mr. Bob Bugni, East Helena<br>Qualifications (if required): representative of the Public Employees' Retirement Board | Governor            | 1/1/2013        |
| <b>Board of Labor Appeals</b> (Labor and Industry)   |                     |                 |
| Mr. Ed Logan, Billings<br>Qualifications (if required): public representative  | Governor            | 1/1/2013        |
| Mr. Norman Grosfield, Helena<br>Qualifications (if required): attorney   | Governor            | 1/1/2013        |
| Mr. Brian Boland, Great Falls<br>Qualifications (if required): public representative                                 | Governor            | 1/1/2013        |



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Board of Occupational Therapy Practice</b> (Labor and Industry)<br>Ms. Lynn Yocom, Anaconda<br>Qualifications (if required): licensed occupational therapist                                       | Governor            | 12/31/2012      |
| Ms. Sue Furey, Missoula<br>Qualifications (if required): public representative  | Governor            | 12/31/2012      |
| <b>Board of Oil and Gas Conservation</b> (Natural Resources and Conservation)<br>Sen. Linda Nelson, Medicine Lake<br>Qualifications (if required): landowner with minerals                            | Governor            | 1/1/2013        |
| Mr. Donald D. Bradshaw, Fort Benton<br>Qualifications (if required): oil and gas industry representative  | Governor            | 1/1/2013        |
| Mr. Wayne Smith, Valier<br>Qualifications (if required): oil and gas industry representative  | Governor            | 1/1/2013        |
| Mr. Jay A. Gunderson, Billings<br>Qualifications (if required): public member   | Governor            | 1/1/2013        |
| <b>Board of Pardons and Parole</b> (Corrections)<br>Rep. John Ward, Helena<br>Qualifications (if required): education/experience in criminology, education, psychiatry, law, social work or sociology | Governor            | 1/1/2013        |
| Ms. Teresa McCann O'Connor, Billings<br>Qualifications (if required): an attorney   | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Board of Pardons and Parole</b> (Corrections) cont.<br/>           Mr. Samuel Lemaich, Missoula<br/>           Qualifications (if required): auxiliary member</p>   | Governor            | 1/1/2013        |
| <p><b>Board of Personnel Appeals</b> (Labor and Industry)<br/>           Mr. Jay Reardon, Helena<br/>           Qualifications (if required): full-time employee of a labor union or an association recognized by the board</p> | Governor            | 1/1/2013        |
| <p>Mr. Quint Nyman, Helena<br/>           Qualifications (if required): full-time employee of a labor union or an association recognized by the board</p>   | Governor            | 1/1/2013        |
| <p>Ms. Karla Stanton, Billings<br/>           Qualifications (if required): management representative with collective bargaining experience</p>   | Governor            | 1/1/2013        |
| <p><b>Board of Public Assistance</b> (Public Health and Human Services)<br/>           Mr. Scott Sorensen, Whitefish<br/>           Qualifications (if required): resident of Montana</p>                                       | Governor            | 1/1/2013        |
| <p>Ms. Amy D. Christensen, Helena<br/>           Qualifications (if required): resident of Montana</p>  | Governor            | 1/1/2013        |
| <p><b>Board of Public Education</b> (Commissioner of Higher Education)<br/>           Ms. Angela McLean, Anaconda<br/>           Qualifications (if required): resident of District 1</p>                                       | Governor            | 2/1/2013        |
| <p>Rep. Douglas E. Cordier, Columbia Falls<br/>           Qualifications (if required): resident of District 1 and a Democrat</p>   | Governor            | 2/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Board of Regents</b> (Education)  |                     |                 |
| Ms. Lynn Hamilton, Havre<br>Qualifications (if required): resident of District 2             | Governor            | 2/1/2013        |
| Mr. Paul Tuss, Havre<br>Qualifications (if required): resident of District 2                 | Governor            | 2/1/2013        |
| <b>Board of Social Work Examiners and Professional Counselors</b> (Labor and Industry)       |                     |                 |
| Mr. John Lynn, Missoula<br>Qualifications (if required): licensed counselor                  | Governor            | 1/1/2013        |
| Ms. Treasa Glinnwater, Ronan<br>Qualifications (if required): licensed social worker         | Governor            | 1/1/2013        |
| Mr. Henry Pretty On Top, Crow Agency<br>Qualifications (if required): licensed social worker | Governor            | 1/1/2013        |
| Ms. Linda Crummett, Billings<br>Qualifications (if required): licensed social worker         | Governor            | 1/1/2013        |
| <b>Capital Investment Board</b> (Commerce)   |                     |                 |
| Ms. Ellen Feaver, Helena<br>Qualifications (if required): financial expert                   | Governor            | 1/1/2013        |
| Mr. Robert Pancich, Great Falls<br>Qualifications (if required): financial expert            | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Capital Investment Board</b> (Commerce) cont.<br/>           Mr. Lawrence A. Anderson, Great Falls<br/>           Qualifications (if required): financial expert</p>                                      | Governor            | 1/1/2013        |
| <p><b>Children's Trust Fund</b> (Public Health and Human Services)<br/>           Rep. Rosalie "Rosie" Buzzas, Missoula<br/>           Qualifications (if required): public representative</p>                  | Governor            | 1/1/2013        |
| <p>Ms. Betty Hidalgo, Great Falls<br/>           Qualifications (if required): public representative</p>  | Governor            | 1/1/2013        |
| <p>Ms. Mary Gallagher,<br/>           Qualifications (if required): agency representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. Nancy Wikle, Helena<br/>           Qualifications (if required): agency representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. JoAnn Eder, Red Lodge<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. Deborah Hansen, Helena<br/>           Qualifications (if required): agency representative</p>  | Governor            | 1/1/2013        |
| <p><b>Coal Board</b> (Commerce)<br/>           Mayor John Williams, Colstrip<br/>           Qualifications (if required): experience in public administration and planning and a resident of an impact area</p> | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Coal Board</b> (Commerce) cont.<br>Mr. Dan Dutton, Belfry<br>Qualifications (if required): representative from business and resident of District 1          | Governor            | 1/1/2013        |
| Mr. Gerald Navratil, Sidney<br>Qualifications (if required): resident of District 2  | Governor            | 1/1/2013        |
| Mr. Chad Fenner, Hardin<br>Qualifications (if required): experience in public administration and planning and a resident of an impact area                     | Governor            | 1/1/2013        |
| <b>Council Member of the Northwest Power and Conservation Council</b><br>Ms. Rhonda Whiting,<br>Qualifications (if required): none specified                   | Governor            | 1/1/2013        |
| <b>Council on Developmental Disabilities</b> (Commerce)<br>Dr. R. Timm Vogelsberg, Missoula<br>Qualifications (if required): university program representative | Governor            | 1/1/2013        |
| Sen. Carol Williams, Missoula<br>Qualifications (if required): legislator  | Governor            | 1/1/2013        |
| Ms. Diana Tavary, Helena<br>Qualifications (if required): advocacy program representative  | Governor            | 1/1/2013        |
| Rep. Tim Furey, Milltown<br>Qualifications (if required): legislator   | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Council on Developmental Disabilities</b> (Commerce) cont.<br>Ms. Marla Swanby, Helena<br>Qualifications (if required): agency representative            | Governor            | 1/1/2013        |
| Mr. Bob Norbie, Great Falls<br>Qualifications (if required): advocacy program representative  | Governor            | 1/1/2013        |
| <b>Facility Finance Authority</b> (Commerce)<br>Mr. James W. (Bill) Kearns, Townsend<br>Qualifications (if required): background in investments or finances | Governor            | 1/1/2013        |
| Mr. Jon Marchi, Polson<br>Qualifications (if required): background in investments or finances   | Governor            | 1/1/2013        |
| Mr. Larry Putnam, Helena<br>Qualifications (if required): public member   | Governor            | 1/1/2013        |
| Mr. Richard C. King, Missoula<br>Qualifications (if required): background in investments or finances  | Governor            | 1/1/2013        |
| <b>Fish, Wildlife and Parks Commission</b> (Fish, Wildlife and Parks)<br>Rep. Bob Ream, Helena<br>Qualifications (if required): resident of District 1      | Governor            | 1/1/2013        |
| Mr. Shane Colton, Billings<br>Qualifications (if required): resident of District 5  | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <p><b>Fish, Wildlife and Parks Commission</b> (Fish, Wildlife and Parks) cont.<br/>           Mr. Ron Moody, Lewistown<br/>           Qualifications (if required): resident of District 3</p>               | Governor            | 1/1/2013        |
| <p><b>Hard Rock Mining Impact Board</b> (Commerce)<br/>           Commissioner Ed Tinsley, Fort Harrison<br/>           Qualifications (if required): public representative and a resident of District 2</p> | Governor            | 1/1/2013        |
| <p>Ms. Mary Ellen Cremer, Big Timber<br/>           Qualifications (if required): representative of major financial institution in Montana and a resident of District 1</p>                                  | Governor            | 1/1/2013        |
| <p>Mr. Joe Michaletz, Helena<br/>           Qualifications (if required): representative of the hard-rock mining industry and a resident of District 2</p>   | Governor            | 1/1/2013        |
| <p><b>Human Rights Commission</b> (Labor and Industry)<br/>           Mr. Dustin J. Hankinson, Missoula<br/>           Qualifications (if required): public representative</p>                               | Governor            | 1/1/2013        |
| <p>Ms. Maria E. Beltran, Worden<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. Linda Minich, Jefferson City<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p><b>Judicial Nomination Commission</b> (Justice)<br/>           Ms. Monica Conrad Paoli, Missoula<br/>           Qualifications (if required): public representative</p>                                   | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Livestock Loss Reduction and Mitigation Board</b> (Livestock)   |                     |                 |
| Mr. James Cross, Kalispell<br>Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission | Governor            | 1/1/2013        |
| Mr. Brad Radtke, Drummond<br>Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission  | Governor            | 1/1/2013        |
| Ms. Whitney Wankel, Bozeman<br>Qualifications (if required): public member                                       | Governor            | 1/1/2013        |
| Mr. Michael Leahy, Bozeman<br>Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission | Governor            | 1/1/2013        |
| Mr. John Herman, Hot Springs<br>Qualifications (if required): nominee from the Board of Livestock                | Governor            | 1/1/2013        |
| <b>Lottery Commission</b> (Administration)   |                     |                 |
| Sheriff Craig Anderson, Glendive<br>Qualifications (if required): representative of law enforcement              | Governor            | 1/1/2013        |
| Mr. Wilbur Rehmann, Helena<br>Qualifications (if required): public member  | Governor            | 1/1/2013        |
| <b>Milk Control Board</b> (Livestock)  |                     |                 |
| Mr. Gary Parker, Fort Shaw<br>Qualifications (if required): public representative and a Democrat                 | Governor            | 1/1/2013        |



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Milk Control Board</b> (Livestock) cont.<br/>           Mr. Larry Van Dyke, Bozeman<br/>           Qualifications (if required): public representative and a Republican</p> | Governor            | 1/1/2013        |
| <p>Mr. Hubert Abrams, Wibaux<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p><b>Montana Alfalfa Seed Committee</b> (Agriculture)<br/>           Mr. Tim Wetstein, Joliet<br/>           Qualifications (if required): alfalfa seed grower</p>               | Governor            | 12/21/2012      |
| <p>Mr. John Wold, Laurel<br/>           Qualifications (if required): alfalfa seed grower</p>   | Governor            | 12/21/2012      |
| <p><b>Montana Arts Council</b> (Arts Council)<br/>           Ms. Jackie Parsons, Browning<br/>           Qualifications (if required): public representative</p>                  | Governor            | 2/1/2013        |
| <p>Ms. Arlene Parisot, Helena<br/>           Qualifications (if required): public representative</p>  | Governor            | 2/1/2013        |
| <p>Ms. Kathleen Schlepp, Miles City<br/>           Qualifications (if required): public representative</p>  | Governor            | 2/1/2013        |
| <p>Ms. Tracy Linder, Molt<br/>           Qualifications (if required): public representative</p>  | Governor            | 2/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Montana Arts Council</b> (Arts Council) cont.<br/>           Mr. Corwin Clairmont, Ronan<br/>           Qualifications (if required): public representative</p>                             | Governor            | 2/1/2013        |
| <p><b>Montana Committee for the Humanities</b> (Committee for the Humanities)<br/>           Mr. Bruce Whittenberg, Helena<br/>           Qualifications (if required): public representative</p> | Governor            | 1/1/2013        |
| <p>Mr. James Shanley, Poplar<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. Ruth Towe, Billings<br/>           Qualifications (if required): public representative</p>   | Governor            | 1/1/2013        |
| <p>Ms. Sidney Armstrong, Helena<br/>           Qualifications (if required): public representative</p>  | Governor            | 1/1/2013        |
| <p><b>Montana Council on Developmental Disabilities</b> (Commerce)<br/>           Ms. Diana Tavary, Helena<br/>           Qualifications (if required): advocacy representative</p>               | Governor            | 1/1/2013        |
| <p>Ms. P.J. Rismon-Beckley, Kalispell<br/>           Qualifications (if required): secondary consumer representative</p>  | Governor            | 1/1/2013        |
| <p>Ms. Barbara Olind, Baker<br/>           Qualifications (if required): secondary consumer representative</p>  | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Montana Council on Developmental Disabilities</b> (Commerce) cont.<br>Ms. Melissa Clark, Great Falls<br>Qualifications (if required): primary consumer representative | Governor            | 1/1/2013        |
| Ms. Jan Wenaas, Great Falls<br>Qualifications (if required): secondary consumer representative   | Governor            | 1/1/2013        |
| Ms. Lisa Hathaway, Bozeman<br>Qualifications (if required): primary consumer representative  | Governor            | 1/1/2013        |
| Mr. Shawn Parker, Box Elder<br>Qualifications (if required): primary consumer representative   | Governor            | 1/1/2013        |
| Ms. Brenda Walters, Shepherd<br>Qualifications (if required): secondary consumer representative  | Governor            | 1/1/2013        |
| Ms. Keogh Duffy, Missoula<br>Qualifications (if required): primary consumer representative   | Governor            | 1/1/2013        |
| Mr. Don Berryman, Anaconda<br>Qualifications (if required): secondary consumer representative  | Governor            | 1/1/2013        |
| Ms. Nanette Whitman-Holmes, Helena<br>Qualifications (if required): secondary consumer representative  | Governor            | 1/1/2013        |
| Ms. Debra Ekblom, Boulder<br>Qualifications (if required): secondary consumer representative   | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>Montana Council on Developmental Disabilities</b> (Commerce) cont.<br/>                     Mr. Isaiah Devereaux, Glasgow<br/>                     Qualifications (if required): primary consumer representative</p>            | Governor            | 1/1/2013        |
| <p>Mr. Rudy Shriner, Helena<br/>                     Qualifications (if required): primary consumer representative</p>  | Governor            | 1/1/2013        |
| <p><b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation)<br/>                     Mr. Sonny Obrecht, Turner<br/>                     Qualifications (if required): grazing district preference holder</p> | Governor            | 1/1/2013        |
| <p><b>Montana Pulse Crop Advisory Committee</b> (Agriculture)<br/>                     Mr. Brian Kaae, Dagmar<br/>                     Qualifications (if required): none specified</p>   | Director            | 2/13/2013       |
| <p><b>Northwest Power and Conservation Council</b><br/>                     Representative Bruce Measure, Kalispell<br/>                     Qualifications (if required): none specified</p>   | Governor            | 1/1/2013        |
| <p><b>Public Safety Officer Standards and Training Council</b> (Justice)<br/>                     Mr. Harold F. Hanser, Billings<br/>                     Qualifications (if required): Board of Crime Control representative</p>     | Governor            | 1/1/2013        |
| <p>Sheriff Tony Harbaugh, Miles City<br/>                     Qualifications (if required): Sheriff</p>   | Governor            | 1/1/2013        |
| <p>Captain Dennis McCave, Billings<br/>                     Qualifications (if required): detention center representative</p>   | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>Public Safety Officer Standards and Training Council</b> (Justice) cont.<br>Mr. Steve Barry, Helena<br>Qualifications (if required): Department of Corrections representative | Governor            | 1/1/2013        |
| Mr. Raymond Murray, Missoula<br>Qualifications (if required): public representative  | Governor            | 1/1/2013        |
| Mr. Robert M. McCarthy, Butte<br>Qualifications (if required): public representative   | Governor            | 1/1/2013        |
| Sergeant Greg Watson, Whitehall<br>Qualifications (if required): state government law enforcement representative   | Governor            | 1/1/2013        |
| Sgt. Alex Betz, Helena<br>Qualifications (if required): state government law enforcement representative  | Governor            | 1/1/2013        |
| <b>Rail Service Competition Council</b> (Transportation)<br>Mr. Michael V. O'Hara, Fort Benton<br>Qualifications (if required): farm commodity producer                          | Governor            | 1/1/2013        |
| Mr. Doug Miller, Troy<br>Qualifications (if required): knowledge of transportation for mineral industry  | Governor            | 1/1/2013        |
| Mr. John DeMichiei, Roundup<br>Qualifications (if required): knowledge of transportation for coal industry   | Governor            | 1/1/2013        |
| Mr. Jerry Jimison, Glendive<br>Qualifications (if required): knowledge of class I railroads  | Governor            | 1/1/2013        |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Respiratory Care Practitioners</b> (Labor and Industry)<br>Rep. Eileen Carney, Libby<br>Qualifications (if required): public representative                            | Governor            | 1/1/2013        |
| Mr. Tony Jay Miller, Joplin<br>Qualifications (if required): respiratory care practitioner  | Governor            | 1/1/2013        |
| Mr. Leonard Bates, Great Falls<br>Qualifications (if required): respiratory care practitioner   | Governor            | 1/1/2013        |
| Mr. Rusty Davies, Billings<br>Qualifications (if required): respiratory care practitioner/pulmonary function speciality   | Governor            | 1/1/2013        |
| <b>Small Business Health Insurance Pool Board</b> (State Auditor)<br>Ms. Betty Beverly, Helena<br>Qualifications (if required): consumer                                  | Governor            | 1/1/2013        |
| Ms. M. Katherine Buckley-Patton, Helena<br>Qualifications (if required): management level individual with knowledge of Medicaid services                                  | Governor            | 1/1/2013        |
| <b>State Employee Group Benefits Advisory Council</b> (Administration)<br>Ms. Mary Dalton, Helena<br>Qualifications (if required): representing executive branch agencies | Director            | 12/31/2012      |
| Mr. Steve Barry, Helena<br>Qualifications (if required): representing executive branch agencies   | Director            | 12/31/2012      |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>   | <u>Appointed by</u> | <u>Term end</u> |
|--|---------------------|-----------------|
| <b>State Employee Group Benefits Advisory Council</b> (Administration) cont.   |                     |                 |
| Mr. Russ Hill, Helena<br>Qualifications (if required): ex-officio member representing the Department of Administration | Director            | 12/31/2012      |
| Mr. John McEwen, Helena<br>Qualifications (if required): representing retired state employees                          | Director            | 12/31/2012      |
| Mr. Richard Cooley, Helena<br>Qualifications (if required): representing executive branch agencies                     | Director            | 12/31/2012      |
| Sen. Jim Keane, Butte<br>Qualifications (if required): representing executive branch agencies                          | Director            | 12/31/2012      |
| Ms. Amy Sassano, Helena<br>Qualifications (if required): representing executive branch agencies                        | Director            | 12/31/2012      |
| Ms. Kelly DaSilva, Helena<br>Qualifications (if required): representing legislative branch agencies                    | Director            | 12/31/2012      |
| Mr. Quint Nyman, Helena<br>Qualifications (if required): representing state employees and labor organization           | Director            | 12/31/2012      |
| Mr. Brian Ehli, Missoula<br>Qualifications (if required): representing state employees and labor organization          | Director            | 12/31/2012      |
| Ms. Erin Ricci, Helena<br>Qualifications (if required): representing state employees and labor organization            | Director            | 12/31/2012      |

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <p><b>State Employee Group Benefits Advisory Council</b> (Administration) cont.<br/>                     Ms. Jenny Kaleczyc, Helena<br/>                     Qualifications (if required): representing executive branch agencies</p>           | Director            | 12/31/2012      |
| <p><b>State Tax Appeals Board</b> (Administration)<br/>                     Ms. Kelly Flaherty-Settle, Canyon Creek<br/>                     Qualifications (if required): public representative</p>  | Governor            | 1/1/2013        |
| <p>Mr. Douglas A. Kaercher, Havre<br/>                     Qualifications (if required): public representative</p>  | Governor            | 1/1/2013        |
| <p><b>Statewide Independent Living Council</b> (Public Health and Human Services)<br/>                     Ms. June Hermanson, Billings<br/>                     Qualifications (if required): public representative/disabilities community</p> | Governor            | 12/1/2012       |
| <p>Ms. Peggy Williams, Helena<br/>                     Qualifications (if required): designated state unit representative</p>   | Governor            | 12/1/2012       |
| <p>Mr. Robert Bushing, Billings<br/>                     Qualifications (if required): public representative/disabilities community</p>   | Governor            | 12/1/2012       |
| <p>Ms. Michelle Williamson, Pablo<br/>                     Qualifications (if required): public representative/disabilities community</p>   | Governor            | 12/1/2012       |



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2012 THROUGH FEBRUARY 28, 2013**

| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Statewide Independent Living Council</b> (Public Health and Human Services) cont.  |                     |                 |
| Mr. Gerald Hutch, Helena<br>Qualifications (if required): public representative/disabilities community                                | Governor            | 12/1/2012       |
| Mr. Jim Brown, Billings<br>Qualifications (if required): public representative/disabilities community                                 | Governor            | 12/1/2012       |
| Mr. Peter Dupree, Poplar<br>Qualifications (if required): public representative/disabilities community                                | Governor            | 12/1/2012       |
| <b>Transportation Commission</b> (Governor)   |                     |                 |
| Ms. Barb Skelton, Billings<br>Qualifications (if required): resident of District 5 and identifies herself as a Democrat               | Governor            | 1/1/2013        |
| Mr. Rick Griffith, Butte<br>Qualifications (if required): resident of District 2 and identifies himself as a Democrat                 | Governor            | 1/1/2013        |
| Ms. Diann Seymour-Winterburn, Helena<br>Qualifications (if required): resident of District 3 and identifies herself as an Independent | Governor            | 1/1/2013        |
| <b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services)   |                     |                 |
| Mr. Ian Elliot, Billings<br>Qualifications (if required): brain injury survivor   | Governor            | 1/1/2013        |
| Mr. James Hunt, Helena<br>Qualifications (if required): advocate of brain injured   | Governor            | 1/1/2013        |

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| <u>Board/current position holder</u>  | <u>Appointed by</u> | <u>Term end</u> |
|---|---------------------|-----------------|
| <b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services) cont.<br>Dr. James Wright, Butte<br>Qualifications (if required): advocate of brain injured | Governor            | 1/1/2013        |