

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of soliciting applications) NOTICE OF NEGOTIATED
for membership on a negotiated) RULEMAKING
rulemaking committee to develop K-)
12 health enhancement standards)
and performance indicators)

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish a negotiated rulemaking committee to develop and amend Board of Public Education rules relating to K-12 content standards and performance indicators for health enhancement and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA, for any rules relating to standards of accreditation.

2. The proposed rules will establish K-12 grade level content and performance standards for health enhancement.

3. Interests that are likely to be significantly affected by the proposed rules are those related to Montana K-12 public schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Karin Olsen Billings, Health Enhancement Division Administrator; Ann Gilkey, Office of Public Instruction, Legal Counsel; Peter Donovan, Board of Public Education, Executive Director; Dr. Megan Chilson, University of Montana, Western.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rules, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers, higher education faculty, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

- cultural diversity
- geography
- health enhancement content experience
- district and school size
- grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On July 16, 2015, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to

the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than August 14, 2015. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than August 28, 2015. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting on September 30, 2015. Teleconferencing and e-mail correspondence will be utilized as much as possible. The initial meeting will convene at 10:00 a.m., in the conference room, at the Holiday Inn Express Downtown, Helena, Montana. The committee will begin with an initial draft of amendments to current Board of Public Education content standards and performance indicators for health enhancement at this meeting.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit a report to the agency specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

(e) Thereafter the superintendent will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Karin Olsen Billings; kbillings@mt.gov; Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than August 14, 2015:

(a) the person's name or the nominee's name, address, and contact information including telephone or e-mail address;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-2893, or electronic mail to bemarlow@mt.gov no later than August 31, 2015.

9. Initially, the agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the

proposed rules. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-7-101, MCA. The proposed rules will implement Title 20, chapter 7, part 1, MCA.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau, Superintendent
Office of Public Instruction

Certified to the Secretary of State July 6, 2015.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of soliciting applications	)	NOTICE OF NEGOTIATED
for membership on a negotiated	)	RULEMAKING
rulemaking committee to develop a)	
process, mechanism, and criteria for)	
the distribution of monies in the state)	
school oil and natural gas distribution)	
account)	

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish two independent negotiated rulemaking committees to develop the process, mechanism, and criteria for the distribution of monies in the state school oil and natural gas distribution account and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-9-310(4), MCA (2015).

2. The two independent negotiated rulemaking committees will consider issues for the purpose of reaching a consensus on proposed rules for the distribution of monies in the state school oil and natural gas distribution account provided for in 20-9-520, MCA. The monies are to be paid to school districts that are directly impacted by oil and natural gas development, but that receive insufficient oil and natural gas revenues to address oil and natural gas development impacts.

The members of the first negotiated rulemaking committee must include public school officials and public school employees from school districts that are located in or are immediately adjacent to a county in which oil and natural gas production taxes are generated and professional organizations representing these public school officials and employees. This committee will transmit proposed rules regarding distribution of 50% of the funds deposited in the state school oil and natural gas distribution account.

The members of the second negotiated rulemaking committee must include public school officials and public school employees from school districts around the state and professional organizations representing these public school officials and employees. This committee will transmit proposed rules regarding the distribution of the remaining 50% of the funds deposited in the state school oil and natural gas distribution account.

3. Interests that are likely to be significantly affected by the proposed rules are those of school districts that are directly impacted by oil and natural gas development but that receive insufficient oil and natural gas production taxes to address the impacts.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committees are: Madalyn Quinlan, Office of Public Instruction, Chief of Staff; Nancy Hall, Office of Budget and Program Planning, Lead Budget Analyst; and Chris Watson, Office of Budget and Program Planning, Revenue Analyst.

5. The agency is seeking applications from interested parties to serve on the two independent committees. For the first committee, the agency will seek public school officials and public school employees from school districts that are located in or are immediately adjacent to a county in which oil and natural gas production taxes are generated and professional organizations representing these public school officials and employees.

For the second committee, the agency will seek public school officials and public school employees from school districts around the state and professional organizations representing these public school officials and employees.

Members of the committees will be selected based on the following criteria:

- geography and proximity to oil and natural gas production areas
- district and school size
- grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On July 16, 2015, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than August 17, 2015. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than August 31, 2015. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection and receive an information packet.

(c) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit a report to the agency specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit an application with the following information in writing to Madalyn Quinlan, mquinlan@mt.gov, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than August 17, 2015:

(a) the person's name or the nominee's name, address, and contact information including telephone or e-mail address;

(b) an indication as to whether the person or nominee is from a school district that is located in or is immediately adjacent to a county in which oil and natural gas production taxes are generated;

(c) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(d) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(e) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration; and

(f) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-2893, or electronic mail to bemarlow@mt.gov no later than August 17, 2015.

9. Initially, the agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons. However, after receipt of comments and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rules. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Office of Public Instruction to adopt the proposed rules is found in 20-9-310, MCA. The proposed rules will implement 20-9-310, MCA.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau, Superintendent
Office of Public Instruction

Certified to the Secretary of State July 6, 2015.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARINGS ON
12.9.804, 12.9.804A, 12.9.805, and) PROPOSED AMENDMENT
12.9.1101 pertaining to game damage)
hunts)

TO: All Concerned Persons

1. On August 11, 2015, at 6:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

On August 11, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed amendment of the above-stated rules.

On August 11, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed amendment of the above-stated rules.

On August 11, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 US Highway 2 West, Glasgow, Montana, to consider the proposed amendment of the above-stated rules.

On August 11, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed amendment of the above-stated rules.

On August 12, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment of the above-stated rules.

On August 12, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed amendment of the above-stated rules.

On August 12, 2015, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, 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 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 July 31, 2015, to advise us of the nature of

the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

12.9.804 GAME DAMAGE HUNTS (1) Damage hunts are carried out according to the following policies and procedures:

(a) remains the same.

(b) if the regional supervisor determines that a damage hunt is necessary before, during, or after the general hunting season, the regional supervisor must obtain approval of the commissioner in whose district the game damage hunt is proposed prior to implementing the hunt. If the commissioner is not available, then the regional supervisor may request approval from the ~~chairman~~ chair of the commission or, in ~~his~~ the chair's absence, any other commissioner.

(2) The following conditions apply to game damage hunts:

(a) remains the same.

(b) damage hunts may be authorized when there are enough animals involved on the landowner's property to justify the use of public hunting, but numbers of animals and size of affected area does not qualify for implementation of a management ~~season~~ hunt, as outlined in ARM 12.9.1101;

(c) and (d) remain the same.

(e) a game damage hunt roster must be established in accordance with ARM 12.9.804A for use in identifying some or all of the hunters eligible to participate in game damage hunts. ~~If sufficient~~ Eligible hunters ~~cannot~~ may be identified through the game damage hunt roster, or the department may identify eligible hunters through other established means of hunter selection, including first-come, first-served advertised opportunities, ~~and unsuccessful special~~ license or permit applicant lists, or lists of names supplied by landowners;

(f) unless stated otherwise, participants in a damage hunt shall possess a valid unused license, permit, or damage hunt license or permit for the species being hunted;

(g) through (i) remain the same.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

12.9.804A GAME DAMAGE HUNT ROSTER (1) A game damage hunt roster will be used to provide a list of some or all of the hunters available to participate in game damage hunts and management ~~seasons~~ hunts, according to the following procedures:

(a) hunters interested in participating in game damage hunts and management ~~hunts~~ seasons will apply through the department web site between ~~June 15 and July 15~~ dates specified by the department annually. Hunters without internet access may apply at any department regional or Helena office. A roster will be established through a computerized random selection of applicant

names, with roster results being made available online by ~~August 4~~ a date specified by the department annually. ~~Hunters without internet access may apply at any department regional or Helena office between June 15 and July 15 annually.~~ If necessary, the department may establish additional sign-up periods;

(b) remains the same.

(c) resident and nonresident hunters must possess a valid unused antelope, deer, or elk license or permit specific to the species being hunted to participate in a game damage hunt or management ~~season~~ hunt; and

(d) nonresident hunters who possess a valid unused antelope, deer, or elk license may comprise up to 10% of the total game damage hunt roster pool of hunters for a specific game damage hunt or management ~~season~~ hunt.

(2) If sufficient numbers of hunters to participate in a game damage hunt or management ~~season~~ hunt for a hunting district cannot be identified from that district's game damage hunt roster, hunters on the roster from an adjacent hunting district may be selected.

(3) The department may also identify eligible hunters through other established means of hunter selection, including first-come, first-served advertised opportunities, unsuccessful special license or permit applicant lists, or lists of names supplied by landowners.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

12.9.805 SUPPLEMENTAL GAME DAMAGE LICENSES (1) To assist landowners who qualify for game damage assistance under the provisions of 87-1-225, MCA, the department, through the regional supervisor or designated staff, has the discretion to issue supplemental game damage licenses for antlerless animals to hunters ~~for game management purposes or~~ as an alternative to a kill permit being issued to a landowner. Criteria used to determine when to issue a supplemental game damage license ~~may~~ will include, but are not limited to, the following:

(a) through (g) remain the same.

(2) and (3) remain the same.

(4) When the department must designate resident or nonresident supplemental game damage license recipients, selection will be made using procedures defined in ARM ~~12.9.804(1)(b)(ii) through (iv)~~ 12.9.804A.

(5) In order to receive an elk supplemental game damage license, a hunter must ~~surrender~~ return for refund to the department any unused valid A9/B12 antlerless elk license and ~~special elk permit, if applicable,~~ prior to the supplemental elk game damage license being issued.

(a) ~~If the hunter surrenders to the department an unused valid elk license, there will be no charge for the elk supplemental game damage license and no refund will be issued for the surrendered license and permit. If the hunter has not purchased an elk license,~~ The price of the supplemental game damage license will be the regular license price of an A9/B12 antlerless elk license or an adjusted price set by the commission; and,

~~(b) The department may only issue an elk supplemental game damage license to a nonresident who holds and surrenders a valid, unused B-10 elk license~~

~~and special elk permit, if applicable. The department will not charge for the elk supplemental game damage license and no refund will be issued for the surrendered license and permit.~~

(6) and (7) remain the same.

AUTH: 87-2-520, MCA

IMP: 87-2-520, MCA

12.9.1101 MANAGEMENT SEASONS HUNTS (1) A

management ~~season~~ hunt may be implemented on lands eligible for assistance. A management ~~season~~ hunt is a proactive measure to prevent or reduce potential damage caused by large concentrations of game animals resulting from seasonal migrations, extreme weather conditions, restrictive public hunting access on adjacent or nearby properties, or other factors. The department shall make determinations of eligibility based on the criteria set out in this rule. To qualify for a management ~~season~~ hunt, a landowner must allow public hunting or not significantly reduce public hunting through imposed restrictions during established hunting seasons, including the general big game season. For eligibility, public hunting must be allowed at levels and in ways sufficient to effectively aid in management of area game populations. Restrictions that may significantly restrict public hunting include:

(a) through (e) remain the same.

(2) ~~Upon receiving conditional approval from the director to proceed with a management season proposal, If the regional supervisor determines that a management hunt is necessary before, during, or after the general hunting season, the regional supervisor must obtain the approval of the commissioner in whose district the management season hunt is proposed prior to implementing the season hunt. If the commissioner is not available, then the regional supervisor may request approval will be requested from the chairman from the chair of the commission, or in his/her the chair's absence, any other commissioner.~~

(3) Management ~~seasons~~ hunts may be implemented under the following conditions:

(a) remains the same.

(b) the ~~season~~ hunt will provide for dispersal and limited harvest of animals;

(c) through (e) remain the same.

(f) any weapons restrictions and area closures that apply during general hunting seasons to areas included in management ~~seasons~~ hunts will also apply to hunting conducted during management ~~seasons~~ hunts in those same areas.

(4) ~~Hunters~~ Some or all hunters eligible to hunt during a management ~~season~~ will hunt may be selected from the game damage hunt roster under procedures outlined in ARM 12.9.804A. ~~If sufficient numbers of hunters cannot be identified through use of the game damage hunt roster, The department may also use other established means of hunter selection, including first-come, first-served advertised opportunities, and unsuccessful special license or permit applicant lists, or lists of names supplied by landowners.~~

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

REASON: The last time the Game Damage Program administrative rules were revised was March 2006. Since that time, various laws and department licensing procedures have changed that necessitate changes to these administrative rules. In addition, a program performance audit completed in May 2015 by the Legislative Audit Division offered several recommendations that suggest revision could best address those issues. An internal, ongoing program review conducted by agency staff has also identified various issues that can best be addressed through revision of current administrative rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Fish, Wildlife and Parks, Wildlife Division, P.O. Box 200701, Helena, Montana, 59620-0701 or e-mail fwpgamedamagearms@mt.gov, and must be received no later than August 21, 2015.

5. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct the hearings.

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

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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.

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

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

/s/ M. Jeff Hagener

M. Jeff Hagener

Director

Department of Fish, Wildlife and Parks

/s/ Aimee Fausser

Aimee Fausser

Rule Reviewer

Certified to the Secretary of State July 6, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rules I through IX pertaining to vessel	)	ADOPTION
pumpout facilities)	
	)	(VESSEL PUMPOUT FACILITIES)
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 17, 2015, the Department of Environmental Quality proposes to adopt the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 27, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I GENERAL (1) Construction of vessel pumpout facilities at watercraft terminals located on or adjacent to state waters is encouraged by the Clean Vessel Act of 1992, which is contained in PL-92-587. Proper construction, operation, and maintenance of these facilities will protect water quality and reduce the potential for the spread of water-borne diseases.

(2) Boaters are encouraged to learn how to use marina pumpout stations.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This rule is proposed to encourage installation and proper use of marine pumpout stations, which help to reduce vessel sewage discharges and should reduce the potential for the spread of disease as well as protect water quality.

Section 23-2-522, MCA, requires the department to adopt rules that provide guidelines for the installation, construction, operation, and maintenance of vessel pumpout facilities. These rules are adopted to comply with that requirement. Compliance with these guidelines is not required and these rules will not be enforceable by any state agency. These guidelines are simply recommended practices for use by the public and, to the extent authorized by law, local government. However, compliance with these guidelines would reduce the risk of violation of 23-2-522(1), MCA, which makes it unlawful to discharge or cause,

permit, or allow discharges of sewage from a vessel into, upon, or near the waters at a stream, river, or lake.

NEW RULE II LOCATION (1) Stationary pumping equipment should generally be located as close to the boat off-loading point as possible and where boats need to maneuver the least. All components of the vessel pumpout station should meet the setback distances required in ARM Title 17, chapter 36, subchapters 3 or 9, as applicable, except that compliance with the setback requirement between a holding tank and surface water is not included in this recommendation.

(2) Holding tanks should be located where they are readily accessible for inspection and maintenance. The bottom of the tank should not be deeper than 12 feet from the finished grade or access road for ease of pumping and maintenance.

AUTH: 23-2-522, MCA
IMP: 23-2-522, MCA

REASON: This proposed rule identifies the minimum setbacks between vessel pumpout stations, water supplies, and natural features as defined in ARM 17.36.323 and will protect public health. Vessel pumpout stations are intended to serve water craft. The proposed rule would provide guidance to applicants for placement of holding tanks to ensure ease of maintenance and pumping. This will protect water quality by promoting usage and reliability of pumpout stations.

NEW RULE III DESIGN (1) Vessel pumpout stations should include means of flushing tanks, lines, and other components that contact sewage. In addition, a pumpout facility should be equipped with a wash-down system to allow cleaning of portable toilets.

(2) Vessel pumpout stations should include a secondary spill containment system to prevent discharge to surface waters from spills, leaks, maintenance, servicing, or storage.

AUTH: 23-2-522, MCA
IMP: 23-2-522, MCA

REASON: This proposed rule recommends that vessel pumpout stations include cleaning equipment for use of boaters and system operators to ensure proper maintenance and operation of wastewater systems. The proposed rule also recommends that a secondary spill containment system be included for the station to ensure protection of the environment from potential pollution during facility use and maintenance.

NEW RULE IV PIPES, FITTINGS, AND HOSES (1) All tanks, pumps, lines, hoses, and other equipment should be clearly marked as "nonpotable" with a permanent label placed in a conspicuous location.

(2) All discharge piping should be made of flexible, heavy-duty material that will be non-collapsing and non-kinking with locking interconnectors. Corrugated or

ribbed hoses should not be used.

(3) Lines should be watertight and appropriately fastened or secured to the dock or pier. Forced main systems should contain appropriate "thrust" blocks and other security fastenings.

(4) All lines and hoses should have an approved backflow prevention device that meets the requirements of ARM Title 17, chapter 38, subchapter 3.

(5) A valve should be provided on the discharge line at the pump and on the suction hose at the nozzle. If a suction hose is to be installed in such a manner that sewage would discharge from the line when the pump is removed for service, a gate valve should be provided on the pump end of the suction hose.

(6) Positive locking connections on the end of the discharge line should be provided to prevent it from coming loose during discharge. A friction nozzle (right angle preferred) or wand-type attachment should be provided on the end of the suction hose. Adapters should be provided to fit any discharge connection from one and one-half to four inches in diameter.

(7) Discharge lines should be protected from freezing and prevented from leaking into the water.

(8) Suction hoses should be equipped with clear tubing or a sight glass on the suction end of the hose to allow the attendant to determine when pumping is complete.

(9) The connection between a suction hose and a vessel should include pipe splash guards or positive locking connections to prevent spilling from the suction hose or disconnection during waste discharge.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: Marking of equipment as nonpotable will protect public health by notifying persons that the water may not be fit for drinking. In addition, the proposed rule would include provisions for hose connection requirements and freezing protections to safeguard against impacts to the environment. Minimum piping construction, fastening devices, valves, nozzles, and connection standards are necessary to ensure ease of use and maintenance.

NEW RULE V PUMPING EQUIPMENT (1) Pumpout stations should meet the requirements of Department Circular DEQ-4, Subchapter 4.2, except where they conflict with this chapter.

(2) Pumps should be of a macerator type or have sufficient size suction and discharge openings to prevent clogging. Manually operated pumps should not be used.

(3) An event or hour meter should be installed on each pump.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This proposed rule recommends standards for wastewater pumpout stations established in Department Circular DEQ-4 to protect public health.

The proposed rule also would describe the type of pump necessary for pumpout stations and would provide the information necessary to ensure that vessel pumpout facilities function properly once they become operational. An event or hour meter is recommended for ease of maintenance.

NEW RULE VI HOLDING TANK (1) Holding tanks should meet the requirements of Department Circular DEQ-4, Subchapter 8.1, except where they conflict with this chapter.

(2) Vessel pumpout holding tanks should be sized to meet the requirements of Table 1 for the volume of sewage generated and the frequency of removal of material from the holding tank.

Table 1

<u>Total Number of Boats Served with Holding Tank Between Licensed Septic Pumper Servicings</u>	<u>Minimum Holding Tank Volume (Gallons)</u>
1-20	500
21-40	600
41-60	900
61-80	1200
81-100	1500
100+	2000

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This proposed rule would adopt existing design standards for holding tanks established in Department Circular DEQ-4 to protect public health. Proposed minimum volume requirements for holding tanks are set forth in Table 1 and are necessary to ensure functionality of the system and to ensure protection of the environment from potential pollution during facility use and maintenance.

NEW RULE VII PORTABLE SANITATION DEVICES (1) Pumpout facilities designed to receive waste from portable marine sanitation devices should have a unit opening of a minimum of 12 inches in diameter and be equipped with a water tight cover that completely covers the receiving unit.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This proposed rule recommends a 12-inch minimum opening for facilities designed to receive waste from portable devices to ensure ease of use. The proposed rule also would be consistent with recommendations made by the

U.S. Fish and Wildlife Service's Pumpout Station and Dump Station Technical Guidelines under the Clean Vessel Act.

NEW RULE VIII CONSTRUCTION (1) All discharge from a vessel pumpout facility should be directed to a holding tank meeting the requirements of this chapter with removal and disposal by a licensed septic hauler as defined in ARM Title 17, chapter 50, subchapter 8.

(2) All collection systems should meet the requirements of Department Circular DEQ-4, Subchapter 4.1, unless modified by this chapter.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This proposed rule recommends utilizing Department Circular DEQ-4, Subchapter 4.1, construction standards, and compliance with ARM Title 17, chapter 50, subchapter 8, which provides for the removal and disposal of waste by a licensed septic hauler, to provide protection of public health during facility use and maintenance.

NEW RULE IX OPERATION, MAINTENANCE, CERTIFICATION, AND AS-BUILTS (1) Operation and maintenance of vessel pumpout facilities should generally conform to the requirements in Department Circular DEQ-4, Appendix D, with the following additions:

(a) for public facilities, hours of operation for vessel pumpout stations should be posted in a conspicuous place where readily observable by the public;

(b) hoses, pumps, and equipment should be flushed after each use by pumping clean water through the system which empties into an approved disposal area (never onto the ground or into the water) and to disinfect all suction connections; and

(c) the operator should wear appropriate protective clothing, such as gloves, and should wash his or her hands following contact with the system.

AUTH: 23-2-522, MCA

IMP: 23-2-522, MCA

REASON: This proposed rule recommends utilizing existing Department Circular DEQ-4 standards relating to wastewater operation, maintenance, certification, and as-builts to protect public health. The proposed rule also recommends that information be provided regarding hours of operation, along with requiring provisions for cleaning equipment to ensure that a system is used in the manner in which it is designed. Requiring gloves and other protective clothing is necessary to protect public health.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than

August 13, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than August 13, 2015.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be six based on 60 liable or potentially liable persons under 75-10-715, MCA, who have received notice letters at facilities DEQ is currently addressing.

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

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State, July 6, 2015.

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

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

TO: All Concerned Persons

1. On August 15, 2015, 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 the Department of Public Health and Human Services no later than 5:00 p.m. on August 5, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The 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 ~~2014~~ 2015 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 ~~2014~~ 2015 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	\$29,175 <u>\$29,425</u>
Two	\$37,325 <u>\$39,825</u>
Three	\$49,475 <u>\$50,225</u>
Four	\$59,625 <u>\$60,625</u>
Five	\$69,775 <u>\$71,025</u>

Six	\$79,925 <u>\$81,425</u>
Seven	\$90,075 <u>\$91,825</u>
Eight	\$100,225 <u>\$102,225</u>
Each Additional Person, Add	\$10,150 <u>\$10,400</u>

(3) remains the same.

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 to amend ARM 37.36.604, Montana Telecommunications Access Program (MTAP). This proposed amendment is necessary to update the U.S. Department of Health and Human Services poverty index guidelines.

ARM 37.36.604

This rule sets forth the criteria that allow the department to pay for services being made available to persons who are eligible for MTAP. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2014 United States Department of Health and Human Services poverty guidelines for households.

The rule amendment would revise this level by replacing the year 2014 guidelines with the year 2015 guidelines.

5. The department intends to apply this rule retroactively to February 3, 2015. 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 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 August 13, 2015. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Kenneth Mordan at the above address no later than 5:00 p.m., August 13, 2015.

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 84 persons based on 840 with an open case currently being served by the program.

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

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

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

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

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State July 6, 2015.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.8.107, 37.8.108, 37.8.126,) AMENDMENT
37.8.311, 37.8.801, and 37.8.802,)
pertaining to the update of vital) NO PUBLIC HEARING
records to reflect current practices) CONTEMPLATED

TO: All Concerned Persons

1. On August 15, 2015, the Department of Public Health and Human Services proposes to amend the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 6, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.8.107 AMENDMENT OF VITAL RECORD (1) remains the same.

(2) Application for the amendment of marriage applications, licenses, certificates, or marital termination reports (which are not part of the decree) may be made by either party directly to the clerk of district court that issued the marriage license or has on file the marital termination orders. The clerk of district court ~~shall~~ will make the changes and forward a copy of the corrected document to the department.

(3) and (4) remain the same.

(5) Applications to amend the medical certification of cause of death ~~shall~~ must only be made by the physician who provided the medical certification, or a coroner or state medical examiner if the coroner or medical examiner assumed responsibility for the case. If the cause of death certification is disputed, changes to the cause of death certification must be made pursuant to an order from a court with appropriate jurisdiction.

(6) remains the same.

(7) A court order that changes a vital record ~~shall~~ must indicate if an amended or substitute record is to be created. If the court order does not indicate a preference, the record will be amended.

(8) Any subsequent change to information previously ~~altered~~ amended through this process requires an order from a court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

37.8.108 AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) remains the same.

(2) Any certified copy of a vital record issued in the state that was amended or corrected within the first year after filing will not be marked "~~ALTERED~~" "AMENDED"; however, the summary evidence number and the date of the correction will be indicated. Any vital record amended one year or more after the event will be marked "~~ALTERED~~" "AMENDED" and will contain the summary evidence number and the date the alterations occurred.

(3) The documentation that justifies the ~~alteration~~ amendment of a vital record must be made available upon request to any person receiving a certified copy.

(4) through (7) remain the same.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

37.8.126 ACCESS TO RECORDS (1) Anyone who submits a completed state-approved application shall must provide proof of identification before obtaining a certified or noncertified copy of a vital record.

(2) If a death certificate lists the cause of death as "~~pending autopsy~~" or "~~pending investigation~~," a certified or noncertified copy will be issued ~~which~~ that has the cause of death information removed.

(3) through (10) remain the same.

AUTH: 50-15-103, 50-15-121, 50-15-122, MCA

IMP: 20-50-503, 40-6-501, 40-6-502, 50-15-103, 50-15-121, 50-15-122, MCA

37.8.311 ADOPTIONS, NAME CHANGES, AND SEX CHANGES (1) The department will replace the original birth certificate with a new one without indicating that the information was ~~altered~~ amended in cases of adoption, a determination of paternity, an acknowledgment of paternity, or legitimation.

(2) and (3) remain the same.

(4) Except in the cases specified in ARM 37.8.108, the amendment of a registrant's given name or surname on a birth certificate may be made only if the department receives a certified copy of an order from a ~~Montana~~ district court with appropriate jurisdiction. The court order that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, the county of birth, if available, and information sufficient to locate and identify the record to be ~~altered~~ amended. If the court order directs the issuance of a new certificate, the record will not show amendments, and the new certificate will not indicate on its face that it was ~~altered~~ amended. The procedure to add a

first ~~and/or~~ name, middle name, or both, to a birth record that is more than one year old, as in the case when a child is not named at birth, is regulated under ARM 37.8.108.

(5) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the ~~court~~ order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be ~~altered~~ amended. If the order ~~from the court~~ directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was ~~altered~~ amended. If the sex of an individual was listed incorrectly on the original certificate, refer to ARM 37.8.108.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

37.8.801 DEATH CERTIFICATE (1) and (2) remain the same.

(3) The person in charge of the final disposition of the dead body ~~shall~~ must present the death certificate to the physician, advanced practice registered nurse, or coroner for cause of death certification within three working days after being notified of the death or receiving the authorization for removal, transportation, and final disposition of a dead body, which ever occurs first.

(4) The certifying physician, advanced practice registered nurse, or coroner ~~shall~~ must complete and return the death certificate to the person in charge of the final disposition of the body within 48 hours of receipt. If the cause of death certification is pending ~~autopsy~~ results, then the cause of death must be listed as "pending ~~autopsy results~~". When the final results are received, they must be sent to the department using a correction affidavit.

(5) through (8) remain the same.

AUTH: 50-15-102, 50-15-103, 50-15-403, MCA

IMP: 50-15-109, 50-15-124, 50-15-403, 50-15-405, MCA

37.8.802 FETAL DEATH CERTIFICATE (1) and (2) remain the same.

(3) The person in charge of the final disposition of the body of a fetus ~~shall~~ must present the fetal death certificate to the physician, advanced practice registered nurse, or coroner for cause of death certification within three working days after being notified of the death or receiving the authorization for removal, transportation, and final disposition of a dead body, whichever occurs first.

(4) The certifying physician, advanced practice registered nurse, or coroner ~~shall~~ must complete and return the fetal death certificate to the person in charge of final disposition of the fetal body within 48 hours after receiving the certificate. If the cause of fetal death is pending ~~autopsy results~~, then the cause of death on the certificate must be listed as "pending ~~autopsy results~~". When the final results are received, they must be sent to the department using a correction affidavit.

(5) through (7) remain the same.

AUTH: 50-15-102, 50-15-124, MCA

IMP: 50-15-102, 50-15-109, 50-15-124, 50-15-403, 50-15-405, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes the above-described amendments to ARM 37.8.107, 37.8.108, 37.8.126, 37.8.311, 37.8.801, and 37.8.802 to revise vital record's Administrative Rules of Montana to reflect current practices of the department. The department is directed under 50-15-204(3), MCA, to promulgate rules "establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records." Amendments replacing the word "altered" with the word "amended" are necessary to more accurately describe the process that is needed to correct a vital record using the correction process. Moreover, use of the word "amended" is consistent with statutory language.

The department is further directed under 50-15-403(2), MCA, to implement rules stating that medical certification must be completed by a physician, an advanced practice registered nurse, or a coroner within the time frame established by the department. Removal of the word "autopsy" from pending death and fetal death certificates allows for inclusion of other circumstances that potentially delay the filing of a certificate with the actual cause of death. This change will allow more certifications of death to be filed within the ten-day deadline established by ARM 37.8.801(8).

The department is proposing minor corrections and revisions to the rules to ensure consistent use of terminology and to comply with current grammar and formatting requirements. The department is proposing to amend these rules by changing the word "shall" to "must" or "will" and removing the term "and/or."

The department will write letters to certifiers of the causes of death, explaining that, more certifications of death will meet the required death filing time frame, if we changed the wording to just pending.

Specifically, the department proposes the following amendments:

ARM 37.8.107, 37.8.108, and 37.8.311

The department is proposing to amend these rules by changing the word "altered" to "amended." This wording standardizes the terminology used by the department and county clerk and recorder offices once a change has been made to a birth certificate, whereupon the department is required by law to indicate on the record that the record has been "amended."

ARM 37.8.126, 37.8.801, and 37.8.802

The department is proposing to remove the word "autopsy" throughout these rules. Removing this word will enable certification of deaths with a pending cause of death to be filed within the ten days of the date of death deadline, even when further investigation/toxicology needs to be performed. When a cause of death cannot be determined to meet the required ten days from date of death deadline, a death or fetal death certificate is now filed with the cause of death field marked as "pending autopsy." However, a pending autopsy is frequently not the reason that a cause of death has not been declared. Use of the word "pending" will be inclusive of all circumstances that delay the cause of death determination, such as toxicology reports.

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 August 13, 2015. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., August 13, 2015.

7. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 61 persons based on the combined annual total of amended records and death certificates submitted as pending.

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

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

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

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

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

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State July 6, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XI, amendment of	)	PROPOSED ADOPTION,
ARM 42.15.108 and 42.15.301, and	)	AMENDMENT, AND REPEAL
repeal of ARM 42.15.407 and)	
42.17.316 pertaining to fiduciaries,)	
estates, and trusts)	

TO: All Concerned Persons

1. On August 10, 2015, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 27, 2015. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The department is proposing the rules in this notice to provide guidance and answers to questions frequently received from fiduciaries regarding their filing requirements. In most cases, the filing requirements for fiduciaries in Montana are established by federal law and the proposed rules will clarify this relationship for several types of trusts. The goal is to reduce confusion for fiduciaries who manage estates and trusts within a complex legal setting.

The department seeks to add consistency within the rules by aligning language from current rules together with the proposed new rules, eliminating duplication, and placing the relevant information together in a new, single chapter to enable the fiduciaries to readily locate the information.

Specific detail is included in the reasonable necessity statement provided for each proposed rule action below.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this chapter:

- (1) "Beneficiary" means a person who:
 - (a) is a beneficiary as defined in 72-38-103, MCA; or
 - (b) is a devisee or heir of a decedent's estate.

(2) "Business trust" means any entity that is a business trust as defined in 35-5-101, MCA, or that is formed with a trust instrument and taxed as a corporation, partnership, or sole proprietorship for federal income tax purposes.

(3) "Charitable trust" means a trust or portion of a trust created for a charitable purpose as provided in 72-38-405(1), MCA. Common forms of trusts that include both a private and a charitable element are charitable remainder annuity trusts (CRAT), charitable remainder unitrusts (CRUT), charitable lead annuity trusts (CLAT), charitable lead unitrusts (CLUT) and pooled income funds.

(4) "Common trust fund" has the meaning given the term "common trust fund" in section 584 of the Internal Revenue Code (IRC) and IRS regulation section 1.6032-1. This generally means a fund maintained by a bank exclusively for the collective investment or reinvestment of monies contributed by the bank in its capacity as a fiduciary or custodian and in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System or the Comptroller of Currency pertaining to the collective investment of trust funds by national banks. To the extent that anything in this definition appears to conflict with the IRC or regulations, the IRC and regulations control.

(5) "Electing small business trust (ESBT)" has the meaning given the term "electing small business trust" in IRC section 1361. This generally includes any trust if:

(a) the trust does not have as a beneficiary any person other than an individual, estate, or organization described in IRC section 170(c), or an organization which holds a contingent interest in such trust and is not a potential current beneficiary;

(b) no interest in such trust was acquired by purchase; and

(c) the trust has an election under IRC section 1361(e). To the extent that anything in this definition appears to conflict with the IRC, the IRC controls.

(6) "Foreign estate" has the meaning given the term "foreign estate" in IRC section 7701. This generally means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business with the United States, is not includible in gross income under IRC subtitle A.

(a) To the extent that anything in this definition appears to conflict with the IRC, the IRC controls.

(7) "Foreign trust" has the meaning given the term "foreign trust" in IRC section 7701. This generally means any trust other than a trust:

(a) over which a court within the United States is able to exercise primary supervision over its administration; and

(b) one or more United States persons have the authority to control all substantial decisions of the trust. To the extent that anything in this definition appears to conflict with the IRC, the IRC controls.

(8) "Grantor trust" means that the income or gains of the trust are taxable to the grantor or others treated as substantial owners under IRC sections 671 to 679.

(9) "Gross income of the estate or trust" means all income of the estate or trust as provided in 15-30-2152, MCA, and in [NEW RULE IV].

(10) "Irrevocable trust" means a trust that cannot be modified or terminated except as provided in 72-38-411, MCA.

(11) "Nonresident estate" means an estate other than a resident estate.

(12) "Nonresident trust" means a trust other than a resident trust.

(13) "Pre-need funeral trust" means funds set aside in a trust account held by a trustee to fund a pre-need funeral contract or agreement as defined in ARM 24.147.302. In most cases a pre-need funeral trust is also a "qualified funeral trust (QFT)." A QFT is defined in IRC section 685, for which the trustee has elected to file federal Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts.

(14) "Qualified subchapter S trust (QSST)" has the meaning given the term QSST in IRC section 1361(d)(3). This generally means a trust in which all of the income is distributed or required to be distributed currently to one individual who is a citizen or resident of the United States, and with terms requiring that:

(a) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust;

(b) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary;

(c) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; and

(d) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary. To the extent that anything in this definition appears to conflict with the IRC, the IRC controls.

(15) "Resident estate" means an estate of a decedent who was a Montana resident at the time of the decedent's death.

(16) "Resident trust" means any trust that is principally administered in Montana and includes, but is not limited to:

(a) any trust that designates Montana as its principal place of administration, as defined in 72-38-103 and 72-38-108, MCA;

(b) any trust that is primarily administered by a trustee or representative who is a Montana resident or whose principal place of business is located in Montana;

(c) any irrevocable trust created by, or consisting of property of, a Montana resident on the date the trust or portion of the trust became irrevocable and has at least one income beneficiary who, for all or some portion of the trust's current taxable year, was a Montana resident;

(d) any trust created by the will of a decedent who was a Montana resident at the time of the decedent's death; and

(e) any trust created by, or caused to be created by, a court as a result of the death of an individual when:

(i) property was transferred to an irrevocable inter vivos trust as a result of a decedent's death;

(ii) the decedent was a Montana resident at the time of the decedent's death; and

(iii) the trust has at least one income beneficiary who, for all or some of the trust's current taxable year, was a Montana resident.

(17) "Revocable trust" means any portion of a trust for which the power to revest title in the grantor is exercisable at any time by the trustor or a nonadverse party.

(18) "Simple trust" means a trust with terms that provide that all the net income must be distributed on an annual basis and do not provide that any amounts are to be paid, permanently set aside, or used for charitable purposes as specified in IRC section 642(c).

(19) "Split-interest trust" means a trust as provided in IRC section 4947, and includes a charitable remainder trust as provided in IRC section 664, a pooled income fund as provided in IRC section 642, charitable lead trust, grantor retained annuity trust (GRAT), grantor retained unitrust (GRUT), and grantor retained income trust (GRIT).

(20) "Supplemental needs trust" or "special needs trust" means a trust that was created for the benefit of a disabled beneficiary and under which the trust assets are not included in the beneficiary's asset or income base for purposes of government benefits such as Medicaid or supplemental security income as provided in 42 U.S.C. 1396p(d)(4).

(21) "Testamentary trust" means a trust that is created by a will and begins its existence when property is transferred from the decedent's estate to the trust. A testamentary trust is irrevocable and can either be a simple or complex trust.

(22) "Trust" means any entity that is classified as a trust for federal income tax purposes and includes a designated settlement fund as provided in IRC section 468B.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2104, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2154, 15-30-2602, 15-30-2603, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to provide necessary and helpful definitions as part of a new chapter to be added within ARM Title 42 that will house the proposed new rules contained in this hearing notice. It is the department's intent to place all of the fiduciary-related information together in a dedicated chapter for ease of reference by fiduciaries and tax return preparers.

As Senate Bill 251, L. 2013, codified common law applicable to trusts, the proposed definitions promote consistency by utilizing the commonly used terms contained in the Uniform Trust Code. This proposed definitions rule will also help fiduciaries and tax return preparers determine how various Internal Revenue Code and Montana statute provisions affect the Montana tax filing requirements of estates and trusts.

NEW RULE II FIDUCIARY – FILING REQUIREMENTS (1) Subject to (4), a fiduciary for a resident estate or resident trust is required to file a Montana Income Tax Return for Estates and Trusts (Form FID-3) if:

(a) the gross income of the estate from all sources exceeds an exemption allowance, regardless of any tax liability;

(b) the gross income of the trust from all sources exceeds an exemption allowance;

(c) the trust has any taxable income; or

(d) the estate or trust is filing a final year return.

(2) Subject to (4), a fiduciary for a nonresident estate, nonresident trust, part-year resident estate or part-year resident trust that has any item of income, gain, loss, and/or deduction derived from or connected with sources in Montana (including, but not limited to, a Montana trustee's intangible interest in a nonresident trust) is required to file a Form FID-3 if:

(a) the gross income of the estate from all sources exceeds an exemption allowance, regardless of any tax liability;

(b) the gross income of the trust from all sources exceeds an exemption allowance;

(c) the trust has any taxable income; or

(d) the estate or trust is filing a final year return.

(3) Form FID-3 is due on or before the 15th day of the fourth month following the close of the tax year of the estate or trust. If the due date falls on a weekend or holiday, the return is due the next business day.

(4) An estate or trust with a filing requirement as provided in (1) and (2) must complete a Form FID-3, unless otherwise provided in the following:

(a) A bankruptcy estate of an individual must file a Form FID-3, but complete only the heading portion and report the amount of tax computed on the attached copy of the individual's Montana tax return. Credits and payments that are applicable to the bankruptcy estate are reported on Form FID-3.

(b) A bankruptcy estate of a married couple filing jointly must file a Form FID-3, but complete only the heading portion and report the amount of tax computed on the attached copy of the joint Montana tax return. A married couple cannot use the filing status of married filing separately on the same return to determine their separate Montana income tax liabilities for a bankruptcy estate. If a married couple does not file a joint return, but both spouses are filing for bankruptcy individually, then each spouse will complete a separate Form FID-3 and an individual Montana income tax return. Credits and payments that are applicable to the bankruptcy estate are reported on Form FID-3.

(c) A business trust must file the following returns:

(i) a Montana Corporate Income Tax Return (Form CIT) if the trust files a U.S. Corporation Income Tax Return (Form 1120);

(ii) a Montana Partnership Information and Composite Tax Return (Form PR-1) if the trust files a U.S. Return of Partnership Income (Form 1065);

(iii) a Montana S Corporation Information and Composite Tax Return (Form CLT-4S) if the trust files a U.S. Income Tax Return for an S Corporation (Form 1120S); and

(iv) a Montana Disregarded Entity Information Return (Form DER-1) if the trust is a disregarded entity.

(d) A common trust fund that files a U.S. Return of Partnership Income (Form 1065) must file a Montana Partnership Information and Composite Tax Return (Form PR-1).

(e) An electing small business trust is subject to special filing requirements as provided in [NEW RULE X].

(f) A foreign decedent's estate has the same filing requirements as a nonresident estate as provided in (2).

(g) A foreign trust has the same filing requirements as a nonresident trust as provided in (2).

(h) A pre-need funeral trust is subject to special filing requirements as provided in [NEW RULE IX].

(i) If an entire trust is a grantor trust, the fiduciary must file a Form FID-3 but complete only the heading portion and report the trust's activity on a separate supporting statement. The supporting statement and a complete copy of the federal Form 1041 must be included with Form FID-3. If the fiduciary is not the grantor, then the fiduciary must provide a copy of Form FID-3 and the supporting statement to the grantor.

(j) If only part of a trust is a grantor trust, the fiduciary must report the activity attributable to the grantor trust as provided in (i) and report the activity not attributable to the grantor trust on a form prescribed by this rule.

(k) A qualified settlement fund or designated settlement fund that is treated as a corporation for federal income tax purposes and that files a U.S. Income Tax Return for Settlement Funds (Form 1120-SF) must file a Montana Corporate Income Tax Return (Form CIT).

(l) A split-interest trust must file Form FID-3, but complete only the heading portion and report the trust's activity on a separate supporting statement, rather than on Form FID-3. The supporting statement and a complete copy of the federal Split-Interest Trust Information Return (Form 5227) must be included with the Form FID-3.

(m) If an entire trust is a qualified subchapter S trust (QSST), the fiduciary must file a Form FID-3 but complete only the heading portion and report the trust's activity on a separate supporting statement. The supporting statement and a complete copy of the federal Form 1041 must be included with Form FID-3.

(n) If only part of a trust is a QSST, the fiduciary must report the activity attributable to the QSST as provided in (m) and report the activity not attributable to the QSST on a form prescribed by this rule.

(o) A tax-exempt trust is subject to special filing requirements as provided in [NEW RULE VIII].

(5) If a fiduciary is required to file Form FID-3, then a copy of the U.S. Income Tax Return for Estates and Trusts (Form 1041) must be submitted on paper or electronically with Form FID-3 as follows:

(a) if filing on paper, then the fiduciary must include copies of the federal schedules that substantiate gross income, deductions, and ordinary or throwback distributions to beneficiaries; or

(b) if filing Form FID-3 electronically, then the fiduciary must provide a complete copy of the federal income tax return with all accompanying schedules and statements to the department if requested.

(6) If a fiduciary is not required to, or does not, file a federal tax return for a tax year for which they are required to file a Form FID-3, the fiduciary must compute federal adjusted total income, complete the applicable federal forms and schedules and submit a copy of the forms and schedules with the Form FID-3. The words "Pro Forma" must be clearly marked at the top of the federal forms and schedules.

(7) If the fiduciary of a decedent's estate is filing for a short tax year and the applicable tax forms are not available, the fiduciary may use the prior year's tax forms. If the fiduciary uses the prior year's tax forms, the fiduciary must incorporate

any tax law changes that are effective for the applicable tax year but may use the prior year's exemption amount and tax rate brackets. A short-year tax return may not be filed electronically.

(8) The guardian of a ward who has income files an individual income tax return on behalf of the ward.

AUTH: 15-1-201, 15-30-2104, 15-30-2603, 15-30-2620, MCA

IMP: 1-1-307, 15-30-2104, 15-30-2114, 15-30-2151, 15-30-2602, 15-30-2603, 15-30-2619, 15-31-101, 15-31-102, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule II to identify the filing requirements of a decedent's estate, a bankruptcy estate, and numerous types of trusts. Even though Montana law provides that, in general, individual income tax rules apply to estates and trusts, numerous questions have arisen about what income thresholds, if any, apply to both resident and nonresident estates and trusts. The proposed rule explains that fiduciaries who file a Montana Income Tax Return for Estates and Trusts (Form FID-3) must consider several factors to determine if an estate or trust has a filing requirement, such as the amount of gross income, if gross income includes taxable income, and if the estate or trust is filing a final year return.

As proposed, New Rule II also addresses questions regarding the multiple estates and trusts with special federal filing requirements and how the department will address those requirements. Not all fiduciaries are required to file Form FID-3. The proposed rule establishes that bankruptcy estates of an individual will file an individual income tax return in addition to a Form FID-3, a business trust and common trust fund should file a return which corresponds to its federal filing status, and a foreign estate and a foreign trust will be treated as a nonresident for Montana income tax filing requirements. The proposed rule further provides guidance for grantor trusts, qualified settlement funds, and split-interest trusts.

The proposed rule allows fiduciaries to timely file short-year tax returns for decedent's estates. Previously, fiduciaries would have to file short-year tax returns on prior year's forms, but then the return could not be processed until the current year forms were available. As proposed, New Rule II establishes that fiduciaries can use a prior year tax return form to complete any required filings and the department can process the return timely.

NEW RULE III FIDUCIARY - INCOME TAX RETURN EXTENSIONS (1) A fiduciary is allowed an automatic six-month extension to file a Montana Income Tax Return for Estates and Trusts (Form FID-3) if:

(a) the current year's tax liability is \$200 or less and the entire tax liability is paid by the extended due date of the return; or

(b) the fiduciary has paid, through withholding, estimated tax payments or a combination of withholding and estimated tax payments, at least:

(i) 90 percent of the current year's tax liability by the due date of the return; or

(ii) 100 percent of the prior year's tax liability by the due date of the return.

(2) For purposes of this rule the tax liability and amount of payment are determined as provided in ARM Title 42, chapter 17, subchapter 3.

(3) If a fiduciary is required to file Form FID-3, then the fiduciary is considered to have paid 100 percent of the previous year's tax for purposes of (1) if the estate or trust is a first-time filer or the estate or trust had zero or negative taxable income the previous year.

(4) If a fiduciary is required to file a return other than Form FID-3, then the extension rules for the return that the fiduciary is filing must apply. For example, if the fiduciary is required to file a Montana Partnership Information and Composite Tax Return (Form PR-1), then the extension rules that apply to filers of Form PR-1 will also apply to the fiduciary that is required to file a Form PR-1.

AUTH: 15-1-201, 15-30-2104, 15-30-2603, MCA

IMP: 15-30-2154, 15-30-2604, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule III to establish guidance for fiduciaries and tax preparers who need to extend the filing of a tax return for an estate or trust. The department often receives questions about which extension rules apply to the different estates and trusts. As proposed, New Rule III will establish that the extension rules that apply to individual filers will also apply to fiduciaries if the required return is a Montana Income Tax Return for Estates and Trusts (Form FID-3). However, if the required return is not a Form FID-3, the proposed rule explains that the applicable extension rules depend upon what type of return must be filed for the trust.

NEW RULE IV FIDUCIARY - INCOME TAX LIABILITY DETERMINATION

(1) This rule applies to fiduciaries that are required to file a Montana Income Tax Return for Estates and Trusts (Form FID-3). If a fiduciary is required to file a different tax return for an estate or trust, then the tax will be determined on the required return. For example, if a fiduciary files a Montana Corporate Income Tax Return (Form CIT) for a business trust, then the tax liability for the business trust will be determined using Form CIT.

(2) Federal adjusted total income of the estate or trust is adjusted for Montana additions and subtractions as provided in (3) and 15-30-2152, MCA, to arrive at Montana adjusted total income.

(3) The Montana additions to federal adjusted total income of an estate or trust include, but are not limited to:

(a) recoveries of amounts claimed as deductions on a prior year's tax return that reduced Montana taxable income, such as a casualty loss reimbursement;

(b) health insurance premiums used to calculate the Insure Montana small business health insurance credit;

(c) expenses allocated to federal obligations that are not allowed as a deduction for Montana purposes; and

(d) other items properly included in Montana taxable income that are not included in federal taxable income, such as distributions to an estate from an employee's pension or retirement plan that are subject to Montana tax at the time of distribution.

(4) The Montana subtractions from federal adjusted total income of an estate or trust include, but are not limited to:

(a) state tax refunds included in federal taxable income. Montana income tax refunds and income tax refunds received from another state are not taxable to Montana;

(b) refund, credit, offset, or other recovery of an amount deducted in an earlier year that was included in federal taxable income but did not reduce Montana taxable income;

(c) pension or annuity income exempt from tax as provided in 15-30-2110, MCA;

(d) federal taxable Railroad Retirement Board Tier I and Tier II benefits; and

(e) deductible expenses allocated to other states' interest and mutual fund dividends such as expenses related to interest income from non-Montana municipal securities includable in Montana taxable income.

(5) Montana adjusted total income is reduced, but not below zero, by any Montana income distribution as determined in [NEW RULE V].

(6) An estate or trust is allowed one personal exemption as provided in 15-30-2152, MCA.

(7) Resident estates and trusts pay tax on all of their income and are entitled to claim a credit for taxes paid to other states on the same income as provided in 15-30-2302, MCA, and ARM 42.4.401 through 42.4.404.

(8) Nonresident and part-year resident estates and trusts compute a tentative tax as if they are resident estates or trusts, and then determine their Montana income tax liability by multiplying the tentative tax by the ratio of their Montana source income to their income from all sources as provided in 15-30-2104, MCA.

(9) Nonresident estates and trusts cannot claim a credit for taxes paid to other states against their Montana income tax liability.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2104, 15-30-2110, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2603, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule IV to specify the distinct principal steps that are involved in determining the taxable income of an estate or trust because, while estates and trusts are generally subject to the rules that apply to individuals, important differences exist. The proposed rule explains the differences by identifying at what stage in the preparation of a fiduciary return adjustments should be made to total federal income of an estate or trust.

NEW RULE V FIDUCIARY - MONTANA DISTRIBUTABLE NET INCOME AND MONTANA INCOME DISTRIBUTION DEDUCTION – CHARACTER

(1) Montana distributable net income (DNI) limits the deduction that a decedent's estate or trust may claim for aggregate distributions to beneficiaries and determines how much of the distribution has to be included in the beneficiaries' gross income.

(2) Montana DNI is computed in the same way distributable net income is computed for federal income tax purposes under Internal Revenue Code section 643, but with Montana adjustments to income as provided in 15-30-2152, MCA, and [NEW RULE IV].

(3) Decedent's estates and trusts are allowed to deduct the lesser of:
 (a) the amounts of income actually distributed, including other amounts paid, credits, or amounts otherwise required to be distributed; or

(b) the taxable portion of Montana DNI.

(4) If a decedent's estate or trust elects for federal income tax purposes to treat distributions made within 65 days after the end of the tax year as having been made in the tax year, the decedent's estate or trust must also treat the distributions as having been made in the tax year for Montana income tax purposes.

(5) Income distributed to a beneficiary from a decedent's estate or trust retains the same character in the hands of the beneficiary as it had in the hands of the decedent's estate or trust, with the exception of unused capital loss distributed upon closure of the decedent's estate or trust to a corporation, which is treated as a short-term loss regardless of its character in the decedent's estate or trust.

(6) Unless the will or trust instrument specifically provides otherwise, a distribution to beneficiaries is considered to be a proportionate distribution of the different kinds of income composing the Montana DNI of the estate or trust. The same character and proportionate distribution rule is illustrated by the following example:

(a) Decedent A, a resident of Montana, died February 15, 2016. Under the terms of the will, all the decedent's property was divided in equal shares to beneficiary B, a resident of Arizona, and beneficiary C, a resident of Montana. The estate adopted a calendar year as its taxable year. For calendar year 2016, the estate had Montana DNI of \$50,000, which is composed of:

DNI	
Interest Income	\$10,000
Dividend Income	\$ 5,000
Net Montana Farm Income	\$35,000
Total	\$50,000

(b) On December 20, 2016, the estate distributed \$12,500 to beneficiary B, and \$12,500 to beneficiary C. Beneficiaries B and C received a distribution for 2016 as follows:

Beneficiary B		Beneficiary C	
Interest Income	\$ 2,500	Interest Income	\$ 2,500
Dividend Income	\$ 1,250	Dividends	\$ 1,250
Farm Income	\$ 8,750	Farm Income	\$ 8,750
Total	\$12,500	Total	\$12,500

(c) Since the interest income of the estate is 20 percent of the Montana DNI, 20 percent of the distribution to beneficiaries B and C is considered interest income. Likewise, 10 percent of the estate's Montana DNI is dividends and 70 percent is farm income. The estate is entitled to a distribution deduction of \$25,000 against gross income in 2016 for the distribution to beneficiaries B and C and computes its own Montana income tax liability on the \$25,000 income retained in the estate; and

(i) Beneficiary C, a resident of Montana, must report the entire distribution of \$12,500 on a Montana individual income tax return; and

(ii) Beneficiary B, a resident of Arizona, is required to report the entire distribution of \$12,500 as Montana source income on a Montana individual income tax return because the income was distributed from a Montana resident estate.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2104, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2603, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule V to provide guidance for determining Montana distributable net income (DNI) and the Montana income distribution deductions. If these amounts are not adjusted for Montana income tax purposes, then a distortion would exist between the calculation of the Montana adjusted total income and the deductions allowed to determine taxable income of an estate or trust. As proposed, New Rule V explains how the characterization and sourcing rules apply when determining the type of income and whether the income constitutes Montana source income to aid preparers in properly completing returns and reports for estates, trusts, and beneficiaries and provides a helpful example.

NEW RULE VI FIDUCIARY - INTEREST AND PENALTIES (1) If a fiduciary is required to file a return other than a Montana Income Tax Return for Estates and Trusts (Form FID-3), then the interest and penalties that are calculated on the applicable tax return will apply to the fiduciary's filing of the same return. For example, if the fiduciary is required to file a Montana Corporate Income Tax Return (Form CIT) for a trust, then any interest and penalties that the fiduciary would be liable for will be calculated as though the trust was a corporation.

(2) If a fiduciary is required to file Form FID-3:

(a) late payment penalties and late filing penalties will be applied as provided in 15-1-216, MCA;

(b) interest on unpaid tax will accrue from the original due date of the return as provided in 15-1-216, MCA, unless the current year's tax liability is \$200 or less and the entire tax liability is paid by the extended due date; and

(c) underpayment interest, as provided in 15-30-2512, MCA, will accrue from the original due date of the return unless the tax liability is \$200 or less and the entire tax liability is paid by the extended due date.

(3) Fiduciaries that are required to file Form FID-3 are subject to underpayment interest as provided in 15-30-2512, MCA.

(4) Fiduciaries that are required to file Form FID-3 are required to make estimated tax payments as provided in 15-30-2512, MCA.

AUTH: 15-1-201, 15-30-2104, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2604, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule VI to address questions received regarding the calculation of interest and penalties for fiduciaries. Not all fiduciaries who have a filing requirement must file a Montana

Income Tax Return for Estates and Trusts (Form FID-3). The proposed rule provides guidance to fiduciaries for the calculation of penalties and interest. The penalties and interest are calculated according to the type of return the fiduciary must file.

NEW RULE VII FIDUCIARY - MONTANA NET OPERATING LOSSES

(1) Amounts used to calculate a Montana net operating loss (NOL) for decedents' estates and trusts cannot be distributed to a beneficiary as reportable tax items on the beneficiary's Montana tax return unless the distribution occurs with the filing of the final year return as provided in Internal Revenue Code (IRC) section 642(h) and 26 CFR 1.642(h)-1. If any excess NOL deduction can be distributed to the beneficiaries, the distribution must be part of the excess Montana NOL deduction, not the excess federal NOL deduction.

(2) A decedent's estate or trust has a Montana NOL if Montana taxable income, recomputed with the adjustments provided in IRC section 172(d), is less than zero. To recompute Montana taxable income, the following must be added back:

- (a) any net operating loss deduction;
- (b) any deduction for an exemption provided in 15-30-2152, MCA;
- (c) any gain excluded from the sale or exchange of qualified small business stock pursuant to IRC section 1202;
- (d) the amount by which a deduction for losses from sales or exchanges of capital assets exceeds the amount includable for gains from sales or exchanges of capital assets;
- (e) the amount by which nonbusiness deductions exceed nonbusiness income;
- (f) the domestic production activities deduction;
- (g) total charitable deductions; and
- (h) the income distribution deduction.

(3) To determine the portion of a deductible expense attributable to income from a trade or business, the expense must be multiplied by the ratio of net income from the trade or business to Montana adjusted gross income. When calculating the portion of federal tax attributable to trade or business income, the ratio must be calculated using the net business income and Montana adjusted total income for the year the federal tax was incurred.

(4) An election to waive the carryback of an NOL loss for an estate or trust is irrevocable. If a fiduciary elects to waive the carryback, the election must be made by the due date (including extensions of time) for filing the estate or trust's tax return in the tax year of the NOL.

(5) This rule is effective for tax years beginning after December 31, 2015.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2119, 15-30-2152, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule VII to provide guidance to fiduciaries who are filing returns for estates and trusts with net operating losses (NOLs). Prior to this guidance in rule, the department had

instructed filers to use the federal NOL deduction and forgo calculating a separate NOL for Montana income tax purposes. Some filers requested the ability to calculate a Montana NOL rather than use the federal NOL deduction because the general NOL deduction did not reflect income or loss adjustments or the different Montana exemption allowance. Proposed New Rule VII also provides guidance for the distribution of NOL deduction amounts.

NEW RULE VIII TAX EXEMPT TRUSTS NOT CLASSIFIED AS CORPORATIONS (1) If a trust is held for educational, charitable, or religious purposes and is not classified as a corporation under 15-31-101, MCA:

(a) Montana individual income tax is not imposed on the fiduciary or the beneficiaries; and

(b) corporate income tax is imposed only on the trust's unrelated business taxable income and must be paid by the fiduciary as provided in (4).

(2) Subject to (3), if a trust, that is not classified as a corporation under 15-31-101, MCA, is part of a stock-bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of the employer's employees, and the employer and employee contributions and earnings are accumulated by the trust in accordance with the plan for distribution to the employees, then:

(a) Montana individual income tax is not imposed on the fiduciary or beneficiaries when the trust receives or accrues income;

(b) Montana individual income tax is imposed on the amount of employer contributions and all trust earnings distributed or made available to the distributee in the year distributed; and

(c) corporate income tax is imposed on the trust's unrelated business taxable income and must be paid by the fiduciary as provided in (3).

(3) An otherwise tax-exempt trust that has unrelated business taxable income (UBTI), as determined for federal income tax purposes, is subject to Montana corporate income tax and is required to file a Montana corporate income tax return reporting that income if the trust's federal UBTI tax liability for the tax year exceeds \$100. To the extent the trust's UBTI is Montana source income, the trust is treated as having been engaged in business in Montana within the meaning of 15-31-101, MCA.

AUTH: 15-1-201, 15-30-2104, MCA

IMP: 15-30-2151, 15-30-2152, 15-30-2153, 15-31-101, 15-31-102 MCA

REASONABLE NECESSITY: The department proposes adopting New Rule VIII to provide specific guidance for estates and trusts that are exempt from taxation in Montana. An estate or trust that is exempt from federal income taxation is not automatically exempt in Montana. The Montana tax statutes have not been updated to specifically reference many types of trusts that are exempt from federal income tax, such as a contract issued by an insurance company that qualifies under IRC section 401(f), or a custodial account that qualifies under IRC sections 408(e), 408A, or 530. Estates and trusts that are not specifically exempted from income taxation by statute are subject to income tax in Montana.

As proposed, New Rule VIII also explains that estates and trusts that are identified as exempt are still subject to taxation if the entity has unrelated business taxable income (UBTI).

NEW RULE IX PRE-NEED FUNERAL TRUSTS – ELECTION TO FILE COMPOSITE RETURN (1) A pre-need funeral trust must file a Montana income tax return under the trust name used for filing the federal income tax return. If the fiduciary of a pre-need funeral trust is the fiduciary of more than one pre-need funeral trust and if the fiduciary elects to file a federal composite return for more than one pre-need funeral trust, the fiduciary can also elect to file a Montana composite return for the same pre-need funeral trusts as included in the federal composite return.

(2) The Montana composite return as referred to in (1) is completed on the Montana Income Tax Return for Estates and Trusts (Form FID-3) and must include a schedule reporting the following information for each separate pre-need funeral trust:

- (a) the name of the owner or the beneficiary of each pre-need funeral trust;
- (b) the type and gross amount of income earned by each pre-need funeral trust during the taxable year;
- (c) the type and amount of each deduction and credit allocable to each pre-need funeral trust;
- (d) the tax and payments made for each pre-need funeral trust; and
- (e) the termination date of each pre-need funeral trust if it was terminated during the year.

(3) The Montana composite return referred to in (1) is subject to the filing requirements of [NEW RULE II].

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2104, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2603, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule IX to provide a new, simplified filing method for qualified pre-need funeral trusts that wish to file a single return for multiple trusts. The proposed new filing method allows an aggregate composite return to be elected but requires that the fiduciary provide necessary information for the department to process the composite return. The required information is the same information that the Internal Revenue Service requests of fiduciaries for pre-need funeral trusts that file a composite return federally.

NEW RULE X ELECTING SMALL BUSINESS TRUST (ESBT) (1) The portion of an ESBT that consists of stock in one or more S corporations is treated as a separate trust for purposes of determining Montana tax liability. The tax, as provided in 15-30-2153, MCA, must be calculated separately and reported on a Montana Income Tax Return for Estates and Trusts (Form FID-3).

(2) To determine Montana taxable income for the portion of the ESBT that holds S corporation stock, federal ESBT taxable income is adjusted for Montana additions to, and subtractions from, income as provided in 15-30-2152, MCA, and [NEW RULE IV]. The following are not included in this calculation:

- (a) deductions for capital losses that exceed capital gains;
- (b) an income distribution deduction;
- (c) an exemption deduction;
- (d) passive losses in excess of passive income; and
- (e) ordinary losses in excess of ordinary income.

(3) An ESBT is allowed a capital gains tax credit. If an ESBT is allowed a nonrefundable credit, such as the capital gains tax credit, items from the non-ESBT portion of the trust cannot be used to calculate the credit.

(4) If the portion of a resident ESBT that has S corporation stock receives taxable income that is sourced to multiple states or countries, the ESBT reports all taxable income in the calculation of Montana taxable income. If the resident ESBT pays income tax on income sourced to another state or country, the trust will receive a credit for income taxes paid to that other state or country as provided in 15-30-2302, MCA. If the trust is either a part-year resident or a nonresident, the trust will separately calculate tax on its Montana source income as provided in 15-30-2104, MCA.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2104, 15-30-2111, 15-30-2112, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2603, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule X to explain how the federal rules applicable to electing small business trusts (ESBTs) are applied to Montana income tax returns for estates and trusts. The Montana Legislature has not enacted legislation directing the department about any way in which it should deviate from the federal treatment of ESBTs. Without guidance, every tax return that reports ESBT activity has applied the federal rules to the filing. As proposed, New Rule X will ensure that all ESBTs can report their activity in a consistent manner.

NEW RULE XI FIDUCIARY – AUDIT ADJUSTMENTS (1) When the department adjusts the return of an estate or trust as provided in 15-30-2605, MCA, and one or more adjustments affect any Montana return filed by a beneficiary, the department may also adjust the beneficiary's return to reflect the adjustments that are allocable to the beneficiary. If a beneficiary has not filed a Montana income tax return, the department may request that the beneficiary file a return, or may estimate the beneficiary's tax liability as provided in 15-30-2512, MCA.

(2) The department will report the details of adjustments it makes to an estate or trust return to the fiduciary. If one or more items included in the income distribution deduction are affected by the adjustment, the department will also report the details of audit adjustments to the affected beneficiaries. The department will not report to a fiduciary the details of an adjustment to a beneficiary's return.

(3) The fiduciary of an estate or trust is responsible for filing all required forms and returns with the department on behalf of the estate or trust. The fiduciary of an estate or trust is also responsible for any estate or trust tax due. If there are two or more fiduciaries, the fiduciaries are jointly and severally liable.

AUTH: 15-1-201, 15-30-2104, 15-30-2620, MCA

IMP: 15-30-2151, 15-30-2512, 15-30-2601, 15-30-2605, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule XI to provide guidance for a tax audit of estates and trusts. As proposed, New Rule XI explains what information can be disclosed during an audit and how the department carries an adjustment from an estate or trust tax return to a beneficiary's tax return.

Additionally, proposed New Rule XI identifies who is responsible for the filing of tax returns and the payment of any tax due, specifically that the fiduciary is responsible for filing a return for the estate or trusts and is also responsible for any tax due as a result of this filing. However, the fiduciary is not usually responsible for filing a beneficiary's return and is not personally liable for any tax due as a result of filing the beneficiary's return.

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

42.15.108 DETERMINING TAX LIABILITY (1) A person required to file a Montana Individual Income Tax Return must determine Montana income tax liability as provided by the applicable Montana statutes and rules. The rules for determining if an individual, whether resident for a full or part tax year, or a nonresident, must file a Montana Individual Income Tax Return, are located in ARM Title 42, chapter 15, subchapter 3.

(a) Special rules, located in ARM Title 42, chapter 15, subchapter 1, apply to certain wages of nonresident military servicepersons and enrolled tribal members.

~~(b) The rules for determining if a trust or estate must file a fiduciary return are located in ARM Title 42, chapter 15, subchapter 3. Except as otherwise specifically provided, trusts and estates are subject to all rules applicable to individuals.~~

(2) through (11) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, 15-30-2102, 15-30-2103, 15-30-2104, 15-30-2110, 15-30-2114, 15-30-2131, 15-30-2153, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.108 to insert a missing word in (1) and to strike (1)(b), which contains outdated language that references rules repealed in 2004.

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

~~(4) A business trust, including a REIT, is treated as a C corporation taxable under Title 15, chapter 31, MCA. See chapters 23 and 24 of Title 42, Administrative Rules of Montana, for the corporation license tax rules.~~

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

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

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.301 to strike (4), which explains the filing requirements for business trusts, and placing similar language within proposed New Rule II to house related information together in a single rule in a newly created chapter in ARM Title 42.

6. The department proposes to repeal the following rules:

42.15.407 PERSONAL EXEMPTION FOR ESTATES AND TRUSTS

AUTH: 15-30-2620, MCA

IMP: 15-30-2152, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.15.407, because proposed New Rule IV(6) more appropriately incorporates the exemption allowance into the determination of a tax liability for an estate or trust, and therefore ARM 42.15.407, will no longer serve a purpose. Only trusts that file a fiduciary income tax return are allowed a personal exemption. Some trusts must file a business return, such as a corporate income tax return or a partnership information return. An exemption allowance is not an allowable deduction on a business return. Proposed New Rule IV also explains that the allowed exemption allowance is a deduction that the estate or trust may take after an income distribution deduction is taken into account.

42.17.316 TRUSTS, ESTATES, AND FIDUCIARY RETURNS

AUTH: 15-30-2620, MCA

IMP: 15-30-2512, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.17.316 because the same provisions are being incorporated into proposed New Rule III which will be housed together with similar subject matter in a newly created chapter of ARM Title 42. With the adoption of New Rule III, ARM 42.17.316 will become unnecessary.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than August 24, 2015.

8. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

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 a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

11. The bill sponsor contact requirements of 2-4-302, MCA, apply for New Rule I and have been fulfilled. The primary sponsor of Senate Bill 251, Senator Art Wittich, was notified by regular mail on May 8, 2014, and subsequently notified on June 15, 2015.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available online at revenue.mt.gov/rules, or upon request from the person in 7.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 6, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
44.3.110 and 44.3.2511 pertaining to	)	AMENDMENT
voting accessibility for electors with)	
disabilities and the Montana Absent)	
Uniformed Services and Overseas)	
Voter Act)	

TO: All Concerned Persons

1. On August 7, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on July 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow electors with disabilities, as defined in 13-3-202, MCA, to receive election materials electronically as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The following procedures shall be followed, wherever applicable, in regard to the transition of election materials from the election administrator to electors electronically:

(a) A county election administrator must use a system that is secure from unauthorized access.

(b) When an election administrator receives a valid application for electronic transmission of a ballot from an elector with disabilities, the election administrator shall, subject to (1), e-mail the elector the ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation. The original ballot shall be retained in a secure absentee envelope or container for that purpose.

(c) The election administrator shall keep an official log of all ballots transmitted electronically.

(d) If the received ballot is acceptable, the election administrator shall, without opening the envelope containing the voted ballot, log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot. The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballots.

(e) On the day before election day or on election day, the election administrator shall have the returned ballots transcribed using the procedure prescribed below.

(f) The voted ballot must be transcribed in a manner that ensures that no one transcribing the ballot has access to the name of the elector who voted the ballot.

(g) No less than three election officials shall participate in the transcription process to transfer the elector's votes from a received ballot, as applicable, to the standard ballot used in the precinct.

(h) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot, the envelope containing the voted ballot and the electronically transmitted ballot, and in the official transcription log.

(i) The election officials who transcribed the electronically transmitted ballot shall sign the log for each ballot they transcribe.

(j) No one participating in the electronic ballot transmission or transcription process may reveal any information about the elector's identity or the votes on the elector's ballot.

AUTH: Ch. 247, Sec. 1, L. 2015

IMP: Ch. 247, Sec. 1, L. 2015

REASON: The 2015 Montana Legislature passed House Bill 400, which allows registered electors with disabilities to receive a pdf version of a ballot and vote it in the same manner as a uniformed-service voter or an overseas voter. This rule is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for electors with disabilities who choose to receive and vote a pdf version of a ballot. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained.

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

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) and (1)(a) remain the same.

(b) absentee balloting, as provided by 13-13-222, MCA, and Ch. 247, Sec. 1, L. 2015; and

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

AUTH: 13-3-205, MCA, and Ch. 247, Sec. 1, L. 2015

IMP: 13-13-213, MCA, and Ch. 247, Sec. 1, L. 2015

REASON: The 2015 Montana Legislature passed House Bill 400, which allows registered electors with disabilities to receive a pdf version of a ballot and vote it in the same manner as a uniformed-service voter or an overseas voter. This rule amendment is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for electors with disabilities who choose to receive and vote a pdf version of a ballot. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained. The authority and implementation statutes have been updated.

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow covered voters to receive and transmit election materials electronically, as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The following procedures ~~in this subchapter~~ shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) remains the same.

~~(b) Upon~~ When an election administrator receives a valid request for electronic transmission of a ballot, ~~an election administrator who has received a valid application from a covered voter, the election administrator~~ shall, subject to (1), ~~send by electronic mail e-mail~~ instructions to the elector on how to access the Secretary of State's electronic absentee transmission system ~~established by the secretary of state~~, if the system is available for the election, or send a ballot electronically ~~a ballot~~, along with instructions to the elector, and a transmittal cover sheet that includes an elector affirmation, ~~and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot, if applicable, by a panel of no less than two election officials. The original affirmation and original ballot, as applicable, shall be retained together in a secure absentee envelope or container for that purpose.~~

(c) remains the same.

(d) If the received ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot, if applicable, ~~and with the original affidavit~~ until the ballots are ready to be transcribed. The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballot.

(e) and (f) remain the same.

(g) The voted ballot must be transcribed in a manner that ensures that no one transcribing the ballot has access to the name of the elector who voted the ballot.

~~(g)~~ (h) No less than ~~two~~ three election officials shall participate in the transcription process to transfer the elector's votes from a received ballot, as applicable, to the standard ballot used in the precinct.

~~(h)~~ (i) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot, ~~and~~ the electronically transmitted ballot, and in the official transcription log.

(j) (i) The election officials who transcribed the electronically transmitted ballot shall sign in the log ~~next to the name of the elector~~ for each ballot they transcribe.

(k) (k) No one participating in the electronic ballot transmission or transcription process may reveal any information about the elector's identity or the votes on the elector's ballot.

(2) remains the same.

AUTH: 13-21-104, MCA

IMP: 13-21-104, MCA

REASON: This rule is reasonably necessary to put in place procedures to ensure the security of the ballots and the secrecy of the votes for uniformed-service voters or overseas voters who are registered to vote in Montana. Because the person receiving the ballot is not one of the individuals who transcribes the ballot, the secrecy of the voted ballot is maintained.

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 Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., August 14, 2015.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/notices>. 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, apply and have been fulfilled. The primary bill sponsor was contacted by letter on June 1, 2015.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 6th day of July, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.14.202 pertaining to the) PROPOSED AMENDMENT
retention of local government)
electronic long-term records)

TO: All Concerned Persons

1. On August 6, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on July 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.14.202 STORAGE REQUIREMENTS FOR ELECTRONICALLY STORED DOCUMENTS WITH GREATER THAN TEN YEAR RECORD RETENTION SCHEDULE (LONG-TERM RECORDS) (1) ~~Original long-term documents that are electronically stored must either be maintained in paper form or they may be destroyed or otherwise disposed of if copies are maintained on archival quality microfilm.~~ The Local Government Records Committee adopts and incorporates by reference the Association of Records Managers & Administrators (ARMA) International's Generally Accepted Recordkeeping Principles® for local governments using electronic systems to store long-term records, ©2014 ARMA International, www.arma.org. Local governments should use them as the framework to design, implement, operate, and decommission the systems and to manage the records and data within the systems.

(2) ARMA's Generally Accepted Recordkeeping Principles® can be accessed on the ARMA web site at the following link: http://www.arma.org/docs/sharepoint-roadshow/the-principles_executive-summaries_final.doc.

AUTH: 2-6-404, MCA
IMP: 2-6-403, 2-6-405, MCA

REASON: The Local Government Advisory Committee met on May 20, 2014, and agreed to amend ARM 44.14.202 to state that ARMA International's Generally

Accepted Recordkeeping Principles® be utilized to manage the storage requirements for electronically stored long-term documents regardless of format or media. The rule is amended to implement that recommendation. The Principles are being adopted by reference because the publication of the Principles would be unduly cumbersome and inexpedient as they are 10 pages in length. The Principles are the sole property of ARMA International and because they are a copyrighted trademark, ARMA International's web site is referenced in the rule to adopt the Principles by reference. The Principles will be posted to the Secretary of State's web site at <http://sos.mt.gov/ARM/notices> during the rulemaking process. The following boilerplate information regarding the Principles is required to be cited:

About ARMA International and the Generally Accepted Recordkeeping Principles®

ARMA International (www.arma.org) is a not-for-profit professional association and the authority on managing information as a strategic asset. It provides education, publications, and information on the efficient maintenance, retrieval, and preservation of vital information created in public and private organizations in all sectors of the economy. It also publishes Information Management magazine, and the Generally Accepted Recordkeeping Principles®. More information about the Principles can be found at www.arma.org/principles.

The authority and implementation statutes were reviewed and updated.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., August 14, 2015.

5. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/notices>. The Secretary of

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 6th day of July, 2015.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 2.59.1716 pertaining to recovery)	
of the costs in bringing an)	
administrative action; ARM 2.59.1741)	
pertaining to treatment of initial license)	
applications submitted near year-end;)	
and ARM 2.59.1753 pertaining to)	
abandonment of initial license)	
applications, all related to mortgage)	
licensees)	

TO: All Concerned Persons

1. On May 14, 2015, the Department of Administration published MAR Notice No. 2-59-523 pertaining to the proposed amendment of the above-stated rules at page 499 of the 2015 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 2.59.1716 and 2.59.1741 exactly as proposed.

3. After further consideration of its proposed amendments to ARM 2.59.1753(3)(b), (4), (4)(a), (4)(b), and (5) concerning the 30-day extension of time for submitting records requested by the department, the department decided that the benefits of the extension would be outweighed by its administrative burden: NMLS license application forms would need to be revised adding further complexity to the form; more department staff time would be needed to track the status of applications; and evenhanded implementation would be difficult because an applicant's diligence during the initial 60-day period for submitting documents requested by the department is wholly subjective.

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

2.59.1753 APPLICATIONS FOR INITIAL LICENSE NEAR YEAR-END;
WHEN APPLICATION FOR INITIAL LICENSE MAY BE DEEMED ABANDONED

(1) through (2) remain as proposed.

(3) An application for initial license ~~may~~ shall be deemed abandoned if the applicant fails to provide the documents or information requested by the department within 60 days of notification to the applicant of the deficiencies.

(a) remains as proposed.

(b) ~~Except as provided in (4), the~~ The application ~~may~~ shall be deemed abandoned if the requested documents or information ~~have not been~~ are not provided within the remainder of the 60-day period in the new year.

(c) Upon abandonment, the licensing process may be started anew with the submission of a new license application and fee.

~~(4) The department may grant a 30-day extension of the 60-day period included in (3) if requested by the applicant in writing before the lapse of the 60-day period and if the department determines that the applicant is diligently attempting to obtain the documents or information, or that the applicant has produced satisfactory evidence that the documents or information do not exist.~~

~~(a) When the 30-day extension period expires, the application is deemed abandoned if the applicant has not produced the documents or information or satisfactory evidence that the documents or information do not exist.~~

~~(b) The licensing process may be started anew with the submission of a new license application and fee.~~

~~(5)(4) The 60-day period for providing documents or information requested by the department and any 30-day extension granted by the department under (3) and (4) are applicable only applies to persons applying for initial licensure and not to renewal applicants. These time periods do not apply to renewal applicants.~~

AUTH: 32-9-120, 32-9-130, MCA

IMP: 32-9-120, 32-9-134, MCA

4. No comments were received.

By: Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State July 6, 2015

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.3504 pertaining to Annual)
Audited Reports and Establishing)
Accounting Practices and Procedures)
to Be Used in Annual Statements)

TO: All Concerned Persons

1. On March 12, 2015, the Commissioner of Securities and Insurance, Office of the State Auditor, Monica Lindeen, published MAR Notice No. 6-213 pertaining to the proposed amendment of the above-stated rule at page 256 of the 2015 Montana Administrative Register, Issue Number 5.

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

3. No comments or testimony were received.

/s/ Nick Mazanec
Nick Mazanec
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State July 6, 2015

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
12.11.501, 12.11.615, and 12.11.625) ADOPTION
and the adoption of NEW RULE I)
pertaining to recreational use on the)
Blackfoot River Recreation Corridor)

TO: All Concerned Persons

1. On March 26, 2015, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-440 pertaining to a public hearing on the proposed amendment and adoption of the above-stated rules at page 292 of the 2015 Montana Administrative Register, Issue Number 6.

2. The commission has amended ARM 12.11.501, 12.11.615, and 12.11.625 as proposed.

3. The commission has adopted NEW RULE I (ARM 12.11.616) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 12.11.616) BLACKFOOT RIVER RECREATION CORRIDOR (1) The Blackfoot River Recreation Corridor includes:

(a) a portion of the Blackfoot River from the Missoula-Powell County line downstream to Johnsrud Park Fishing Access Site; and

(b) a portion of the Clearwater River from Highway 200 downstream to the confluence with the Blackfoot River.

(2) Unless otherwise signed, the public is permitted to occupy:

(a) 50 feet above the ordinary high water mark from the Missoula-Powell County line ~~Russell Gates Memorial~~ to Corrick's Riverbend Fishing Access Site on the Blackfoot River;

(b) 50 feet above the ordinary high water mark from Clearwater Crossing Fishing Access Site to Clearwater Bridge on the Clearwater River; and

(c) 1/4 mile from the Blackfoot River or to the Corridor Road, whichever is greater, from Corrick's Riverbend Fishing Access Site to Johnsrud Park Fishing Access Site on the Blackfoot River.

(3) Camping is permitted in designated areas only.

(4) Building and maintaining a fire is permitted in designated areas only.

(5) Discharge of any firearm, air or gas weapon, or arrow from a bow is prohibited except for legal game hunting.

(6) Discharge of fireworks is prohibited.

(7) Pets must remain within sight and under control at all times.

(8) Within designated camping areas, pets must remain on a leash at all times.

(9) Motor vehicles are to remain within authorized roadways and designated parking areas.

(10) Glass bottles and containers are prohibited.

~~(5) (11)~~ It is the responsibility of the public to know the current regulations, rules, and laws governing the use and occupancy of the land within the Blackfoot River Recreation Corridor. ~~If there is any question, the stream access law should be applied.~~ This rule is in effect as long as the Blackfoot River Recreation Corridor Agreement is in effect.

AUTH: 23-2-302, 87-1-303, MCA

IMP: 23-2-302, 87-1-303, MCA

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

Comment 1: One person recommended the need for bear-resistant food boxes or game poles and adopt the Smith River protocol for food storage.

Response 1: Department-owned float-ins will all have bear-resistant food storage by 2016.

Comment 2: One person stated the rules should limit outfitting to a maximum of two launches per outfitter, per section, per day. The traffic needs to be spread out along the river.

Response 2: Commercial use, such as outfitting, and limits on commercial use is outside the scope of this rulemaking process.

Comment 3: Two people submitted comments directed to the agreement between the landowners and the department.

Response 3: The terms of the agreement are outside the scope of this rulemaking process.

Comment 4: One person stated the public was not given an opportunity to provide comment regarding the ability to camp along the river corridor.

Response 4: The public was provided with an opportunity to comment through this rulemaking process.

Comment 5: One person stated the land use rules cited in the agreement were for use on department land only and not adopted for private land use in the administrative rule proposal.

Response 5: The commission adopted the rule with the appropriate language added to NEW RULE I (ARM 12.11.616).

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

/s/ Aimee Fausser
Aimee Fausser
Rule Reviewer

Certified to the Secretary of State July 6, 2015.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
12.7.807 pertaining to fishing contests)

TO: All Concerned Persons

1. On March 26, 2015, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-441 pertaining to public hearings on the proposed amendment of the above-stated rule at page 295 of the 2015 Montana Administrative Register, Issue Number 6.

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

12.7.807 PROHIBITED CONTESTS (1) Contests involving any listed species or species of concern are prohibited except for Yellowstone cutthroat trout (*Oncorhynchus clarki bouvieri*) or westslope cutthroat trout (*Oncorhynchus clarki lewisi*) stocked in lakes or reservoirs.

(2) All contests involving wild trout (*Salmo Oncorhynchus* or *Salvelinus*) in streams or rivers are prohibited. ~~except~~ Contests for brook trout (*Salvelinus fontinalis*) that are restricted to anglers 14 years or younger are allowed until July 17, 2017.

AUTH: 87-3-121, MCA

IMP: 87-3-121, MCA

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

Comment 1: The commission received one comment supporting the rule amendments.

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

Comment 2: The commission received two comments opposed to the amendments and to fishing contests in general.

Response 2: Section 87-3-121, MCA, states the commission shall adopt rules to regulate contests and the rules must be based on the commission's duty to protect, preserve, and propagate fish in the state. The commission amended these rules to provide youth anglers the opportunity to fish a non-native trout species in organized fishing contests. Sufficient safeguards to mitigate potential harm still exist

through the contest permitting process.

Comment 3: The commission received one comment stating that the contests for youth fishing brook trout should sunset in two years in order to safeguard against possible unforeseen and unintended harmful consequences.

Response 3: The commission amended (2) to provide for a sunset in two years. The commission reserves the right to evaluate and amend the rules at any time within those two years.

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State July 6, 2015.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
23.12.407 concerning house number)
height for day care centers)

TO: All Concerned Persons

1. On May 28, 2015, the Department of Justice published MAR Notice No. 23-12-241, pertaining to the proposed amendment of the above-stated rule at page 621 of the 2015 Montana Administrative Register, Issue Number 10.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Rule Reviewer

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General
Department of Justice

Certified to the Secretary of State July 6, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULE I requests for information, the	)	AMENDMENT, AND REPEAL
amendment of ARM 24.11.101,)	
24.11.317, 24.11.511, and 24.11.534,)	
and the repeal of ARM 24.11.901,)	
24.11.902, 24.11.903, 24.11.904,)	
24.11.907, 24.11.908, 24.11.909, and)	
24.11.2231 regarding unemployment)	
insurance)	

TO: All Concerned Persons

1. On April 16, 2015, the Department of Labor and Industry (department) published MAR Notice No. 24-11-304 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 357 of the 2015 Montana Administrative Register, Issue Number 7. On May 14, 2015, the department published an amended notice of public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 510 of the 2015 Montana Administrative Register, Issue Number 9.

2. On June 10, 2015, at 9:00 a.m., the department held a public hearing in the Sanders Auditorium of the DPHHS Building at 111 North Sanders Street, Helena, Montana, 59601, to consider the proposed adoption, amendment, and repeal of the above-stated rules. No members of the public appeared at the public hearing. No members of the public commented on the proposed adoption, amendment, and repeal during the rule comment period.

3. The department has adopted NEW Rule I (24.11.911) as proposed.

4. The department has amended and repealed the above-stated rules exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

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

Certified to the Secretary of State July 6, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.210.625 inactive to active)
license status, 24.210.661 and)
24.210.829 new licensee mandatory)
continuing education, 24.210.667)
continuing real estate education,)
24.210.826 inactive to active status -)
property management, and)
24.210.835 continuing property)
management education)

TO: All Concerned Persons

1. On April 30, 2015, the Board of Realty Regulation (board) published MAR Notice No. 24-210-42 regarding the proposed amendment of the above-stated rules, at page 416 of the 2015 Montana Administrative Register, Issue No. 8.

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

COMMENT 1: One commenter was concerned about changes to ARM 24.210.667, noting that (5) requires licensees to obtain required continuing education (CE) in topic areas the board identifies by August 1 of each year. The commenter stated that educators would have only between August and October to prepare training subjects that the board requires. The commenter noted that it would be difficult or impossible for an educator to prepare on such a tight schedule and wished to know in advance which subjects were going to be required.

RESPONSE 1: The board appreciates all comments received in the rulemaking process. However, the board notes that the provision on identifying topics by August 1 of each year exists as (7) in the current rule, and is only being renumbered to (5). The only proposed change is to delete the requirement that four hours of education must be "mandatory" education.

The board cannot lawfully make the changes as suggested by the commenter, as no changes were proposed to that language in the initial rule proposal. To change language now would exceed what was originally proposed for public comment in the proposal notice.

COMMENT 2: One commenter opposed amending ARM 24.210.829(1) to require that new property manager licensees take 12 hours of property management education. The commenter stated that it is unclear what would qualify as "property management" education, since some courses currently designed for property managers may be approved under a different topic. The commenter further stated

that requiring designated "property management" education for new licensees will be more cumbersome than current requirements and may cause some currently compliant licensees to be out of compliance.

RESPONSE 2: The board appreciates all comments made in the rulemaking process. The board is currently in the process of clarifying and identifying with an asterisk those courses on the board's web site which are property management eligible and will be considered property management courses in addition to regular licensee courses.

COMMENT 3: One commenter supported the proposed changes, but recommended that the designations of courses as being either "mandatory" or "elective" be effective on November 1, rather than in the middle of the year. The commenter believed this would avoid confusion to licensees, instructors, and providers, and suggested delaying the amendment to assist the department in modifying the online program that tracks rosters of CE credits.

RESPONSE 3: The board concluded that it will cause more confusion among licensees if the implementation date is delayed, and is proceeding with the intent to make the change effective for this licensing year.

COMMENT 4: One commenter was concerned with licensees' ability to meet the rookie course requirement when there are no courses scheduled for 2015, and asked if there would be a waiver of the rookie course requirement for this license year. Noting that the board's web site still shows the 2014 rookie course schedule, the commenter suggested the board remove the 2014 schedule and instead post updated information.

RESPONSE 4: The department has removed the 2014 course schedule from the web site as suggested. The board will take other concerns under advisement and discuss them at a future meeting. The rookie course will not be waived. It is scheduled five times this licensing year and has been posted to the web site.

COMMENT 5: One commenter noted that the board had made motions at the July 8, 2014, meeting to amend ARM 24.210.666(4) and 24.210.834(4), but such changes were not part of this rule notice. The commenter asked if this was an oversight.

RESPONSE 5: The board never intended to include the rule amendments in this rule project, but proceeded with them in MAR Notice No. 24-210-41, an earlier rule package. In MAR Notice No. 24-210-41, the board had proposed changes to ARM 24.210.666 and 24.210.834, as well as other rules. However, due to public comments, the board decided at the July 10, 2014, meeting to not proceed with any of the changes.

COMMENT 6: Several dozen commenters supported the rule package, particularly the repeal of the annual core course requirement. Additionally, the commenters

supported the board's elimination of designating courses as either "mandatory" or "elective."

RESPONSE 6: The board appreciates all comments made in the rulemaking process, and is proceeding with the changes as proposed.

3. The board has amended ARM 24.210.625, 24.210.661, 24.210.667, 24.210.826, 24.210.829, and 24.210.835 exactly as proposed.

BOARD OF REALTY REGULATION
PAT GOODOVER, BROKER
CHAIRPERSON

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

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

Certified to the Secretary of State July 6, 2015

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 32.3.139 appointment as deputy	)	REPEAL
state veterinarian, 32.3.202)	
requirements for importation,)	
32.3.206 official health certificate,)	
32.3.207 permits, 32.3.2001 brands)	
and earmarks, and the repeal of ARM)	
32.3.204 permit required for livestock,)	
game, furbearing animals, wild)	
animals, embryos, and semen)	

TO: All Concerned Persons

1. On February 26, 2015, the Department of Livestock published MAR Notice No. 32-15-260 regarding the proposed amendment and repeal of the above-stated rules at page 208 of the 2015 Montana Administrative Register, Issue Number 4.

2. On April 30, 2015, the Department of Livestock published MAR Notice No. 32-15-260 regarding a public hearing on the proposed amendment and repeal of the above-stated rules at page 423 of the 2015 Montana Administrative Register, Issue Number 8.

3. On May 21, 2015, at 10:00 a.m., the department held a public hearing at the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. There were eight attendees at the hearing, all of whom gave testimony. Twelve members of the public submitted written comments prior to the close of the comment period.

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

32.3.139 APPOINTMENT AS DEPUTY STATE VETERINARIAN (1) The department is authorized to deputize a veterinarian when it determines that such veterinarian:

- (a) is licensed to practice veterinary medicine in Montana;
- (b) is a current USDA accredited category I or category II veterinarian pursuant to 9 CFR, Chapter 1, Part 161;
- (c) has made formal application for deputization upon forms provided by the department;
- (d) has been recommended by the state veterinarian; and
- (e) has attended the department deputy state veterinarian training.

(2) The state veterinarian may issue approve an individual ~~deputy state veterinarian status on a case-by-case basis if the requesting veterinarian can~~ provisional deputy

~~document sufficient need exists~~ prior to completion of the required training as listed in (1)(e). Provisional status is valid until the next available training or another date set by the state veterinarian.

5. The department has amended ARM 32.3.202, 32.3.206, 32.3.207 and 32.3.2001 as proposed.

6. The department has repealed ARM 32.3.204 as proposed.

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

ARM 32.3.139 APPOINTMENT AS DEPUTY STATE VETERINARIAN

COMMENT #1: One commenter expressed concern over the lack of training the brand division staff and local brand inspectors have, and that concern is highlighted regarding our deputy state veterinarians. They feel that we have to be careful of appointing people that are not properly trained or have the awareness of the regulations and instructions. This action would be moving the Animal Health Division in the wrong direction by not ensuring adequate training and knowledge. The commenter suggested a definition for the word "provisional" be added to our rules by which the "provisional deputy veterinarian" would be expected to complete the education in (1)(e) within a certain time frame thus the waiver requirements not be so open ended.

RESPONSE #1: Thank you for your comment. MDOL agrees about the importance of vetting provisionally appointed deputy state veterinarians to ensure they are able to uphold their responsibilities. MDOL also agrees that provisionally appointed deputy state veterinarians need to attend training in a timely manner.

Adding a "provisional deputy veterinarian" to the proposed rule and adding a deadline for completion of deputy accreditation training is appropriate to address these priorities.

ARM 32.3.202 Requirements for Importation

ARM 32.3.204 Permit Required for Livestock, Game, Furbearing Animals, Wild Animals, Embryos, and Semen (Repeal)

COMMENT #2: Several commenters were concerned about the repeal of ARM 32.3.204 and the language that states: "This requirement applies regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state." They believe that leaving that language in rule would be a clarifying phrase – a comforting phrase, rather than making the language redundant.

RESPONSE #2: Please note 2-4-305, MCA, clearly states that in rulemaking, rule language should not merely repeat statutory language. Section 81-2-703, MCA, is an authorizing statute for ARM 32.3.202. Since the language in 81-2-703, MCA, already states ". . . regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement," putting that phrase in rule is unnecessary and violates the purpose of rulemaking.

ARM 32.3.206 Official Health Certificate

COMMENT #3: One organization believes ARM 32.3.206 as written is "a bit short sighted" and provides too much flexibility. They stated that one wrong determination has the ability to devastate the livestock industry in Montana.

RESPONSE #3: The department disagrees. The flexibility to grant waivers already exists through the authority of 81-2-703(7), MCA, which states, "A waiver of the requirement for a health certificate or a permit must be based upon evidence that there will be no significant danger to the public health if the exemption is granted."

This handling of exemptions is also consistent with other states. Based on a survey of other states' handling of exemption requests (43 responses): (a) Over 75% (31/41) of the states have the ability to evaluate requests based on special circumstances. (b) For those 31 states with such authority, in over 80% (25/31) of cases the discretion lies with the state veterinarian's office. (c) Finally, regarding the timeliness of consideration, 56% (15/27) of the states considered the requests the same day. An additional 37% (10/27) considered requests within a week. Therefore, only 7% of responding states took more than a week with a majority taking action the same day. Of interest is that all of Montana's neighboring states of Idaho, North Dakota, Oregon, South Dakota, Washington and Wyoming, 1) allow exemptions, 2) the authority lies with the state veterinarian's office, 3) requests are considered the same day or within a week.

Additionally, prior state veterinarians at Montana Department of Livestock going back to 1984 (Drs. Linfield, Gertonson, Siroky, Ferlicka) have confirmed that they exercised discretionary authority to grant exemptions on a case-by-case basis if the waiver did not create a threat of disease.

The Board of Livestock works in conjunction with the state veterinarian in carrying out the vital mission of the department. When necessary, the board defers to the expertise of the state veterinarian (81-1-303, MCA), and the state veterinarian is responsible to the board for the administration of the laws in relation to animal health (81-1-301, MCA). This set of checks and balances ensures statutory intent to foster, promote, and protect the livestock industry of this state, per 81-2-102(1)(b), MCA.

COMMENT #4: Several commenters support that the proposed amendment in ARM 32.3.206 creates a legal process to consider rule variance requests. Without the proposed amendment, no specific process for either the Board of Livestock or the state veterinarian exists to address and render a decision on a variance request.

The state veterinarian's duty will be to review each request from a scientific perspective on whether the imported animals pose a risk of disease to livestock. The state veterinarian is required by the qualifications of his position to possess the expertise to review scientific evidence unlike the Board of Livestock, which is largely comprised of lay persons without such scientific expertise. As well, this proposed amendment will allow the BOL to avoid allegations of selective enforcement of rule requirements. The proposed rule amendment will protect the board from an appearance of bias.

RESPONSE #4: The department appreciates the support and agrees that the state veterinarian is employed by the department because of expertise in animal health. A system of checks and balances ensures the statutory intent in 81-1-301, 81-1-302, and 81-1-303, MCA.

COMMENT #5: One commenter states full support for the rule change regarding import/export decisions.

RESPONSE #5: The department thanks the commenter for their support. The Animal Health Division believes the ability to grant waivers is important in order to fulfill its obligation to the livestock industry. Recent examples of needed waiver decisions included: (1) A trailer of animals traveling to Idaho from North Dakota that found last-minute room to haul a bull for a registered Angus producer in southwest Montana who was hoping to test for trichomoniasis on arrival. (2) Another was a request to exempt the CAN brand on a Montana animal that strayed into Canada. These case-by-case exemptions recognize the need to promptly respond to industry needs.

COMMENT #6: A commenter expressed support for the Montana State Veterinarian to have the ability to grant waivers, and make quarantine decisions. Other states' veterinarians are trusted to make such decisions.

RESPONSE #6: The department appreciates the commenter's confidence. Please see Response #3 where surrounding states overwhelmingly have the discretionary authority to grant exemptions on a case-by-case basis.

COMMENT #7: One commenter suggested that while the board may be able to "delegate" the functions/authority, they are not able to rid themselves of the accountability for the decisions made. A prime example could be made by the budget issues at the Department of Livestock. By giving the authority to waive rules pertaining to animal importation to an employee, the board is not upholding their responsibility to the livestock industry and weakening their ability to foster, promote and protect the livestock industry of this state.

RESPONSE #7: The department thanks the commenter for their participation in this process. While the Board of Livestock has oversight for fiscal operations as well as Animal Health operations, the transfer of livestock in a manner that is time sensitive and yet doesn't compromise animal health is different than budgetary deliberations.

The department disagrees with this commenter's opinion that the board's position is weakened in delegating certain areas of expertise to the state veterinarian. The state veterinarian's qualifications are fully vetted upon employment, complying with statutory intent per 81-1-301, MCA, which states: "(1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health. (2) The person must have a doctor of veterinary medicine degree from an accredited college or school and must be licensed to practice veterinary medicine in this state." Further delegation of authority is stated in 81-1-303, MCA: "In any action taken by the board in 81-2-102 and 81-20-101, the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health."

Finally, 81-1-302, MCA, clearly provides board oversight and review: "The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by the administrator is subject to review, modification, or annulment by the board." This collaboration between the Board of Livestock and the state veterinarian fosters, promotes, and protects the livestock industry of this state.

COMMENT #8: Another commenter spoke in favor of the proposed amendment to ARM 32.3.206. On occasion, the immediate transport of livestock is required for animal welfare. State veterinarians of Montana are the most versed to provide real-time and rational risk-based assessments of livestock movements which can expedite and facilitate livestock movement into Montana.

RESPONSE #8: The department thanks the commenter and agrees. Please see Responses #3 and #5.

COMMENT #9: One practicing veterinarian commented: "I have always felt the regulatory aspect of veterinary medicine was to provide for the efficient movement of animals without compromising the animal health of the industry. This discretionary authority would allow the veterinary staff of the state to facilitate the movement in cases where the animal health of the industry is not at risk. I think this authority makes good sense for Montana."

RESPONSE #9: The department thanks the commenter for their support. Please see Response #5. In addition, the department believes this discretionary authority is consistent with 81-2-102(1), MCA: "The department may . . . perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry."

COMMENT #10: A representative from one organization states that argument can be made that Dr. Zaluski has educational background to make science-based decisions. But there can also be a point made that this change gives the authority to the state veterinarian and we cannot know who will hold that position in the future. We also make the argument that the import requirements are in place because there is risk; so that waiving them would create a threat automatically.

RESPONSE #10: Thank you for your comment and the recognition that Dr. Zaluski is well-qualified to make science-based decisions which we concur uphold the mission of the department. Be informed, however, that the proposed amendment does not give the department waiver authority; the rule merely promulgates that which has already been given by law. Please see 81-2-703, MCA

Please see Response #7 for qualifications of the state veterinarian and board oversight. The checks and balances ensure statutory intent to foster, promote, and protect the livestock industry of this state.

Please see Response #3 regarding the statutory authority in 81-2-703(7), MCA, to grant waivers. This authority is consistent with the department's stated objective in 81-2-102(1)(b), MCA, to foster, promote, and protect the livestock industry of this state.

COMMENT #11: Another commenter referred to the Core-Mark case as a case-in-point in which the producers' wishes were upheld and the board did not waive the "sell-by" date. This decision was upheld by the Montana Supreme Court in July of 2014. The commenter questioned: "What if there had been waivers granted in this case? What if that was not what the consumer and dairy industry wanted?"

RESPONSE #11: The Core-Mark case is consistent with and supports the current proposed amendment where the Board of Livestock has oversight over the decisions made by its employees. Please see Response #7 regarding board oversight.

COMMENT #12: A few commenters stated that in the Board of Livestock meetings on May 1 and 19, 2015 the state veterinarian brought before the board a request to change the risk dates for grazing in the DSA. The board decided to wait and take no action. John Scully stated that he represents the wishes of the livestock producers which would be to protect their ability to use the grazing allotment of the Forest Service Land. Nina Baucus also questioned the lack of proof that there was a risk and that the dates should be changed. Other board members also expressed concerns for the industry's wishes. Waiving import requirements seems contrary to the defined function of the board or the Animal Health Division if we go to 81-2-102 MCA, and 2-15-112, MCA.

RESPONSE #12: The department thanks the commenter for the specific example used to support your comment. Board participation at the meeting you referenced actually demonstrates that the Board of Livestock continues to exercise its authority for oversight and reviews decisions proposed or made by its employees. The proposed rule does not erode the board's responsibility to continue this oversight or its authority to do so.

COMMENT #13: One commenter supports the change to allow the state veterinarian some flexibility to provide exemption for imports, with one additional requirement that any exemptions are provided in a report at the following meeting of

the BOL. We feel it is important to ensure normal livestock industry business can occur in our state, but it is also important for the board members to be fully informed as these decisions are made.

RESPONSE #13: The department thanks the commenter for their support and agrees that timely decisions are expected if efficient movement of livestock is to be fostered. The department also agrees that records need to be kept of waivers that have been considered. Animal Health compiles a monthly report which will include any exemptions considered and provides this report to the board.

COMMENT #14: Another veterinarian feels it essential that the Montana State Veterinarian has some discretion over the allowed identification and importation of animals. He states: "Sometimes extenuating circumstances exist, and this flexibility may go to great lengths in procuring better business for Montana. As a professional veterinarian and business owner, it is sometimes necessary allow those with expertise to make judgment calls in regard to case-by-case situations. These amendments seem reasonable."

RESPONSE #14: The department thanks the commenter for their support and agrees. Please see Responses #5, #7, and #9.

COMMENT #15: One commenter shared that the veterinarian should have the ability to grant exemptions if and when unforeseen circumstances occur when shipping animals. These issues could only be addressed and handled with the state veterinarian's ability to understand and modify current dogmas concerning these disease issues. The state veterinarian is most qualified to evaluate disease risks of exemptions. Prompt decisions for animal health or humane considerations are needed when a request is made.

RESPONSE #15: The department thanks the commenter and is in full agreement with the commenter's position. As stated in Responses #3 and #5, case-by-case exemptions recognize the need to promptly respond to industry needs, and the overwhelming majority of states places this responsibility on the state veterinarian, a person who is educated and trained to conduct such an assessment.

COMMENT #16: We are in support of the rule change specifically to ARM 32.3.206. This makes good sense to waive the import rule on a case-by-case basis. We have had experience where cattle were delayed for testing or vaccination and these animals in question did not present a disease risk to the state of Montana. These rules have slowed the export process, exposing the animals to further stress prior to being allowed to be shipped to Montana. We feel that this rule change can help to streamline the import process and also smooth out some of the inconsistencies we have seen between states.

RESPONSE #16: The department thanks the commenter and agrees with this commenter's position.

COMMENT #17: One commenter cited the following example: A producer wants to ship his bulls to Montana and Wyoming. Test results are delayed due to circumstances beyond producer's control. This matter is of a time-sensitive nature. Wyoming waives the rules; Montana has no authority to even consider the exemption.

RESPONSE #17: The department thanks the comment for their input. Please see Responses #3 and #5.

COMMENT #18: One commenter is concerned that prior to this hearing they requested a report of the waivers that had been granted by the State Veterinarian/Animal Health Division in the past 3-5 years. The idea was that by looking at the past need and the outcomes of the waivers, they could determine what authority was truly needed by the state veterinarian in the way of waivers. If the need was mainly health certificates one or two days expired and the occasional request for show cattle to be waived having the CAN brand, then that authority seemed reasonable, but why give authority to waive calfhood brucellosis vaccination or disease testing if it has not been needed in the past. Decisions such as those should have the board's oversight.

The Animal Health Division had not recorded or tracked the waivers in the past. The state veterinarian did bring requests that he thought the board expressed interest in. Animal Health recently started tracking requests. Continuing, the commenter asks: "As we watched last year with Porcine Epidemic Diarrheal virus raged across North American and now we watch as Avian Influenza torments the poultry industry, what risks are we truly willing to take with waivers to the import regulations? What tracking and reporting system is in place to ensure that there hasn't been or will not be effects on the industry?"

RESPONSE #18: The department thanks the commenter for their participation. The need for timely decisions to allow the efficient movement of livestock is a high priority. However, waivers to existing authority should only be granted if the movement does not present a disease risk to the state of Montana. The qualifications of the state veterinarian and the Board of Livestock oversight over the decisions of the state veterinarian provide necessary checks and balances for these decisions.

Board notification is regularly carried out either at meetings, our monthly report, or other means necessary upon board request. Please see Response #13 regarding tracking exemption requests and providing this information to the Board of Livestock.

Department of Livestock, Animal Health Division uses an electronic permit system to track imports of livestock/poultry.

ARM 32.3.207 Permits

COMMENT #19: One commenter stated that the removal of the requirement for information of where the livestock had been in the last six months may weaken the ability to ensure parts of ARM 32.3.224(5). "How can we be sure they have not been exposed to cattle from Mexico if we are not required to know where they have been? The rule as amended does not seem to collect the information needed to ensure compliance with ARM 32.3.224. We would also be interested in what is the industry standard."

RESPONSE #19: An extended six-month travel history on every health certificate would help mitigate disease risk; however, to create travel histories for every animal, at every market, for every producer is excessively burdensome for the industry and far exceeds national standards for interstate movement. The state of Montana has import requirements, which include a health certificate, required testing, brand requirements, declarations of origin and a permitting system which satisfy statutory intent.

ARM 32.3.206 states the criteria for official health certificates issued by accredited veterinarians. If cattle or bison are imports of Mexico or have the M, or Mx brand, the testing requirements are listed in ARM 32.3.212B. You may visit our web site at <http://liv.mt.gov/default.mcp>. In keeping with statutory intent, this web site provides detailed information and instruction for the safe movement of livestock into our state.

ARM 32.3.2001 Brands and Earmarks

COMMENT #20: One commenter expresses frustration regarding an exemption request for the CAN brand. I have two registered purebred Black Angus cows with heifer calves at foot. They will be moved to Montana for only 24 hours for breeding. I don't want to CAN brand the cows since they will only be in Montana for 24 hours. Moving these cattle in a timely manner and having to wait for BOL approval is quite frustrating.

RESPONSE #20: The department appreciates the comment. The proposed rule, ARM 32.3.2001, creates an exemption for the CAN brand for exhibition, transport to a bull collection facility, or on a case-by-case basis with Board of Livestock approval. The Board of Livestock has significant concerns over Bovine Spongiform Encephalopathy (BSE) and would like to maintain discretion over exemptions to this requirement. The Department of Livestock will make every effort that CAN brand exemptions are considered in the timeliest manner possible.

COMMENT #21: A commenter would like to see the language in ARM 32.3.2001(1)(c), "on a case-by-case basis with Board of Livestock approval, if the waiver does not create a threat of disease to livestock or to the public, or compromise animal disease traceability" similarly in ARM 32.3.206.

RESPONSE #21: The department appreciates the comment. This suggested duplicate language is not needed in ARM 32.3.206. Please see 81-1-302, MCA.

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State July 6, 2015

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2015. This table includes those rules adopted during the period April 1, 2015, through June 30, 2015, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2015, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2015 Montana Administrative Register.

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