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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to closing a consumer loan business and NEW RULE II pertaining to reimbursement of department costs in bringing an administrative action; and the amendment of ARM 2.59.303 pertaining to credit insurance, 2.59.308 pertaining to examination fees, 2.59.315 pertaining to licensure surrender, and 2.59.318 pertaining to annual reports	))))))))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 30, 2015, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 16, 2015, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

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

NEW RULE I REQUIRED PROCEDURE FOR CLOSING A CONSUMER LOAN BUSINESS (1) At least 60 days before the intended closure date of a consumer loan business, the licensee shall provide the following to the department:

(a) a copy of a notification to all consumers with outstanding loans containing:

(i) a current outstanding loan balance including an itemization of unpaid principal, accrued interest, and allowable fees;

(ii) notice of intended closure date of the business which date shall not be sooner than 60 days from the date of mailing the notice;

(iii) the licensee's succession plan, e.g., sale or assignment of the loan, and the successor's contact information and assumption letter;

(iv) any alternatives to the licensee's succession plan that are available to the consumer;

(v) contact information for borrower use in obtaining collateral/lien releases; and

(vi) the department's name, address, phone number, and e-mail address where any complaints arising from the intended closure may be filed;

(b) the name, physical address, mailing address, e-mail address, and phone numbers of the licensee's post-closure, designated custodian of the licensee's inactive loan files, and the physical address where the records will be maintained for the period required under 32-5-307, MCA; and

(c) a report of active loans containing the following information for each loan:

(i) name, address, and loan number of all active borrowers;

(ii) loan origination date;

(iii) original principal amount of loan;

(iv) current interest rate;

(v) current principal balance;

(vi) maturity date; and

(vii) summary of special provisions related to taxes and insurance reserves, funded maintenance reserves, etc.

(2) The department may conduct a final examination of the consumer loan business at the licensee's expense as provided in 32-5-403, MCA, and ARM 2.59.308 before accepting the surrender of license. The department may, in lieu of an examination, accept an audit report prepared in accordance with generally accepted accounting principles (GAAP) and/or United States generally accepted audit standards (GAAS) by an independent auditor retained by the licensee for the disclosed purpose of closing or selling the business, as applicable.

AUTH: 32-5-401, MCA
IMP: 32-5-103, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to establish requirements for the orderly closure or sale of a consumer lending business; the seamless continuation of services to existing borrowers by another licensee or financial institution; the continued availability of loan records; and to ensure the licensee's compliance with 32-5-304, 32-5-307, MCA, and other provisions of the Montana Consumer Loan Act. When a consumer loan business closes, the department has numerous concerns, including how the customers of the business will be notified of the closure and the location of the account. The notification to the customer needs to be made in sufficient time to allow the customer to send any existing payment obligation to the new entity collecting the debt.

The department would like to ensure that the accounting is correct for any existing debt by conducting a final examination. The reason for this is that the existing consumer lender is closing and any new entity taking over the debt will take over the obligation as of the date of transfer, but will not have the records to be able to go back and research to determine if the debt payments were calculated and applied correctly in the past. In addition, if some violation of state or federal law has occurred in the calculation or allocation of payments, the responsible entity would be the consumer lender that is going out of business, not the new entity taking over the debt. So the department would need to do an examination to determine that the accounts and disclosures were correct and complete at or near the time of transfer of the accounts.

However, if the consumer lender is large enough to warrant an independent audit of accounts as part of the sale of the business, an audit may be done by the independent auditor, and the department could accept the independent audit in lieu of the department's examination.

Other areas of concern for the department when a consumer lender closes are taxes and insurance. If the consumer lender has been maintaining a reserve for the payment of taxes and/or insurance, those sums must be audited to make certain they are correct and transferred seamlessly to the new entity, meaning, no payment for taxes or insurance can be missed or paid late. In addition, even if reserves are not maintained for taxes and insurance, the department must ensure that all payments are made on a timely basis by the new entity and that all policy documents reflect the name of the new entity that holds the lien.

Liens are another area of concern for the department when a consumer lender closes. If a consumer pays off a loan and the consumer lender fails for any reason to release the lien (including because they are out of business), the consumer cannot get the lien released. For example, a consumer decides to sell their car, which was the collateral for the loan, but finds it has a lien from the consumer lender on the title. The consumer cannot get the lien released without authorization from the consumer lender. If the consumer lender is out of business, the motor vehicle division will not accept a lien release from anyone else, including an attorney from the defunct entity. The consumer's only remedy is to go to district court for a court order. This generally costs more than the lien on the vehicle. The department is concerned about all these issues because they result in harm to the borrowers. The department, by this rule, seeks to identify the issues that it has encountered in this area in the past and to address them before the consumer lender closes. This will avoid harm to the borrowers of the consumer lender that is closing. The department also monitors the entity to which the loans are transferred to ensure that the entity is properly licensed in Montana and that it correctly transfers and integrates the new loans into its portfolio.

NEW RULE II DEPARTMENT COSTS IN BRINGING AN ADMINISTRATIVE ACTION (1) The department's "costs in bringing an administrative action" as used in 32-5-207, MCA, for which reimbursement may be ordered by the department are:

(a) administrative law judge charges;

(b) court reporter fees;

(c) exhibit preparation costs if the exhibit was admitted into evidence at the hearing;

(d) the cost of a deposition if the deposition was used at the hearing;

(e) fees, if any, for service of subpoenas;

(f) transcription cost as provided in 2-4-614, MCA;

(g) witness fees and mileage for the department's lay/fact witnesses; and

(h) mileage for the department's expert witness if the expert appears personally and testifies at the hearing.

AUTH: 2-4-104, 2-18-503, 25-10-201, 26-2-501, 32-5-207, 32-5-401, MCA
IMP: 32-5-207, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary because 32-5-207(1)(b), MCA, states the department may order reimbursement of its "costs" in bringing an administrative action and there is currently no rule defining what costs the department may order to be reimbursed. The proposed rule specifies the allowable costs for reimbursement purposes. The Montana Administrative Procedure Act (MAPA) 2-4-104, MCA, states that rules regarding witness fees and mileage are the same in administrative contested cases as in civil actions in district court. Witness fees are governed by 26-2-501, MCA, and mileage is governed by 2-18-503, MCA. The additional costs included in the rule are those that a prevailing party may recover in a civil action in state district court under 25-10-201, MCA, as limited by case law. A discussion of numerous types of recoverable costs is included in the Montana Supreme Court's opinion in *Thayer v. Hicks*, 243 Mont. 138, 793 P.2d 784 (1990). The proposed rule includes certain costs that are not applicable to district court actions, but which are necessarily incurred by the department in MAPA contested cases such as costs incurred for the services of a neutral, appointed hearing examiner/administrative law judge. The department uses the services of the Department of Justice Agency Legal Services Bureau, which assigns a hearing examiner to hear the department's contested cases. The approach that the department has taken is that recoverable costs allowed under Montana law are limited so as not to discourage persons from exercising the right to a hearing under 32-5-207, MCA.

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

2.59.303 CREDIT INSURANCE (1) through (3) remain the same.

(4) ~~Licensee shall~~ A licensee may not place credit life insurance, ~~and/or~~ credit disability insurance, or loss of income insurance on any loan of $300 or less in principal amount exclusive of charges for insurance premiums.

(5) The amount and term of credit life insurance, ~~and/or~~ credit disability insurance, or loss of income insurance placed by a licensee must conform to the provisions of 33-21-202 and 33-21-203, MCA.

(6) and (7) remain the same.

(8) Refunds of unearned premiums for credit life insurance, credit disability insurance, and loss of income insurance must be made in accordance with the Montana Insurance Code (~~32-21-206~~ 33-21-206, MCA).

(9) ~~Licensee~~ A licensee shall enter on each borrower's loan account record the amount of credit life, credit disability, or loss of income insurance premium ~~and credit disability insurance premium~~ charged in connection with the loan.

(10) through (10)(d) remain the same.

(11) For the purpose of providing adequate information for the annual report ~~of licensee~~ required by 32-5-308, MCA, a licensee ~~must~~ shall keep accurate accounts to reflect the following:

(a) total net charges to borrowers for credit life, ~~insurance and~~ credit disability, and loss of income insurance placed by the licensee;

(b) total premiums remitted to insurers for ~~such~~ the coverage;

(c) remains the same.

(d) total of loans and loan balances paid by insurers under credit life policies upon death of borrowers;

(e) total of loans and payments ~~on loans~~ received from insurers on loans under credit disability policies~~.~~; and

(f) total of loans and payments received from insurers on loans under loss of income policies.

(12) The insurance information required under (11) must be reported in the aggregate in the licensee's annual report and must also be broken down by loan and maintained in each individual loan file.

AUTH: 32-5-401, MCA
IMP: 32-5-306, 32-5-307, 32-5-308, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend (4), (5), (9), and (11) to add loss of income insurance to the types of credit insurance available to borrowers under 32-5-306, MCA. A similar amendment was made to other sections of the rule in MAR Notice No. 2-59-501, but the above-referenced sections were not otherwise being amended and were overlooked. An amendment to (8) is necessary to correct a typographical error in the citation of 32-21-206, MCA. It is necessary to amend (11)(d) to clarify that it applies only to credit life insurance, since that is the only type of insurance that would pay a loan balance on the death of the borrower. Subsection (11)(f) is being added to specify the recordkeeping requirements pertaining to loss of income insurance being included in the annual report under 32-5-308, MCA. This break down allows the department examiners to determine the amounts being paid out for each type of insurance each year. Section (12) is necessary to ensure that in addition to having information reported in the aggregate in the annual report, the information is broken down by loan and maintained on an individual loan basis so that the department's examiners can verify appropriate application of insurance payments and appropriate refunds of unearned premiums in individual loan files.

2.59.308 EXAMINATION FEES (1) ~~A consumer loan business shall pay the Division of Banking and Financial Institutions a fee in the amount of $37.50 per hour for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.~~ The examination fee charged by the department to the examinee must be in an amount sufficient to recover all of the department's actual costs for its supervision program related to the subject examination.

(2) The term "actual costs" means the "hourly cost of employee" for each examiner performing the examination plus actual travel expenses incurred in conjunction with the examination.

(3) The term "hourly cost of employee" means the cost incurred by the department for each hour that an employee is performing the examination; the cost includes the employee's wages and benefits.

(4) The term "performance of an examination" or "performing an examination" means pre-examination preparation, travel time, examination, examination report writing, review of a licensee's response to the examination report, and, if appropriate, amending the report based on the licensee's response.

(5) The term "travel expenses" means the "hourly cost of employee" for each examiner's travel time; motor pool and fuel charges; airfare, cab, or other public transportation fare; lodging; per diem; and, if approved by the department in advance, charge for rental vehicle for use at the examination site. The term also includes mileage paid to an examiner under 2-18-503, MCA, for use of personal vehicle for examination travel if use of the personal vehicle was approved by the department in advance.

AUTH: 32-5-401, 32-5-403, MCA
IMP: 32-5-402, 32-5-403, MCA

STATEMENT OF REASONABLE NECESSITY: An audit report of the Legislative Audit Division dated September 5, 2014, noted that without a documented basis for establishing the rates charged to consumer loan licensees for examinations under the current rule, it could not be determined whether the fees were commensurate with costs incurred. Section 32-5-403(2), MCA, states the expenses of the department incurred must be charged at a rate established in rule and the amount charged must be established to recover all of the costs of the department's supervision program. The amendments are needed to define terms used in the statute concerning examination fees to aid in the audit process and to facilitate transparency. Actual expenses incurred by the department in the performance of an examination are documented and tracked and charged to the licensee accordingly. Examiner time is tracked in the department's database. "Hourly cost of employee" information is tracked by the department. The rule amendments identify the components of an examination to enable auditors to verify that the fees charged under (1) are commensurate with costs.

2.59.315 LICENSE SURRENDER (1) remains the same.

(2) The department may decline to accept a licensee's offer to surrender a license under the following circumstances:

(a) the licensee has not fully complied with [NEW RULE I];

(b) the licensee has not made a succession plan that adequately protects consumers related to the continued servicing of the licensee's active loan files;

(c) the licensee has not fully complied with a final order issued by the department in an enforcement action even though compliance is not yet due;

(d) the department has an outstanding complaint or a pending enforcement action against the licensee; or

(e) the licensee has not submitted an annual report covering the final calendar year or partial year that the licensee was in business irrespective of whether the licensee had any Montana loan activity during that reporting period.

(3) Once the department accepts an offer to surrender a license, the license may not be reinstated but the former licensee may reapply for a new license at any time.

AUTH: 32-5-205, 32-5-209, MCA
IMP: 32-5-205, 32-5-209, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment is needed to identify the conditions referred to in 32-5-205, MCA, under which a licensee's offer to surrender a license may be declined. NEW RULE I in this notice creates requirements related to the closure or sale of a licensed consumer loan business. A closure or sale would necessarily involve the surrender of the licensee's license. Therefore, the requirements contained in NEW RULE I are incorporated into (1)(a) and (1)(b) and must be satisfied before the department may accept a licensee's offer to surrender its license. Occasionally in a MAPA contested case, the department orders a licensee to pay a civil penalty in installments. If the licensee offers to surrender its license before the penalty is fully paid, (1)(c) would allow the department to decline the offer even though the remaining installments are not yet due. The ability to decline the offer of surrender in that circumstance is necessary because 32-5-205, MCA, states the surrender of a license does not affect the licensee's liability for acts committed prior to the surrender. If a license could be surrendered before a penalty is fully paid and the former licensee subsequently failed to pay the remaining installments, the violation (noncompliance with the terms of the order) would have been committed after the license surrender, which circumstance is not covered by 32-5-205, MCA. Subsection (2)(d) makes clear that a licensee may not surrender a license to avoid a pending complaint or enforcement action. Subsection (2)(e) is necessary because 32-5-308, MCA, requires all licensees to file an annual report covering their licensee activity in this state. That information allows the department to do analytics on the types of loans being made in Montana for statistical and examination purposes. This rule makes clear that report must be filed before a licensee may surrender the license. Section (3) states the obvious. Once a license is surrendered it is gone. It cannot be reinstated but the former licensee can apply for a new license.

2.59.318 ADOPTION OF ANNUAL REPORT FORM AND DUE DATE

(1) ~~All entities~~ An entity holding a consumer loan license ~~at any time during 2014~~ for any period of time during a calendar year reporting period shall complete ~~the~~ and file with the department by April 15 of the following calendar year a Consumer Loan Annual Report of Licensee ~~dated August 5, 2014, and file it with the department by April 15, 2015~~. ~~Instructions for filing are in the report.~~ The annual report must be filed whether or not any loans were originated during the reporting period and whether or not the licensee renewed its license at the end of the reporting period or held a license when the report came due the following April 15.

(2) A completed annual report may be mailed to the Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 316, P.O. Box 200546, Helena, MT 59620-0546; faxed to (406) 841-2930; or e-mailed to banking@mt.gov.

(3) The Consumer Loan Annual Report of Licensee form, 7/1/2015 edition, is adopted and incorporated by reference.

~~(2)~~(4) Copies of the annual report form and instructions for completion are available on the division's web site, ~~www.banking.mt.gov~~ http://banking.mt.gov/Home/Forms#164912244-consumer-loan.

AUTH: 32-5-308, MCA

IMP: 32-5-308, MCA

STATEMENT OF REASONABLE NECESSITY: In (1), it is necessary to delete the reference to holding a license during 2014 and to delete the "April 15, 2015" due date for the annual report to avoid the need for repeated rule amendments to reflect the correct reporting period and annual report due date. The current rule was intended to be temporary while the due date and content of the report were under consideration. The edition date for the annual report form in (1) must be amended because the form has been revised to accommodate inclusion of credit insurance information required under ARM 2.59.303(11) and 32-5-308, MCA. An amendment to expressly adopt and incorporate the report form is necessary to eliminate any potential legal infirmity of the rule on that basis. The department is requiring licensees to file a report showing no loans because otherwise the department has no way to know if the licensee made no loans or failed to file the report. The web site address is being changed because the department recently updated its web site and the uniform resource locator has changed.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., November 23, 2015.

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 the person listed in 5 above no later than 5:00 p.m., November 16, 2015.

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

8. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times,

concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

11. The department has determined that under 2-4-111, MCA, the adoption and amendment of the above-stated rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to credit union supervisory committee, New Rules II through VI pertaining to credit union investment rules, and New Rule VII pertaining to board of director training	))))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 30, 2015, the Department of Administration proposes to adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 16, 2015, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail banking@mt.gov.

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

NEW RULE I DUTIES OF THE SUPERVISORY COMMITTEE (1) The supervisory committee shall:

(a) verify that adequate internal controls are established and maintained to safeguard the credit union's assets;

(b) oversee the inspection of securities, cash, and accounts of the credit union;

(c) review credit union operations and monitor its overall financial condition on an ongoing basis;

(d) review the actions of the board of directors, officers, and committees to ensure that the individuals and entities:

(i) exercise firm control over the credit union's affairs;

(ii) understand their role; and

(iii) promote the credit union for its intended purposes;

(e) ensure that the credit union complies with all applicable laws and regulations;

(f) review all new policies and changes to credit union procedures and assess their effects on the safety of members' funds; and

(g) understand, support, and monitor compliance programs related to the Bank Secrecy Act of 1970 and the Money Laundering Control Act of 1986.

AUTH: 32-3-403, MCA

IMP: 32-3-403, MCA

STATEMENT OF REASONABLE NECESSITY: HB 550, enacted by the 64th Legislature of the state of Montana, amended 32-3-403, MCA, to require rulemaking to establish the duties and powers of a credit union supervisory committee. Therefore, this rule is necessary to establish the duties and powers of a supervisory committee. The rule outlines the primary duties of the supervisory committee. These specific areas were determined by the department to be appropriate for a supervisory committee as opposed to another committee or the board of directors of the credit union. Supervisory committee members have been confused in the past regarding their specific role in the credit union. This rule is designed to allay that confusion by specifically setting forth the supervisory committee duties and responsibilities. The duties listed in this proposed rule came from a variety of industry resources, but most heavily lean on the National Credit Union Administration handbook and the Credit Union National Association handbook.

NEW RULE II NET WORTH DEFINITION – CALCULATION – DETERMINATION (1) For purposes of [New Rules III and IV], "net worth" means the sum of regular reserves, undivided earnings, and membership shares. Net worth excludes the allowance for loan and lease losses. Net worth is calculated quarterly based on data from the previous call report.

(2) The department shall determine compliance with these rules using quarterly net worth for the period in which the security is purchased.

(3) A security that complies with [New Rules III and IV] at the time of purchase is not in violation of [New Rules III and IV] at a later date due to a subsequent decline in net worth.

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to define the term "net worth" because it is used in New Rules III and IV. Those rules contain a limit on the amount of securities an institution can purchase expressed as a certain percentage of the net worth of the institution. Those limitations are in place to control the investment risk an institution can acquire. The rules are identical to the rules for state-chartered banks except that banks are limited to a percentage of capital and surplus. Credit unions, as member-owned cooperatives, don't have capital because they don't have stock, so it is necessary to define the equivalent of capital and surplus for credit unions. The department initially considered defining net worth as regular reserves but determined that was too restrictive. After review of several National Credit Union Administration definitions of net worth and capital in different contexts, and discussions with the Credit Union bureau chief, the department determined it appropriate to define net worth as in New Rule II.

NEW RULE III INVESTMENT RULE – CERTAIN QUASI-GOVERNMENT SECURITIES (1) Certain other securities are approved for credit union investment. There is no dollar limit on a credit union's investment in:

(a) General Services Administration (participation certificates);
(b) Maritime Administration (bonds and notes); and
(c) Washington Metropolitan Area Transit Authority (bonds).
(2) A credit union's investment is limited to 50 percent of its net worth in:
(a) Asian Development Bank (bonds and notes);
(b) Financing Corporation (FICO) (bonds);
(c) Inter-American Development Bank (bonds);
(d) Resolution Funding Corporation (REFCORP) (bonds);
(e) Tennessee Valley Authority (TVA) (bonds); and
(f) World Bank (bonds and notes).

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY FOR NEW RULES III, IV, AND V: HB 550, enacted by the 64th Legislature, amended 32-3-701, MCA, to require rulemaking to establish the investment securities that a credit union may hold. Therefore, New Rules III, IV, and V are necessary to establish the investment securities that a credit union may hold. New Rules III, IV, and V list the types of investment securities that are considered appropriate for a credit union to hold. The department selected these types of securities because they are generally considered to be relatively secure investments. Obviously, the statutes and the department do not allow credit unions or other financial institutions to invest in high-risk instruments due to the potential for loss of the investment principal. So these investments, while not generating the highest return, are generally considered to have less risk of loss of the investment principal. These rules include the same other quasi-government securities banks are allowed to invest in (ARM 2.59.1602), corporate bonds banks can invest in (ARM 2.59.1604), and mutual funds banks can invest in (ARM 2.59.1605). The department believes if the investments are appropriate for banks, they are equally appropriate for credit unions.

NEW RULE IV INVESTMENT RULE – CORPORATE BONDS (1) A credit union may invest up to 20 percent of its net worth, per issuer, in corporate bonds.

(2) These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization.

(3) Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the credit union's investment policy.

(4) Corporate bonds must be reviewed as necessary to assure the credit union's board of directors that bond quality has not fallen below investment grade.

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: To invest in corporate bonds, the credit union's investment policy must identify which rating organizations and gradations the credit union will use and that the investments in corporate bonds

must be reviewed in the time frame established by the board to verify the bonds have not fallen below investment grade. This is identical to the bank rule and ensures the credit union identifies the risk it will take based on its policy and continues to monitor its portfolio to confirm that the risk profile of the portfolio has not changed over time.

NEW RULE V INVESTMENT RULE – MUTUAL FUNDS (1) Under the authority of 32-3-701, MCA, and subject to its restrictions, a credit union may invest in mutual funds whose shares represent only those United States obligations listed in [New Rule III].

(2) Shareholders must have a proportionate undivided interest in any mutual fund utilized under this rule.

(3) Shareholders must be shielded from personal liability for acts or obligations of the mutual fund.

(4) The credit union's investment policy, as formally approved by its board of directors, must specifically provide for such investments. Prior approval of the board of directors must be obtained for initial investments in specific mutual funds and recorded in the official board minutes. Procedures, standards, and controls for managing such investments must be implemented prior to the investment being made.

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: To invest in mutual funds holding quasi-governmental securities, the credit union's investment policy must allow the investment and contain procedures, standards, and controls for managing the funds before the investment is made. The board of directors must specifically approve the initial investment in the mutual fund. These controls are designed to ensure the board of directors of the credit union specifically understands, reviews, and accepts the risk it is taking in the initial purchase of the security and has a program in place to continue to monitor that risk. This rule is adapted from ARM 2.59.1605, which is the bank investment standard in mutual funds. Shareholders must have a proportionate undivided interest in any mutual fund utilized under this rule because it spreads the risk of the investments held by the mutual fund uniformly over all the participants in the fund. This is a method of limiting risk to each individual participant in the fund. The shareholders must be shielded from personal liability for acts or obligations of the mutual fund so that the credit union is not sued for an action or obligation of the mutual fund. Both of the provisions are designed to limit risk to the credit union.

NEW RULE VI GENERAL OBLIGATION BONDS (1) A credit union may invest, without dollar limitation, in the general obligations of:

(a) any state of the United States if the obligations are fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the state responsible for repayment of the general obligation; and

(b) any Montana political subdivision if:

(i) the obligations are issued pursuant to the Constitution, statute, or the charter or ordinances of the respective county or city;

(ii) the obligations are fully guaranteed as to the repayment of principal and interest. Evidence of a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the Montana political subdivision responsible for repayment of the general obligation; and

(iii) the issuing body has not been in default regarding the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

AUTH: 32-3-701, MCA
IMP: 32-3-701, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is identical to ARM 2.59.1603, the general obligation investment rule for banks. Because credit unions do not have capital to absorb losses as banks do, it is important to limit the risk that credit unions are allowed to undertake in their investment portfolios. Since credit unions are allowed to invest in general obligations of the state and its subdivisions, those obligations must be backed by the full faith and credit of the state or its political subdivision to ensure the credit union will not lose money on its investment. In addition, it is too risky for credit unions to invest in a general obligation bond of any political subdivision that has defaulted on its obligations in the past five years. Five years was chosen because it is long enough to ensure that the state or its subdivision is financially able to repay its debt, thus limiting risk to the credit union but not so long as to be economically punitive. It is also consistent with the bank rule which also sets a five-year time frame for entities that have defaulted on their obligations. Therefore, the department by this rule seeks to ensure, as much as possible, that credit unions are making safe investment choices.

NEW RULE VII DIRECTOR TRAINING (1) Training topics and course selection for directors' training must reflect the size and complexity of the business model of the credit union that the directors serve and the depth of understanding needed by the directors to effectively manage the credit union. The training must ensure directors achieve at least the minimum level of competency to enable the directors to exercise appropriate independent business judgment to complement the expertise and business judgment of the credit union's executive officers in matters within the board's authority.

AUTH: 32-3-412, MCA
IMP: 32-3-412, MCA

STATEMENT OF REASONABLE NECESSITY: SB 53, which was passed by the 2015 Montana Legislature, repealed 32-3-412, MCA, and adopted a reorganized and expanded version of that statute. The new law includes director education requirements to ensure that the directors, who collectively, have a different role and function from that of the credit union's executive officers, achieve a level of

competency necessary to fulfill that role and perform that function. A credit union's board members are elected (or temporarily appointed to fill unexpired terms of elected board members) by the credit union's members and are not always or necessarily conversant at the outset with responsibilities of managing a member-owned financial institution. The rule is intended to provide direction and guidance to executive officers of credit unions and their current boards concerning development of director education programs that include minimum standards meeting the legislation's objectives.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., November 23, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., November 16, 2015.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on the eight state-chartered credit unions.

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

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

unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been complied with. The bill sponsors were notified by mail on August 6 and August 19, 2015.

10. The department has determined that under 2-4-111, MCA, the adoption of the above-stated rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.1710, 2.59.1724, and 2.59.1743 pertaining to records to be maintained by mortgage brokers, records to be maintained by mortgage lenders, and reporting forms for mortgage servicers	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 30, 2015, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on November 16, 2015, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.1710 RECORDS TO BE MAINTAINED BY MORTGAGE BROKERS

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

(c) copies of the loan estimate and closing disclosures required by the Truth in Lending Act – Real Estate Settlement Practices Act (TILA-RESPA) Integrated Disclosure (TRID) rule, which must be signed and dated by the borrowers;

(c) through (m) remain the same, but are renumbered (d) through (n).

~~(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment or deposit, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.~~

(3) through (3)(h) remain the same, but are renumbered (2) through (2)(h).

(i) the total ~~yield spread premium~~ adjusted origination charges received by the mortgage broker at the closing of the loan; ~~and~~

(j) the name of the individual mortgage loan originator who originated the loan; and~~.~~

(k) the names of all individuals who received compensation for originating or assisting in the origination of the loan.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124~~, 32-9-125~~, MCA

STATEMENT OF REASONABLE NECESSITY: The department is updating this rule because the TILA-RESPA Integrated Disclosure (TRID) rule becomes effective October 3, 2015. This federal rule creates two new mortgage disclosures called the loan estimate and closing disclosure. Mortgage companies must maintain copies of these disclosures to demonstrate compliance with the federal rule and to allow the department to conduct an examination to determine whether the loan was originated in compliance with the federal rules.

The department's rule requires that the borrower(s) sign and date both disclosures, proving the borrower(s), in fact, received the disclosures. In the past, department examiners have found documents in files that the borrowers did not receive. The signature requirement protects the broker from allegations that the disclosures were not properly made, and the borrower from the possibility of not having actually received the disclosures.

Section (2) is no longer applicable to mortgage brokers because the trust account requirements were repealed from the Montana Mortgage Act in 2013. Brokers no longer are allowed to receive front-end payments from borrowers so there is no longer a need for trust accounts.

The proposed amendments to (3) are necessary because, under the TRID rules, a yield spread premium is no longer a permissible charge on a residential mortgage loan. The fee that a mortgage broker may collect on residential mortgage loans is now called an origination charge.

The information in new (2)(k) is necessary to allow the department to verify that unlicensed mortgage loan origination has not occurred. During an examination of the mortgage broker, the department examiners identify all the individuals who were paid for originating the loan and verify that each of those persons is properly licensed in Montana. The department is proposing to delete 32-9-125, MCA, as an implemented statute because this statute was repealed in 2013. This statute required mortgage brokers to maintain trust accounts in order to accept borrower funds for third-party fees. Borrowers no longer remit funds to mortgage brokers for third-party fees. The cost for an appraisal was the common third-party fee that borrowers used to pay to mortgage brokers. Changes in the manner by which appraisals are now ordered no longer permit mortgage brokers to collect this fee directly from borrowers.

2.59.1724 RECORDS TO BE MAINTAINED BY MORTGAGE LENDERS

(1) through (7)(n) remain the same.

(o) a copy of all appraisals; ~~and~~

(p) a copy of all disclosures, handbooks, and pamphlets required by federal law~~.~~; and

(q) copies of the loan estimate and closing disclosures required by the TILA-RESPA Integrated Disclosure rule, which must be signed and dated by the borrowers (12 CFR 1024 and 1026).

(8) through (14)(c) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-121, ~~32-9-125,~~ 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: The department is updating this rule to reflect the implementation of the TRID rule as stated in the statement of reasonable necessity above. The department is proposing to delete 32-9-125, MCA, as an implemented statute because this statute was repealed in 2013. This statute required mortgage lenders to maintain trust accounts in order to accept borrower funds for third-party fees. The statute was not necessary because it was addressed by an amendment to the Montana Mortgage Act in 2011, which requires mortgage lenders to maintain an escrow fund. The escrow fund requirement is contained within 32-9-145, MCA.

2.59.1743 REPORTING FORMS FOR MORTGAGE SERVICERS

(1) remains the same.

(2) At the servicer's election, ~~the~~ each servicer ~~may~~ shall submit either the expanded mortgage call report (MCR) through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated ~~December 23, 2011~~ September 3, 2015,~~. Each servicer shall submit either an expanded MCR through the NMLS or the Quarterly Statement for Mortgage Servicing Activity dated December 23, 2011~~ for ~~each and~~ every quarter during which it held a license.

(3) The Quarterly Statement for Mortgage Servicing Activity dated ~~December 23, 2011~~ September 3, 2015, which is adopted and incorporated by reference, is available on the ~~department's~~ division's web site at ~~http://banking.mt.gov/Portals/58/Servicer_Quarterly_Report.pdf~~ http://banking.mt.gov/Home/Forms#164912243-loan-servicers.

AUTH: 32-9-130, MCA
IMP: 32-9-170, MCA

STATEMENT OF REASONABLE NECESSITY: The department has revised the Quarterly Statement of Mortgage Servicing Activity form (servicing form) to better reflect the most recent changes to the expanded mortgage call report (MCR), which is available to mortgage servicer licensees on the Nationwide Multi-State Licensing System. The edition date of the servicing form and the current location on the division's web site have also been updated, necessitating this amendment.

The servicing form now provides greater detail to distinguish servicing activities identified as wholly owned loans serviced, loans serviced under mortgage servicing rights, subservicing for others, and subservicing by others. Wholly owned loans serviced are loans serviced by a servicer that also has ownership rights to the loan. Loans serviced under mortgage servicing rights (MSR) are loans serviced by a servicer that only owns the servicing rights to the loan. Subservicing for others are loans that a servicer is subservicing on behalf of another company. Subservicing by others are loans that are wholly owned or for which a servicer owns the MSR and has contracted with a third party to service on its behalf. The servicing form has also been made consistent with the MCR in the categories of types of first lien residential mortgages and other mortgages made.

The majority of the mortgage servicer licensees utilize the MCR to fulfill the reporting requirement. The department has given its servicer licensees the option to use whichever form they prefer, but they must file one form or the other. Only about 19 of the current 135 mortgage servicer licensees use the servicing form.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., November 23, 2015.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., November 16, 2015.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 281 persons based on the 2,813 existing licensed mortgage entities, branches, and mortgage loan originators.

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

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 4.9.301 pertaining to wheat and barley committee grants	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on October 29, 2015, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov.

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

NEW RULE I PROHIBITION ON INDIRECT PAYMENTS (1) In order to make sure funds are not used for prohibited purposes, indirect costs are not generally allowed as part of a grant. If the committee chooses to make an exception to the rule, a unanimous vote is required and the percentage of indirect costs cannot be more than 5 percent.

AUTH: 80-11-205, MCA
IMP: 80-11-202, 80-11-205, MCA

REASON: While not awarding indirect costs has been a long standing pattern of the board, federal agencies have requested that this be in rule to make clear the prohibition.

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

4.9.301 APPLICATION FOR GRANTS (1) Grant applications for project funding ~~shall be filed with the committee before the second regular meeting of the committee held each calendar year. Filing requirements will be satisfied by receipt of one original application at the office of the committee on a date set by the committee~~ must be received by the deadline set by the committee. The committee will set at least one grant deadline per year. Consideration of a late grant application may occur if the committee agrees by unanimous vote.

AUTH: 80-11-205, MCA
IMP: 80-11-202, 80-11-205, MCA

REASON: Due to the volume of grant requests received, the Montana Wheat and Barley Committee determined more than one grant application period may be necessary. This rule change allows for this possibility. It will also create a uniform method to handle late applications.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

6. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 4.3.407, 4.4.202, 4.8.103, 4.12.1501, 4.12.1502, and 4.12.1504 through 4.12.1510 pertaining to student loans, public participation, and the mint committee	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL

TO: All Concerned Persons

1. On November 4, 2015, at 2:30 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on October 29, 2015, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov.

3. The department proposes to repeal the following rules:

4.3.407 DISCONTINUING NEW STUDENT LOANS

AUTH: 80-2-106, MCA
IMP: 80-2-103, MCA

REASON: This rule announcing the discontinuation of student loans is not needed and clutters the rules.

4.4.202 PUBLIC PARTICIPATION

AUTH: 2-15-121, 80-2-201, MCA
IMP: 2-3-103, MCA

4.8.103 PUBLIC PARTICIPATION

AUTH: 80-11-303, MCA
IMP: 2-4-103, MCA

REASON: ARM 4.4.202 and 4.8.103 are redundant because they repeat the department public participation requirements found in ARM 4.2.201 through 4.2.204.

4.12.1501 COMMITTEE ORGANIZATION

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

4.12.1502 COMMITTEE PROCEDURE

AUTH: 80-11-403, MCA
IMP: 80-11-403, MCA

4.12.1504 FEE ON ALL MINT OIL PRODUCED

AUTH: 80-11-403, MCA
IMP: 80-11-412, MCA

4.12.1505 RECORDS REQUIRED

AUTH: 80-11-403, MCA
IMP: 80-11-416, MCA

4.12.1506 MINT OIL PURCHASER LICENSE REQUIRED

AUTH: 80-11-403, MCA
IMP: 80-11-414, 80-11-417, MCA

4.12.1507 DEFINITIONS

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

4.12.1508 CONDITIONS GOVERNING IMPORTATION OF MINT AND MINT ROOTSTOCK

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

4.12.1509 CONDITIONS GOVERNING IMPORTATION OF MINT EQUIPMENT

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

4.12.1510 RIGHT TO CONTEST COMMITTEE ACTION

AUTH: 80-11-403, MCA
IMP: 80-11-401, MCA

REASON: ARM 4.12.1501, 4.12.1502, and 4.12.1504 through 4.12.1510 are authorized by the statutes creating the Mint Committee which were discontinued by the 2015 legislature.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.6.101 commodity advisory committees and repeal of ARM 4.6.501 through 4.6.504 corn crop advisory committee and commodity assessment	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 5, 2015, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of Scott Hart Building, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on October 29, 2015, to advise us of the nature of the accommodation that you need. Please contact Benjamin Tiller, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail btiller@mt.gov.

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

4.6.101 PETITION TO CREATE A COMMODITY ADVISORY COMMITTEE ~~RESEARCH AND MARKET DEVELOPMENT PROGRAM~~ (1) The petition requirements are:

(a) name of applicant;

(b) address of applicant;

(c) phone number of applicant ~~if applicant is an organization, a list of officers with complete addresses and phone numbers~~;

~~(d) the proposed rate of assessment per unit of commodity;~~

~~(e)~~ (d) a proposed statement of purpose;

~~(f)~~ (e) a list of 25 or more producer signatures (including legibly printed names, addresses, and phone numbers) of this commodity who are petitioning the Montana Department of Agriculture to create ~~develop~~ a commodity advisory committee ~~research and market development program~~;

(i) The petition must include only names of individuals ~~persons~~ who are ~~qualify as a "grower or producer" as defined in 80-11-503, MCA; "A person or landowner who is~~ personally engaged in growing or producing the relevant agricultural commodity. ~~commodities, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements."~~

(ii) Each petitioner ~~the grower or producer~~ must have grown or produced the relevant ~~this~~ agricultural commodity within the last two growing seasons.

~~(g) attach a list of all known producers (with addresses and phone numbers) of this commodity, as defined above, who are 18 years of age or older, and a Montana resident;~~

~~(h)~~ (f) the Department of Agriculture shall verify eligibility of petitioners ~~as commodity producers~~ using the definition in (1)(e)~~(f)~~(i)-(ii); and

~~(i) a petition shall be filed with the department either in person or by certified mail; and~~

~~(j)~~ (g) the petition ~~application~~ shall include the name, address, and phone numbers of the designated liaison for the petitioners.

AUTH: 80-11-504, 80-11-510, MCA
IMP: 80-11-510, 80-11-512, MCA

REASON: Sections 80-11-510 and 80-11-512, MCA, were amended during the 2015 legislative session to change how commodity advisory committees and research and market development programs are created.

Prior to the amendments, producers were required to file a petition to create a research and market development program. If the research and market development program was created, then the department was required to form a commodity advisory committee. The amendments reverse this procedure. Now producers must petition the department to create a commodity advisory committee. After a public hearing on a valid petition, the department may create a commodity advisory committee. That committee then meets to consider a referendum to form a research and market development program. The changes to this administrative rule are necessary to accommodate these procedural changes.

These amendments remove the requirement that a petition contain the proposed rate of commodity assessment. Since a research and market development program is required to charge an assessment, this information is not relevant until the commodity advisory committee proposes a referendum. The legislative amendments to 80-11-510 and 80-11-512, MCA, require public meetings to discuss potential assessments prior to a referendum to form a research and market development program.

The description of who may sign a petition has been amended to reflect the legislature's intent to prevent a farm's business entity from being included in the petitioner count if an individual involved in that farm's operations is also a petitioner. The current reference to the definition of grower or producer in 80-11-503, MCA, would allow each farm to contribute an additional petitioner by including the business entity in addition to the individuals.

The requirement that the petitions be delivered by certified mail or in person has been eliminated to reduce the technical restrictions for filing a petition.

4. The department proposes to repeal the following rules:

4.6.501 MONTANA CORN CROP ADVISORY COMMITTEE

AUTH: 80-11-504, 80-11-510, MCA
IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

4.6.502 DEFINITIONS

AUTH: 80-11-504, 80-11-510, MCA
IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

4.6.503 ANNUAL CORN CROP COMMODITY ASSESSMENT–COLLECTION

AUTH: 80-11-504, 80-11-510, MCA
IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

4.6.504 APPLICATIONS FOR CORN CROP RESEARCH AND MARKETING PROJECT FUNDS

AUTH: 80-11-504, 80-11-510, MCA
IMP: 80-11-504, 80-11-510, 80-11-511, 80-11-512, 80-11-515, 80-11-516, 80-11-517, 80-11-518, 80-11-519, MCA

REASON: These rules were repealed by HB 390 during the 2015 legislative session.

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: Benjamin Tiller, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail btiller@mt.gov, and must be received no later than 5:00 p.m., November 16, 2015.

6. Benjamin Tiller, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on April 7, 2015.

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State October 5, 2015.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.16.3122,10.16.3346, 10.16.3505, 10.16.3508, 10.16.3509 through 10.16.3513, 10.16.3518, 10.16.3520, 10.16.3523, 10.16.3560, 10.16.3660 through 10.16.3662; and repeal of 10.16.3514, 10.16.3515, 10.16.3517 and 10.16.3571 pertaining to special education	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 6, 2015, at 10:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Superintendent of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on October 21, 2015, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) remains the same.

(2) For the purposes of this rule, "resides" means ~~where the child lives during the school week~~ a student's residence as defined in 1-1-215, MCA.

(3) through (5) remain the same.

(6) The local educational agency must conduct routine checking of hearing ~~aides~~ aids in accordance with the requirements of 34 CFR 300.113.

(7) and (8) remain the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3346 AVERSIVE TREATMENT PROCEDURES (1) through (8) remain the same.

(9) Parents must be informed as soon as possible, but no ~~less~~ more than 24

hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3505 PARENTAL CONSENT (1) The local educational agency (LEA) shall ~~implement parental consent procedures as described in~~ obtain written consent for initial evaluation and initial provision of special education and related services prior to implementation of a student's individualized education program (IEP) consistent with 34 CFR 300.300 and ~~consistent with~~ this rule.

(2) ~~Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational or public agency prior to the placement.~~

~~(a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.~~ Within one year of implementing the initial IEP, and annually thereafter, the IEP team shall timely meet to create an annual IEP. If the parent agrees with the proposed special education and related services and signs the IEP giving consent, the LEA shall begin implementation.

~~(b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved.~~

~~(c) When parental consent for annual placement has not been obtained and has not been specifically refused, the local educational agency shall informally attempt to obtain consent from the parent.~~

~~(i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.~~

(3) The following procedures are intended to encourage continued parental participation in the development of the IEP, and to ensure the timely provision of FAPE when the parent does not agree and sign the annual IEP.

(a) Pursuant to 34 CFR 300.503, the LEA shall provide prior written notice of the changes to the parents, which includes a copy of the IEP, invites the parents to submit written exceptions to the IEP, and indicates that, if the parent does not respond, the LEA may implement the IEP as developed by the IEP team beginning 15 days following the date of the prior written notice.

(b) If the parent does not identify, in writing, the disputed special education and related services in the proposed IEP within 15 days of the date of the prior written notice, the LEA may implement the proposed IEP.

(c) If a parent provides written exceptions to the proposed special education and related services in the annual IEP within 15 days of the prior written notice the LEA shall implement the IEP in the areas of agreement. The student's last agreed-

upon IEP shall remain in effect in the areas specifically disputed in writing, as exceptions, until the disagreement is resolved or implemented as provided below.

(i) The LEA shall allow a reasonable amount of time to resolve the disagreements before sending the second prior written notice. If agreement is reached and the parents sign the IEP giving consent, the LEA shall begin implementation.

(ii) If agreement is not reached after a reasonable amount of time, the LEA shall provide a second prior written notice that includes the IEP which resulted from the discussion with the parents and shall implement the annual IEP 15 days after the date of the second prior written notice.

~~(ii)~~ (4) If ~~no response from the parent is obtained, the local educational agency shall~~ the LEA provides the student any special education and related services according to the student's annual IEP without parental consent ~~subject to the parent's right to~~ pursuant to the requirements above, a parent may request an impartial due process hearing under ARM 10.16.3507 through 10.16.3523 or utilize other available dispute resolution procedures.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3508 ~~INITIATING~~ SPECIAL EDUCATION DUE PROCESS HEARING

(1) A parent or public agency as defined in 34 CFR 300.33 may request ~~for~~ an impartial due process hearing involving the education or possible identification of a student with disabilities. The request shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501. A copy of the request shall be mailed to the other party.

(2) remains the same.

~~(3) Upon receipt, the Superintendent of Public Instruction shall mail a copy to the other party.~~

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

(4) Pursuant to 34 CFR 300.508 (e) and (f), the party receiving a due process complaint has ten days to file a response, and if required, the LEA must send prior written notice.

(5) All pleadings and discovery shall be filed and served both electronically and by U.S. mail. The time period for any response shall begin on the next business day following electronic service.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3509 ~~SPECIAL EDUCATION DUE PROCESS HEARING PROCEDURES~~ APPOINTMENT OF IMPARTIAL HEARING OFFICER (1) Upon receipt by mail of a signed written request for a due process hearing involving a special education controversy, the Superintendent of Public Instruction shall:

(a) promptly advise the LEA ~~district administration~~ and parent, legal guardian, or surrogate parent of the request for due process hearing; and

(b) and (b)(i) remain the same.

(ii) ~~Selection of impartial hearing officer:~~

~~(A)~~ Upon receiving a request for hearing, the Superintendent of Public Instruction shall ~~mail to each party a list of the names of five proposed impartial hearing officers together with a summary of their qualifications.~~ appoint an impartial hearing officer from the maintained list of qualified, available, impartial hearing officers.

~~(B) Each party shall have five business days following receipt of the list of names to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the Superintendent of Public Instruction. Requests for more information about proposed impartial hearing officers must be directed to the Superintendent of Public Instruction. Unless good cause is shown, this request for more information does not extend the five business day response time. (This five business days is counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.3523.)~~

~~(C) If the parties arrive at a mutually agreeable choice, the Superintendent of Public Instruction shall make the appointment from the ranking.~~

~~(D) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the Superintendent of Public Instruction shall make the appointment from the names ranked by the parties.~~

(2) An impartial hearing officer may at any point withdraw from ~~consideration~~ appointment or ~~from~~ service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written request to withdraw shall be directed to the Superintendent of Public Instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3510 SCHEDULING CONFERENCE AND NOTICE OF HEARING

(1) The impartial hearing officer shall, within five business days of the filing of the response or the completion of the resolution process, whichever comes first, conduct a prehearing scheduling conference ~~pursuant to ARM 10.16.3512~~. ~~The impartial hearing officer shall inform the parties of all future proceedings in this matter.~~ Following the prehearing scheduling conference, the impartial hearing officer shall issue a notice of hearing. The notice of hearing shall include, at a minimum:

(a) a statement of the date, time, place, location, and nature of the hearing;

(b) a schedule for discovery, including schedule for identification of expert and lay witnesses and exchange of proposed exhibits, prehearing motions and post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order;

(c) references to the specific applicable statutes and rules ~~involved available at that time~~;

(d) remains the same.

(e) a provision informing the parent of any free or low-cost legal and other

relevant services available in the area; ~~and~~

(f) ~~a statement of issues and matters to be discussed at the hearing.~~ a statement of whether or not the parent wants an electronic verbatim record of the hearing and/or the findings of facts and decision; and

(g) consideration of such other matters as may aid in the disposition of the action.

(2) The notice of hearing shall be sent by certified mail to any party not represented by counsel. Any party represented by counsel shall be served by regular and electronic mail addressed to the attorney representing the party.

(3) ~~If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed.~~

~~(a)~~ The notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication.

(4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued ~~by~~ at the hearing officer's discretion ~~as stipulated~~ after stipulation by ~~the~~ all parties or upon motion of a party showing reasonable necessity for the continuance, but in no event beyond 12 months from the date of filing of the due process action. In determining whether to grant a request for continuance, ~~or~~ approve a stipulation for continuance, or approve any action which may unduly delay the hearing, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing, including the impact to the student's right to FAPE due to a delay of the hearing process.

(5) The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named LEA is located.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3511 CONFERENCE AND INFORMAL DISPOSITION (1) The impartial hearing officer may informally confer with the parties to the request for impartial due process hearing for the purpose of attempting informal disposition of any special education controversy in addition to the requirements in ARM 10.16.3510 and 10.16.3512.

(2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may ~~informally confer to~~ resolve the special education controversy by stipulation, agreed settlement, dismissal, or other resolution ~~consent order, or default~~. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the

proceedings upon formal action of the hearing officer ~~unless a party to the hearing appeals the decision under ARM 10.16.3523~~.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING CONFERENCE - FORMULATING ISSUES (1) The impartial hearing officer shall ~~schedule~~ conduct a prehearing conference prior to the hearing to:

(a) identify and clarify the issues to be decided at the hearing;

(b) and (c) remain the same.

~~(d) set discovery and prehearing schedule, including schedule for identification of expert witnesses;~~

~~(e) determine if the parent wants an audio record of the hearing and/or the findings of facts and decision;~~ and

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

(2) Any evidence to be introduced at the hearing, including all evaluations and recommendations based on the evaluations, shall be disclosed to the opposing party at least five business days before the hearing.

(3) Initial objections to the introduction of any offered evidence must be made at least three business days prior to the hearing.

~~(2)~~ (4) The impartial hearing officer shall make an order which recites the action taken at the conference, any amendment to the request for impartial due process hearing, the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order when entered will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. ~~The impartial hearing officer, in his/her discretion, may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above.~~

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

~~(4) The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located.~~

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3513 DISCOVERY (1) The impartial hearing officer may compel~~,~~ or limit ~~or conduct~~ discovery prior to the hearing and/or prehearing conference pursuant to ARM 10.16.3514 through 10.16.3516.

(2) Within the discretion of the hearing officer, the following methods of discovery are available to the parties upon the filing of a request for due process:

(a) depositions;

(b) written interrogatories;

(c) requests for admissions;

(d) production of documents or things; and

(e) permission to enter upon land or property, to observe educational programs and other purposes.

(3) The time for responding to requests for production, requests for admission, and interrogatories is 20 calendar days from the date the discovery requests are served on the receiving party or such other time as set by the hearing officer.

(4) The hearing officer shall set a date by which discovery must be completed and establish a calendar so that discovery does not delay the hearing.

(5) The hearing officer may limit or compel discovery as necessary to balance the need for reasonable discovery with the need to not unduly delay the hearing.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3518 AVAILABILITY OF CROSS-EXAMINATION OR PARTICIPATION IN THE HEARING (1) The right to examine~~,~~ or cross-examine ~~or to participate~~ as a party in this action shall be limited to the attorneys, the parties named in the matter, and the impartial hearing officer. ~~the~~ A lay advocate~~s~~ with special knowledge or training with respect to students with disabilities ~~who~~ may accompany and advise a ~~particular~~ party named in the matter~~, the particular parties named in the matter, and the impartial hearing officer~~.

(2) Parents involved in hearings have the right to have the child who is the subject of the hearing present at the hearing and open the hearing to the public.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER (1) The impartial hearing officer may:

(a) and (b) remain the same.

(c) ~~provide~~ upon request of a party, as deemed necessary by the hearing officer, allow for the taking of testimony by depositions of witnesses who will not be available for the hearing, including video or audio testimony of a witness who is unavailable or when procurement of the witness in person at the hearing will be unduly costly and burdensome for a party, without causing unreasonable delay of the proceedings;

(d) set the time, ~~and~~ place, and length of the hearing and direct parties to appear and confer to consider simplifications of the issues by consent of the parties involved;

(e) fix the time for filing of briefs or other documents; and

(f) remains the same.

(2) The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence, except as provided by these rules. Evidence, including hearsay evidence, is admissible if the impartial hearing officer deems it to be

reasonable, appropriate, and reliable. All evidence and objections to evidence shall be noted in the record~~:~~.

(3) Documents or other evidence regarding the student who is the subject of the proceeding or his or her parents contained in the LEA or public agency's educational records as defined in the Federal Educational Rights and Privacy Act (FERPA), and its implementing regulations at 34 CFR 99, shall be allowed as self-authenticating, and shall require no extrinsic evidence of authenticity as a condition precedent to admissibility.

~~(a)~~ (4) ~~a~~Any part of the evidence may be received in written form~~;~~.

~~(b) d~~Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the impartial hearing officer's specialized knowledge.

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within ~~45 days of the Superintendent of Public Instruction's receipt of the request for hearing~~ the 45-day time frame delineated in 34 CFR 300.515, unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the Superintendent of Public Instruction. The hearing officer shall also mail or deliver the record as defined in ARM 10.16.3522 to the Superintendent of Public Instruction.

(2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in which to render a final decision, the impartial hearing officer shall notify the Superintendent of Public Instruction, in writing, when the decision ~~is due~~ will be issued, providing justification for the extension and including consideration of the impact on the student at issue in the matter. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the Superintendent of Public Instruction, the Superintendent of Public Instruction may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the LEA's ~~school district's~~ placement is determined to be inappropriate and the parent's placement is deemed appropriate.

(4) and (5) remain the same.

(6) The Superintendent of Public Instruction shall ~~only~~ be responsible for paying only administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and ~~stenographic~~ court reporter

services. The parties involved shall each be responsible for any legal or other fees that occur.

(7) ~~Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance.~~ A court of competent jurisdiction may award reasonable attorneys' fees to a prevailing party in accordance with 34 CFR 300.517.

~~(8) In the event that parents of a student with disabilities prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under 34 CFR 300.517.~~

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

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

10.16.3560 SPECIAL EDUCATION RECORDS (1) remains the same.

(2) The OPI shall enforce this rule consistent with the IDEA. LEAs found to be out of compliance by OPI with provisions of this policy under IDEA shall be given an opportunity to come into compliance; demonstrate policies, procedures, or practices to ensure future compliance; be required to complete a corrective action plan consistent with this rule and applicable state and federal law; or any other sanctions determined necessary and appropriate by the OPI.

~~(2)~~ (3) The special education record retained by each LEA shall include access log, request for initial evaluation, permission for evaluation, summaries of assessments, test protocols, and other information that are not subject to sole possession requirements of FERPA, evaluation reports, individualized education programs, and reports of the student's progress toward meeting annual goals of the individualized education program.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3660 EARLY ASSISTANCE PROGRAM (1) remains the same.

(2) A parent, guardian, adult student, LEA ~~school district~~, or their representative may request early assistance in any issue related to a ~~student's free appropriate public education~~ violation of Part B of the IDEA, 20 U.S.C. 1400, et seq., or Montana special education laws, Title 20, chapter 7, MCA, and corresponding regulations at 34 CFR Part 300 and ARM 10.16.3007, et seq. The Early Assistance Program does not require formal, written application.~~; however, r~~Request for early assistance may be made in writing to the Superintendent of Public Instruction, Legal Division-Dispute Resolution Office, P.O. Box 202501, Helena, MT 59620-2501. ~~There is no pre-established procedure that must be followed.~~

(3) ~~The Early Assistance Program focuses on substance -- the quick resolution of problems of mutual concern to all parties. It is not based on the model of an impartial third party resolving a legal dispute between parties with conflicting goals or interests. It is, however, based on the goal of ensuring the delivery of a free~~

~~appropriate public education. The Early Assistance Program draws on the traditional model of parents and schools working cooperatively to achieve their shared goal of meeting the educational needs of the student with disabilities.~~

~~(4) As stated in~~ Pursuant to ARM 10.16.3662, immediately following the filing of a ~~formal administrative~~ state complaint as referenced in 34 CFR 300.151 through 300.153 ~~(as distinguished from a request for due process), a parent or guardian and the local educational or public agency may to allow the Superintendent of Public Instruction, through~~ the Early Assistance Program~~,~~ has 15 business days from the day it receives the written complaint to attempt to resolve the problem through the ~~Early Assistance~~ program. Pursuant to 34 CFR 300.152(b)(1)(ii) these 15 ~~business~~ days shall not be counted as part of the 60-day complaint resolution timeline.

~~(5)~~ (4) The services offered under this program are available in all circumstances where there is a possibility for resolution. If the Early Assistance Program ~~manager~~ director decides that any attempt to mutually resolve the complaint would be futile, the ~~compliance officer~~ dispute resolution office shall proceed according to the procedures and timelines set forth in 34 CFR 300.151 through 300.153 and ARM 10.16.3662.

AUTH: 20-7-402, MCA
IMP: 20-7-403, MCA

10.16.3661 OPPORTUNITY TO PRESENT STATE COMPLAINTS~~S~~ (1) ~~The Superintendent of Public Instruction has established state complaint procedures to comply with~~ Pursuant to 34 CFR 300.151 through 300.153~~.~~, ~~I~~individuals or organizations alleging that a Montana local educational or public agency has violated the provisions of Part B of the IDEA, 20 U.S.C. 1400, et seq. or Montana special education laws including failure ~~failed~~ to provide a student with disabilities a free appropriate public education or procedural safeguards may use ARM 10.16.3662 to file a state complaint. As used in this chapter, the term "local educational agency (LEA)," shall include other public agencies or state-operated programs.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint ~~that~~ alleging the ~~local educational or public agency is violating~~ LEA violated the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

(2) The state complaint must:

(a) allege a violation that occurred not more than one year prior to the date ~~that~~ the complaint is ~~received~~ filed;

(b) state the name and address of the affected child, if applicable, and the name of the school where the violation allegedly occurred;

(c) contain a ~~specific~~ statement ~~of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education the local educational or public agency has allegedly violated~~ that the agency has violated a requirement of federal or state special education laws or regulations; ~~and~~

~~(c)~~ (d) ~~include a statement of~~ state the nature of the problem and the facts on which ~~the~~ each allegation is based; and

(e) state a proposed resolution of the problem to the extent known and available to the complainant.

(3) The complaint must be file~~d~~ ~~the complaint~~ with the ~~Compliance~~ OPI Dispute Resolution Office~~r~~, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and ~~forward~~ a copy provided by the complainant to the ~~local educational or public agency serving the child~~ LEA, or other party if the complaint is filed by the LEA. The ~~compliance~~ dispute resolution office~~r~~ may return the complaint for a more complete statement of the issue~~. The compliance officer may~~ and contact the complainant orally or in writing to discuss the details of the complaint before acceptance and filing of the complaint.

(4) Within ten calendar days of ~~receipt of the final written complaint~~ filing, the ~~compliance~~ dispute resolution office~~r~~ shall send written ~~notification~~ notice to the complainant and the ~~local educational or public agency~~ LEA that a complaint has been filed.

(a) The ~~compliance officer~~ written notice shall include a copy of the complaint ~~with the notice to the local educational or public agency~~.

(b) If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a free appropriate public education to the student, the ~~compliance officer~~ written notice shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM ~~10.16.3507~~ 10.16.3508 through ~~10.16.3523~~ 10.16.3531.

(c) The written notice shall inform the ~~local educational or public agency and the complainant that~~ parties ~~the compliance officer will contact both parties to notify them of the availability~~ of the Early Assistance Program as set forth in ARM 10.16.3660.

(5) ~~If the local educational or public agency and the complainant are successful in resolving the dispute within 15 business days, the complaint will be dismissed. If the dispute is not resolved through the Early Assistance Program process, the compliance officer shall immediately request the local educational or public agency to prepare and submit its written response to the complaint within ten calendar days of receiving the notice that the Early Assistance Program has been unsuccessful. An extension may be granted to the local educational or public agency by the compliance officer based on reasonable necessity. The local educational or public agency shall send its response to the compliance officer and a copy to the complainant.~~ The EAP shall have up to 15 business days from the filing of the complaint to assist the parties to resolve the dispute. If successful, the complaint will be dismissed. If the EAP process is not successful, the dispute resolution office shall immediately notify the responding party to prepare and submit its written response of the complaint to the dispute resolution office and send a copy

to the complainant within ten calendar days. An extension may be granted based on reasonable necessity.

(6) Upon receipt of the ~~local educational or public agency's~~ response, the ~~compliance~~ dispute resolution officer~~r~~ shall begin an appropriate investigation.

(7) The complainant will have ten calendar days to submit additional relevant information to the ~~compliance~~ dispute resolution officer~~ additional information~~, either orally or in writing~~, about the allegations in the complaint and the local educational or public agency's written response to the complaint~~.

(8) ~~During the investigation neither the complainant nor the local educational or public agency or others representing either party shall contact the compliance officer without notifying the other party.~~ Following an appropriate investigation, the ~~compliance~~ dispute resolution officer~~r~~ shall review all relevant information and make an independent determination as to whether ~~the local educational or public agency is violating~~ a violation of a ~~requirement of~~ federal or state statute, regulation, or rule concerning IDEA special education has occurred ~~the provision of a free appropriate public education to a student with disabilities~~. ~~The compliance officer shall write a~~ A final report shall be issued within 60 days of ~~receipt~~ filing of the complaint unless an extension of the 60-day period is required by exceptional circumstances which exist with respect to the particular complaint or the timeline was modified during the Early Assistance Program process.

(9) The final report ~~will~~ shall address each allegation in the complaint and ~~state~~ list findings of fact and ~~legal~~ conclusions of law, ~~if required. The written decision will contain~~ including the reasons for the ~~compliance officer's~~ decision. If the ~~compliance officer~~ final report concludes that an allegation is true and ~~that~~ corrective action is required to comply with federal or state law, ~~the compliance officer will order the~~ corrective action ~~and~~ shall be ordered ~~include~~ including timelines for implementation of such action. The Superintendent of Public Instruction will provide technical assistance at the request of the local educational or public agency. The Office of Public Instruction shall retain the investigative files as a confidential agency record pursuant to the appropriate retention schedule ~~complaint, investigative records, and the final report shall be filed in a confidential file retained by the compliance officer~~.

(10) At any time during this process, if the ~~compliance~~ dispute resolution officer~~r~~ determines ~~that~~ the complaint has been resolved and compliance is achieved, the ~~compliance officer shall inform the complainant and the local educational or public agency of that fact in writing~~ parties shall be informed and the complaint shall be dismissed.

(11) If within ~~60 days~~ one year of issuance of the final report, the ~~local educational or public agency~~ LEA has not implemented the corrective action required by the final report, the Superintendent of Public Instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

(a) recommending to the Board of Public Education withholding state education funds;

(b) denial in whole or part IDEA, Part B federal funds; or

(c) recommending to the Board of Public Education a change in accreditation status.

(12) ~~If~~ Prior to implementing the final report order, and prior to implementing sanctions against the LEA, and if the ~~local educational or public agency~~ LEA alleges that the ~~compliance~~ officer~~r~~ has violated a state or federal special education statute, regulation, or rule in ordering the corrective action required by the final report, the Superintendent of Public Instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA~~, prior to implementing sanctions~~.

(13) There is no right to appeal a final report issued as a result of a state complaint.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

4. The board proposes to repeal the following rules:

10.16.3514 DISCOVERY METHODS, AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA

10.16. 3515 SCOPE AND LIMITATION OF DISCOVERY, AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA

10.16.3517 SEQUENCE AND TIMING OF DISCOVERY, AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA

10.16.3571 PARENTAL CONSENT FOR RECORDS, AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA

5. REASON: The OPI has determined that it is reasonably necessary to amend these rules pertaining to special education to clarify and correct policy and practice consistent with the IDEA. Specifically, proposed amendments include language in ARM 10.16.3122 to ensure consistency between law and rule regarding legal residency. Legal residency would take precedence over the inconsistent rule, thereby creating confusion for application of the rule. There is an error corrected in ARM 10.16.3346. Amendments to ARM 10.16.3505 provide detailed procedure for continuation of education services to be provided to a student eligible for special education when there is disagreement over an annual renewal of an IEP. Presently, the student at issue is left with an outdated IEP which must be implemented by the LEA if the parents do not consent to a new IEP, which is contrary to the intent of the IDEA. Proposed language in ARM 10.16.3508 clarifies that the party requesting a due process claim is responsible for sending the request to the opposing party. Amendments to ARM 10.16.3509 are necessary to allow for the required appointment of an impartial hearing officer by the OPI for due process hearings without a strike list. There are not many trained impartial hearing officers in this state. When a request for a due process hearing is made, the OPI is responsible for finding a trained impartial hearing officer and must have more flexibility to utilize the individuals trained and available to conduct a hearing.

Proposed language in ARM 10.16.3510 through 10.16.3523, and the repeal of ARM 10.16.3514, 10.16.3515, and 10.16.3517 are also reasonable and necessary to implement the intent of the IDEA by the use of due process hearings which are designed by IDEA to efficiently and quickly resolve disputes. Current rules, including extensive discovery, have created a hearing process which more resembles a full trial than an expeditious means to continue the special education of an eligible student. The educational needs of the student are not being met by prolonged hearings. The amendments to ARM 10.16.3560 and repeal of ARM 10.16.3571 better reflect the intent and requirements of IDEA regarding protection of confidential student records. Revisions to ARM 10.16.3660 through 10.16.3662 correct and clarify the processes for the Early Assistance Program and for a state complaint in accordance with applicable federal laws.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

7. Ann Gilkey, Chief Legal Counsel for the Superintendent of Public Instruction, has been designated to preside over and conduct this hearing.

8. The Office of Public Instruction 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 agency.

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

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

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

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.40.201, 17.40.202, 17.40.206, 17.40.207, 17.40.213, and 17.40.215 pertaining to definitions, classification systems, examinations, experience and education, continuing education requirements, and approved training providers	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER TREATMENT SYSTEMS AND OPERATORS)

TO: All Concerned Persons

1. On November 4, 2015, at 9:30 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., October 26, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.40.201 DEFINITIONS In addition to the terms defined in 37-42-102, MCA:

(1) remains the same.

(2) "Certified operator-in-training" means an operator who does not satisfy the experience requirements set forth in ARM 17.40.213, but has:

(a) passed the certification examination; and

(b) met applicable continuing education requirements~~, if any,~~ in ARM 17.40.213.

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

~~(6) "Operator-in-training" means an operator who has passed the certification examination but does not yet meet the experience requirements set out in ARM 17.40.207.~~

(7) through (12) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-202, MCA

REASON: The department is proposing to amend the definition of certified operator-in-training to add a requirement that each certified operator-in-training must earn continuing education credit(s) (CECs) to maintain a certificate. The purpose of the proposed amendment is to ensure that certified operators-in-training remain current with rules, regulations, and other topics in their fields.

In addition, the department is proposing to add the word "certified" before "operator-in-training" to emphasize that there are specific requirements to be met in order to become an operator-in-training.

17.40.202 CLASSIFICATION OF SYSTEMS (1) For operators certified prior to January 1, 2016, ~~A~~all water supply systems and wastewater systems are classified according to population served or type of treatment as shown below:

(a) through (e)(iv)(K) remain the same.

(2) For operators certified on or after January 1, 2016, all water supply systems and wastewater systems are classified according to population served or type of treatment as shown below:

(a) Water distribution systems:

(i) Class 1--serving more than 15,000 people;

(ii) Class 2--serving 1,501 to 15,000 people;

(iii) Class 3--serving 500 to 1,500 people;

(iv) Class 4--serving fewer than 500 people.

(b) Water treatment systems:

(i) Class 1--treatment for surface water utilizing chemical coagulation, filtration, and disinfection;

(ii) Class 2--treatment for surface water not utilizing chemical coagulation;

(iii) Class 3--ground water supply serving at least 500 people with or without disinfection;

(iv) Class 4--ground water supply serving fewer than 500 people with or without disinfection.

(c) Wastewater treatment systems:

(i) Class 1--secondary and advanced (tertiary) treatment provided by:

(A) conventional activated sludge plants;

(B) biological nutrient removal plants;

(C) ammonia conversion processes;

(D) extended aeration activated sludge plants, such as oxidation ditches and package plants, fixed-growth trickling filter, and bio-disc plants;

(E) sequencing batch reactors; and

(F) other tertiary processes, such as effluent filtration and membrane bioreactor systems;

(ii) Class 2--No class 2;

(iii) Class 3--secondary treatment provided by aerated lagoons or lagoons not utilizing artificial aeration;

(iv) Class 4--No class 4.

(d) Industrial wastewater treatment systems:

(i) Class 1--physical-chemical or biological treatment facility treating more than 1.0 mgd, including, but not limited to, the following:

(A) air flotation;

(B) air stripping;
(C) reverse osmosis;
(D) electrochemical treatment;
(E) activated sludge;
(F) anaerobic digestion;
(G) aerobic digestion;
(H) nutrient removal systems;
(I) tertiary treatment; or
(J) chemical clarification;
(ii) Class 2--biological treatment facilities treating 1.0 mgd or less, including, but not limited to, the following:
(A) clarification;
(B) filtration;
(C) constructed wetlands;
(D) carbon adsorption;
(E) ion exchange;
(F) disinfection;
(G) trickling filters;
(H) bio-disc systems;
(I) sequencing batch reactors;
(J) biological sand filters;
(K) membrane filtration; or
(L) advanced on-site treatment and disposal systems described under certification class (e)(ii) requirements;
(iii) Class 3--industrial treatment facilities, including, but not limited to, the following:
(A) oil-water separation;
(B) grinding or communitors;
(C) land surface disposal;
(D) neutralization (pH adjustment);
(E) aerated lagoons;
(F) on-site septic tank treatment systems with pressure dosed drainfields;
(G) siphon dosed drainfields; or
(H) elevated sand mounds;
(iv) Class 4--industrial treatment facilities, including, but not limited to, the following:
(A) detention ponds;
(B) sedimentation ponds;
(C) stabilization ponds;
(D) lagoons without mechanical mixing or aeration;
(E) septic systems treating the discharge from drinking water treatment systems; or
(F) on-site treatment using standard septic tanks and gravity drainfields.
(e) On-site systems:
(i) No class 1;
(ii) Class 2--package biological wastewater treatment systems, which are public sewage systems and are regulated with a MGWPCS discharge permit,

including, but not limited to, the following:

(A) conventional activated sludge;

(B) sequencing batch reactor;

(C) fixed film; and

(D) extended aeration activated sludge systems;

(iii) Class 3--treatment systems, which are public sewage systems and are regulated with a MGWPCS discharge permit, including, but not limited to, the following:

(A) recirculating media trickling filters;

(B) intermittent sand filters;

(C) recirculating sand filters;

(D) aerobic wastewater treatment units;

(E) chemical nutrient reduction systems;

(F) alternate advanced treatment systems; and

(G) experimental systems;

(iv) Class 4--treatment with soil absorption systems, which are public sewage systems and are regulated with a MGWPCS discharge permit, including, but not limited to:

(A) standard absorption trenches;

(B) shallow capped absorption trenches;

(C) deep absorption trenches;

(D) sand-lined absorption trenches;

(E) gravelless trenches and other absorption methods;

(F) elevated sand mounds;

(G) evapotranspiration absorption and evapotranspiration systems;

(H) subsurface drip;

(I) gray water irrigation systems;

(J) absorption beds; and

(K) experimental systems.

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

AUTH: 37-42-202, MCA
IMP: 37-42-104, 37-42-304, 37-42-306, MCA

REASON: The department is switching from Montana-specific examinations to standardized examinations in order to save the cost of updating and validating the current examinations. To make the transition smooth, the old examinations will be used until the end of 2015. After a one month moratorium in December 2015, the new examinations will be implemented in January 2016.

The standardized examinations are through the Association of Boards of Certification (ABC) testing, which administers tests to utilities throughout the United States. ABC has a nationwide system of classifying water and wastewater treatment plants and water distribution systems. Montana has revised its classification system to incorporate key provisions of the ABC system, yet still preserve Montana-specific requirements. These amendments are expected to allow operators to transfer operator certificates to and from Montana more easily.

Three major amendments have been proposed. First, water distribution class

population sizes were adjusted to more closely match ABC's classification system. Second, Montana's water treatment class 5 certification was combined with class 4. Class 4 will become ABC's "very small water treatment system" class, which will be the only remaining combination examination, thus keeping costs down for small systems. The other combination examinations will no longer be offered, requiring operators to take the distribution examination separately from the treatment examination. Third, the wastewater mechanical treatment plant classes will be combined into one class (designated 1C). In addition, the wastewater lagoon treatment plant classes will be combined into one class (designated 3C). There are two justifications for combining wastewater treatment classes. First, the knowledge base required on the ABC examination for mechanical plants, regardless of complexity, is very similar. The same is true for lagoon plants. Second, as systems upgrade, operator certification level can change. With the proposed changes, both mechanical treatment plants and lagoon systems can upgrade without changing operator certification requirements.

The amendments would clearly delineate implementation dates for the new examinations and the new requirements/classifications for water and wastewater treatment plants and water distribution systems in Montana.

17.40.206 EXAMINATIONS (1) remains the same.

(2) An annual application fee~~, based on the state fiscal year,~~ is required for each application for water certification and each application for wastewater certification. Examination fees are required for each examination taken.

(3) through (8) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-201, 37-42-301, 37-42-305, 37-42-306, MCA

REASON: ARM 17.40.212 provides that an application fee entitles an applicant to take examinations for 12 months from the date of an examination application. This proposed amendment will delete conflicting ARM language in 17.40.206 that entitles an applicant to take examinations only during the fiscal year the fee was paid. This rule gives most operators less than a year, possibly only a couple of months, to take examinations before paying another application fee. There is no reason to allow applicants less than a full year.

17.40.207 EXPERIENCE AND EDUCATION (1) remains the same.

(2) To become fully certified, an operator, in addition to passing the certification examination for the operator's specific classification, must have the following operating experience in a facility of that classification:

(a) Class 1--two and one-half years' experience;

(b) Class 2--~~one and one-half~~ two years' experience;

(c) Class 3--one and one-half years' experience;

(d) Class 4--~~six months~~ one year experience~~;~~

~~(e) Class 5--three months experience~~.

(3) and (4) remain the same.

(5) A person who has passed the examination but lacks the requisite

experience will be issued a certificate as CERTIFIED OPERATOR-IN-TRAINING. When the experience requirement is fulfilled and the operator returns a verified experience voucher to the department, a certificate as CERTIFIED OPERATOR will be issued.

AUTH: 37-42-202, MCA
IMP: 37-42-201, 37-42-302, 37-42-306, MCA

REASON: ABC has a nationwide system of certification standards, including experience requirements. Five surrounding states (Wyoming, Idaho, North Dakota, South Dakota, and Washington) and ABC-mandated experience requirements are more stringent than even the proposed Montana experience requirements. Currently, operators are sitting for examinations shortly after hire. However, past experience with current ABC prescriptive examinations has shown that more experience is generally necessary for operators to pass these examinations.

The proposed increase in experience requirements will be combined with operator certification encouragement to work as long as possible before sitting for examinations. As a result, even with new standardized ABC examinations, examination pass rates should increase.

17.40.213 CONTINUING EDUCATION REQUIREMENTS (1) ~~A~~ Each fully-certified operator and certified operator-in-training (hereafter collectively called "certified operators") shall earn a continuing education credit or credits, as specified in this rule, during each two-year period commencing on July 1 of each even-numbered year as follows:

(a) and (b) remain the same.

(c) A Class 1 fully-certified operator shall earn two credits for ~~each certificate held by the operator for water treatment, or water distribution, or both,~~ a water certification and ~~shall earn~~ two credits for ~~each~~ a wastewater ~~certificate~~ certification held by the operator.

(d) A Class 1 certified operator-in-training shall earn one credit for a water certification and one credit for a wastewater certification held by the operator.

~~(d)~~ (e) A Class 2, 3, ~~and~~ or 4 fully-certified operator shall earn one credit for ~~each certificate held by the operator for water treatment, or water distribution, or both,~~ a water certification and ~~shall earn~~ one credit for ~~each~~ a wastewater ~~certificate~~ certification held by the operator.

(f) A Class 2, 3, or 4 certified operator-in-training shall earn 1/2 credit for a water certification and 1/2 credit for a wastewater certification held by the operator.

~~(e)~~ (g) A Class 5 fully-certified operator shall earn 0.4 credits for ~~each~~ a water ~~certificate~~ certification held by the operator for water treatment or water distribution.

(h) A Class 5 certified operator-in-training shall earn 0.2 credits for a water certification held by the operator.

(2) through (3) remain the same.

(4) If a~~n~~ certified operator upgrades a certificate or becomes newly certified during the period from January 1 of an odd-numbered year to June 30 of the following even-numbered year and that upgrade increases the credit requirement,

the operator shall during that same two-year period earn the lower credit requirement but is not required to meet the higher credit requirement until the next two-year period commences.

(5) Only ~~a~~an certified operator who fulfills the credit requirements before the end of each two-year period may obtain renewal of a certificate. Except as provided in (1) and (13), the certificate of an operator who does not fulfill the credit requirements expires on June 30 of the applicable two-year period and the person may receive a new certificate on submission of an application, payment of the appropriate application and examination fees, and passage of the appropriate examination.

(6) through (7)(c) remain the same.

(8) In addition to the requirements in (6), the subject matter of the educational offering must be relevant to the particular class(es) of certificates to which the credit is being applied. A~~n~~ certified operator may receive credit only for courses approved for the type of ~~certificate~~ certifications(s) held by that operator.

(9) remains the same.

(10) ~~Fully c~~Certified operators holding both water and wastewater certificates may earn credits toward the continuing education requirements of both certificates (i.e.~~,~~ dual credits) by attending a course which has been approved for both classes of certificates.

(11) through (15) remain the same.

(16) The department shall temporarily inactivate the certificate of a~~n~~ certified operator who is on active military duty if the operator notifies the department in writing of the change in status and requests inactivation.

(17) through (17)(b) remain the same.

(18) After a certificate has been reactivated under (17), the certified operator shall meet the continuing education credit requirements for the current continuing education two-year period by the June 30 deadline or within 18 months of the operator's return, whichever is longer.

AUTH: 37-42-202, MCA
IMP: 37-42-304, 37-42-305, 37-42-306, 37-42-307, 37-42-308, MCA

REASON: The department is proposing to add continuing education requirements (CECs) to maintain certified operator-in-training certification, beginning with the June 2016 to May 2018 certification period so OITs remain current on rules, regulations, and topics in their fields.

17.40.215 APPROVED TRAINING PROVIDERS (1) through (2) remain the same.

(3) An approved training provider shall provide the following documentation, maintain the following records~~,~~ and make such information available to the department upon request:

(a) through (d) remain the same.

(e) The training provider shall distribute to each attendee a continuing education credit report form provided by the department to be filled out by the attendee.

(i) through (iv) remain the same.

(v) For continuing education credits taken during a continuing education two-year period to count toward satisfying a~~n~~ certified operator's continuing education requirements, those credits must be reported on credit report forms received by the department by June 15 of each even-numbered year. If credits sufficient to satisfy the continuing education requirements are not so reported, the certificate of the operator may be suspended or revoked as set forth in ARM 17.40.213.

(vi) through (5) remain the same.

AUTH: 37-42-202, MCA
IMP: 37-42-202, MCA

REASON: The proposed amendment, by adding the word "certified," would add continuing education requirements (CECs) to maintain certified operator-in-training certification, beginning with the June 2016 to May 2018 certification period. This proposed amendment will specify that all certified operators will have the same two-year period of time to earn and report credits. Making the CEC periods the same for both certifications will facilitate credit tracking and will maximize use of credits for both certifications.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., November 12, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, 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 supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to 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.

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

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North BY: */s/ Tom Livers*

JOHN F. NORTH TOM LIVERS, Director

Rule Reviewer

Certified to the Secretary of State, October 5, 2015.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.129.603 and the repeal of 24.129.601 and 24.129.602 licensing	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 16, 2015, the Board of Clinical Laboratory Science Practitioners (board) proposes to amend and repeal the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Clinical Laboratory Science Practitioners no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcls@mt.gov (board's e-mail).

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

24.129.603 MINIMUM STANDARDS FOR LICENSURE (1) through (2)(e) remain the same.

(f) American Board of Medical Genetics (ABMG); ~~or~~

(g) National Certification Agency (NCA)~~.~~; or

(h) American Association of Bioanalysts (AAB).

AUTH: 37-1-131, 37-34-201, MCA
IMP: 37-34-303, MCA

REASON: Although the board has approved the American Association of Bioanalysts (AAB) as a national examination certification agency, it was inadvertently missed from inclusion in rule. The board is now amending this rule to clarify to applicants the board's approval of AAB.

4. The board proposes to repeal the following rules:

24.129.601 APPLICATIONS FOR LICENSE found at ARM page 24-10551.

AUTH: 37-34-201, MCA
IMP: 37-34-201, 37-34-305, MCA

REASON: The board is repealing this unnecessary rule, along with ARM 24.129.602, because the department administers a standardized application process for all professional and occupational licensure boards, and these rules merely reference the department rules on applications.

24.129.602 RENEWALS found at ARM page 24-10552.

AUTH: 37-1-141, 37-34-201, MCA
IMP: 37-1-141, 37-34-201, 37-34-305, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment and repeal in writing to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcls@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcls@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

7. If the board receives requests for a public hearing on the proposed amendment and repeal from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rules; 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 by the AAB clarification has been determined to be 9 persons based on 92 licensure applicants last year.

8. An electronic copy of this notice of amendment and repeal is available at www.cls.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical

difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdcls@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.129.603 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.129.601 and 24.129.602 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcls@mt.gov.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
ALISON MIZNER, PRESIDING OFFICER

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

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

Certified to the Secretary of State October 5, 2015

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.147.402 mortician license, 24.147.403 mortuary transfers, inspections and temporary permits, 24.147.501 out-of-state mortician licensure, and 24.147.1503 sale of at-need, preneed, and prepaid funeral arrangements	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 5, 2015, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (board) no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdfnr@mt.gov (board's e-mail).

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

24.147.402 ORIGINAL MORTICIAN LICENSE - APPLICATION (1) remains the same.

~~(a)~~ (b) a certified transcript of ~~60~~ 30 semester credits ~~credit hours or, if courses are offered on a quarter calendar, 90~~ or 45 quarter credits ~~credit hours~~ sent directly to the board office from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education~~;~~ in any of the following subjects:

(i) accounting;
(ii) business;
(iii) computer applications;
(iv) communications/speech;
(v) English;
(vi) history;
(vii) mathematics;
(viii) psychology;

(ix) religion;
(x) sociology;
(xi) education;
(xii) biological sciences; or
(xiii) other subjects germane to the practice of mortuary science.

~~(b)~~ (a) a ~~diploma and~~ certified transcript of 60 semester credits or 90 quarter credits, sent directly to the board office from a funeral service or mortuary science education program ~~college of mortuary science~~ accredited by the American Board of Funeral Service Education (ABFSE) or its successor, ~~demonstrating~~ granting an associate degree, certificate, or diploma ~~and credit hours obtained in addition to those obtained under (1)(a)~~;

(c) remains the same.

(d) a certified copy of the certification form verifying successful completion, within five years prior to the date of application, of the International Conference of Funeral Service Examining Board ("Conference") examination sent directly to the board office from the Conference.

(2) remains the same.

(3) A ~~diploma and~~ certified transcript demonstrating a baccalaureate degree in a funeral service or mortuary science education program from an ABFSE or successor accredited college ~~of mortuary science~~ will serve to meet the requirements of (1)(a) and (b).

(4) through (6) remain the same.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-101, 37-19-302, 37-19-303, MCA

REASON: The 2015 Montana Legislature enacted Chapter 34, Laws of 2015 (House Bill 110), an act clarifying educational requirements for the Board of Funeral Service. The bill was signed by the Governor on February 18, 2015, and became effective on October 1, 2015. The bill clarified the intent to require, beyond the 60 semester hours of accredited mortuary science education, additional higher education for morticians and directed the board to prescribe the approved subject areas. The board is amending this rule to implement the legislation and clarify that qualifying American Board of Funeral Service Education (ABFSE) programs are referred to as both "mortuary science" or "funeral service" education programs. Section (1)(a) also clarifies that the ABFSE recognizes a certificate or diploma as equivalent to an ABFSE accredited associate degree, because all ABFSE accredited education programs require 60 semester credits within a prescribed curriculum, regardless of whether an associate's degree, a certificate, or a diploma is issued.

While most new mortuary science graduates take the national examination and seek licensure to begin practicing the profession, the board has received applications from individuals not currently licensed in another state who do not qualify for licensure under ARM 24.147.501. Because skills learned in school and in preparation for the licensure exam diminish after time without use, and changes occur in public health issues, it is necessary for the board to amend (1)(d) and establish a time limit on how long a person may be out of practice before needing to re-establish current competency. In achieving a balance between public safety and

unnecessarily impacting a person's ability to work, the board determined that a five-year period meets this balance and is consistent with other states and professions having the same requirement.

24.147.403 MORTUARY TRANSFERS, INSPECTIONS, AND TEMPORARY PERMITS (1) through (1)(e) remain the same.

(f) The board shall review ~~all new mortuary applications,~~ all inspection reports indicating noncompliance, and any responses to the inspection at the next regularly scheduled board meeting after the inspection. For good cause, the board may request a reinspection; the costs of which shall be paid by the applicant prior to issuance of a permanent license.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-403, MCA
IMP: 37-19-402, 37-19-403, 37-19-703, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: It is reasonably necessary for the board to amend (1)(f) to no longer require board review of all new mortuary applications to align with board direction that staff will process all routine business applications.

24.147.501 LICENSURE OF OUT-OF-STATE MORTICIAN APPLICANTS

(1) and (1)(a) remain the same.

(b) the applicant has a license based on standards in another state whose standards at the time of application to this state are substantially equivalent to Montana standards; and

(c) and (2) remain the same.

(3) The applicant shall affirm whether the applicant has been actively engaged in the practice during the period of licensure in another state. If not ~~so~~ actively engaged in practice as a mortician in five of the last seven years from the date of the application, ~~the board may require the applicant, as part of a notice of proposed board action, to take continuing education or undergo supervised practice for a period of time to ensure competency.~~ the applicant must provide proof of successful completion of the national examination on a date within five years prior to the date of application, sent directly from the Conference to the board office.

(4) remains the same.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-137, 37-1-304, 37-1-316, 37-19-302, ~~37-19-703,~~ MCA

REASON: The board determined it is reasonably necessary to amend (1)(b) to address language ambiguity and applicant confusion regarding when another state's standards are to be measured. The amendment will clarify that the substantial equivalency determination is made at the time of application to this state per 37-1-304, MCA.

While this rule currently requires affirmation of active practice, licensing staff has requested the board provide a specific time frame for active practice in another

state in response to applicant questions. For the same reasons stated for changes to ARM 24.147.402(1)(d), the board is amending (3) to require that applicants be actively engaged in mortician practice for five of the last seven years prior to applying to Montana. The board determined this requirement will demonstrate to the public reasonably current skills in mortuary arts and mortuary sciences and if not, the applicant must pass the national examination instead of the board bearing the cost involved in instituting formal action and monitoring a final order. The board concluded that examination is a superior method of measuring competency, as compared to continuing education or supervised practice.

It is reasonable and necessary to amend the catchphrase to clarify that this rule addresses the licensure of out-of-state morticians only and does not refer to other professions licensed by the board. Licensing staff utilizes this rule solely for mortician licensure. The board is also amending the implementation citations to remove the citation to 37-19-703, MCA, the statute for crematory, crematory operator, and crematory technician application requirements, as this rule applies only to morticians.

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS (1) and (2) remain the same.

(3) Trust funds shall be deposited in accordance with 37-19-828, MCA. ~~within three business days after receipt in a special account maintained exclusively for the deposit of monies in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under federal and/or Montana law.~~

(4) and (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The 2015 Montana Legislature enacted Chapter 125, Laws of 2015 (House Bill 225), an act revising funeral trust banking provisions and extending the time period within which money must be deposited. The bill was signed by the Governor on March 27, 2015, and became effective on October 1, 2015. The bill amended 37-19-828, MCA, and increased the time for licensees to deposit trust money from three to ten days. The legislation also allows the financial institution holding the trust money to be organized under the laws of Montana or another state as long as it maintains an office in this state. The board is amending this rule to refer to the statute itself rather than repeat its provisions.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdfnr@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors, Representative Kenneth Holmlund (HB 110) and Representative Vince Ricci (HB 225), were contacted on September 23, 2015, by telephone.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.402, 24.147.403, 24.147.501, and 24.147.1503 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdfnr@mt.gov (board's e-mail).

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

BOARD OF FUNERAL SERVICE
JOHN TARR, CHAIRPERSON

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

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

Certified to the Secretary of State October 5, 2015

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

In the matter of the repeal of ARM 24.155.601 licensure by grandfather clause	)	NOTICE OF PROPOSED REPEAL
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 16, 2015, the Board of Massage Therapy proposes to repeal the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy (board) no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlmt@mt.gov.

3. The board proposes to repeal the following rule:

24.155.601 LICENSURE BY GRANDFATHER CLAUSE found at ARM page 24-14843.

AUTH: 37-1-131, 37-33-405, MCA
IMP: 37-1-131, 37-33-503, MCA

REASON: The 2015 Montana Legislature enacted Chapter 57, Laws of 2015 (Senate Bill 104), an act requiring all licensees of the Board of Massage Therapy to meet similar licensure qualifications and removing the grandfather status of certain license applicants. The bill was signed by the Governor on February 25, 2015, and became effective October 1, 2015.

When House Bill 662 created the board in 2009, the legislature provided an alternate licensure path in 37-33-503, MCA, for applicants with prior experience practicing massage therapy in Montana. Because SB 104 has repealed this statute, which only allowed grandfathering licensure until July 1, 2012, the board determined it is reasonably necessary to repeal this rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed repeal in writing to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to

(406) 841-2305, or by e-mail to dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

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

6. If the board receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rules; 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 zero persons, because the statutory provision that permitted licensure via the grandfathering method has been repealed by the 2015 legislature.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdlmt@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Arntzen, was contacted on September 21, 2015, by telephone.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.155.601 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or e-mail dlibsdlmt@mt.gov.

BOARD OF MASSAGE THERAPY
STACY BAIRD, CHAIR

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

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

Certified to the Secretary of State October 5, 2015

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULE I licensees authorized to perform psychological assessments, NEW RULE II educational requirements for performing psychological assessments without supervision, and NEW RULE III licensees qualified to supervise psychological assessments	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 6, 2015, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Behavioral Health (board) no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Cyndi Reichenbach, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdswpc@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2009 legislature enacted Chapter 453, Laws of 2009 (Senate Bill 235), an act expanding the exemption from licensure as a psychologist to include psychological testing, evaluation, and assessment by qualified members of other professions, including licensed professional counselors. The bill was signed by the Governor on May 5, 2009. The 2009 legislature also enacted Chapter 199, Laws of 2009 (House Bill 530), an act revising the definition of social work to clarify that the term includes the administering, evaluating, and assessing of tests. The bill was signed by the Governor on April 9, 2009. Both bills became effective on October 1, 2009.

Senate Bill 235 amended 37-17-104, MCA, to require that the board adopt rules to qualify licensed social workers and professional counselors to perform psychological testing, evaluation, and assessment. Further, these rules must be consistent with the guidelines of the national associations of social workers and professional counselors. In MAR Notice No. 24-219-22, the board previously adopted several rules to initially set these qualification standards. The board is now proposing NEW RULE I to identify professionals qualified to perform psychological assessments, NEW RULE II to establish minimum educational standards for

licensees to perform psychological assessments, and NEW RULE III to identify professionals who are qualified to supervise persons who are learning to perform psychological assessments. The board has determined these new rules are reasonably necessary to establish minimum standards of education and training required for licensees to be authorized to conduct psychological testing.

While guidelines promulgated by national associations of social workers and professional counselors do not include specific numbers or hours of education and experience, the board has determined that the criteria set forth in these proposals can best be met through a combination of education and supervised work experience. Although the board did not determine it was necessary to specify the amount of education or experience necessary to meet the criteria proposed, the board has previously acknowledged that completing six semester hours of graduate education and performing eight assessments under supervision would generally prepare a licensee to independently perform psychological testing.

As guidance, the following are examples of areas the graduate education should generally cover: psychometric theory, including issues of reliability, validity, reference group norms, limits of generalizability, and test construction; theories of intelligence and human cognition, including the role of race and ethnicity in intellectual evaluations, and the administration and interpretation of intellectual instruments; theory, administration, and interpretation of major self-report inventories, such as the MMPI-2 or the PAI, including applicability of specific population norms to individual clients; appropriate selection of instruments to answer specific referral questions and the construction of a test battery; the integration of data from multiple data sources, including interview, psychometric tests, and collateral sources; test security; communication of assessment results to different referring individuals and agencies and feedback to clients themselves; and the relationship between assessment and treatment.

As guidance, the supervised experience in psychological assessment should generally require submission of written reports of those assessments to the supervisor and should generally demonstrate the licensee's competence in the following areas: integration and interpretation of clinical history utilizing a clinical interview conducted by the licensee; intelligence testing; personality testing utilizing at least one objective personality inventory that is widely recognized and used in the field of psychology, has strong empirical foundations, and assesses global personality and psychological functioning; the formulation of appropriate diagnoses using the five axes specified in the Diagnostic and Statistical Manual of Mental Disorders (DSM); and the making of appropriate recommendations.

In addition to satisfying the criteria set forth in the proposed new rules, a licensee must be able to adhere to the standards the board previously adopted in MAR Notice No. 24-219-22, and are specifically found at ARM 24.219.1001, 24.219.1005, 24.219.1011, 24.219.1014, 24.219.1017, 24.219.1020, 24.219.1023, 24.219.1026, 24.219.1029, 24.219.1032, 24.219.1035, and 24.219.1038, to safely and competently perform psychological assessments.

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

NEW RULE I LICENSEES AUTHORIZED TO PERFORM PSYCHOLOGICAL ASSESSMENTS (1) Psychological assessments may be performed by the following individuals:

(a) a licensed clinical professional counselor or licensed clinical social worker who satisfies the requirements in [NEW RULE II](1) or (2);

(b) a licensed clinical professional counselor or a licensed clinical social worker who satisfies the requirements in [NEW RULE II](1) and who is acting under the supervision of another licensee of the board specified in (1)(a);

(c) a psychologist licensed under Title 37, chapter 17, MCA; or

(d) a licensed clinical professional counselor or a licensed clinical social worker who satisfies the requirements in [NEW RULE II](1) and who is acting under the supervision of a licensed psychologist.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

NEW RULE II EDUCATIONAL REQUIREMENTS FOR PERFORMING PSYCHOLOGICAL ASSESSMENTS WITHOUT SUPERVISION (1) Except as provided in (2), a licensed clinical professional counselor or licensed clinical social worker may engage in psychological assessments without supervision only if the board has received and approved the following information demonstrating generic and specific qualifications to perform psychological assessments:

(a) academic training at the graduate or postgraduate level from a regionally accredited program that covered:

(i) descriptive statistics;

(ii) reliability and measurement error;

(iii) validity and meaning of test scores;

(iv) normative interpretation of test scores;

(v) selection of appropriate tests;

(vi) test administration procedures;

(vii) ethnic, racial, cultural, gender, age, and linguistic variables; and

(viii) testing individuals with disabilities; and

(b) a signed statement from a professional qualified to supervise psychological assessments as set forth in [NEW RULE I](1)(a) or (c) that the supervised licensee has met the requirements to use psychological tests as set forth in this rule.

(2) A licensed clinical professional counselor or licensed clinical social worker is qualified to perform psychological assessments and is not required to demonstrate that the licensee has met the qualifications set forth in (1) if the licensee performed psychological assessments prior to October 14, 2011.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

NEW RULE III LICENSEES QUALIFIED TO SUPERVISE PSYCHOLOGICAL ASSESSMENTS (1) The only professionals qualified to supervise psychological assessment are:

(a) licensed clinical professional counselors and licensed clinical social workers who satisfy the requirements in [NEW RULE II]; and

(b) licensed psychologists.

AUTH: 37-17-104, MCA
IMP: 37-17-104, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswpc@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswpc@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

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

Documentation of the board's above-stated determination is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; facsimile (406) 841-2305; or dlibsdswpc@mt.gov (board's e-mail).

10. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC

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

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

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.146 modifications to the international building code applicable to department and local government code enforcement, the adoption of NEW RULE I incorporation by reference of international swimming pool and spa code, and the repeal of ARM 24.301.801 adoption by reference of ARM 37.111.1115 review of plans	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 5, 2015, at 2:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Building Codes Bureau no later than 5:00 p.m., on October 30, 2015, to advise us of the nature of the accommodation that you need. Please contact David White, Building Codes Bureau, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2009; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; or dlibsdbcb@mt.gov (bureau's e-mail).

3. GENERAL REASONABLE NECESSITY: The department determined it is reasonably necessary to propose several rule changes to adopt a new publication of the nationally recognized international code council building codes International Swimming Pool and Spa Code (ISPSC) 2015. Amendments to ARM 24.301.146 and the repeal of ARM 24.301.801 will facilitate the adoption and clarify the standards for pool and spa construction so that designers, builders, and owners of such facilities will have a clear understanding of the building regulations. The department undertook an exhaustive evaluation of this code adoption and worked with stakeholders to propose the appropriate modifications to the model code and arrive at a balanced cost/benefit set of safe pool regulations tailored to Montana's unique population density and jurisdictional demographic.

The related operational practice conducted by the Department of Public Health and Human Services is expected to continue after the changes are effective.

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

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (11) remain the same.

(12) Delete Subsection 903.2.8 and replace with the following:

"1. An approved automatic sprinkler system installed in accordance with Section 903.3 shall be provided in all Group R buildings meeting any of the following criteria:

"a. 9 or more transient guests or ~~8~~ 5 or more transient guestrooms;

"b. 9 or more occupants in other than dwelling units;

"c. 5 or more dwelling units; or

"d. more than 2 stories.

"2. In lieu of the above required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each transient guestroom may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

"3. "Transient guest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

"4. "The requirements for automatic sprinkler systems for R-4 occupancies are found in ARM 24.301.146."

(13) through (19) remain the same.

(20) Delete Section 3109 in its entirety and replace with the International Swimming Pool and Spa Code, 2015 edition as adopted in [NEW RULE I].

(21) through (35) remain the same.

AUTH: 50-60-203, MCA
IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: It is reasonably necessary to amend (12) and reduce the number of transient guestrooms required for an approved automatic sprinkler system. The department notes this reduction follows a growing industry trend specific to Group R buildings such as hotels, motels, and inns. It is anticipated that the number of guestrooms will be further reduced over several rule amendments, until relying solely on the number of transient guests and not a number of guestrooms.

The department is amending (20) to implement the department's adoption of the ISPSC in NEW RULE I of this notice.

5. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL SWIMMING POOL AND SPA CODE (ISPSC) (1) The department adopts and incorporates by reference the International Swimming Pool and Spa Code, 2015 edition, published by the International Code Council, unless another edition is specifically stated, together with the following amendments:

(a) Chapters 7 through 10, inclusive, are deleted in their entirety.

(2) As specified in ARM 24.301.146(20), the department has deleted Section 3109 Swimming Pool Enclosures and Safety Devices from the International Building Code and replaced that section with the International Swimming Pool and Spa Code (ISPSC) as adopted by reference in (1). Cities, counties, and towns that have adopted the International Building Code in connection with their certification to enforce building codes will utilize the applicable sections of the ISPSC to regulate swimming pool and spa construction.

(3) As specified in 76-2-412, MCA, the ISPSC provisions, which are not applicable to residential occupancies, may not be applied to a community residential facility serving eight or fewer persons, or to a day-care home serving 12 or fewer children.

(4) The purpose of this code is to establish minimum standards to provide a reasonable level of safety and protection of health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, and location of public swimming pools, spas, and aquatic recreation facilities.

(5) No swimming pool or spa permit shall be issued for a building or structure, under the jurisdiction of the department, until the building permit has first been issued for that building or structure.

(6) The ISPSC adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for swimming pool and spa installations. A copy of the ISPSC may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, or on their web site at www.ICCSafe.org.

AUTH: 50-60-203, MCA
IMP: 50-53-103, 50-60-104, 50-60-202, 50-60-203, 76-2-412, MCA

REASON: The department is proposing (1) pursuant to 50-60-202, MCA, as the department is the sole agency to promulgate building regulations, and per 50-60-203, MCA, must do so by rule. This new rule is necessary to adopt an international swimming pool and spa code pursuant to 50-60-202, MCA, and in alignment with the repeal of ARM 24.301.801.

It is reasonably necessary to clarify in (1)(a) that chapters 7-10 are deleted in their entirety because 50-60-102(1)(a), MCA, provides that the state building code, as defined in 50-60-203(3), MCA, does not apply since the department lacks jurisdiction over privately owned residential structures of less than five dwelling units.

The department is proposing (2) to align with amendments proposed to ARM 24.301.146(20). This allows cities, counties, and towns that have adopted the International Building Code in connection with their certification to enforce building codes as they will utilize the applicable sections of the ISPSC to regulate swimming pool and spa construction in those certified jurisdictions.

It is necessary to clarify in (3) that the ISPSC provisions are not applicable to residential occupancies and may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children

because of the family day-care home, group day-care home, and day-care home considerations in 76-2-412, MCA.

The department is clearly delineating the purpose of the ISPSC code in (4).

The department is adopting (5) to clarify that the department will not issue a swimming pool or spa permit for a building or structure until after the building permit is issued for that building or structure, because the pool or spa permit is inclusive of the building permit.

Language in (6) is necessary to inform citizens and stakeholders of the purpose of this code and how to obtain copies of the ISPSC.

6. The rule proposed to be repealed is as follows:

24.301.801 ADOPTION BY REFERENCE OF ARM 37.111.1115--REVIEW OF PLANS at ARM page 24-32455.

AUTH: 50-60-203, MCA
IMP: 50-53-103, 50-60-104, MCA

REASON: The department determined it is reasonably necessary to repeal this rule to align with the adoption of a new swimming pool and spa construction code pursuant to 50-60-202, MCA, in NEW RULE I of this notice.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or e-mail to dlibsdbcb@mt.gov and must be received no later than 5:00 p.m., November 13, 2015.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all department or bureau administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or

standard mail is preferred. Such written request may be sent or delivered to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dlibsdbcb@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.301.146, the adoption of NEW RULE I, and the repeal of ARM 24.301.801 will not significantly and directly impact small businesses.

Documentation of the department's above-stated determinations is available upon request to David White, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dlibsdbcb@mt.gov.

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

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

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

Certified to the Secretary of State October 5, 2015

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

In the matter of the amendment of ARM 37.70.107, 37.70.110, 37.70.115, 37.70.305, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, 37.70.602, 37.70.607, and 37.70.901 pertaining to Low Income Assistance Program (LIEAP) amendments for the 2014-2015 and 2015-2016 heating season	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 28, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.107 REFERRALS TO THE QUALITY ASSURANCE DIVISION, PROGRAM COMPLIANCE BUREAU (1) The ~~Department of Public Health and Human Services (DPHHS),~~ Quality Assurance Division, Program Compliance Bureau (PCB), has the power and duty to:

(a) investigate matters relating to ~~low income energy assistance~~ LIEAP including, but not limited to, applications, awards of benefits, and information received relating to an application;

(b) through (c)(ii) remain the same.

(2) Local ~~C~~contractors ~~may~~ must make reports of possible overpayments or fraud to the ~~Department of Public Health and Human Services (DPHHS),~~ department's Intergovernmental Human Services Bureau (IHSB), P.O. Box 202956,

Helena, MT 59620-2953~~3~~6. IHSB will review cases ~~referred~~ prior to referral to the ~~DPHHS Audit and Compliance Bureau~~ PCB.

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

37.70.110 FRAUD/TRANSFER OF RESOURCES (1) ~~Whoever~~ A person who knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device, ~~low income energy assistance~~ LIEAP benefits to which he or she is not entitled is guilty of theft as provided in 45-6-301, MCA, and is ineligible for assistance for the entire current heating season.

(2) If ~~an individual~~ a person appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the ~~Audit and Compliance Bureau~~ Intergovernmental Human Services Bureau (IHSB) to determine if the case should be referred to the department's Quality Assurance Division, Program Compliance Bureau (PCB). The ~~bureau~~ PCB may ~~in turn~~ refer the matter to the Department of Justice or the county attorney of the county in which the ~~recipient~~ person resides for further action.

(3) Resale or transfer of benefits to another ~~party~~ person is expressly prohibited.

(4) Fuel vendors may not retain benefits of ~~LIEAP beneficiaries~~ households who have discontinued service.

(5) Fuel assistance ~~shall~~ will not be granted to ~~any~~ a person who has deprived himself or herself, directly or indirectly, of any resources for the purpose of qualifying for assistance. ~~Any~~ A person who has transferred resources or interest in resources within one year of the date of application without receiving adequate consideration in money or money's worth ~~shall~~ will be presumed to have made such transfer for the purpose of qualifying for assistance.

(a) ~~The applicant or recipient~~ A person may submit evidence that he or she did not make the transfer of resources ~~for the purpose of~~ to qualify~~ing~~ for ~~assistance~~ LIEAP benefits.

(b) It is the responsibility of the ~~applicant~~ person to submit this evidence.

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

37.70.115 OVERPAYMENTS AND UNDERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of ~~low income energy assistance~~ LIEAP benefits, it may be corrected by increasing the benefit award to cover the underpayment.

(a) For purposes of determining financial eligibility, such retroactive corrective payments ~~shall~~ will not be considered as income.

(2) Except as provided in (3), current and future program year payments of ~~low income energy assistance~~ LIEAP benefits will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) Additionally, cases in which ~~the recipient~~ a person willfully made false statements or withheld information causing overpayment ~~are to~~ must be referred to the ~~audit and compliance bureau~~ Intergovernmental Human Services Bureau (IHSB) to determine if the case should be forwarded to the department's Quality Assurance Division, Program Compliance Bureau (PCB) for determination of fraud as provided in ARM 37.70.110.

(3) When it is discovered that the local contractor caused an overpayment of ~~low income energy assistance~~ LIEAP benefits ~~or weatherization services~~, at the sole discretion of the department, the local contractor may be required to repay the entire overpayment to the department, rather than the overpayment being withheld from the ~~recipient~~ household's future payments.

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

37.70.305 APPLICATION (1) Except as provided in (4), a new application for ~~low income energy assistance~~ LIEAP benefits must be made for each new heating season and when a household ~~changes~~ moves to a different residence during the heating season. ~~An application is initiated~~ Any adult member of the household may file ~~by filing~~ a signed written application on the form prescribed by the department at the office of the local contractor in the area where the ~~applicant lives~~ household resides. If necessary, the local contractor will provide assistance in completing the application form.

(2) The application form may be submitted by mail or by other means to the local contractor's office. The department or its local contractor may~~, at their option,~~ accept applications at locations other than the local contractor's office~~, such as a senior citizen center,~~ as designated by the department or its local contractor.

(3) An application for ~~low income energy assistance~~ LIEAP benefits ~~generally~~ must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30, except as provided in (4). If April 30 falls on a weekend or ~~legal~~ holiday observed by Montana state government, the local contractor must accept applications on the next business day after the weekend or ~~legal~~ Montana state government observed holiday. However, at the option of the department, ~~applicants who use~~ a household's application for certain types of deliverable heating fuel which are sold at lower prices during the summer months or ~~applicants~~ for emergency services may be ~~permitted to file their applications~~ filed prior to October 1 of the heating season for which ~~they are~~ a household is seeking assistance. In the case of ~~applicants~~ households who use other types of fuel and who are not seeking emergency services, the ~~local contractor~~ department may in its discretion accept applications prior to October 1~~, but the date of application will be deemed to be October 1~~.

(4) ~~Residents of publicly subsidized housing who receive a minimum benefit as provided in ARM 37.70.601(2) because their energy costs are included as a portion of their rent and their rent is a fixed portion of their income are required to file an application only once every five years if they continue to live in the same subsidized housing unit. When such a resident is found to be eligible for LIEAP, the household will be approved to receive a minimum benefit for a five-year period as~~

~~provided in ARM 37.70.601(2) without filing a new application in the four subsequent heating seasons. A new application may be filed in the following situations, however:~~ Publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or households who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season. However, these households are eligible for weatherization assistance as provided in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in ARM 37.70.601 or a minimum payment of $25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

~~(a)~~ (5) ~~A resident of p~~ Publicly subsidized housing households who move~~s~~ into nonsubsidized housing during the five-year eligibility period may reapply for a prorated benefit for the current heating season based on the ~~resident's~~ household's new circumstances as provided in ARM 37.70.602. The ~~resident~~ household ~~will then be required to~~ may file a new application for each subsequent heating season as long as the ~~resident~~ household lives in nonsubsidized housing, as provided in (1).

~~(b)~~ (6) ~~A resident of p~~Publicly subsidized housing households who move~~s~~ to another publicly subsidized housing unit during the five-year eligibility period may file a new application for a ~~minimum~~ modified LIEAP benefit for another five-year period, which will run from the date of the new application, if the household's energy costs are included as a portion of its rent ~~and its rent is a fixed portion of its income~~ or if it has an obligation to pay a base-load electric bill.

~~(5)~~ (7) No ~~person or family~~ household or any of its members will be excluded from participation in ~~the low income energy assistance program~~ LIEAP or be discriminated against in regard to the amount of benefits or in any other regard on the basis of race, color, religion, sex, culture, age, creed, marital status, physical or mental disability, political beliefs, or national origin.

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

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS AND VERIFIABLE ELIGIBILITY REQUIREMENTS (1) The procedures for determining eligibility for ~~low income energy assistance~~ LIEAP benefits ~~is~~ are as follows:

(a) ~~An application is filed by t~~The ~~applicant~~ household files an application together with verification for determining financial eligibility and benefit award.

(b) After an application is filed, the local contractor may request any additional information or documentation needed to determine the household's eligibility, ~~or~~ benefit amount, or both.

(c) If ~~an applicant~~ a household fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of the most

recent request for additional information, the application will be denied~~, but the household may reapply for assistance~~.

(d) If an application is denied, the household may reapply for assistance.

~~(i)~~ (2) Eligibility requirements that must be verified include ~~but are not limited to:~~

~~(A)~~ a social security number (SSN)~~,~~ for each household member and proof of U.S. citizenship, ~~or lawful entry into the United States with the intent of establishing permanent residence for each member of the household over the age of three weeks;~~ or proof of status as a qualified alien as defined in 8 U.S.C. 1641(b). Other elibibility requirements that may be verified include:

~~(B)~~ (a) photo identification for each household member ~~aged~~ 18 years of age or older may be required if the SSN has not been verified~~.~~;

(b) ~~F~~for members under age 18, a birth certificate will be accepted if the SSN has not been verified;

~~(C)~~ (c) current receipt of benefits under the Supplemental Nutrition Assistance Program (SNAP), supplemental security income, or cash assistance funded by temporary assistance for needy families (TANF);

~~(D)~~ (d) household income~~/~~ and resources;

~~(E)~~ (e) proof of lack of tax dependency status for ~~individuals~~ household members enrolled at least half time in an institution of higher education;

~~(F)~~ (f) proof of the household's obligation to pay for the cost of heating its residence ~~except for residents of publicly subsidized housing who are receiving only a minimum benefit,~~ and type of primary heating fuel for the household's residence; and

~~(G)~~ (g) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607~~(2)~~. Failure to provide receipts to the local contractor ~~within 45 days of the heating season's end or~~ by June ~~25~~ 20 ~~in the case of an extended heating season~~ will result in forfeiture of any remaining benefits for that heating season.

~~(ii)~~ (3) If the local contractor reasonably doubts ~~reasonable doubt exists as to~~ the accuracy of the information provided by the ~~client~~ household, then the type of dwelling, the number of bedrooms, ~~and/or~~ the primary heating fuel~~/~~, and the primary fuel vendor must also be verified.

~~(b)~~ (4) The local contractor may at its option conduct an interview with ~~the applicant~~ household members in person or by telephone, if necessary, to determine eligibility. In cases where the local contractor considers an interview to be necessary and neither the local contractor's office nor a telephone is reasonably accessible to the ~~applicant~~ household, the local contractor will conduct the interview at some place which is reasonably convenient for ~~both the applicant~~ the household and the local contractor.

~~(c)~~ (5) After a household's eligibility and benefit amount ~~has~~ have been determined by the local contractor, notice of the decision will be given to the ~~applicant~~ household as provided in ARM 37.70.312.

~~(2)~~ (6) A household's eligibility and benefit amount will be determined based on the household's circumstances in regard to the following ~~at~~ on the ~~time~~ date the application is filed~~, including, but not limited to,~~:

(a) household income level;

(b) the ~~type of the~~ household's dwelling type~~,~~;
(c) the number of bedrooms in the dwelling~~,~~;
(d) the dwelling's primary heating fuel~~,~~;
(e) the heating district in which the dwelling is located~~,~~;
(f) verification of the identities and citizenship or ~~lawful residence~~ qualified alien status of those residing in the household~~,~~; and
(g) the household's resources.

(7) Eligibility in regard to income~~, however,~~ is based on the household's income in the 12 months immediately preceding the month of application. If the household is ineligible using income in the 12 months preceding the month of application, eligibility will be determined by ascertaining the household's gross income in the three months immediately preceding the month of application and multiplying that figure by four to arrive at the household's annual income based on the three-month period.

~~(3)~~ (8) The ~~applicant~~ household has the burden of proving that ~~the household~~ it meets all requirements for eligibility.

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

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including, but not limited to, wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, veterans administration payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the 12 months immediately preceding the month of application.

(a) and (2) remain the same.

(3) "Applicant" means a person of legal age (18 years or older) or an emancipated minor applying for LIEAP benefits for all eligible household members in the household at the time of application. The applicant does not need to be an eligible member of the household.

(4) "Base-load electric" costs are the costs represented in a utility company's bill for electricity that powers lights and appliances other than for heating or cooling, and electric water heaters.

(5) "Deliverable heating fuel" means heating fuel that can be delivered to the customer and stored for later use, for example, propane, fuel oil, kerosene, or coal.

~~(3)~~ (6) "Disabled individual household" means a household in which resides at least one person who has been determined disabled based on the criteria for disability provided in Title II or Title XVI of the Social Security Act.

~~(4)~~ (7) "Elderly" means a person who is 60 years of age or older.

~~(5)~~ (8) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 is ineligible for payment in the current heating season, except in the sole discretion of the department, charges incurred from July 1 through September 30 for certain types of deliverable fuels (e.g., wood, coal, fuel oil, and

propane) to heat a residence are eligible for payment in the current heating season. Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable. Eligible energy costs include tank rental and replacing valves on portable propane tanks, but not deposits or fuel tank set ups.

(9) "Eligible household member" is any person who is a U.S. citizen or qualified alien and is a member of a household that meets the LIEAP eligibility requirements.

(10) "Emancipated Minor" is any person under the age of 18 that has been released from parental care or custody and granted full legal rights and responsibilities as provided in 41-1-401, MCA.

~~(6)~~ (11) "Federal fiscal year (FFY)" means the period from October 1 of one calendar year through September 30 of the next calendar year. For example, federal fiscal year ~~2011~~ 2016 means the period from ~~October 1, 2010~~ October 1, 2015 through ~~September 30, 2011~~ September 30, 2016.

~~(7)~~ (12) "Heating season" means the period from October 1 to April 30 ~~of the following year~~. For example, the ~~2009~~ 2015 through ~~2010~~ 2016 heating season is the period from ~~October 1, 2009~~ October 1, 2015~~,~~ through ~~April 30, 2010~~ April 30, 2016. The department may, however, in its sole discretion, extend the heating season beyond April 30. If the heating season is extended beyond April 30, LIEAP benefits may be applied against energy costs incurred in the additional months of the heating season, but no applications for benefits may be filed after April 30 except as provided in ARM 37.70.305. ~~Should~~ If the department extends the end of the heating season beyond April 30, requests for reimbursement must be received by the ~~agency~~ local contractor no later than ~~June 25~~ June 20 of the same year.

~~(8)~~ (13) "Household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased ~~in common~~ together or who make undesignated payments for energy in the form of rent.

(a) Any foster child or foster adult who lives in the household at the time of application and for whom foster care payments are being made may be either included or excluded from the household ~~at the option of the LIEAP applicant~~. This option must be exercised by the household at the time of application and cannot be changed until a new application for the next heating season is made.

(b) remains the same.

~~(9)~~ (14) "Incurment" means that portion of a medically needy ~~recipient~~ person's income that exceeds the ~~department's~~ medically needy income ~~level~~ standard for the size of the ~~filing unit~~ household.

(15) "Ineligible household member" is a person who is not a U.S. citizen or qualified alien that is a member of a household that meets the LIEAP eligibility requirements. An ineligible household member of legal age may apply for LIEAP benefits on behalf of eligible household members.

~~(10)~~ (16) "In-kind income" means goods, services, or other nonmonetary benefits, including ~~but not limited to~~ meals, clothing, housing, or produce.

(11) and (12) remain the same, but are renumbered (17) and (18).

(19) "Life threatening" means any of the conditions of emergency specified in ARM 37.70.901 that may cause death or severe permanent damage to the health of one or more household members.

~~(13)~~ (20) "Local contractor" means a community-based organization with which the department has contracted to provide outreach and to receive and process applications for LIEAP and the ~~W~~weatherization assistance ~~P~~program.

~~(14)~~ (21) "Medically needy" means ~~an individual~~ a person or family otherwise eligible for Montana Medicaid (medical assistance) but whose income exceeds medically needy income levels.

(15) remains the same, but is renumbered (22).

~~(16)~~ (24) "~~Minimum~~ Modified LIEAP benefit" means the ~~fixed~~ amount paid to eligible households who reside in publicly subsidized housing ~~as provided in ARM 37.70.601~~ and whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill. ~~The minimum benefit is not computed using the benefit matrices and income/climatic adjustment multipliers in ARM 37.70.601 but is a single payment of $50 for a five-year period.~~ The modified LIEAP benefit is equal to 5 percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season or a minimum payment of $25, whichever is greater paid to the household annually. Households determined eligible for the publicly subsidized housing modified LIEAP benefit, whose economic and housing situation does not change, are income eligible for a period of five years.

(17) remains the same, but is renumbered (23).

(18) through (20) remain the same, but are renumbered (25) through (27).

~~(21)~~ (28) "Nonrecurring lump sum payment" means a ~~single, one time~~ sum of money paid at one time rather than in two or more separate payments.

(22) remains the same, but is renumbered (29).

(30) "Publicly subsidized housing" means government-sponsored economic assistance aimed towards providing affordable housing for persons in need.

(31) "Qualified alien" means an alien who, at the time of submitting a LIEAP application, is a qualified alien as defined by 8 U.S. Code 1641(b).

~~(23)~~ (32) "Self-employment deductions" means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment. As an alternative, the local contractor may at the request of the household deduct 40 percent from the annual gross receipts for self-employment deductions.

~~(24)~~ (33) "Shelters" mean a dwelling unit or units whose principal purpose is to house on a temporary basis, individuals who may or may not be related to one another, including transients, students, or other individuals seeking short-term or nonpermanent living situations.

(25) remains the same, but is renumbered (34).

~~(26)~~ (35) "Single family unit" means a building which contains a single shelter or rental unit for living purposes. ~~For purposes of the program, a doublewide trailer or mobile home is considered a single family unit.~~

~~(27)~~ (36) "State fiscal year" means the period from July 1 of one calendar year through June 30 of the next calendar year. For example, state fiscal year ~~2011~~ 2016 means the period from July 1, ~~2010~~ 2015 through June 30, ~~2011~~ 2016.

(28) remains the same, but is renumbered (37).

~~(29)~~ (38) "Valid loan" means a person's lawful promise to repay a monetary ~~payment~~ sum received from a source outside the household, including ~~but not limited to a~~ private individuals ~~or a~~ and commercial institutions, which must be repaid at a future date. ~~The agreement to repay~~ Unless otherwise provided in law, the loan may be ~~either~~ oral or written.

~~(30)~~ (39) "Vendor payment" means a monetary payment made on behalf of the household by a person ~~or entity which~~ who is not a member of the household to a third party outside the household such as a creditor of the household or ~~a person or entity providing~~ vendor of services or goods to the household.

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

37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) ~~With the exception of residents of publicly subsidized housing described in (7), only h~~Households that are obligated to pay for fuel to heat their homes are eligible for ~~low income energy assistance~~ LIEAP benefits.

(2) Except as provided elsewhere in this rule, households which consist solely of members who are eligible for and receiving supplemental nutritional assistance payments (SNAP), supplemental security income (SSI), TANF-funded cash assistance, or county or tribal general assistance are automatically financially eligible for ~~low income energy assistance~~ LIEAP benefits ~~awards~~.

(3) Households which consist of members receiving SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance, and other individuals whose income and resources were not considered in determining eligibility for SNAP, SSI, TANF-funded cash assistance, or general assistance are not automatically eligible for ~~low income energy assistance~~ LIEAP benefits but must meet the financial requirements set forth in this rule.

(4) Individuals living in shelters, including but not limited to, recipients of SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance, are not eligible for ~~low income energy assistance~~ LIEAP benefits. Individuals living in licensed group-living situations as defined in ARM 37.70.401 may be eligible if they meet all other requirements for eligibility. Individuals living in licensed group-living situations which are not group-living situations as defined in ARM 37.70.401 are not eligible for ~~low income energy assistance~~ LIEAP benefits.

(5) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent for federal income tax purposes by a taxpayer who is not a member of a household which is eligible in the current heating season, or which would be eligible in the current heating season if the household applied, are ineligible for ~~low income energy assistance~~ LIEAP benefits.

(6) Households that are eligible for or that have received LIEAP benefits through a~~n Indian~~ tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season, unless the household changes residence during the heating season

and the household is no longer eligible for tribal LIEAP benefits; in that case, the household may apply for a prorated LIEAP benefit based on the household's new circumstances as provided in ARM 37.70.602. Additionally, any individual who was a member of a household that received LIEAP benefits through a~~n Indian~~ tribal program funded by the U.S. Department of Health and Human Services may not receive LIEAP benefits from the department for the same heating season unless the individual leaves the household that received tribal LIEAP benefits during the heating season and is no longer eligible for tribal LIEAP benefits; in that case the individual may apply for a prorated LIEAP benefit from the department for the same heating season based on the circumstances of the individual's new household as provided in ARM 37.70.602.

(7) Residents of publicly subsidized housing whose energy costs are included as a fixed portion of their rent ~~and whose rent is a fixed portion of their income may be eligible to receive a minimum benefit and weatherization assistance as provided for in ARM Title 37, chapter 71. Residents of publicly subsidized housing who receive a minimum benefit and subsequently move into nonsubsidized housing during the five-year eligibility period may apply for a prorated benefit for the current heating season as provided in ARM 37.70.602. Residents of publicly subsidized housing who receive a minimum benefit and subsequently move into another subsidized housing unit during the five-year eligibility period may reapply for a minimum benefit for another five-year period from the date of reapplication within the current heating season~~ or who reside in publicly subsidized housing and have an obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season. However, these households are eligible for weatherization assistance as provided for in ARM Title 37, chapter 71 and a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit, or a minimum payment of $25, whichever is greater, paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change are eligible for a period of five years.

(8) In households consisting of eligible and ineligible household members, the income of all will be counted for benefit calculation purposes. Only the eligible household members will be counted toward the total "number in the household" when counting the number of household members for benefit calculation purposes.

~~(8)~~ (9) Current and future benefits will be denied to any ~~individuals~~ persons and households who refuse to submit social security numbers or proof of U.S. citizenship or ~~lawful entry into the United States with the intent of establishing permanent residence~~ proof of status as a qualified alien as defined in 8 U.S.C. 1641(b), or whose social security numbers, proof of residency, or citizenship cannot be verified.

~~(9)~~ (10) ~~Current and future~~ Benefits may be denied to any ~~applicant or recipient~~ person who, having been prioritized for weatherization services as a high excess energy user, according to the criteria set forth in ARM 37.71.401 and 37.71.601, refuses, for reasons within his or her control, energy conservation services for the weatherization assistance program (WAP). The ~~applicant or~~

~~recipient~~ person may become eligible for benefits again by accepting the WAP energy conservation services.

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

37.70.406 INCOME STANDARDS (1) Households with one through seven members with annual gross income at or below 60~~%~~ percent of the estimated state median ~~income for federal fiscal year (FFY) 2014~~ are eligible for ~~low income energy assistance~~ LIEAP benefits on the basis of income. Households with eight or more members are eligible for ~~low income energy assistance~~ LIEAP benefits on the basis of income only if the household's annual gross income is at or below 150~~%~~ percent of the ~~2013~~ 2015 U.S. Department of Health and Human Services poverty guidelines for a household of that size. Households with annual gross income above the applicable income standard are ineligible for ~~low income energy assistance~~ LIEAP benefits, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SNAP, SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) If a household that is otherwise eligible for ~~low income energy assistance~~ LIEAP benefits has annual gross income in excess of the applicable income standard, the ~~department~~ local contractor will determine the household's total gross monthly income for the three months immediately preceding the month in which the application for assistance was filed. If the product of four multiplied by the total gross monthly income for the three months immediately preceding the month of application is at or below the applicable income standard, the household is eligible for a three-month annualized income benefit as provided in ARM 37.70.601.

(3) ~~The table of income standards for households of various sizes for the 2014 heating season may be accessed at the department's web site at www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.~~ The department adopts and incorporates by reference the department's Low Income Energy Assistance Program (LIEAP) Table of Income Standards, 2015-2016 heating season. The LIEAP table of income standards, 2015-2016 heating season, is located at the department's web site at http://www.dphhs.mt.gov/hcsd/energyassistance.aspx or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(4) Households ~~at or below 60% of the estimated state median income amount for FFY 2014 for the household's size are~~ eligible for LIEAP are also eligible for LIEAP client education and outreach activities.

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

37.70.407 EXCLUDED INCOME (1) through (1)(y) remain the same.

(z) payments under Public Law 101-426, Radiation Exposure Compensation Act, are excluded as income and as a resource to the household.;

(aa) amounts paid to satisfy an incurment for the medically needy programs.; and

(ab) proof of out-of-pocket health insurance premiums paid by a member of the household for a household member or members will reduce the income when supplied at the time of application or prior to application eligibility determination.

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

37.70.408 RESOURCES (1) The following nonbusiness resources are counted in determining a household's eligibility:

(a) and (b) remain the same.

(c) checking/ and savings accounts;

(d) market value of stocks or bonds and/or other negotiable resources; and

(e) remains the same.

(2) The equity value of the household's business assets is counted in determining eligibility. The household may have business assets the equity value of which does not exceed $25,000.

(3) The value of the family home a primary residence and the proceeds from the sale of the family home a primary residence are not included as a resource for 12 months from the date of sale of the family home.

(4) In state fiscal year 2014, a household will be eligible if its total countable nonbusiness resources do not exceed $10,610 for a single person, $15,918 for two persons, and an amount equal to $15,918 plus $1,061 for each additional household member, up to a maximum of $21,223 per household. In addition, the household may have business assets whose equity value does not exceed $25,000. The department adopts and incorporates by reference the department's LIEAP Table of Resource Standards, for the 2015-2016 heating season. The LIEAP table of resource standards is located at the department's web site at http://www.dphhs.mt.gov/hcsd/energyassistance.aspx or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(5) The dollar limitations on nonbusiness resources listed elsewhere in this rule shall will be adjusted annually by the department on July 1 by increasing each limitation by an amount equal to the limitation amount for the previous year, multiplied by the lesser of:

(a) the percentage increase in the consumer price index, (all items, United States city average), for the most recent calendar year completed before the beginning of the year for which the determination is being made; or

(b) 3% percent.

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

37.70.601 BENEFIT AWARD (1) ~~Except as provided in (2), the benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.~~ The department adopts and incorporates by reference the department's LIEAP Benefit Award Matrix and Table of Multipliers, for the 2015-2016 heating season. The LIEAP Benefit Award Matrix is located at the department's web site at http://www.dphhs.mt.gov/hcsd/energyassistance.aspx or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620. These matrices are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by:

(a) household income level;

(b) type of primary heating fuel;

(c) the type of dwelling: single family unit, multi-family unit, and mobile home;

(d) the number of bedrooms in the dwelling;

(e) the heating district in which the household is located, to account for climatic differences across the state;

(f) verification of the identities and citizenship or qualified alien status of those residing in the household; and

(g) the houshold's resources.

~~(a)~~ (2) The benefit payable to an eligible household will be computed by multiplying the applicable amount in the table of base benefit levels found in ~~(1)(c)~~ the LIEAP Benefit Award Matrix for the 2015-2016 heating season by the applicable matrix amount in the table of income/climatic adjustment multipliers found in ~~(1)(d)~~ the LIEAP Benefit Award Matrix for the 2015-2016 heating season.

~~(b)~~ (3) ~~Applicants~~ Households may claim no more bedrooms than household members except that single elderly and disabled individual households are entitled to claim two bedrooms if their dwelling unit contains more than one bedroom.

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

~~TABLE OF BENEFIT LEVELS~~

~~(i) SINGLE FAMILY~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$ 482~~	~~$ 870~~	~~$ 1,030~~	~~$1,645~~	~~$ 707~~	~~$ 646~~
~~TWO~~	~~701~~	~~1,265~~	~~1,497~~	~~2,391~~	~~1,029~~	~~939~~
~~THREE~~	~~954~~	~~1,724~~	~~2,040~~	~~3,258~~	~~1,401~~	~~1,280~~
~~FOUR~~	~~1,313~~	~~2,371~~	~~2,806~~	~~4,482~~	~~1,928~~	~~1,761~~

~~(ii) MULTI-FAMILY~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$ 407~~	~~$ 736~~	~~$ 871~~	~~$1,748~~	~~$ 597~~	~~$ 546~~
~~TWO~~	~~614~~	~~1,108~~	~~1,312~~	~~2,633~~	~~900~~	~~822~~
~~THREE~~	~~900~~	~~1,626~~	~~1,925~~	~~3,863~~	~~1,320~~	~~1,206~~
~~FOUR~~	~~1,052~~	~~1,900~~	~~2,249~~	~~4,513~~	~~1,543~~	~~1,409~~

~~(iii) MOBILE HOME~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$ 406~~	~~$ 733~~	~~$ 868~~	~~$1,453~~	~~$ 596~~	~~$ 544~~
~~TWO~~	~~594~~	~~1,072~~	~~1,269~~	~~2,124~~	~~872~~	~~796~~
~~THREE~~	~~787~~	~~1,421~~	~~1,682~~	~~2,816~~	~~1,155~~	~~1,055~~
~~FOUR~~	~~878~~	~~1,586~~	~~1,877~~	~~3,143~~	~~1,289~~	~~1,178~~

~~(d) The following table is based upon the household's income as a percentage of the federal poverty guideline and adjusted for climatic differences in the ten human resource development council service areas in the state of Montana:~~

~~TABLE OF INCOME/CLIMATIC ADJUSTMENT MULTIPLIERS~~

~~PERCENT OF POVERTY~~	~~AEM~~	~~IV~~	~~V~~	~~VI~~	~~VII~~	~~VIII~~	~~IX~~	~~X~~	~~XI~~	~~XII~~
~~0 - 11~~	~~1.00~~	~~1.08~~	~~0.98~~	~~0.99~~	~~0.93~~	~~1.02~~	~~1.08~~	~~0.90~~	~~0.92~~	~~1.09~~
~~> 11 - 23~~	~~0.95~~	~~1.02~~	~~0.94~~	~~0.94~~	~~0.89~~	~~0.97~~	~~1.03~~	~~0.86~~	~~0.87~~	~~1.04~~
~~> 23 - 35~~	~~0.90~~	~~0.97~~	~~0.89~~	~~0.89~~	~~0.84~~	~~0.92~~	~~0.98~~	~~0.81~~	~~0.82~~	~~0.98~~
~~> 35 - 47~~	~~0.85~~	~~0.92~~	~~0.84~~	~~0.84~~	~~0.79~~	~~0.87~~	~~0.92~~	~~0.77~~	~~0.78~~	~~0.93~~
~~> 47 - 59~~	~~0.80~~	~~0.86~~	~~0.79~~	~~0.79~~	~~0.75~~	~~0.82~~	~~0.87~~	~~0.72~~	~~0.73~~	~~0.87~~
~~> 59 - 71~~	~~0.75~~	~~0.81~~	~~0.74~~	~~0.74~~	~~0.70~~	~~0.77~~	~~0.81~~	~~0.68~~	~~0.69~~	~~0.82~~
~~> 71 - 83~~	~~0.70~~	~~0.75~~	~~0.69~~	~~0.69~~	~~0.65~~	~~0.71~~	~~0.76~~	~~0.63~~	~~0.64~~	~~0.76~~
~~> 83 - 95~~	~~0.65~~	~~0.70~~	~~0.64~~	~~0.64~~	~~0.61~~	~~0.66~~	~~0.70~~	~~0.59~~	~~0.60~~	~~0.71~~
~~> 95 - 107~~	~~0.60~~	~~0.65~~	~~0.59~~	~~0.59~~	~~0.56~~	~~0.61~~	~~0.65~~	~~0.54~~	~~0.55~~	~~0.65~~
~~>107 - 119~~	~~0.55~~	~~0.59~~	~~0.54~~	~~0.54~~	~~0.51~~	~~0.56~~	~~0.60~~	~~0.50~~	~~0.50~~	~~0.60~~
~~>119 - 131~~	~~0.50~~	~~0.54~~	~~0.49~~	~~0.49~~	~~0.47~~	~~0.51~~	~~0.54~~	~~0.45~~	~~0.46~~	~~0.55~~
~~>131 - 143~~	~~0.45~~	~~0.48~~	~~0.44~~	~~0.44~~	~~0.42~~	~~0.46~~	~~0.49~~	~~0.41~~	~~0.41~~	~~0.49~~
~~>143 - 150*~~	~~0.40~~	~~0.43~~	~~0.39~~	~~0.39~~	~~0.37~~	~~0.41~~	~~0.43~~	~~0.36~~	~~0.37~~	~~0.44~~

~~* This category also applies to those whose income exceeds 150% of the poverty guideline and meets the criteria of ARM 37.70.406(1)~~

~~(2)~~ (4) ~~Eligible households who are residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income will receive one payment of $50 for the entire five-year period from the date of application and are not eligible for low income energy assistance benefits provided for in (1).~~ Publicly subsidized households whose energy costs are included as a fixed portion of their rent or who reside in publicly subsidized housing and have an out-of-pocket obligation to pay a base-load electric bill are not eligible for a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season. However, these households may be eligible for a modified LIEAP benefit. The modified LIEAP benefit is equal to five percent of the amount of a regular LIEAP benefit computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season or a minimum payment of $25, whichever is greater, would be paid to the household annually. Households determined eligible for the modified LIEAP benefit whose economic and housing situation does not change would be determined eligible for a period of five years.

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

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) ~~Except as provided in (5), w~~When an eligible household changes residence during the heating season, the household must file a new application. The household's benefit award will then be recomputed based on its new ~~circumstances~~ residence, and the new benefit will be ~~equal to the benefit award the household would have received had its original application been for the new circumstances~~ prorated from the date of the change of residence. Any unused portion of the original benefit award reverts to the department. When an eligible household changes its type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) Benefit awards will be prorated for ~~applicants~~ households new to the state or not previously responsible for heating costs from the date of residency or responsibility for the remainder of the heating season. Benefits will also be prorated for households ~~or individuals~~ who live in an area served by a~~n Indian~~ tribal LIEAP if the household ~~or individual~~ moves from the service area during the heating season and applies for benefits through ~~the state of~~ Montana~~'s~~ LIEAP. Such households ~~or individuals~~ are eligible for a prorated benefit for the remainder of the heating season from the date the household ~~or individual~~ moved from the service area served by the tribal LIEAP.

~~(5) If a resident of publicly subsidized housing who has received a minimum benefit as provided in ARM 37.70.601 changes residence during the five-year eligibility period, the following rules apply:~~

~~(a) If the resident moves into nonsubsidized housing, the resident may reapply for a prorated benefit for the current heating season based on the resident's new circumstances. The benefit will be computed by multiplying the applicable amount in the table of base benefit levels found in ARM 37.70.601 times the applicable matrix amount in the table of income/climatic adjustment multipliers in ARM 37.70.601 and then taking a pro rata portion of that result determined by dividing the number of days from the date of reapplication through the last day of the heating season by the total number of days in the heating season. The resident will then be required to file a new application for each subsequent heating season as long as the resident lives in nonsubsidized housing.~~

~~(b) If the resident moves to another publicly subsidized housing unit during the five-year eligibility period, the resident may file a new application for a minimum benefit for another five-year period which will run from the date of the new application.~~

~~(6)~~ (5) When a household changes primary fuel vendors any remaining LIEAP attributable credit balance will be returned to the department by the original fuel vendor. The department may reissue the unused portion of the benefit award ~~may be forwarded~~ to the new fuel vendor or ~~reimbursed~~ reimburse to the household as ~~outlined~~ provided in ARM 37.70.607.

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

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) Eligible households that are billed for energy costs directly by the fuel vendor ~~shall~~ will be paid a benefit in the amount ~~provided by ARM 37.70.601~~ computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season and ~~shall~~ will be paid as follows:

(a) and (b) remain the same.

(c) Application for benefits for the current heating season will not be processed until the credit balances for each of the household's fuel vendors attributable to previous years' program awards total ~~less than~~ $50 or less.

(d) All credit balances are presumed to be from previous program awards unless the ~~applicant~~ household provides proof to the contrary.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household ~~shall~~ will be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season ~~shall~~ does not exceed the benefit amount ~~provided by ARM 37.70.601~~ computed using the benefit matrices and multipliers in the LIEAP Benefit Award Matrix and Table of Multipliers for the 2015-2016 heating season. Reimbursement ~~shall~~ will be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor

~~within 45 days of the end of the heating season or~~ by June ~~25~~ 20 ~~if the department has extended the heating season beyond April 30 for which benefits are sought~~.

(3) For eligible households that have their energy costs included in their rental payments:

(a) The household ~~shall~~ will be paid a benefit computed on a monthly basis. For each month of the current heating season for which the household provides a paid rent receipt, the household ~~shall~~ will be reimbursed a pro rata portion, ~~(~~determined by dividing one by the number of months in the heating season~~),~~ of the benefit amount provided in ARM 37.70.601; provided, however, that the benefit paid to the household for any month ~~shall~~ must not exceed 50~~%~~ percent of the rent paid for that month as evidenced by the rent receipt. Failure to provide rent receipts to the local contractor ~~within 45 days of the end of the heating season or~~ by June ~~25~~ 20 ~~if the department has extended the heating season beyond April 30 shall~~ will result in the forfeiture of any benefits to which the household would otherwise be entitled.

(b) The benefit ~~shall~~ will be paid by check payable to the household.

(4) Benefits for eligible households using wood to heat their dwelling ~~shall~~ will be paid as follows:

(a) remains the same.

(b) at the option of the local contractor, by payment directly to the household for future purchases of wood~~.~~; provided, however, that households which receive a direct payment ~~shall~~ will not be entitled to any additional benefits for the current heating season which the household might otherwise be entitled to receive due to a move to a different dwelling or other change in circumstances, except an emergency as defined in ARM 37.70.901; or

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and the end of the heating season of the current state fiscal year, by a payment directly to the household reimbursing the household for wood already purchased. Households which are reimbursed by a direct payment do not lose their right to additional benefits for the current heating season as provided in (4)(b). Failure to provide receipts verifying wood purchases to the local contractor ~~within 45 days of the end of the heating season or~~ by June ~~25~~ 20 ~~if the department has extended the heating season beyond April 30 shall~~ will result in the forfeiture of any benefits to which the household would otherwise be entitled.

~~(5) Reimbursement may, at the discretion of the department only, be made to or on behalf of residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income.~~

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

37.70.901 EMERGENCY ASSISTANCE (1) Emergency assistance under ~~the Low Income Energy Assistance Program~~ LIEAP may be provided to an eligible household in the following circumstances only when such circumstances present ~~a serious, immediate~~ an imminent threat to the health and safety of the household:

(a) and (b) remain the same.

(c) hazardous or potentially hazardous conditions exist in the household's primary home water heating system, ~~and/or~~ space heating systems, ~~and~~ or safety modifications to the system are required; or

(d) any other home energy-related conditions caused by severe weather conditions, fuel shortages, ~~and/~~or acts of God~~.~~; or

(e) the household has a documented medical need for home energy related safety modifications.

(2) Eligibility requirements:

(a) A household eligible for ~~the low income energy assistance program~~ LIEAP ~~which~~ that has an emergency as defined above is eligible for emergency assistance.

(b) A household ~~which~~ that would be eligible for ~~the low income energy assistance program~~ LIEAP had the household applied and which has an emergency as defined above is also eligible for emergency assistance.

(3) The household is responsible, at its own expense, for documenting that circumstances exist which present ~~a serious, immediate~~ an imminent threat to the household as defined in (1)(a) through ~~(d)~~ (e). The local contractor may, however, in its discretion and subject to the priorities and restrictions specified in its contract with the department, assist the household in identifying and documenting such circumstances, if the local contractor has the expertise and resources to do so.

(4) remains the same.

(5) Subject to the provisions of (6), after a household has requested emergency assistance and provided proof that it is financially and otherwise eligible for such assistance, the local contractor ~~shall~~ must provide some form of assistance to resolve the emergency:

(a) through (6)(b) remain the same.

(7) The identification, removal, ~~and/~~or abatement of asbestos is not an allowable use of emergency assistance funds.

(8) remains the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of 37.70.107; 37.70.110; 37.70.115; 37.70.305; 37.70.311; 37.70.401; 37.70.402; 37.70.406; 37.70.407; 37.70.408; 37.70.601; 37.70.602; 37.70.607; and 37.70.901 pertaining to Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low-income households pay their home heating costs. The department proposes to make the following changes to its administrative rules governing LIEAP:

All Above-Described Rules Generally

As a matter of general housekeeping, the department proposes to replace multiple outdated, inconsistent, or verbose terms with fewer ones, which is consistent with

current department efforts to achieve clear and efficient rulemaking. For example, terms such as applicant, recipient, beneficiary, party, individual, person, household, and household member have been inconsistently applied to refer to people who participate in LIEAP. The department believes it is necessary for clarity and consistency to limit references, when possible, to "person," "individual," or "household member," or their plural variations, and to refer to "households" more often when describing overall living arrangements within a residence. The term "low income energy assistance" is also proposed to be replaced with "LIEAP benefits" when referring to the benefits a person or household receives, and with "LIEAP" when program-specific references are made. Other minor word choice amendments are proposed to achieve gender neutrality, to reflect the current style of administrative rules writing, or to fix previous language errors. "Must" is a proposed substitution of "shall," which is an increasingly problematic modifying word when describing duties or requirements imposed on people and objects.

The department does not believe these word choice substitutions affect the meaning of the rules and they are consistent with changes made to several other departmental program administrative rules.

ARM 37.70.107 and 37.70.401

The terms "agency," "contractors," and "local contractors" are used interchangeably in these rules to mean a community-based organization with which the department has contracted to provide outreach and process applications for LIEAP and the Weatherization Program. For uniformity and clarity when referring to these organizations with which the department contracts, the department determines it necessary to substitute references to "agency" and "contractors" with "local contractors." This will not change any definitions or the duties of the local contractor.

ARM 37.70.107, 37.70.110, and 37.70.115

ARM 37.70.107(2) currently provides that the department's Intergovernmental Human Services Bureau (IHSB) will review cases in which fraud is suspected before making referrals to DPHHS' Audit and Compliance Bureau. The name of the Audit and Compliance Bureau was changed some time ago to the Program Compliance Bureau (PCB) although the name was not changed in rule due to oversight. The department proposes to update the name of the bureau and also insert in ARM 37.70.107(1) and (2) and 37.70.110(2) the name of the division of which the PCB is a part, the Quality Assurance Division. These changes are necessary to designate clearly and accurately the entity to which fraud referrals are made. Additionally, ARM 37.70.115(2)(a) currently provides that fraud matters are referred to the Audit and Compliance Bureau. In practice, local contractors contact IHSB, not the PCB, when they suspect fraud has occurred. The department proposes to amend ARM 37.70.115(2)(a) to specify that cases of suspected fraud must be forwarded to the IHSB, which will determine whether to make a referral to the PCB. This change is necessary to describe accurately the department's fraud referral procedure.

ARM 37.70.305

In (1), the words "moves to a different" is being substituted for "changes" in the phrase "changes residence." This is a revision in terminology to avoid ambiguity pertaining to what constitutes "change" and does not affect existing department policy. In (1) and (2) "contractor" is being changed to "local contractor" for the reasons discussed above in connection with the amendment of ARM 37.70.107. In (3) the term "local contractor" is being changed to "department" because the decision to accept applications prior to October 1 must be made by the department, as local contractors are not authorized to make those decisions.

In (1) and (2) "contractor" is being changed to "local contractor" for the reason discussed above in connection with the amendment of ARM 37.70.107, 37.70.401, and 37.70.901. Section (3) currently provides that, subject to one exception, a LIEAP application must be filed between October 1 and April 30, unless April 30 falls on a weekend or legal holiday. The department proposes to substitute "holiday" observed by Montana state government as set forth in 1-1-216, MCA, for the term "legal holiday." This is necessary because "legal holiday" has no clear cut meaning that would be understood by everyone reading the rule. The holidays observed by Montana state government are specified in 1-1-216, MCA, and thus can be readily ascertained by referring to that statute.

Section (3) states that, at the discretion of the local contractor, households that use heating fuel sold at lower prices in the summer may file their applications prior to October. The term "local contractor" is being changed to "department" because the decision to accept applications prior to October 1 must be made by the department so that there will be consistency throughout the state regarding when applications can be filed. This is not a change in policy. In recent years the department, not the local contractors, has made the decision to accept such applications from July 1 through September 30, but the rule was never changed to bring it in line with the current practice. The word "deliverable" is being inserted before "heating fuel" to clarify that fuels sold at a lower price in the summer are fuels like propane and heating oil that can be delivered to the customer and stored for later use.

Finally, (3) currently states that when applications are accepted prior to October 1 the date of the application is deemed to be October 1. This provision is being deleted because the LIEAP rules provide that a household's eligibility and benefit amount are based on its income in the month of application, which for these households would be July, August, or September. If the date of these applications is deemed to be October 1, the household's income during the month of October would have to be used rather than its income in the month when the application was actually filed. This would result in inconsistency between these households and households that must apply between October 1 and April 30 in the way their income is calculated. This change is being made so that the income of all households will be calculated as of the month in which the application was actually filed, which is fairer.

Section (4) currently provides that residents of publicly subsidized housing whose energy costs are included as a portion of their rent are eligible for a single payment of $50 for a period of five years, called a minimum benefit. The department proposes to change the benefit paid to eligible residents of publicly subsidized housing. Instead of receiving a minimum benefit, they will receive a benefit equal to five percent of the amount of a regular LIEAP benefit or a payment of $25, whichever is greater. This benefit, called a "modified benefit," will be paid to the household each year for a five-year period. The department also proposes authorizing payment of a modified benefit to households that are obligated to pay a base-load electric bill.

The change to the modified benefit is necessary because the department recognizes that publicly subsidized housing households whose energy costs are included as a fixed portion of their rent or who have an obligation to pay a base-load electric bill need assistance even though they are not directly paying a vendor for heating and cooling costs. They are being paid only 5% of the regular LIEAP benefit or $25, whichever is more, because they generally do not pay as much as households who directly pay for heating and cooling. Paying these households a modified benefit of at least $25 per year will also allow residents of publicly subsidized housing who do not have to pay the costs of heating or cooling their homes to qualify for a higher Supplemental Nutrition Assistance Program (SNAP) benefit in accordance with Section 4006 of Title IV of the Agriculture Act of 2014, commonly known as the Farm Bill of 2014.

ARM 37.70.311

This rule sets out the procedures for processing LIEAP applications. The department has determined through its current business practices that a LIEAP applicant's verified social security number (SSN) is sufficient to prove identity without photo identification and, alternatively, that an applicant's birth certificate is sufficient to prove identity without a verified SSN. The department proposes an amendment to specify that photo identification is not required if the SSN is verified and provide that a birth certificate will be accepted as proof of identity if the SSN cannot be verified for persons under 18 years of age. The department deems the proposed changes necessary as an accommodation for persons who may not otherwise have alternate forms of identification when applying for LIEAP benefits.

Subsection (2)(b) and (6) are being amended to include the requirement to obtain proof of lawful entry into the United States as a "qualified alien." The U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, the federal agency that administers LIEAP, has issued new guidance to encourage states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens.

Subsection (2)(e) currently provides that receipt of Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) benefits must be verified.

A household that consists solely of members who receive SSI or TANF is automatically financially eligible for LIEAP because they are needs-based programs and thus there is no need to investigate the household's finances to determine LIEAP eligibility. The addition of SNAP to the list of assistance programs the receipt of which must be verified is proposed because SNAP is also a needs-based program, the receipt of which makes the household automatically financially eligible for LIEAP.

Subsection (2)(i) currently states that households need to submit paid energy receipts to the local contractor within 45 days of the end of the heating season or by June 25 if the department has extended the heating season beyond April 30 for which benefits are sought. This section is being amended to simplify the last day of the heating season. The last day to submit receipts for a LIEAP benefit will be June 20.

ARM 37.70.401

The department proposes to add or clarify terms used in the rule. This is necessary to ensure defined terms used in the rule are interpreted as the department intends.

Several changes are necessary due to guidance recently issued by the agency that administers LIEAP, namely the Division of Energy Assistance, which is part of the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services. Transmittal No. LIHEAP-IM-2014-07 issued in December 2014 encourages states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens. The transmittal does not specify who qualifies as an eligible child, but the department has determined that a child who is a emancipated minor as defined by Montana law should be eligible to file a LIEAP application. It is therefore necessary to include a definition of the term "emancipated minor" in ARM 37.82.401.

Additionally, the department also is taking this opportunity to state in rule that with the exception of emancipated minors a person must be 18 years of age to file a LIEAP application. The rules currently do not contain any age requirement for filing a LIEAP application. The department believes that emancipated minors and persons who have attained the age of 18, which is the age of majority in Montana, are generally mature enough to understand the importance of providing accurate information about the household so that eligibility and benefit amount can be correctly determined, while younger persons may not be. A definition of "applicant' is therefore being added to specify that a person must be 18 or an emancipated minor to apply for LIEAP.

The definition of "applicant" also provides that a person does not have to be an eligible household member in order to apply on behalf of eligible members. This provision is being included because Transmittal No. LIHEAP-IM-2014-07 clarifies that an ineligible household member may apply for an eligible member or members.

This will allow an eligible member who might find it hard to file an application for a reason such as poor health, disability, or limited ability to read or write to receive benefits by having an ineligible member file the application on behalf of the eligible member. ARM 37.70.401 currently does not define "eligible household member" or "ineligible household member" because these terms are not used in the LIEAP rules. It is necessary to define these terms now because they are used in the definition of "applicant" that is being added.

A definition for the term "applicant" is a proposed amendment to the rule because the federal agency that administers LIEAP, the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, has issued new guidance to encourage states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens. A LIEAP applicant doesn't need to be an eligible household member. This change to the rule makes it clear that an ineligible household member can submit a LIEAP application for the household.

It is necessary to add a definition of "base-load electric" bill to correspond with the proposed amendment of ARM 37.70.305, providing that residents of publicly subsidized housing who are obligated to pay a base-load electric bill are entitled to receive a modified LIEAP benefit.

A definition for the terms "eligible household member" and "ineligible household member" are proposed because the federal agency that administers LIEAP, the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, has issued new guidance to encourage states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens. These definitions clarify that the person needs to be a U.S. citizen or qualified alien to be an eligible household member.

A definition for the term "deliverable heating fuel" must be added because the word "deliverable" is being added to the words" heating fuel" in ARM 37.70.305 for the reason explained above.

The amendment to the term "federal fiscal year" is necessary to update the dates displayed in the example provided. The federal fiscal year "2011" will be changed to "2016". The federal fiscal year period will be updated from "October 1, 2010 through September 30, 2011" to October 1, 2015 through September 30, 2016. This amendment does not change the meaning of the term "federal fiscal year."

The amendment to the term "heating season" is necessary to update the dates displayed in the example provided. The example "2009 through 2010" will be updated to "2015 through 2016." The heating season period from "October 1, 2009 through September 30, 2010" will be updated to "October 1, 2015 through April 30, 2016." In addition, the definition for the term "heating season" currently states

requests for reimbursement must be received by the local contractor no later than June 25. This definition is being amended to simplify the last day of the heating season. The last day to submit receipts for a LIEAP benefit is June 20.

A definition for the term "life-threatening" is proposed because the federal agency that administers LIEAP, the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, noted in a compliance review that the department uses the term "life-threatening" in ARM 37.70.901 concerning emergency assistance without providing a definition.

Amendments for the definitions of "incurment" and "medically needy" are necessary for clarification. The term "minimum benefit" is proposed for amendment to "modified benefit" to correspond to changes in the subsidized rent households LIEAP benefit. The proposed changes do not change the definitions of the above-described terms. A new definition for "publicly subsidized housing" is proposed as it is needed for use with modified LIEAP benefits and subsidized rent households. The Table of Benefit Levels referenced in ARM 37.70.601 as the "Table," is used to calculate a household's benefit amount and classifies homes as single family homes, multi-family homes, and mobile homes. The definition of "single family unit" as it applies to the table provides that a doublewide trailer or mobile home is considered a single family unit. This statement is proposed for deletion and is necessary because it is incorrect and conflicts with the definition of "mobile home" currently in (17), which specifies that singlewide or doublewide trailers and mobile homes are all considered mobile homes.

A definition for the term "qualified alien" is proposed because the federal agency that administers LIEAP, the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, has issued new guidance to encourage states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens. This definition identifies the documentation required to verify a person is a qualified alien.

The amendment for the term "self-employment deductions" is necessary to allow the local contractors the option to deduct 40 percent from the annual gross receipts for self-employment. The self-employment policy changed to allow the local contractors to count 60 percent of the gross self-employment income. Annual gross income will be calculated by taking annual gross receipts times 60 percent. For households with self-employment income, annual gross income means annual gross receipts (all self-employment income before deductions) minus self-employment deductions. The self-employment deduction would be 40 percent of the total gross self-employment income. The local contractor still has the option to calculate self-employment income using actual deductions if this calculation method benefits the client.

The amendment to the term "state fiscal year" is necessary to update the dates displayed in the example provided. The state fiscal year "2011" will be changed to "2016". The state fiscal year period will be updated from "July 1, 2010 through June

30, 2011" to July 1, 2015 through June 30, 2016. This amendment does not change the meaning of the term "state fiscal year."

ARM 37.70.402

This rule currently provides that certain residents of publicly subsidized housing may receive a minimum benefit. For the reasons discussed in connection with the amendment of ARM 37.70.305, above, these households will now be eligible for a modified LIEAP benefit instead of the minimum benefit and this rule also requires amendment to reflect this change.

Section (8) needs to be amended to explain how LIEAP benefits will be calculated when eligible and ineligible household members reside together. The U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, the federal agency that administers LIEAP, has issued new guidance to encourage states to develop LIEAP policies and procedures that do not "discourage, delay or deny" LIEAP benefits to eligible persons, including eligible children residing with ineligible non-citizens. The gross income will be counted for all household members (eligible and ineligible). Only the eligible household members will be counted for purposes of calculating the LIEAP benefit.

ARM 37.70.406

The department proposes to incorporate by reference the table of income standards used to determine eligibility for LIEAP. This amendment is necessary so the income standards will have the force of law.

ARM 37.70.407

The department is proposing to amend this rule by excluding out-of-pocket health insurance premiums as income when calculating income to determine a LIEAP household's poverty level. The amendment was initiated due to the Health and Economic Livelihood Partnership (HELP) Act. The HELP Act extends health care coverage to people between the ages of 19-64 earning less than 138 percent of the federal poverty level. The HELP Act will provide low-cost health insurance to Montanans that make too much money for traditional Medicaid, but too little to receive subsidies on the health insurance exchange. The department doesn't want to penalize a person paying for health insurance coverage. Therefore, all out-of-pocket health insurance premiums will not be considered countable income under LIEAP.

ARM 37.70.408

The department is proposing to amend this rule by removing the dollar amounts of the nonbusiness resource limits and adopting and incorporating by reference the department's 2015 LIEAP table of nonbusiness resource standards located on the

department's web site. The rule also adds information on how to obtain a copy of the LIEAP table of nonbusiness resource standards.

This proposed rule change is necessary for increased efficiency in departmental rulemaking and is consistent with current department efforts to adopt by reference, where possible, regularly changing data that is currently in rule with internet or policy manual references that do not require formal rulemaking when updated.

ARM 37.70.601

The dollar amounts listed in the Table of Benefit Levels, more commonly known as the benefit award matrix, are used to calculate a household's benefit amount. The figures in the matrix are updated each year to take into consideration new information regarding the amount of funds available to pay LIEAP benefits for the current heating season, projected changes in fuel costs, and estimates of the number of households that will apply and be found eligible for the heating season.

The department is proposing to amend this rule by removing the matrix and incorporating by reference matrix data as it is periodically revised by the department and located on the department's web site. The amendment also instructs interested persons as to how to obtain a copy of the matrix.

ARM 37.70.607

Subsection (1)(c) currently provides that LIEAP benefits for the current heating season will not be issued until a household's total credit balance with all of its fuel vendors from LIEAP benefits paid from previous heating seasons, is less than $50. The proposed amendments providing that a credit balance may be $50, but not more than $50, are necessary to be consistent with ARM 37.70.607(1)(b) which provides that fuel vendors must return any credit balance in excess of $50 to the department at the end of the heating season.

Sections (2), (3)(a), and (4)(c) currently state that households need to submit paid energy receipts to the local contractor within 45 days of the end of the heating season or by June 25 if the department has extended the heating season beyond April 30 for which benefits are sought. This section is being amended to simplify the last day of the heating season. The last day to submit receipts for a LIEAP benefit will be June 20.

Additionally, the department proposes to remove (5). Section (5) currently provides that the department has discretion to reimburse residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income. Removal of this provision is necessary because it is no longer accurate. Residents of publicly subsidized housing who meet those requirements are now eligible for a modified LIEAP benefit, described in ARM 37.70.305.

ARM 37.70.901

The language in (1) and (3) pertaining to "serious, immediate" is proposed for change to "imminent" to align with the terminology used by the U.S. Department of Health and Human Services, Administration for Families and Children, Office of Community Services, the federal agency that administers LIEAP. "Documented medical need" is also proposed for addition as (1)(e) as a circumstance under which emergency assistance may be provided. This addition is reasonably necessary, as an audit issue arose from the Office of Community Services, which indicates the department should allow documented medical need as a circumstance under which emergency assistance may be provided.

The department proposes to amend and clarify (5) by substituting the word "shall" with "must" as it pertains to a LIEAP contractor's duty to provide emergency assistance within 48 hours after the request is made in all cases and within 18 hours after a request is made if the emergency is life-threatening. The proposed amendment is necessary as the department moves towards removal of the word "shall" for the preferred plain English alternate of "must," as several court jurisdictions that have determined "shall" to imply additional meanings that legal document drafters did not intend. Further clarification of rule language aids the department's contention that the intent of 42 U.S.C. 8623(c) imposing these time limits is for the household to receive emergency assistance within 48 or 18 hours of the time the household requests assistance even if it makes the request outside of normal business hours. Therefore, local contractors providing LIEAP services must have systems in place to ensure emergencies are addressed within the 18/48 hour rules even when the request is received within normal business hours.

Fiscal Impact

LIEAP is 100% federally funded. Congress has not yet appropriated funds for LIEAP for the 2015-2016 heating season, but based on current available information the department estimates that Montana will receive LIEAP funds of approximately $17 million to $18 million for the current heating season. This compares to LIEAP funding of $18 million for the 2014-2015 heating season. It is estimated that 20,000 households will qualify for LIEAP benefits this year, which is comparable to last year.

5. The department intends to apply these rule amendments retroactively to October 1, 2015. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

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

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

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Barbara Banchero
Barbara Banchero, Attorney
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015.

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

In the matter of the amendment of ARM 37.80.101, 37.80.201, 37.80.202, 37.80.203, and 37.80.502 pertaining to child care assistance and the implementation of required policy changes under the Child Care and Development Block Grant of 2014	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 28, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain the same.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) The Montana Child Care Manual, dated ~~March 1, 2014~~ December 16, 2015, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following nonfinancial requirements must be met in order for payments under this chapter to be made:

(a) With the exceptions in (1)(b), parents must work the following minimum number of hours each month:

(i) remains the same.

(ii) for single parent households:

(A) remains the same.

(B) the parent has no work requirement ~~must be working a minimum of 40 hours each month~~ if attending school or training full-time; or

(C) the parent must be working a minimum of ~~60~~ 40 hours each month if attending school or training part-time.

(b) The monthly minimum hourly work requirement does not apply to:

(i) through (iii) remain the same.

(iv) households containing parents who ~~lost a job either in the current month or in the month just preceding the current month~~ are in a grace period, provided the parents:

(A) and (B) remain the same.

(C) ~~have applied for a grace period and~~ have been approved for a grace period;

(v) through (2) remain the same.

(3) Child care assistance under this chapter for parents who are pursuing training or education is subject to the following limitations:

(a) and (b) remain the same.

(c) the training is for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana; and

(d) the training is obtained through an institution approved by the Board of Regents or other recognized accrediting body~~; and~~.

~~(e) the parent must verify that he or she is making satisfactory progress in the training or education as defined by the training or educational institution or by the department.~~

(4) and (5) remain the same.

(6) Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) A household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is referred to a child care resource and referral agency to obtain child care assistance, so long as the participant

contacts the resource and referral agency within ~~ten~~ thirty calendar days after the date the referral is made.

(ii) If the parent does not contact the child care resource and referral agency within ~~ten~~ thirty calendar days after being referred for TANF child care assistance, eligibility for child care assistance will begin on the date a child care certification plan is obtained from the child care resource and referral agency.

(b) through (11) remain the same.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) remains the same.

(2) Households that are not receiving temporary assistance for needy families (TANF) are presumed eligible to receive child care assistance for 30 calendar days while application information is verified.

(a) To qualify for presumptive eligibility, a household must:

(i) and (ii) remain the same.

(iii) submit ~~an appropriate child care service plan~~ the name of the child care provider on the application sufficient to set up the authorization of services.

(b) through (13) remain the same.

(14) If an audit of the case shows that monies received fall under ARM 37.80.506(1)(a), (b), (c), and (d), ~~A~~a household that receives any amount of child care assistance to which the household was not entitled must repay all child care assistance to which the household was not entitled~~, regardless of whether the applicant, the recipient, the department, or contractors acting on behalf of the department caused the overpayment~~.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.203 REQUIREMENT TO REPORT CHANGES (1) remains the same.

(2) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in the following circumstances within ten calendar days from the date the change occurs or the applicant or recipient learns of the change:

(a) through (c) remain the same.

(d) training or school attendance, including changes to the location or hours of the training ~~and circumstances regarding satisfactory progress~~;

(e) through (3) remain the same.

(4) If an audit of the case shows that monies received fall under ARM 37.80.506(1)(a), (b), (c), and (d), ~~A~~a household that receives child care assistance to which the household was not entitled must repay the overpayment.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA

37.80.502 CHILD CARE OVERPAYMENT (1) remains the same.

(2) If an audit of the case shows monies received fall under ARM 37.80.506(1)(a), (b), (c), and (d), ~~The~~ the department may recover the amount of any child care payment made to a child care provider or to a parent which is in excess of the amount to which the provider or parent was entitled~~, regardless of whether the overpayment was caused by the department, by the provider, or by the parent~~.

(a) through (5) remain the same.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.80.101, 37.80.201, 37.80.202, 37.80.203, and 37.80.502, pertaining to child care assistance. The Best Beginnings Program is administered by the department and provides low-income parents and guardians financial assistance to pay for day care.

The proposed rule changes include required changes under the Child Care and Development Block Grant of 2014, reducing barriers for families, removing incorrect practice from policy, and a shift toward family-friendly policies.

ARM 37.80.101

This rule adopts and incorporates by reference the Child Care Policy Manual (Manual). The department proposes to make revisions to this Manual that will take effect on December 16, 2015. The proposed amendment to the rule is necessary to incorporate into the Administrative Rules of Montana the following revisions to the Manual:

Throughout the Manual, change the name of the Early Childhood Services Bureau (ECSB) Procedure and Resource Manual Handbook to the Early Childhood Services Bureau (ECSB) Procedure Handbook;

add the term "services" to "authorization" where appropriate; and

change the term "recertify" to "redetermination" where appropriate.

Policy Section 1-3: Overview-Best Beginnings Child Care Scholarships - Definitions

The definition of "Adverse Action" is changed because child care resource and referral agencies do not have the legal authority to take action on provider enrollment or licensure issues.

The definition of "Child Care Scholarship" is changed because families qualify for child care assistance while involved in approved work or school/training activities, or a combination of the two.

The definition of "Good Cause to Request a Grace Period" is changed because the Child Care Development Fund law effective November 19, 2014, requires a person to be actively seeking employment.

The definition of "Grace Period" is being changed from 30 days to 90 days to meet recommendations established as part of the new Child Care Development Fund law.

Policy Section 1-4a: Overview-Best Beginnings Child Care Scholarships - Special Needs

The General Rule section is revised to state that additional funding for a child with special needs is at the discretion of the ECSB.

The Early Childhood Specialist's role in the Individual Child Care Plan and Entering a Final Amount is changed to state the current practices in the Special Needs Subsidy program.

The Recertification section is also revised to state the current practices in the Special Needs Subsidy program.

The Statewide Inclusion Coordinator has been renamed because Early Childhood Services Bureau no longer uses a contractor for this work and carries out the responsibility within the bureau.

This section is also being revised because this is the first step in a two-step process by ECSB to make adjustments to its policy around special needs children based on requirements established as part of the Child Care Development Fund law and the Office of Child Care State Plan requirements. The second step will involve recommendations on approach by the Best Beginnings Advisory Council.

Policy Section 2-1: Non-TANF Child Care Eligibility – Application Process

Presumptive eligibility is changed to require less paperwork to process eligibility.

Policy Section 2-3: Non-TANF Child Care Eligibility - Non-TANF Activity Requirements

The General Rule, Minimum Hourly Work Requirements, and Employed and Attending School/Training section are revised because families qualify for child care assistance while involved in approved activity requirements which can be work, or school/training activities, or a combination of the two.

Policy Section 2-7: Non-TANF Child Care Eligibility - Redetermination

This manual section is being revised to state changes in eligibility determination. With exceptions around Child Protective Services and TANF referrals, all families will be determined eligible for a 12-month period of time. At the end of that time, families' eligibility will be redetermined for another 12 months. Language around mini-recertification processes and its associated invoice auditing has been removed.

Language about special needs has been removed to be consistent with Policy Section 1-4a.

These changes are required by the new Child Care Development Fund law and the Office of Child Care State Plan.

Policy Section 4-1: Child & Family Services Child Care Management – CSFD & CCR&R Coordination

This change allows a CPS worker to refer a child for Special Needs consideration at any time. Previous language only allowed it at the time the referral was written. Other language around special needs was changed to be consistent with Policy Section 1-4a.

Policy Section 4-2: Child & Family Services Child Care Management – Tribal IV-E Child Protective Services

These changes are made to be consistent with Policy Section 4-1.

Section 6-1: Serving the Family – Child Care Referrals

This change removes language about working with a contractor because Early Childhood Services Bureau now performs this function.

Section 6-3: Serving the Family – Issuing the Authorization of Services and Certification Plan

The section is being renamed because the authorization of services is determined then the certification plan is generated by the Child Care Under the Big Sky database.

This section is also being revised to be consistent with the 12-month eligibility span in Policy 2-7.

Section 6-6: Serving the Family – Absent Days & Continuity of Care

This changes the grace period due to job loss. The change is required by the new Child Care Development Fund law and the Office of Child Care State Plan.

Section 6-8: Serving the Family – Investigating and Auditing

This change removes language about auditing invoices at recertification and overpayment to be consistent with Policy Section 2-7 and Policy Section 6-9.

ARM 37.80.201

The department is proposing to amend this rule to decrease the minimum work requirements for parents who attend school full-time or part-time, to change the grace period, to remove the requirement that a parent verify satisfactory progress in the training or education program, and to revise language about a child care resource and referral agency and a TANF child care assistance referral.

A grace period allows a parent to remain eligible for child care assistance after a job loss when the work requirement is no longer met. A grace period given after a job loss will increase from 30 to 90 days because it is a required change from the Child Care and Development Block Grant Act of 2014.

A decrease in the work requirement for a parent attending school full-time or part-time is intended to provide continuity of care for children.

It is not necessary to report to the program that a parent is making satisfactory progress and that requirement is being removed. A parent must be enrolled in school or training.

A parent has 30 calendar days to finish the TANF application after being referred. The rule is being updated to be consistent with Policy Section 3-2.

ARM 37.80.202

The department is proposing to amend this rule to clarify required documentation for presumptive eligibility and to state when overpayments will be repaid by a household. Presumptive eligibility requires the parent to submit the name of his or her child care provider to the resource and referral agency. This is sufficient to set up an authorization of services for the child. Additional documentation is not required. This will reduce paperwork required from the parent.

Overpayments will only be pursued if caused by intentional program violations defined in ARM 37.80.506. The requirement that a parent or guardian repay overpayment caused by department error is being removed to be consistent with ARM 37.80.203 and 37.80.502.

ARM 37.80.203

The department is proposing to amend this rule to remove language about documenting satisfactory progress in school. The parent must only show enrollment of credit hours and receipt of fees paid. The work requirement for a full-time student is also removed. Overpayment requirements regarding repayment of department-

caused overpayments are being amended to be consistent with ARM 37.80.202 and 37.80.502.

ARM 37.80.502

The department is proposing to amend this rule to remove the requirement that a parent or guardian repay an overpayment caused by department error.

Fiscal Impact

There is no anticipated fiscal impact from these proposed rule changes.

5. The department intends to adopt these rules as effective on December 16, 2015.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

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

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

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Geralyn Driscoll
Geralyn Driscoll, Attorney
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015.

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

In the matter of the amendment of ARM 37.86.2803, 37.86.3001, 37.86.3002, and 37.86.3003 pertaining to the addition of lactation services to Medicaid outpatient hospital services	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 28, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

<u>37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING</u>

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants.

(a) remains the same.

(b) For cost report periods occurring on or after May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-10, Transmittal 2, ~~last updated August 2011,~~ subject to the exceptions and limitations provided in the department's administrative rules.

(c) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

<u>37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS</u>

(1) through (11) remain the same.

(12) "ICD-9-CM" means the International Classification of Diseases, Ninth Revision based on the official version of the United Nations World Health Organization's Ninth Revision, effective for dates of service or discharge date prior to and including September 30, ~~2014~~ 2015.

(13) and (14) remain the same.

(15) "Lactation services" means support through breastfeeding education and consultations with certified lactation providers to increase the health of both mother and baby.

(15) through (22) remain the same, but are renumbered (16) through (23).

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

37.86.3002 OUTPATIENT HOSPITAL SERVICES, SCOPE AND REQUIREMENTS (1) remains the same.

(2) Outpatient hospital services are services that would also be covered by Medicaid if provided in a nonhospital setting and are limited to the following diagnostic and therapeutic services furnished by hospitals to outpatients:

(a) through (c) remain the same.

(d) services provided outside the hospital, as follows:

(i) remains the same.

(ii) therapeutic services that are ~~incident~~ incidental to physician services and provided under the direct personal supervision of a physician. Outpatient physical therapy, occupational therapy, and speech therapy are not subject to the direct physician supervision requirement. Therapy services are limited as in ARM 37.86.606; ~~and~~

(e) ~~diabetic~~ diabetes education services provided by a hospital whose ~~diabetic~~ diabetes education ~~protocol has been approved by the Medicare Part A Program, P.O. Box 6732, Fargo, ND 58108-6732. Coverage of diabetic education services is limited to those services meeting the requirements of 42 CFR, part 410, subpart H as revised through October 1, 2010. A copy of this section is adopted and incorporated by reference and is available through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951~~ programs are in compliance with ARM 37.86.5401 through 37.86.5404~~.~~; and

(f) lactation services provided in a certified baby-friendly hospital approved by the department and performed by nonphysician providers. These services will only be allowed to be billed by the facility effective on or after January 1, 2016.

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

37.86.3003 OUTPATIENT HOSPITAL SERVICES, EXCLUSIONS

(1) Outpatient hospital services do not include:

(a) remains the same.

(b) exercise programs and programs primarily educational in nature unless covered as preventative outpatient services, including, but not limited to:

~~(i) cardiac rehabilitation exercise programs prior to January 1, 2006;~~

~~(ii) nutritional programs;~~

~~(iii)~~ independent exercise programs, such as pool therapy, swim programs, or health club memberships;

~~(iv) pulmonary therapy prior to January 1, 2006;~~

(c) through (f) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.86.2803, 37.86.3001, 37.86.3002, and 37.86.3003 regarding changes to the Outpatient Hospital and All Hospital administrative rules of Montana by adding lactation services for Certified Baby-Friendly Hospitals, correcting the ICD-9 end date from 9/30/2014 to 9/30/2015, amending language to not conflict with educational programs that are now covered as Preventative Outpatient Services, and remove the "last updated" date from ARM 37.86.2803 with reference to the Form 2552-10, as it is not necessary to reference a date for this form.

ARM 37.86.2803

The department proposes removing from (1)(b) the reference to the date when Form 2552-10 of CMS Publication 15 was last updated, that is, "last updated August 2011." Form 2552-10 assists providers in completing cost reports turned in to the department by setting forth definitions and expectations for allowable costs. The department believes removal of the reference to the specific date of the latest updating is appropriate because that date is not critical to the meaning and purpose of the rule, and because reference to a specific date of updating might be confusing given that the form is periodically updated.

ARM 37.86.3001

The department proposes correcting a misstatement of date in current (12) by changing the reference to the dates when ICD-9-CM will be effective for dates of service or discharge date prior to and including September 30, 2014 to September 30, 2015. When read together with (13), this change will clarify that ICD-9-CM will be effective for dates of service or discharge up to and including September 30, 2015, and that ICD-10-CM will be effective for dates of service or discharge after September 30, 2015.

The department proposes adding a definition of "lactation services" because those services are being added as covered services for Montana Medicaid Certified Baby-

Friendly Outpatient Hospitals and eligible members. The definition describes what the service was designed to provide.

ARM 37.86.3002

The department proposes amending (2)(e) to change references to "diabetic education" to "diabetes education," which is perceived as more person-centered. Current subsection (2)(e) requires that the Medicare Part A program approve a hospital's diabetes education protocol for "diabetes education services" the hospital provides to outpatients to be defined as "outpatient hospital services," and limits coverage for such services to those services meeting 42 CFR, part 40, subpart H, as revised through October 1, 2010. The protocol for diabetes education services has changed since this rule was last revised, and such services no longer go through Medicare; instead, such services are now offered through Montana Medicaid in several diabetes education programs to members by Montana Medicaid. This rule, therefore, proposes replacing the current requirements and coverage limits with a single standard under which diabetes education services a hospital provides to outpatients are defined as "outpatient hospital services" only if the hospital's diabetes education program complies with ARM 37.86.5401 through 37.86.5404, related to Montana Medicaid diabetes services, thus ensuring all hospitals and providers are following the same expectations in offering diabetes education services. The rule also proposes deleting the part of the current rule incorporating by reference 42 CFR, part 40, subpart H and making it available through the department as unnecessary.

The department proposes adding new (2)(f) because the department is adding lactation service as a service it will cover on an outpatient hospital basis. This subsection sets forth the scope and requirements for coverage that such services be provided by a nonphysician provider in a Certified Baby-Friendly Hospital and must be billed by the facility. These services may be billed for on or after January 1, 2016, when the Medicaid Management Information System (MMIS) will be capable of processing such claims.

ARM 37.86.3003

The department proposes adding to (1)(b) language making clear that the exclusion of exercise programs and programs primarily educational in nature in this subsection from the definition of "outpatient hospital services" does not apply if such programs are covered as preventative outpatient services, such as independent exercise programs such as pool therapy, swim programs, or health club memberships. This prevents this section from conflicting with language allowing coverage for other educational and preventative outpatient services, such as lactation services.
The department proposes amending (1)(b)(i) through (iii) to remove "cardiac rehabilitation exercise programs," "nutritional programs," and "pulmonary therapy" because Montana Medicaid covers these services on a limited basis, and because these services have their own rules that govern the scope and requirements of each service.

Fiscal Impact

The proposed changes for lactation services will currently affect two Certified Baby-Friendly-approved facilities and other providers as they choose to become certified. As Medicaid will be paying for these services, it will initially minimally increase provider reimbursement (current facilities would receive approximately $8295.00 per fiscal year) and qualifying members (current estimation is 79 members) would receive a newly covered service. Other facilities are currently in the process of becoming Certified Baby-Friendly (approximately 12). If they were all Certified Baby-Friendly and approved by the department, Medicaid could look at an estimated yearly fiscal impact of $176,490.00 based on an estimated 1698 eligible members. The proposed corrected date for ICD-9-CM will affect all Outpatient Hospital Service providers, but there will be no fiscal impact for the state, providers, or members. There will also be no fiscal impact for the removal of the date from All Hospital Reimbursement.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

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

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

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

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

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

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Francis X. Clinch
Francis X. Clinch, Attorney
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015.

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

In the matter of the amendment of ARM 37.86.101 pertaining to updating the physician-related services provider manual	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 28, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.101 PHYSICIAN SERVICES, DEFINITIONS (1) through (4) remain the same.

(5) The department adopts and incorporates by reference the Physician-Related Services Manual governing the administration of the Physician program dated ~~July 2014~~ August 1, 2015. The Physician-Related Services Manual is available for public viewing at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and at the department's web site at http://medicaidprovider.mt.gov.

(6) through (8) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.86.101.

ARM 37.86.101

The department is proposing to change the date in (5) to August 1, 2015. This is necessary due to the changes made in the Physician-Related Services Provider Manual which will be effective on August 1, 2015.

Revisions to the Physician-Related Services Manual

Each type of Medicaid provider has its own provider manual. The department has undertaken the following changes to the latest and current version of the "Physician-Related Services" manual (the manual), dated August 1, 2015.

1. The department is proposing moving the chapter for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) from each Montana Medicaid provider manual, including former versions of this manual, and placing it in the "General Information for Providers" manual, where it will be easier to maintain EPSDT information in a consistent manner for all Medicaid providers. The "General Information for Providers" manual is found at http://medicaidprovider.mt.gov/Portals/68/docs/manuals/general082015.pdf.

2. The department is proposing moving the Well Child Screen Chart which was formerly Appendix B to the July, 2014 version of the manual to the "General Information for Providers" manual. That chart is also part of EPSDT which was removed and placed in the "General Information for Providers" manual.

3. The department is proposing removing for the sake of clarity all definitions and acronyms which are not specific to this manual, and putting them in the "General Information for Providers" manual. Only definitions and acronyms that are specific to physician-related service providers are retained in this manual.

4. The department is proposing moving key contacts and web sites information from this manual to the "Contact Us" link in the Montana Healthcare Programs Provider Information web site in order to make those contacts and that information more broadly available, and to simplify the updating and maintenance process. The "Contact Us" link may be found at the following web site: http://medicaidprovider.mt.gov/contactus.

5. The department is proposing adding language to current Section 3.1 regarding Prior Authorization for Retroactively Eligible Members, clarifying that for persons who become retroactively eligible for Medicaid, providers may accept them as Medicaid members from the current date or from the date when retroactive eligibility was effective.

6. The department is proposing adding language to current Section 5.1 clarifying that Native Americans who have been treated at an Indian Health Service, tribal or urban facility are exempt from Member Cost Sharing.

7. The department is proposing adding language to current Section 5.9 specifying that except for "moderate conscious sedation," Montana Medicaid does not allow separate reporting of anesthesia for medical or surgical procedures when the practitioner performing the surgery provides anesthesia, and clarifying how to bill properly for anesthesia services.

8. The department is proposing adding language to current Section 5.11 clarifying the proper manner for including the date of, or date associated with service, when billing for obstetrical services.

9. The department is proposing removing a reference formerly included in Section 1.1 of the previous version of the manual to "nutrition services" because it was not referenced anywhere else.

10. The department is proposing making general improvements in the spelling and grammar of the manual.

11. The department is proposing changing the date of this manual from July 2014 to the date of the proposed current version, August 1, 2015.

Fiscal Impact

There is no fiscal impact associated with this rule amendment.

5. The department intends to apply this rule retroactively to October 1, 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 either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., November 12, 2015.

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

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

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

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

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

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Francis X. Clinch
Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.104, 42.11.105, 42.11.211, 42.11.213, 42.11.243, 42.11.245, 42.11.251, 42.11.402, 42.11.405, 42.11.406, 42.11.421, 42.11.422, 42.11.423, 42.11.424, and 42.11.425 pertaining to liquor prices, vendor product representatives and permits, samples, advertising, unlawful acts, inventory policy (powdered/crystalline liquor products), product availability, product listing, bailment, and state liquor warehouse management	))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 27, 2015, the Department of Revenue published MAR Notice No. 42-2-934 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1254 of the 2015 Montana Administrative Register, Issue Number 16.

2. A public hearing was held on September 21, 2015. The department subsequently learned that a group of potentially interested persons may not have received a copy of the proposal notice as intended. Therefore, the department is extending the original comment period deadline by 28 days, to November 2, 2015, to accommodate any additional parties who may wish to participate in this rulemaking action.

3. The Department of Revenue 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, advise the department of the nature of the accommodation needed no later than 5 p.m. on October 26, 2015. 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.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 2, 2015.

5. Any public comments provided in response to the original notice remain valid for this rulemaking and do not need to be resubmitted to the department.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.158, 42.21.162, and 42.21.165 and the repeal of ARM 42.21.124 pertaining to personal property reporting requirements, personal property taxation dates, livestock reporting, and livestock per capita fee payments	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 5, 2015, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS (1) remains the same.

(2) For the purposes of this rule, the statewide aggregate ~~taxable~~ market value of a taxpayer's personal property includes all property owned, claimed, possessed, controlled, or managed by an individual or business entity, either directly or indirectly through an affiliated entity or family member, unless that property is specifically exempted by law.

(3) through (5) remain the same.

(6) ~~Starting in tax year 2014, the~~ The department will apply the exemption and the applicable tax rates identified in (a) through (d) to an individual's or business entity's class eight property by adding together the statewide market value of class eight property owned by the individual or business entity to determine the aggregate market value. If the aggregate market value of class eight property is:

(a) through (8) remain the same.

(9) ~~Beginning in Tax Year 2014, personal~~ Personal property owners whose aggregate class eight market value is $100,000 or less, as defined in (2), will have no further reporting obligation, except:

(a) and (b) remain the same.

(10) New businesses ~~that start up in tax year 2014, and after,~~ are not required to submit a personal property statement/reporting form if the entity's business equipment is valued at $100,000 or less, unless requested by the department in accordance with (9).

(11) and (12) remain the same.

AUTH: 15-1-201, 15-9-101, MCA

IMP: 15-1-121, 15-1-303, 15-6-138, 15-6-201,15-6-202, 15-6-203, 15-6-206, 15-6-213, 15-6-215, 15-6-217, 15-6-218, 15-6-219, 15-6-220, 15-6-225, 15-6-228, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, ~~15-24-902, 15-24-903, 15-24-904, 15-24-905,~~ 15-24-3001, MCA

REASON: The department proposes amending ARM 42.21.158 to strike the word "taxable" from (2) to eliminate potential confusion with the end of the same section which states that some property may be tax exempt.

The department also proposes amending (6), (9), and (10), to remove outdated references to the year 2014 that are no longer needed in the rule.

The department further proposes striking four implementing statutes from the rule that no longer apply to the rule because they relate to livestock reporting, which is now a separate reporting process covered by separate administrative rules.

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) and (2) remain the same.

(3) If the property has taxable situs in Montana on January 1 and the taxpayer is being assessed for the first time for the property, the application for exemption is due upon the later of March 1 or 30 days after ~~the assessment notice has been sent by the department~~ acquisition of the property.

(4) through (7) remain the same.

AUTH: 15-1-201, 15-8-301, MCA

IMP: 15-6-201, 15-6-202, ~~15-6-211,~~ 15-6-229, 15-6-230, 15-8-201, 15-8-301, 15-16-613, 15-24-301, 15-24-303, 15-24-3001, MCA

REASON: The department proposes amending ARM 42.21.162 as a matter of housekeeping to strike outdated language in (3) and replace it with language that reflects the current process. The due date for exemption applications is based on the date a property is acquired, not on an assessment date. The proposed amendment will make this section of the rule consistent with the remainder of the rule and also with the language in the department's other exemption related rules.

The department further proposes striking an implementing statute from the rule that was repealed with the enactment of Senate Bill 157, L. 2015, and adding 15-8-301, MCA, as both an authorization and an implementing statute that further supports this rule.

42.21.165 LIVESTOCK REPORTING ~~REQUIREMENTS~~ AND PER CAPITA FEE PAYMENT ~~(1) A person who raises or owns livestock in the state of Montana subject to the per capita fees under 15-24-921, MCA, and the requirement of a written statement under 15-24-903, MCA,~~

(1) A livestock owner or the livestock owner's agent must submit ~~a completed livestock reporting form.~~

~~(2) The completed~~ a livestock reporting form, electronically or in writing, ~~must be submitted~~ to the department no later than March 1 annually. ~~The department will inform the livestock owner of their obligation to complete and submit a livestock reporting form and advise the livestock owner that they are subject to penalty under the provisions of 15-8-309 and 15-24-904, MCA, for failure to submit the reporting form in a timely manner.~~

(2) The reporting form required in (1) must list the livestock type and count, by county, where livestock are located on February 1. For all poultry and bees, swine 3 months of age or older, and all other livestock 9 months of age or older, the livestock owner/producer shall report the number of animals within each of the following established categories:

(a) horses, mules, and asses (ponies, donkeys, burros);

(b) cattle;

(c) domestic bison;

(d) sheep;

(e) swine;

(f) goats;

(g) poultry (chickens, turkeys, geese, ducks, and other domestic birds raised as food or to produce feathers);

(h) bee hives or boards;

(i) alternative livestock (privately owned caribou, mule deer, whitetail deer, elk, moose, antelope, mountain sheep, mountain goats indigenous to Montana);

(j) ostriches, emus, and rheas; and

(k) llamas and alpacas.

~~(3) If a livestock owner fails to complete and submit a livestock reporting form during the time frame set forth in (2) the department may assess a $25 penalty under 15-8-309 and 15-24-904, MCA.~~

(3) Livestock owners that bring livestock into the state after February 1 of the current year are required to complete and submit a livestock reporting form to the department. The department will use the information provided by the livestock owner to mail them a reporting form in the following year.

(4) If a livestock owner who reported in the previous year(s) fails to submit a completed livestock reporting form by the March 1 deadline, the department ~~will~~ shall use the owner's reported livestock counts from the previous year(s) to estimate the livestock ~~numbers based upon the best information available~~ type and count for the current year. ~~The~~ For livestock owners with livestock located on property owned by someone else that have not self-reported by the March 1 deadline, the department ~~may utilize previously reported~~ shall estimate the livestock ~~numbers, brand inspections, or other available information as a basis for its estimation~~ owner's livestock type and count based on the livestock numbers provided by the landowner.

~~(5) Statements submitted after the deadline in (2) may be assessed a penalty unless:~~

~~(a) the livestock owner provides evidence of their inability to comply due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) evidence that this/these conditions(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 1 to prevent timely filing of the reporting form.~~

(5) Effective in 2016, per capita livestock fee payments are due to the department by May 31 of the reporting year.

(6) The Montana Department of Livestock (DOL) has access to the department's livestock reporting and billing/payment data for compliance purposes. If the DOL determines that a livestock owner has not been reporting their livestock counts to the department as required, the DOL will provide the department with estimated livestock type and counts and the department will use this information to bill the livestock owner for the per capita livestock fees.

AUTH: 15-1-201, MCA
IMP: 15-6-207 ~~15-8-309~~, 15-24-903, ~~15-24-904~~ 15-24-905, 15-24-921, 15-24-922, 15-24-925, 87-4-406, MCA

REASON: The department proposes amending ARM 42.21.165 based on the enactment of Senate Bill (SB) 62, L. 2015, which revised the livestock reporting and per capita fee payment process. The department also proposes removing outdated language from the rule and incorporating language from a related livestock rule into this one.

SB 62 revised the per capita fee payment due date from November 30 to May 31 each year, and the department proposes adding this new due date to the rule accordingly. The new legislation further removed the requirement that the Department of Livestock (DOL) provide monthly brand inspection reports to the department for reporting and billing compliance efforts. The department proposes adding language to the rule to explain the process that the DOL and the department will now use to ensure compliance with the reporting requirements.

The department also proposes adding helpful language to the rule based on 15-24-905, MCA, which requires owners of livestock brought into the state after February 1 of the current year to file a reporting form with the department. The new language is proposed as a method to explain what the department uses the reported information for. The department also proposes adding 15-24-905, MCA, to the rule as an implementing statute.

The department further proposes striking the penalty and exception language from the rule as a matter of housekeeping because the penalty provided for in 15-8-309, MCA, covers personal property and livestock is no longer considered personal property in 15-6-138, MCA.

Much of the remaining language proposed to be added to the rule was previously located in ARM 42.21.124, the per capita livestock reporting procedure rule. That rule is proposed to be repealed in this same notice in order to relocate the relevant information together with this livestock reporting rule to place the livestock information together. For example, the livestock category list previously in ARM

42.21.124 will become new (2) of this rule. The department proposes refining that category list, including updating the term "domestic ungulate" to "alternative livestock," as now defined in 87-4-406, MCA. The department also proposes adding 87-4-406, MCA, to the rule as an implementing citation in support of this language.

The department also proposes revising the rule title to properly reflect the new rule content as amended. The department further proposes striking two implementing statutes that no longer apply to the rule and adding three statutes that apply to the rule as amended to include the language from ARM 42.21.124.

4. The department proposes to repeal the following rule:

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

AUTH: 15-1-201, MCA
IMP: 15-6-207, 15-24-921, 15-24-922, 15-24-925, MCA

REASON: The department proposes repealing ARM 42.21.124, which covers the livestock tax reporting procedure, and consolidating the content together with ARM 42.21.165, which covers livestock reporting requirements, to house all of the livestock information together in a single rule for efficiency.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 17, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of Senate Bill 157 and Senate Bill 62, Senator Bruce Tutvedt and Senator Taylor Brown, respectively, were contacted by letters on both July 6, 2015 and September 18, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.15.214 pertaining to resident military salary exclusion	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 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 amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed no later than 5 p.m. on October 26, 2015. 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 rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident service member are exempt from Montana income tax:

(a) remains the same.

(b) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "~~contingent~~ contingency operation" as defined in 10 USC 101; and

(c) basic, special, and incentive pay received by a member of the National Guard ~~for active service authorized by the President of the United States or the Secretary of the Defense for a period of more than 30 consecutive days for the purpose of responding to a national emergency declared by the President and supported by federal funds~~ performing a "homeland defense activity" as defined in 32 USC 901.

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and ~~weekend duty~~ inactive duty training;

(b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) or (1)(c); ~~and~~

(c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) or (1)(c); and

~~(c)~~(d) retired, retainer, or equivalent pay, or allowances.
(3) remains the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, 15-30-2117, MCA

REASON: The department proposes amending ARM 42.15.214 to implement Senate Bill 378, L. 2015, which clarifies a Montana resident's eligibility to exempt military salaries in certain situations. The new legislation applies to tax years beginning after December 31, 2015.

As proposed, the amendment revises the phrase "contingent operation" to "contingency operation" and explains that individuals serving on active duty in a "contingency operation" or for performing a "homeland defense activity," as defined in 10 USC 101 and 32 USC 901 respectively, are exempt from Montana state income tax.

The department further proposes amending (2) to make it clear that military salaries received while on "inactive duty training" or while on "active Guard and Reserve duty" are not exempt from Montana state income tax unless such duty is also a homeland defense activity or a contingency operation. The proposed amendments establish in rule the department's current treatment of military exempt salaries.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 16, 2015.

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

6. 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 that 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 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 378, Senator Elsie Arntzen, was contacted by letter on September 9, 2015 and September 18, 2015.

9. 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. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to tax credits for contributions to qualified education providers and student scholarship organizations	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 5, 2015, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I QUALIFIED EDUCATION PROVIDER (1) A "qualified education provider" has the meaning given in 15-30-3102, MCA, and pursuant to 15-30-3101, MCA, may not be:

(a) a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination; or

(b) an individual who is employed by a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination when providing those services.

(2) For the purposes of (1), "controlled in whole or in part by a church, religious sect, or denomination" includes accreditation by a faith-based organization.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: Montana Constitution, Art. V, Section 11, Montana Constitution, Art. X Section 6, 15-30-3101, MCA

REASON: The department proposes adopting New Rule I based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 7, was codified at

15-30-3101, MCA.

As proposed, New Rule I will conform to the requirements of 15-30-3101, MCA, which requires the department to administer the tax credit for taxpayer donations in accordance with Art. V, Section 11(5) and Art. X, Section 6(1) of the Montana Constitution, which prohibits the direct or indirect appropriations or payment from any public fund to any sectarian or religious purpose.

NEW RULE II STUDENT SCHOLARSHIP ORGANIZATION REQUIREMENTS (1) An organization seeking approval as a student scholarship organization shall complete and submit to the department an online application prior to accepting donations. This application will be located on the department's web site at revenue.mt.gov. the student scholarship organization shall include the following information on the application:

(a) the student scholarship organization's name, address, and federal employer identification number;

(b) the student scholarship organization's representative's name, title, phone number, and e-mail address;

(c) a list of all qualified education providers who may receive scholarships from the student scholarship organization on behalf of students; and

(d) any other necessary information.

(2) A student scholarship organization may provide scholarships only to an eligible student who attends a Montana school or is taught by a qualified education provider in Montana.

(3) Pursuant to 15-30-3103, MCA, a minimum of 90 percent of all contributions received by a student scholarship organization, after the cost of the fiscal review in 15-30-3105, MCA, must be awarded as scholarships within the three calendar years following the year of the contributions. For example, if a student scholarship organization received $105,000 in contributions in 2017 and the cost of the fiscal review is $5,000, the student scholarship organization must award at least $90,000 of those contributions as scholarships before the end of 2020.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3102, 15-30-3103, 15-30-3105, 15-30-3106, MCA

REASON: The department proposes adopting New Rule II based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 9, was codified at 15-30-3103, MCA, Section 11 was codified at 15-30-3105, MCA, and Section 12 was codified at 15-30-3106, MCA.

As proposed, (1) will clarify the information a student scholarship organization must provide to register with the department, as set forth in 15-30-3105 and 15-30-3106, MCA. Section (2) clarifies the scholarships from which the credits originate can only be awarded to Montana students. Section (3) provides an example for the deadline for when a student scholarship organization must award scholarships relative to its receipt of contributions.

NEW RULE III CREDIT LIMITATIONS AND CLAIMS (1) A taxpayer may

claim a credit for contributions to an innovative educational program provided for in 20-9-901, MCA, and/or student scholarship organizations provided for in 15-30-3101, MCA.

(2) The maximum credit that may be claimed in a tax year by a taxpayer for allowable contributions to:

(a) innovative education programs is $150; and

(b) student scholarship organizations is $150.

(3) In the case of a married couple that makes a joint contribution, unless specifically allocated by the taxpayers, the contribution will be split equally between each spouse. If each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount.

(4) An allowable contribution from:

(a) an S corporation passes to its shareholders based on their ownership percentage; and

(b) a partnership or limited liability company taxed as a partnership passes to their partners and owners based on their share of profits and losses as reported for Montana income tax purposes.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3101, 15-30-3111, MCA

REASON: The department proposes adopting New Rule III based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 1, was codified at 20-9-901, MCA, and SB 410, Section 7, was codified at 15-30-3101, MCA.

As proposed, New Rule III outlines that the maximum credit amount applies to each taxpayer rather than each contribution. The proposed rule further provides that the tax credit is available to each partner, shareholder, or other owner of a pass-through entity based on allowable contributions made by the entity.

4. Following adoption, the department plans to apply the provisions of New Rule I effective January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 17, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices

and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 410, Senator Llew Jones, was contacted by letter on June 22, 2015, September 2, 2015, and September 21, 2015.

10. 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. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.22.101, 42.22.104, 42.22.105, 42.22.107, 42.22.108, 42.22.109, 42.22.111, 42.22.121, 42.22.1312, 42.22.1313, 42.22.1315, 42.22.1316, and 42.22.1317 pertaining to centrally assessed property	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.22.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (27) remain the same.

(28) "Telecommunications" ~~for property tax purposes,~~ means the transmission of information between or among points specified by the user. ~~The transmission must be without change in the form or content as sent and received.~~

(29) "Telecommunications service provider" means a telecommunication services company or a person providing retail telecommunication services as provided in 15-53-129, MCA.

(30) through (33) remain the same.

AUTH: 15-23-108, 15-53-155, MCA

IMP: 15-6-135, 15-6-137, 15-6-141, 15-6-156, 15-6-157, 15-6-158, 15-6-159, 15-23-101, 15-23-211, 15-23-213, ~~15-72-104,~~ MCA

REASON: The department proposes amending ARM 42.22.101(28) to strike "for property tax purposes" because it is unnecessary language to include in a definition located in ARM Title 42, chapter 22, which exclusively covers centrally assessed property.

The department also proposes amending the definition in accordance with current methodology, recent court decisions, and to harmonize it with the definition of "telecommunications service provider" in (29) and in 15-53-129, MCA.

The department further proposes amending the list of implementing statutes to include references to additional statutes that this rule implements and to remove a reference to a statute which is not relevant.

42.22.104 TREATMENT OF MOTOR VEHICLES AND SPECIAL MOBILE EQUIPMENT (1) remains the same.

(2) Motor vehicles with or without equipment attached are exempt and shall pay a fee in lieu of tax, 61-3-321 and 61-3-529 ~~and 61-3-561~~, MCA.

(3) through (6) remain the same.

(7) The total net book value for equipment defined in (2), (3), and (4) shall be deducted on a market-to-cost basis from the state-allocated value, as defined in ARM 42.22.111. The market-to-book ratio shall be determined by dividing the system or unit market value ~~after deduction of the exempt intangible personal property~~ by the system net book value ~~after deduction of the exempt intangible personal property~~.

(8) remains the same.

AUTH: 15-23-108, MCA
IMP: ~~Title 15, chapter 23, part 1,~~ 61-3-321, 61-3-529, ~~61-3-561,~~ MCA

REASON: The department proposes amending ARM 42.22.104 to remove a reference to a repealed statute, 61-3-561, MCA, and adding a reference to 61-3-321, MCA, which imposes a fee in lieu of tax for certain motor vehicles. The amendment is proposed both in (2) and in the implementing section of the rule.

The department also proposes amending ARM 42.22.104(7) to eliminate unnecessary language from the section. The department's current practice is to calculate a market-to-book ratio before the deduction of intangibles. The purpose is to keep the ratio consistent with the cost it is being applied to. Vehicles and special mobile equipment are removed using their depreciated cost before adjustment for intangibles, and therefore using a ratio before intangibles are removed is appropriate. The proposed amendment will comport and harmonize the rule with current practices.

The department further proposes striking an unnecessary chapter reference from the implementing section of the rule.

42.22.105 REPORTING REQUIREMENTS (1) and (2) remain the same.

(3) The report shall contain the following information on the operating properties:

(a) and (b) remain the same.

(c) statement of cash flow for the system;

(c) through (p) remain the same, but are renumbered (d) through (q).

(4) remains the same.

AUTH: ~~15-6-218~~ 15-1-201, 15-23-108, MCA
IMP: ~~15-6-218,~~ 15-23-103, ~~15-23-201~~ 15-23-204, 15-23-212, 15-23-301, 15-23-402, ~~15-23-502, 15-23-602, 15-23-701,~~ MCA

REASON: The department proposes amending ARM 42.22.105(3) to add in language to request information from a taxpayer that will enable the department to properly calculate the yield capitalization approach to value. The department began using this approach in 2004, but has never updated the rule to include a request for this necessary and helpful information.

The department further proposes amending the list of authorization and implementation statutes to add an additional relevant authorization statute, to reflect current statutory renumbering, to remove a repealed statute, and to remove statutes not relevant to this rule.

42.22.107 ADDITIONAL REPORTING REQUIREMENTS FOR BENEFICIAL USE OF GOVERNMENT-OWNED TRANSMISSION LINES (1) Qualifying companies shall provide to the department information on any possession or beneficial use of government-owned transmission lines, as ~~defined~~ referenced in 15-23-101 and 15-24-1207, MCA, during the preceding calendar year. The information shall be submitted beginning March 31, 1984, and each year thereafter and shall include the following:

(a) and (b) remain the same.

(c) original cost and accrued depreciation ~~and market value in dollars and cents~~ of the tax-exempt property;

(d) through (f) remain the same.

AUTH: 15-1-201, 15-24-1207, MCA
IMP: 15-24-1207, MCA

REASON: The department proposes amending ARM 42.22.107 to change a word in (1) for better accuracy and to strike language from (1)(c), because the department now relies solely on the original cost and accrued depreciation data to value the beneficial use of transmission lines. The language proposed to be stricken placed a requirement on entities, such as the Bonneville Power Administration, that may not have the market value information available to them.

42.22.108 MARKET VALUE OF AIR AND WATER POLLUTION CONTROL AND CARBON CAPTURE EQUIPMENT (1) The market value of approved class five air and water pollution control and carbon capture equipment shall be determined by multiplying the depreciated value of the approved class five pollution control equipment in Montana by a market-to-book ratio. The market-to-book ratio shall be determined by dividing the system or unit market value ~~after deduction of the exempts intangible personal property~~ by the system net book value ~~after~~

~~deduction of the exempt intangible personal property~~. This value shall then be deducted from the Montana value and certified to the counties as class five property.

(2) remains the same.

AUTH: 15-23-108, MCA
IMP: 15-6-135, MCA

REASON: The department proposes amending ARM 42.22.108 to add more detail to the title and (1) to reflect the current statutory language of 15-6-135, MCA.

The department further proposes eliminating unnecessary language from (1) because the department's current practice is to calculate a market-to-book ratio before the deduction of intangibles. The purpose is to keep the ratio consistent with the cost it is being applied to. Pollution control equipment is removed using its depreciated cost before adjustment for intangibles, and therefore using a ratio before intangibles are removed is appropriate. The proposed amendment will comport and harmonize the rule with current practices.

42.22.109 ADOPTION OF APPRAISAL METHODS AND APPRAISAL STANDARDS (1) The department adopts the 2009 WSATA-CCAP (Western States Association of Tax Administrators - Committee on Centrally Assessed Properties) appraisal handbook, published in August 2009, available at ~~www.WSATA.org, user name WSATA, password member~~ wsata-ccap.org, as the reference and overall appraisal guide for conducting unit valuations of centrally assessed properties in Montana.

(2) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-8-101, 15-8-111, MCA

REASON: The department proposes amending ARM 42.22.109 to update the web site address in (1) and to remove the password and user name information because they are no longer required to order the appraisal handbook.

42.22.111 VALUATION METHOD (1) through (4) remain the same.

(5) The valuation determined appropriate by the department shall be supported by a written explanation ~~of the indices examined and the method by which the valuation was determined~~ per 15-1-210, MCA.

(6) remains the same.

AUTH: 15-23-108, MCA
IMP: ~~Title 15, chapter 23, part 1,~~ 15-1-210, 15-8-111, MCA

REASON: The department proposes amending ARM 42.22.111 to remove language not supported by 15-1-210, MCA. The proposed amendment will harmonize the rule with this statute.

The department further proposes amending the list of implementation statutes to strike an unnecessary chapter reference and to include a reference to an additional statute that this rule implements.

42.22.121 ALLOCATION PROCEDURE (1) and (2) remain the same.

(3) For the purpose of allocating the unit value, quantity, use, and productivity ratios may be applied. Following are examples of possible ratios the department may apply to allocate unit value to Montana. The following examples shall not be construed to prohibit the use of other factors in the allocation process:

(a) through (c) remain the same.

(d) for pipelines:

(i) cost~~, trended cost, depreciated cost~~;

(ii) through (17) remain the same.

AUTH: 15-23-108, MCA
IMP: ~~15-23-211~~ 15-1-101, 15-23-213, MCA

REASON: The department proposes amending ARM 42.22.121 to strike unnecessary language from (3)(d). The department has never used trended or depreciated costs for allocation purposes for pipeline companies. As set forth in ARM 42.22.109, the department relies on the WSATA-CCAP appraisal handbook to develop allocation formulas when the data is available. The proposed amendment will comport and harmonize the rule with current practices.

The department further proposes amending the list of implementation statutes to strike a statute that is not currently relevant to this rule and to add a statute that is relevant.

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) and (2) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-6-156, 15-6-157, 15-6-158, 15-8-111, MCA

REASON: The department proposes amending ARM 42.22.1312 to include references to additional statutes that this rule implements.

42.22.1313 ASSESSMENT OF GRAIN, SEED, AND FERTILIZER STORAGE FACILITIES (1) through (7) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-6-138, 15-7-103, 15-8-111, MCA

REASON: The department proposes amending ARM 42.22.1313 to include a reference to an additional statute that this rule implements.

42.22.1315 ~~2008~~ 2015 INDUSTRIAL PROPERTY REAPPRAISAL

(1) Industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate department field office. ~~Each industrial~~ Industrial personal property is reappraised annually. Industrial real property is reappraised every two years.

(2) remains the same.

(3) This rule applies to tax years January 1, ~~2009~~ 2015, through December 31, ~~2014~~ 2017.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASON: The department proposes amending ARM 42.22.131 to add language into the rule that distinguishes the difference between the annual reappraisal of industrial personal property and the two-year reappraisal of industrial real property.

The department further proposes amending (3) to update the years in the rule due to the enactment of Senate Bill 157, L. 2015, which changed the property reappraisal cycle from six years to two years.

42.22.1316 INDUSTRIAL PROPERTY CERTIFICATION REQUIREMENTS

(1) The employee must hold a bachelor degree from an accredited college or have at least five ~~years~~ years' experience in the industrial or complex property valuation field.

(2) through (4) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, ~~15-7-111,~~ MCA

REASON: The department proposes amending ARM 42.22.1316 to make a grammatical correction in (1). No language is proposed to be changed at this time.

The department further proposes striking an implementing statute that is not relevant to this rule.

42.22.1317 UNIT VALUATION OR CENTRALLY ASSESSED PROPERTY APPRAISER CERTIFICATION REQUIREMENTS (1) The employee must hold a bachelor degree from an accredited college or have at least five ~~years~~ years' experience in the business or centrally assessed property valuation field.

(2) through (4) remain the same.

AUTH: 15-23-108, ~~15-53-155, 15-72-117,~~ MCA
IMP: 15-7-107, 15-23-101, ~~15-23-104, 15-23-211, 15-23-213, 15-53-145, 15-53-147, 15-72-104,~~ MCA

REASON: The department proposes amending ARM 42.22.1317 to make a grammatical correction in (1). No language is proposed to be changed at this time.

The department further proposes amending the list of authorization and implementing sections of the rule to add an additional implementing statute and to strike references to statutes that are not relevant.

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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 16, 2015.

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

6. 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 that 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 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 157, Senator Bruce Tutvedt was contacted by letter on July 6, 2015 and September 1, 2015.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will have little to no significant or direct impact on small business. Any impact will be the result of legislative changes, not rule changes. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II and the amendment of ARM 42.9.101, 42.9.102, 42.9.103, 42.9.104, 42.9.105, 42.9.106, 42.9.501, 42.9.510, and 42.9.520 pertaining to pass-through entities	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 4, 2015, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I INACTIVE PASS-THROUGH ENTITIES (1) Except as provided in (3) and (4), foreign limited liability companies, foreign series limited liability companies, domestic limited liability companies, and domestic series limited liability companies qualified to do business in Montana and not required to file an information return under 15-30-3302, MCA, must submit an affidavit, on a form provided by the department, attesting that the limited liability company was not engaged in business in Montana during the reporting period.

(2) Foreign limited partnerships, foreign limited liability partnerships, domestic limited partnerships, and domestic limited liability partnerships qualified to do business in Montana and not required to file an information return under 15-30-3302, MCA, must submit an affidavit, on a form provided by the department, attesting that the limited partnership or limited liability partnership was not engaged in business in Montana during the reporting period.

(3) Any limited liability company organized solely to hold assets that does not claim a deduction under IRC section 212, for federal income tax purposes, is not required to submit an affidavit as set forth in (1) if, upon request from the department, the limited liability company provides a written statement describing the nature of its purpose.

(4) This rule does not apply to a limited liability company, limited partnership, or limited liability partnership that is treated as an association for federal income tax purposes and subject to the provisions outlined in Title 15, chapter 31, MCA.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-3302, 15-31-101, MCA

REASON: The department proposes adopting New Rule I to assist the department in determining the business purpose and filing requirements of registered limited liability companies and partnerships. The Montana Secretary of State provides the department with information regarding newly registered entities. However, the department often needs additional information to determine if an entity is engaged in business in the state of Montana. The information provided will also support other department processes that assist the taxpayer in reviving or dissolving entities previously registered with the Secretary of State.

NEW RULE II PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS WHO ARE TAX-EXEMPT ENTITIES (1) A pass-through entity is required to withhold tax on behalf of a partner, shareholder, manager, or member even if the partner, shareholder, manager, or member is not organized and operated for profit or is a stock bonus, pension, profit-sharing, or individual retirement plan. A partner, shareholder, manager, or member seeking the benefits of exemption from Montana filing and tax requirements must comply with all statutory requirements authorizing the classification claimed.

(2) In order to establish exemption status and thus be relieved of the duty of filing returns and paying tax based upon income received from a pass-through entity, each partner, shareholder, manager, or member claiming exemption must file an affidavit with the department showing:

(a) the character of the organization;

(b) the purpose it was organized for;

(c) its actual activities; and

(d) the sources and the disposition of its income.

(3) Incorporated not-for-profit entities must file the affidavit required in (2) and include:

(a) a statement disclosing whether or not any of its income may inure to the benefit of any private shareholder or individual;

(b) a copy of the articles of incorporation;

(c) a copy of the by-laws; and

(d) copies of the latest financial statements showing the assets, liabilities, receipts, and disbursements.

(4) Other unincorporated stock bonus, pension, profit-sharing, or individual retirement plans must file the affidavit required in (2) and include:

(a) documents relevant to the adoption and administration of the plan;

(b) copies of the latest financial summary or statements showing assets, liabilities, receipts, and disbursements; and

(c) a copy of any form the partner, shareholder, manager, or member is required to file with the IRS, if applicable. An example is federal Form 5500 Annual Return/Report of Employee Benefit Plan.

(5) In addition, if the IRS has granted the partner, shareholder, manager, or member exemption from the federal income tax, a certified copy of the exemption certificate or letter must also be filed.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-3313, 15-30-2151, 15-31-101, 15-31-102, MCA

REASON: The department proposes adopting New Rule II to provide guidance to pass-through entities and their partners, shareholders, managers, or members who are classified as tax-exempt. The proposed rule provides a process for a partner, shareholder, manager, or member who is classified as tax-exempt to submit an application to the department to affirm tax-exempt status. The proposed rule is not intended to provide for an exemption from pass-through withholding on tax-exempt entities, but rather to provide a standard by which the department may consider an entity in compliance with their filing obligations.

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

42.9.101 DEFINITIONS The following definitions apply to this chapter:

(1) and (2) remain the same.

(3) "Other nonresident entity" means an entity, organization, or account whose principal place of business or administration is located outside the state of Montana that has not elected, for tax purposes, to be treated as a disregarded entity, partnership, or corporation, and is not an estate or trust.

~~(3)~~(4) ~~A participant's "share~~ "Share of a partnership's or S corporation's income" ~~is~~ means the aggregate of ~~his, her, or its~~ a participant's share of the pass-through entity's income, gain, loss, or deduction, or item of income, gain, loss, or deduction.

AUTH: 15-30-2620, 15-30-3312, MCA
IMP: 15-30-3311, 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.101 to define "other nonresident entity" because the term encompasses all other nonresident entities not addressed specifically in ARM Title 42, chapter 9. Defining this term will provide helpful guidance for pass-through entities using the rules in this chapter.

The department further proposes amending the definition in newly numbered (4) to properly format the language as a definition.

42.9.102 PASS-THROUGH ENTITY INFORMATION RETURNS (1) and (2) remain the same.

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

~~(4)~~(3) Partnership and S corporation returns can ~~also~~ be filed electronically through ~~the Taxpayer Access Point (TAP) on the Department of Revenue's web site at revenue.mt.gov or~~ the joint federal/state program using Montana-approved e-filing tax software ~~vendors~~.

(5) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2602, 15-30-2603, 15-30-2616, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.102 to remove the Taxpayer Access Point (TAP) as an electronic filing option for partnerships and S corporations, due to low usage of this filing option. Less than 0.5 percent of the returns filed by partnerships and S corporations in tax years 2011 and 2012 were filed using TAP and the filing of pass-through returns through TAP was discontinued beginning with the 2013 tax year. Usage of this electronic filing option was too low to justify programming and testing costs associated with maintaining this feature.

The department further proposes reversing the order of (3) and (4) to improve the language flow of the rule.

42.9.103 LATE-FILE PENALTY FOR PASS-THROUGH ENTITIES (1) A pass-through entity required to file a Montana information return, as provided in ARM Title 42, chapter 9, is subject to a late-filing penalty if the return is not filed by the due date (including extensions).

~~(2) The late-filing penalty is calculated by multiplying $10 times the number of the pass-through entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of each month the information return is not filed, not to exceed five months. For example, if a pass-through entity had 20 members at the close of its tax year and filed its information return six months after it was due, the late-filing penalty would be $1,000 ($10 x 20 x 5)~~

(2) ARM 42.3.101 through 42.3.115 and 42.3.120 apply to requests for waiving penalties.

(3) For disregarded entities that do not have a tax year, the number of partners, shareholders, members, or other owners will be determined as of the preceding December 31.

~~(3) The late-filing penalty described in (2) is not imposed on certain small pass-through entities. If the pass-through entity has ten or fewer partners, shareholders, members, or other owners, the penalty will not be imposed if the pass-through entity demonstrates that:~~

~~(a) each of the partners, shareholders, members, or other owners is an individual, an estate of a deceased individual, or a C corporation;~~

~~(b) each partner, shareholder, member, or other owner has filed any required tax return or report with the department by the due date (including extensions) for the return or report; and~~

~~(c) each partner, shareholder, member, or other owner paid all taxes when due.~~

~~(4) ARM 42.3.101 through 42.3.115 and 42.3.120 apply to requests for waiving penalties.~~

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, 15-31-101, 15-31-111, MCA

REASON: The department conducted a review of ARM 42.9.103 and concluded that the method for calculating the late filing penalty for pass-through entities is adequately described in statute and therefore proposes striking the duplicative language from the rule.

42.9.104 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS WHO ARE NONRESIDENT INDIVIDUALS, ESTATES, OR TRUSTS (1) A partnership and S corporation with one or more nonresident individual, estate, or trust owners, during any part of a tax year for which an information return is required by this chapter, must for each nonresident individual, estate, or trust that receives a distributive share of Montana source income of $1,000 or more:

(a) through (6) remain the same.

(7) If a pass-through entity fails to withhold on the distributive share of income reported to a nonresident individual, estate, or trust, as required under 15-30-3313, MCA, and the income that is subject to withholding is subsequently reported on the tax return of any owner for the correct tax year, and all applicable tax is paid, then the tax that the pass-through entity failed to withhold shall not be collected from the pass-through entity; however:

(a) such payment by the owner does not relieve the pass-through entity from liability for penalties, interest, or additions to the applicable tax because of its failure to deduct and withhold; and

(b) the pass-through entity will not be relieved under this rule from its liability for the amounts required to be withheld unless it demonstrates that the income tax against which the required withholdings may be credited has actually been reported and paid.

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

AUTH: 15-30-2620, 15-30-3313, MCA
IMP: 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.104 to implement Senate Bill (SB) 386, L. 2015, which established a de minimis standard for pass-through entities that are required to withhold on an owner that is a nonresident individual, estate, or trust.

The department proposes to establish first, that a pass-through entity may not be assessed withholding under certain conditions and second, that penalties and interest may still be the responsibility of the pass-through entity for failure to withhold when required to do so.

Section 15-30-3313, MCA, requires a pass-through entity to withhold income tax on behalf of its owners unless a waiver from this requirement has been granted or the owner has elected to be included in a composite return. Several entities who do not meet the exceptions fail to withhold when they would otherwise be required to do so, including those entities that have been specifically notified in writing of their withholding requirement.

The department further proposes adding 15-30-3313, MCA, as rulemaking authority for the rule based on the enactment of SB 386, which added rulemaking provisions to the statute.

42.9.105 CONSENT, COMPOSITE RETURN, OR WITHHOLDING FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE FOREIGN C CORPORATIONS (1) A partnership with one or more foreign C corporation or other nonresident entity owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation, or other nonresident entity, that receives a distributive share of Montana source income of $1,000 or more:

(a) file a composite return as provided in ARM 42.9.202 and include the foreign C corporation or other nonresident entity in the filing;

(b) obtain from the foreign C corporation or other nonresident entity and file Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana ~~corporate license tax or corporate~~ income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction; or

(c) remit an amount on the foreign C corporation's or other nonresident entity's behalf, determined as provided in (5), with the Pass-Through Entity's Information Return, Form PR-1 or Form CLT-4S and provide Montana Schedule K-1 to the foreign C corporation or other nonresident entity. The Montana Schedule K-1 must set forth the amount of withholding remitted to the department which can be used as a withholding payment against the tax liability of the foreign C corporation or other nonresident entity, upon filing a Montana ~~corporation license tax return or~~ income tax return.

(2) A disregarded entity with one or more foreign C corporation or other nonresident entity owners, during any part of a tax year for which an information return is required by this chapter, must for each foreign C corporation or other nonresident entity:

(a) obtain from the foreign C corporation or other nonresident entity and file Form PT-AGR (Montana Pass-Through Entity Owner Agreement). On Form PT-AGR, the owner agrees to timely file a Montana ~~corporate license tax or corporate~~ income tax return, to timely pay tax due, and to be subject to the state's tax collection jurisdiction on the Montana pass-through entity owner tax agreement, Form PT-AGR, Montana Pass-Through Entity Owner Tax Agreement; or

(b) remit an amount on the foreign C corporation's or other nonresident entity's account, determined as provided in (5), with the Form DER-1, Disregarded Entity Information Return and provide Montana Schedule K-1 to the foreign C corporation or other nonresident entity. The Montana Schedule K-1 must set forth the amount of withholding remitted to the department which can be used as a

withholding payment against the tax liability of the foreign C corporation or other nonresident entity upon filing a Montana ~~corporation license tax return or~~ income tax return.

(3) The pass-through entity is not required to file new agreements each year, but must file a currently effective agreement for each new foreign C corporation or other nonresident entity owner that does not elect to be included in a composite return or choose to have the pass-through entity remit tax on their behalf.

(4) A foreign C corporation or other nonresident entity may file Form PT-AGR with the department directly. The foreign C corporation or other nonresident entity must notify and provide a copy of the completed Form PT-AGR to the partnership, S corporation, or disregarded entity. The Form PT-AGR is due on or before the due date, including extensions, of the pass-through entity's return. If the foreign C corporation or other nonresident entity files Form PT-AGR, the partnership, S corporation, or disregarded entity is still subject to the filing requirements as provided in (1).

(5) The amount that must be remitted by the due date described in (6) is the tax rate in effect under 15-31-121, MCA, multiplied by the foreign C corporation's or other nonresident entity's share of Montana source income reflected on the pass-through entity's information return.

(6) remains the same.

(7) If a pass-through entity fails to withhold on the distributive share of income reported to a foreign C corporation or other nonresident entity, as required under 15-30-3313, MCA, and the income that is subject to withholding is subsequently reported on the tax return of any owner for the correct tax year and all applicable tax is paid, then the tax that the pass-through entity failed to withhold shall not be collected from the pass-through entity; however:

(a) such payment by the owner does not relieve the pass-through entity from liability for penalties, interest, or additions to the tax applicable because of its failure to deduct and withhold; and

(b) the pass-through entity will not be relieved under this rule from its liability for the amounts required to be withheld unless it demonstrates that the income tax against which the required withholdings may be credited has actually been reported and paid.

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

AUTH: 15-30-2620, 15-30-3313, MCA
IMP: 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.105 to implement Senate Bill (SB) 386, L. 2015, which established a de minimis standard for pass-through entities that are required to withhold on an owner that is a foreign C corporation or other nonresident entity.

The department further proposes establishing first, that a pass-through entity may not be assessed withholding under certain conditions and second, that penalties and interest may still be the responsibility of the pass-through entity for failure to withhold when required to do so.

Section 15-30-3313, MCA, requires a pass-through entity to withhold income tax on behalf of its owners unless a waiver from this requirement has been granted or the owner has elected to be included in a composite return. Several entities who do not meet the exceptions fail to withhold when they would otherwise be required to do so, including those entities that have been specifically notified in writing of their withholding requirement.

The department further proposes adding 15-30-3313, MCA, as rulemaking authority for the rule based on the enactment of SB 386, which added rulemaking provisions to the statute.

42.9.106 COMPOSITE RETURN, WITHHOLDING, OR WAIVER FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES (1) Except as provided in (2), (6), and (7), a first-tier pass-through entity with one or more owners that are also pass-through entities (second-tier pass-through entities), during any part of the tax year for which an information return is required by this chapter, must for each second-tier pass-through entity that receives a distributive share of Montana source income of $1,000 or more:

(a) file a composite return as provided in ARM 42.9.202 and include the second-tier pass-through entity in the filing; or

(b) do each of the following:

(i) remit to the department an amount equal to the highest marginal rate in effect under 15-30-2103, MCA, multiplied by the second-tier pass-through entity's share of Montana source income with the Forms CLT-4S, PR-1, or DER-1 Pass-Through Entity's Information Return; and

(ii) provide Montana Schedule K-1 to the second-tier pass-through entity setting forth the amount remitted to the department that may be claimed as a refundable credit against the Montana income tax liability of the owners who file individual, ~~corporation license,~~ corporate income, or other income tax returns as explained in (8).

(2) The department may waive the requirements to remit tax or pay composite tax on behalf of ~~the~~ a domestic second-tier pass-through entity for the current tax year, as set forth in (1), if the first-tier pass-through entity~~:~~

~~(a)~~ obtains from the domestic second-tier pass-through entity a completed Form ~~PT-STM~~ PT-AGR ~~for the year~~ and files it with the department ~~at least 45 days before the original~~ by the due date of the first-tier pass-through entity's tax return~~;~~ ~~and~~ , including extensions. On Form PT-AGR, the domestic second-tier pass-through entity owner must:

(a) provide the name, address, and social security or federal employer identification number of each of the domestic second-tier pass-through entity's partners, shareholders, members, or other owners;

(b) establish that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in a resident individual income tax return; and

(c) agree to notify the first-tier pass-through entity and the department if the ownership of the domestic second-tier pass-through entity and, if applicable, the ownership of any higher-tier pass-through entities changes.

~~(b) establishes to the satisfaction of the department that the second-tier pass-through entity's distributive share of Montana source income for the current year will be fully accounted for in individual income, corporation license, or other income tax returns filed with the state.~~

~~(3) The department will notify the first-tier pass-through entity of its decision to waive or not waive the requirement to file a composite return or remit within 30 days after receipt of the completed Form PT-STM. The department will generally waive the requirement if it can determine that all of the income for the three most recent tax years has been reported on timely filed tax returns and that all tax due under those returns has been paid.~~

(3) The department may revoke the waiver provided for in (2) if it determines that the partner, shareholder, member, or other owner no longer qualifies as a domestic second-tier pass-through entity. The department will notify the first-tier pass-through entity in writing of its requirement to withhold on the second-tier pass-through entity.

~~(4) A second-tier pass-through entity may file Form PT-STM with the department directly. The second-tier pass-through entity must notify and provide a copy of the completed Form PT-STM to the first-tier pass-through entity. The Form PT-STM is due at least 45 days before the original due date of the first-tier pass-through entity's tax return. If the second-tier pass-through entity files Form PT-STM, the first-tier pass-through entity is still subject to the filing requirements as provided in (1) and (2).~~

(4) The pass-through entity is not required to file new agreements each year, but must file a currently effective agreement for each new domestic second-tier pass-through entity owner that does not elect to be included in a composite return or choose to have the pass-through entity remit tax on their behalf.

~~(5) The department may grant a conditional waiver that lasts longer than one year on written request included with the Form PT-STM if, in addition to the conditions provided in (3), the first-tier pass-through entity:~~

~~(a) agrees to notify the department if the ownership of the second-tier pass-through entity and, if applicable, the ownership of any higher-tier pass-through entities changes;~~

~~(b) agrees to remit the amount provided under (1) within 60 days after notice from the department that the second-tier pass-through entity's distributive share was not fully accounted for on corporation license, individual income, or other tax returns filed with the department; and~~

~~(c) agrees to be subject to the personal jurisdiction of the state for the collection of the remittance.~~

(5) For the purposes of (2), (3), and (4), and pursuant to 15-30-3313, MCA, a "domestic second-tier pass-through entity" means a second-tier pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals.

~~(6) The department's waiver is conditioned upon there being no change in material facts, including a change of ownership of the second-tier pass-through entity and, if applicable, the ownership of any higher-tier pass-through entity changes, and is automatically revoked on the happening of any such change.~~

(7) remains the same but is renumbered (6).

(7) The exemption applicable to a publicly traded partnership (PTP), as described in (6), may be extended to a pass-through entity in which one or more PTPs has a direct or indirect majority interest in the income distributed by the pass-through entity. To receive a waiver, the pass-through entity must submit a written waiver request to the department at least 45 days before the original due date of the first-tier pass-through entity's tax return. Additional information is required if the following conditions exist:

(a) if the PTP is the second-tier partner, the PTP must be in compliance with filing requirements;

(b) if the PTP is not the second-tier partner, all tiers between the PTP and the first-tier entity must be in compliance with filing requirements, and the first-tier entity must provide the following documentation:

(i) an organizational chart;

(ii) all agreements that include information about ownership in the pass-through entity and special allocation; and

(c) a PTP must have an ultimate majority interest in the income distributed by the pass-through entity, to be determined on a case-by-case basis.

(8) remains the same.

(9) If a pass-through entity fails to withhold on the distributive share of income reported to a second-tier pass-through entity, as required under 15-30-3313, MCA, and the income that is subject to withholding is reported on the tax return of any owner for the correct tax year and all applicable tax is paid, then the tax that the pass-through entity failed to withhold shall not be collected from the pass-through entity; however:

(a) such payment by the owner does not relieve the pass-through entity from liability for penalties, interest, or additions to the tax applicable because of its failure to deduct and withhold; and

(b) the pass-through entity will not be relieved under this rule from its liability of the amounts required to be withheld unless it demonstrates that the income tax against which the required withholdings may be credited has actually been reported and paid.

~~(9) This rule is effective for tax years beginning after December 31, 2011.~~

AUTH: 15-1-201, 15-30-2620, 15-30-3313, MCA
IMP: 15-1-201, 15-30-2620, 15-30-3302, 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.106 to implement Senate Bill (SB) 386, L. 2015, which established a de minimis standard for first-tier pass-through entities that are required to withhold on an owner that is also a pass-through entity, and provides waiver provisions for first-tier pass-through entities whose income ultimately passes through to a publicly traded partnership or resident individuals.

The department proposes amending the rule to establish first, that a pass-through entity may not be assessed withholding under certain conditions and second, that penalties and interest may still be the responsibility of the pass-through entity for failure to withhold when required to do so.

Section 15-30-3313, MCA, requires a pass-through entity to withhold income tax on behalf of its owners unless a waiver from this requirement has been granted or the owner has elected to be included in a composite return. Several entities who do not meet the exceptions fail to withhold when they would otherwise be required to do so, including those entities that have been specifically notified in writing of their withholding requirement. Language was also added to establish a process for which a first-tier entity with a publicly traded partnership in its ownership structure may apply for a waiver. Due to the complex nature of these structures and the revolving interest of potentially hundreds and thousands of partners, a different approach is warranted in processing waiver requests meeting certain conditions.

The department also proposes requiring Form PT-AGR to be filed for any second-tier pass-through entity regardless of the owner's status as a resident or nonresident to provide a mechanism for the department to make the withholding requirement determination in order to effectively carry out the intent of the law.

The department further proposes striking existing (9) because its applicability is out of date, and proposes adding 15-30-3313, MCA, as rulemaking authority for the rule based on the enactment of SB 386, which added rulemaking provisions to the statute.

42.9.501 PASS-THROUGH ENTITY INFORMATION RETURNS FOR SINGLE-MEMBER LLC TREATED AS DISREGARDED ENTITY (1) Any single-member limited liability company (LLC) treated as a disregarded entity that has Montana source income, whether formed in Montana or in another state or country, must file a Montana Disregarded Entity Information Return, Form DER-1, as provided in this rule unless:

(a) the sole member is an individual who has been a full-year Montana resident during the applicable reporting period; and

(b) the single member LLC itself does not hold an interest in a pass-through entity.

(2) through (11) remain the same.

~~(12) See ARM 42.15.201 and 42.15.202 to determine the time for filing a short-period return.~~

(12) An LLC required to file an information return, as provided for in (1) through (11), may obtain an automatic extension of time to file its information return if its owner has qualified for an extension of time to file a return. The extended due date is the same as the owner's federal extended due date. The LLC is allowed an automatic extension to file its information return for up to six months if the owner is not required to file a federal information return.

(13) An LLC required to file an information return, as provided for in (1) through (11), is subject to a late-filing penalty if:

(a) and (b) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3302, 15-31-501, MCA
IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.501 to clarify that for single-member LLCs the Form DER-1 is due by the due date of the owner's information return, including extensions.

The department proposes adding language to require Form DER-1 when any single-member LLC owns an interest in another pass-through entity. The information provided on Form DER-1 is necessary to determine compliance in complex pass-through structures. It is difficult for the department to make pass-through relationship connections in the absence of information returns. Requiring the Form DER-1, as in the situation set forth in (1) new (b), will provide the department with the information necessary to make the proper determinations in regard to pass-through withholding and estimates of pass-through returns.

The department further proposes striking existing (12) because it references two repealed rules.

42.9.510 PASS-THROUGH ENTITY INFORMATION RETURNS FOR PARTNERSHIPS ELECTING IRC 761 ~~(1) Any entity that elected under IRC 761, on or before December 31, 2002, to be excluded from application of some or all of the partnership tax rules and that, on or after January 1, 2003, is either engaged in a trade, business, or occupation in the state, or owns real or tangible personal property located in the state, must file a Montana Disregarded Entity Information Return, Form DER-1, on or before August 31, 2003.~~

~~(2)~~(1) Any entity that has Montana source income, that elects under IRC 761 to be excluded from application of some or all of the partnership tax rules on or after January 1, 2003, must file a Montana Form DER-1 on or before ~~90 days after the date it makes the election~~ the 15th day of the fourth month following the close of the annual accounting period of the owners.

(2) An entity required to file an information return provided in (1) can obtain an automatic extension of time to file its information return if its owner has qualified for extension of time to file a return. The extended due date is the same as the owner's federal extended due date. The entity is allowed an automatic extension to file its information return of up to six months if the owners are not required to file a federal information return.

(3) A disregarded entity required to file the information returns provided in (1) ~~and (2)~~ is subject to a late-filing penalty if:

(a) and (b) remain the same.

~~(4) Any entity required in (1) or (2) to file an information return must file a Montana Form DER-1, within 90 days of the date:~~

~~(a) its 761 election is changed or revoked for federal tax purposes;~~

~~(b) any capital or profit interest of any partner, member, or other owner is transferred, liquidated, or redeemed;~~

~~(c) it is dissolved, liquidated, merged, or consolidated with another entity;~~

~~(d) it sells substantially all its assets; and~~

~~(e) it files an application for a certificate of withdrawal with the Montana Secretary of State.~~

AUTH: 15-1-201, 15-30-2620, 15-30-3302, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.510 to clarify that the Form DER-1 is due annually from partnerships electing to be treated as disregarded entities under IRC section 761. Disregarded entities are subject to the withholding requirements outlined in 15-30-3313, MCA. This requirement cannot be fulfilled or enforced if a disregarded entity does not file annually.

The department further proposes striking (1) because its applicability is out of date, and proposes striking (4) because it no longer applies with the proposed amendment to newly numbered (1), which removes the 90-day language.

42.9.520 PASS-THROUGH ENTITY INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES ~~(1) Any corporation described in IRC 1361(b)(3), for which an election to treat the corporation as a qualified subchapter S subsidiary was made on or before December 31, 2002, and that on or after January 1, 2003, is either engaged in a trade, business, or occupation in the state, or owns real or tangible personal property located in the state, must file a Montana Disregarded Entity Information Return, Form DER-1, on or before August 31, 2003.~~

~~(2)~~(1) Any corporation described in IRC 1361(b)(3) whose parent elects to treat as a qualified subchapter S subsidiary on or after January 1, 2003, and that has Montana source income, must file a Montana Form DER-1~~,~~ on or before ~~90 days after the election is made~~ the 15th day of the third month following the close of the parent S corporation's annual accounting period.

(2) A corporation required to file an information return provided in (1) can obtain an automatic extension of time to file its information return if its owner has qualified for an extension of time to file a return. The extended due date is the same as the owner's federal extended due date. The corporation is allowed an automatic extension to file its information return of up to six months if the owner is not required to file a federal information return.

(3) A corporation required to file the information returns provided in (1) ~~and (2)~~ is subject to a late-filing penalty if:

(a) and (b) remain the same.

~~(4) Any corporation required in (1) or (2) to file an information return must file a Montana Form DER-1, within 90 days of the date:~~

~~(a) its qualified subchapter S subsidiary status is changed or revoked for federal tax purposes;~~

~~(b) its stock is transferred or redeemed;~~

~~(c) it is dissolved, liquidated, merged, or consolidated with another entity;~~

~~(d) it sells substantially all its assets; and~~

~~(e) it files an application for a certificate of withdrawal with the Montana Secretary of State.~~

AUTH: 15-1-201, 15-30-2620, 15-30-3302, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.520 to clarify that the Form DER-1 is due annually from corporations electing to be treated as a qualified subchapter S subsidiary under section 1361(b)(3) of the IRC. Disregarded entities are subject to the withholding requirements outlined in 15-30-3313, MCA. This requirement cannot be fulfilled or enforced if a disregarded entity does not file annually.

The department further proposes striking existing (1) because its applicability is out of date, and proposes striking (4) because it no longer applies with the proposed amendment to newly numbered (1), which removes the 90-day language.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 16, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 386, Senator Jill Cohenour, was contacted by letter on June 2, 2015 and September 18, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of New Rule I and the amendment of ARM 42.9.501, 42.9.510, and 42.9.520 will directly impact some small businesses. The adoption and amendment of the remaining rules in this notice will not significantly and directly

impact small businesses. The department's full impact analysis is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment ARM 42.20.102, 42.20.106, 42.20.156, 42.20.171, 42.20.173, 42.20.301, 42.20.454, 42.20.455, 42.20.501, 42.20.502, 42.20.503, 42.20.505, 42.20.516, 42.20.602, 42.20.615, 42.20.620, 42.20.640, and 42.20.725 and repeal of ARM 42.20.509, 42.20.510, 42.20.517, and 42.20.621 pertaining to property classification, appraisal, valuation, and exemptions	))))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 5, 2015, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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 advise the department of the nature of the accommodation needed no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record, the property owner's agent, or a federally recognized tribe~~,~~ must file an application for a property tax exemption on a form available from the local department office before March 1, except as provided in ARM 42.20.118, of the year for which the exemption is sought. All first time exemption applicants in 2016 and all owners of real property that was exempt as of March 1, 2014, must submit an application for exempt status along with the application fee stated in (16) no later than March 1, 2016 in order for the application to be processed for tax year 2016. Applications postmarked after March 1 will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) through (c) remain the same.

(2) The following documents must accompany all applications, unless the applicant is a federally recognized tribe. If the applicant:

(a) ~~if the applicant~~ is incorporated, a copy of the applicant's articles of incorporation;

(b) ~~if the applicant~~ is not incorporated, a copy of the applicant's constitution or by-laws; or

(c) ~~if the applicant~~ has been granted tax-exempt status by the Internal Revenue Service (IRS), a copy of the applicant's tax-exempt status letter (501 determination):

(i) through (9) remain the same.

(10) For real property exemption applications submitting use for parks and recreational facilities, the following documents must accompany the applications:

(a) remains the same.

(b) if a federally recognized tribe, a tribal resolution:

(i) identifying the fee land, by legal description, to be used exclusively for parks and recreational facilities~~, by legal description,~~;

(ii) including language stating the type of exemption the tribe is requesting~~,~~; and

(iii) including language stating how the property qualifies for this type of exemption, not to exceed 640 acres.

(11) For real property exemption applications where the applicant is requesting an 8-year exemption for up to 15 acres of property owned by a purely public charity, as set forth in 15-6-201, MCA, the following apply:

(a) all documents in (5) must be submitted with the application;

(b) the exemption applies to only the general taxes, not the special fees and assessment charges imposed by the local governments;

(c) upon the department's approval of the 8-year exemption, the department will file a notice of exemption with the clerk and recorder in the county where the property is located. The notice shall:

(i) indicate that the exemption has been granted;

(ii) describe the penalty for default; and

(iii) specify that default will create a lien on the property by operation of law;

(d) the department shall notify the applying entity that the application has been approved and a notice exemption on the property has been filed with the county clerk and recorder;

(e) an organization granted an 8-year exemption must notify the department on an annual basis by March 1 whether the property has been placed into a public charitable use;

(f) if an organization has been granted the 8-year exemption the application stated in (1) does not extend the 8-year timeline;

(g) for property not used directly for the charitable purpose intended within the 8-year exemption period, or for property sold or transferred before it is entered into direct charitable use, the exemption is revoked and the property is taxable as follows. If the property:

(i) has completed the 8 years without being placed into a public charitable purpose, the tax will be calculated using the current year's ad valorem tax multiplied by 8 years; or

(ii) has been sold or the exemption status is revoked prior to the end of the 8-year period, the tax will be calculated using the current year's ad valorem tax multiplied by the number of years the property was exempt before the date of sale or revocation. For example, if the property was exempt for 4 years of the approved 8-year period, the tax will be the current year's ad valorem tax multiplied by 4; and

(h) upon default and removal of the 8-year exemption, the department will inform the county clerk and recorder that a lien was created on the property by operation of law, and inform the county treasurer that the lien on the property is being executed and that taxes will be due.

(12) For real property exemption applications where the applicant is requesting exemption for property used for low-income housing, as set forth in 15-6-221, MCA, all documents in (2) must be submitted with the application and also include:

(a) documentation that the property is dedicated to providing affordable housing to low-income tenants;

(b) a copy of the IRS tax exemption status letter (if a limited partnership-general partner is a nonprofit corporation with an IRS 501(c)3 exemption);

(c) a copy of the Board of Housing letter allocating low-income tax credits;

(d) documentation that at least 20 percent of the residential units are rent-restricted and rented to tenants whose household incomes do not exceed 50 percent of the median family income for the county, and at least 40 percent of the residential units are rent-restricted to persons whose household incomes do not exceed 60 percent of the median income for the county;

(e) a copy of the deed or other legally binding document that restricts the property's usage;

(f) a letter stating that the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50 percent of the units in the property to tenants at 50 percent of the median family income for the area, with rents restricted to a maximum of 30 percent of 50 percent of median family income;

(g) a copy of the owner's partnership or operating agreement or accompanying document providing that at the end of the compliance period, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner; and

(h) documentation, such as the hearing minutes or newspaper notification, that a public hearing was held to consider whether the property meets a community housing need.

(11) and (12) remain the same, but are renumbered (13) and (14).

(15) Real property exemption renewal applications must provide the documentation specified in this rule and also include a copy of IRS form 990 identifying the gross receipts of the entire organization. Real property exemption renewal applications will be charged a processing fee as follows:

(a) $15 for vacant land parcels 1 acre or less;

(b) $20 for parcels 1 acre or less with one improvement and no complex structures;

(c) $35 for parcels 1 acre or less with one improvement with complex structures;

(d) $35 for parcels 1 acre or more (land and/or buildings); or
(e) $0 for nonprofit entities with gross receipts less than $5,000.

AUTH: 15-1-201, 15-6-230, 15-6-231, MCA
IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, ~~15-6-211,~~ 15-6-216, 15-6-221, 15-6-230, 15-6-231, 15-6-233, 15-6-311, 15-7-102, MCA

REASON: The department proposes amending ARM 42.20.102 due to the enactment of House Bill (HB) 389, L. 2015, which requires the department to review tax exempt properties and requires all entities owning real property to reapply for exempt status.

The department proposes adding new language in (1) to inform entities currently in exempt status to reapply for exempt status by March 1, 2016. Real property owners who received an exemption beginning in tax year 2014 do not have to reapply because (HB) 389 does not require real property owners who received an exemption within two calendar years of the uniform renewal application to reapply. The department further proposes adding new (15) to delineate the processing fees charged to entities applying for a property tax exemption and the required documentation. The addition of the fees and documentation is a requirement of HB 389, Section 2.

Currently, there are approximately 6,000 entities that receive real property exemption statewide. The department has determined that these entities will pay approximately $129,000 in total ($21.50 average per parcel) in the one-time costs in the first year. Of the 6,000 entities, an estimated 600 will not be charged any fees if their total gross receipts are less than $5,000; 300 will be charged $15 for vacant parcels of 1 acre or less; 3,600 will be charged $20 for parcels that have 1 acre or less with a building on the property but no complex structures; 600 will be charged $35 for parcels that have 1 acre or less with complex structures; and 900 will be charged $35 for parcels greater than 1 acre (land and/or buildings).

The department also proposes adding new (11) to address the process the department follows when an 8-year property exemption is approved for purely public charities, what happens when the exemption is removed, the requirements for purely public charities to maintain exempt status for the duration of the 8 years, instances when the exemption is revoked, and how the taxes are calculated in the event of a revocation.

The language proposed with new (12) is intended to clarify the process and specify the required documents for entities seeking an exemption for low-income housing. While this information is available in 15-6-221, MCA, the department frequently receives questions from new applicants about the process and what documentation to include and determined it would be helpful to detail that information in this rule.

The department further proposes revising the outline structure in (2) to remove excess language and proposes reformatting the outline structure in (10) to make it consistent with similar language sections in this same rule.

The department also proposes updating the implementing section of the rule to correspond with the legislative changes in Senate Bill 157, L. 2015, which repealed 15-6-211, MCA, and replaced it with 15-6-311, MCA.

Furthermore, as HB 389, Section 1 is codified at 15-6-231, MCA, and HB 389, Section 3 is codified at 15-6-233, MCA, the department proposes adding these two statutes to the implementing section of the rule and proposes adding 15-6-231, MCA, as additional rulemaking authority for the rule.

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) through (5) remain the same.

(6) "Complex structure" means improvements that have an intricate or complicated association or assemblage of related parts or units. Some examples include, but are not limited to:

(a) an office building where only a portion of the building is exempt;

(b) a multi-floor hospital; or

(c) an apartment complex used for low-income housing.

(6) through (22) remain the same, but are renumbered (7) through (23).

AUTH: 15-1-201, 15-6-231, 15-7-111, MCA
IMP: 15-6-101, 15-6-232, 15-7-111, 15-7-112, 15-7-304, 15-7-306, 15-9-101, 15-24-1501, MCA

REASON: The department proposes amending ARM 42.20.106 to define the term "complex structure" because that term is proposed to be added to a rule in this subchapter as part of implementing House Bill (HB) 389, L. 2015.

Furthermore, as HB 389, Section 1 is codified at 15-6-231, MCA, and HB 389, Section 2 is codified at 15-6-232, MCA, the department proposes adding the statutes to the authorization and implementing sections of the rule accordingly.

42.20.156 AGRICULTURAL AND FOREST LAND USE CHANGE CRITERIA

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

(e) remains the same, but is renumbered (d).

(i) through (3) remain the same.

AUTH: 15-1-201, 15-7-111, 15-44-105, MCA
IMP: 15-1-101, 15-6-133, 15-7-103, 15-7-111, 15-7-202, 15-7-206, 15-7-207, 15-7-210, 15-44-102, 15-44-103, MCA

REASON: The department proposes amending ARM 42.20.156 to correct a numbering error that occurred when the rule was previously amended. Section (1)(e) should have been numbered (1)(d). No language changes are being proposed at this time.

42.20.171 LAND CLASSIFICATION DETERMINATION DATE FOR CLASS THREE, FOUR, AND TEN PROPERTY (1) through (3) remain the same.

(a) Example 1 - A taxpayer with a contiguous ownership less than 160 acres in size files an application for agricultural land classification on May 1. The department's decision is based on the property's agricultural income for the preceding year and the property's ability to meet the agricultural eligibility rules pursuant to ARM 42.20.620 ~~or 42.20.625~~;

(b) and (c) remain the same.

(d) Example 4 - A taxpayer purchases a parcel of land on May 1 of the current year. The parcel was classified as forest land on January 1 of the current year. The taxpayer files an AB-26 within 30 days of receipt of the assessment notice requesting that the department review the forest land productivity ~~grade~~ for the property. If the department determines that a change in productivity ~~grading~~ is appropriate, the change is effective for the current year because the basis for the property's productivity existed on January 1 of the current year; and

(e) Example 5 - A taxpayer purchases a property on December 31 of the previous year. The property was classified as agricultural land under the previous owner. The new taxpayer files a timely application for agricultural land classification with the local department office. The new taxpayer states that the property will continue to be managed as an agricultural operation for the current year. The property met the agricultural eligibility requirements on January 1 of the current year for the previous owner. The property is classified and assessed as agricultural land by the department for the current year, even though the current taxpayer has not owned the property long enough to market agricultural products or consume agricultural products produced by the property. The department may ask the new taxpayer to file another application for agricultural land classification the following year to demonstrate that the property continues to meet the agricultural land eligibility requirements pursuant to ARM 42.20.620 ~~or 42.20.625~~.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-103, 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASON: The department proposes amending ARM 42.20.171 to remove references to "grades" and "grading" because grades are no longer used to rate productivity. The department further proposes striking two references to ARM 42.20.625, because that rule is being repealed and combined with ARM 42.20.620.

42.20.173 STATUTORY DEADLINE FOR ~~ASSESSMENT~~ CLASSIFICATION AND APPRAISAL REVIEWS (1) ~~For the current~~ The reappraisal cycle~~, tax years 2015-2020, the~~ for class three and four property is January 1, 2015, through December 31, 2016. The department will accept requests for informal ~~assessment~~ classification and appraisal reviews (Form AB-26) for ~~classes~~ class three~~,~~ and class four~~, and ten~~ property for tax years 2015 and 2016. The reappraisal cycle for class ten property is January 1, 2015 through December 31, 2020. The department will accept Form AB-26 requests for class ten property for tax years 2015 through 2020. ~~The owner of any land and/or improvements who had not previously submitted a request for an informal review of their 2015 assessment notice and~~ A property taxpayer who is dissatisfied with ~~the valuation~~ their property's appraised value may ~~request an informal review of the assessment notice by submitting a request for informal review form (~~ submit a Form AB-26~~)~~ one time per reappraisal cycle. The Form AB-26 must be submitted to the local department office in the county in which the property is located~~, on or before the first Monday in June of the current tax year, or~~ within 30 days after the date on

the ~~assessment~~ classification and appraisal notice to be considered for the current tax year.

(2) For taxpayers who do not file ~~on or before the first Monday in June of the current tax year, or~~ within 30 days after the date on the ~~assessment~~ classification and appraisal notice, the informal review will be considered for the following year.

(3) remains the same.

(4) For subsequent reappraisal cycles, beginning in tax year 2015, taxpayers may file an informal ~~assessment~~ classification and appraisal review in any year of the cycle, but only one time during a cycle unless the department determines that a change in value occurred and the taxpayer receives a new ~~assessment~~ classification and appraisal notice during the cycle.

AUTH: 15-1-201, MCA
IMP: 15-7-102, 15-7-110, 15-7-111, MCA

REASON: The department proposes amending ARM 42.20.173 due to the enactment of Senate Bill (SB) 157, L. 2015, which generally revised reappraisal laws that changed the reappraisal cycle from six years to two years for classes three and four property beginning in 2015. Class ten (forest land) property remains on the six-year cycle.

The department proposes amending (1) to make the distinction between the lengths of the different reappraisal cycles for the classes relative to the timing for assessment reviews.

The department proposes amending the 30-day language in the rule to match the new legislation and also proposes updating all references to the department's classification and appraisal notice and Form AB-26 with their current names.

The department further proposes adding 15-7-110 and 15-7-111, MCA, as implementing citations for the rule based on the enactment of SB 157 and updating the title to correspond with the proposed amendments to the rule language.

42.20.301 APPLICATION FOR CLASSIFICATION AS NONPRODUCTIVE, PATENTED MINING CLAIM (1) The property owner of record or the property owner's agent must make application to the department to secure classification of the owner's land as a nonproductive, patented mining claim. To be considered for the current tax year, an application must be filed on a form available from the department ~~by the first Monday in June or~~ within 30 days after receiving ~~an assessment~~ a classification and appraisal notice from the department, whichever is later. The form must be filed with the department.

(2) The department will review the application and may conduct a field ~~evaluation~~ review. The department will approve or deny the application and will return a copy of the form to the property owner or the owner's agent.

(3) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, 15-7-102, 15-8-111, MCA

REASON: The department proposes amending ARM 42.20.301 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws.

The department proposes amending the 30-day language in the rule to match the new legislation, updating a reference to the department's classification and appraisal notice with its current name, and making a word change in (2) for consistency with the remainder of the rule.

The department further proposes adding 15-7-102, MCA, as an implementing citation for the rule as amended.

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered, a taxpayer or the taxpayer's agent must:

(a) submit a completed Request for Informal Classification and Appraisal Review (Form AB-26) to the local department office in the county where the property is situated~~, on or before the first Monday in June or~~ within 30 days after the date on the ~~assessment~~ classification and appraisal notice;

(b) through (4) remain the same.

(5) When a tax appeal board decision indicates that the adjusted selling price is market value for the property under appeal, and the department files no further appeal within the time prescribed by law, the adjusted selling price shall become the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment or upon an updated reappraisal value.

AUTH: 15-1-201, MCA
IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASON: The department proposes amending ARM 42.20.454 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws.

The department proposes amending the 30-day language in the rule to match the new legislation and updating a reference to the department's classification and appraisal notice and Form AB-26 with their current names.

The department also proposes adding language to the end of (5) to make it clear that adjustments made to a property's value following an informal review and/or appeal adjustment will remain that property's value until the department conducts its next statutorily required reappraisal of the property.

The department further proposes adding the word "value" to the rule title for clarity regarding the rule content.

42.20.455 CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be considered, the taxpayer or the taxpayer's agent must meet the following requirements:

(a) and (b) remain the same.

(c) submit a Request for Informal Classification and Appraisal Review (Form AB-26) and the original long-form narrative appraisal, to the local department office in the county where the property is situated ~~on or before the first Monday in June or~~ within 30 days after the date on the ~~assessment~~ classification and appraisal notice.

(2) and (3) remain the same.

(4) When a tax appeal board decision indicates that the independent appraisal value is market value for the property under appeal, and the department files no further appeal within the time prescribed by law, the independent appraisal value shall become the value for assessment and taxation purposes, until such time as changing circumstances with respect to the property requires a new valuation and assessment or upon an updated reappraisal value.

AUTH: 15-1-201, MCA
IMP: 15-7-102, 15-7-111, 15-8-111, MCA

REASON: The department proposes amending ARM 42.20.455 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws.

The department proposes amending the 30-day language in the rule to match the new legislation and updating references to the department's classification and appraisal notice and Form AB-26 with their current names.

The department further proposes adding language to the end of (4) to make it clear that adjustments made to a property's value following an informal review and/or appeal adjustment will remain that property's value until the department conducts its next statutorily required reappraisal of the property.

42.20.501 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain the same.

~~(4) "Comstead exemption" means the percentage of phase-in value of commercial property that is exempt from taxation pursuant to 15-6-222, MCA.~~

(5) through (9) remain the same but are renumbered (4) through (8).

~~(10) "Homestead exemption" means the percentage of phase-in value of residential property that is exempt from taxation pursuant to 15-6-222, MCA.~~

(11) through (16) remain the same but are renumbered (9) through (14).

~~(17)~~(15) "Neighborhood (NBHD) group percentage" means the percent of change in value from the total 2014 tax year value of the year before reappraisal to the total 2015 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

$$\text{Neighborhood Group Percentage} = \frac{\text{(Total } \sout{2003}\ 2008 \text{ NBHD REAP Value - Total } \sout{2014}\ 2015 \text{ NBHD Tax Year Value)}}{\text{Total 2014 NBHD Tax Year Value}}$$

(a) remains the same.

(18) through (23) remain the same, but are renumbered (16) through (21).

~~(24)~~(22) "Taxable market value" means that portion of the total market value subject to taxation after the total market value has been adjusted, if applicable, for the phase-in of value~~, and the homestead/comstead exemption~~.

(25) remains the same, but is renumbered (23).

AUTH: 15-1-201, 15-7-111, MCA
IMP: ~~15-6-222,~~ 15-7-111, 15-10-420, MCA

REASON: The department proposes amending ARM 42.20.501 due to the enactment of Senate Bill (SB) 157, L. 2015, which generally revised reappraisal laws and removed the homestead and comstead exemptions.

The department proposes striking the terms and definitions of "homestead exemption" and "comstead exemption" from this rule because they no longer apply.

The department further proposes striking a statute that was repealed by SB 157 from the implementing section of the rule.

42.20.502 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR)~~,~~ FOR FOREST LAND EXCLUDING INDUSTRIAL PROPERTIES (1) For property that contains no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~2002~~ 2014 or subsequent tax years, the current year VBR will be the same as the prior year ~~VBR~~ market value.

~~(2) For class three property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.~~

~~(3) For class three property that contains a productivity change only, the current year VBR will remain the same as the full appraisal value of the previous cycle.~~

~~(4) For class four property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by one plus the percent of neighborhood group change. The following formula illustrates that calculation:~~

~~VBR = Reappraisal value /(1 + NBHD group percentage)~~

~~(5) Land which has been reclassified as residential or commercial land after January 1, 2014, will have the VBR determined by comparing other 2014 market values of similar residential or commercial land, and determining a comparable VBR for the new residential or commercial land.~~

~~(6) For class four property (excluding industrial property) that has been either partially or wholly destroyed, the current year VBR is calculated by first determining what percent of the property has been destroyed. That percent is multiplied by the prior year improvement VBR to determine a value amount that is attributed to the destruction. The current year VBR is then the difference between the prior year VBR and the value attributed to the destruction. The following formula illustrates that calculation:~~

~~Current year VBR =~~
~~Prior year VBR -~~
~~(Percent of property destroyed x prior year improvement VBR)~~

(7) and (8) remain the same, but are renumbered (2) and (3).

~~(9)~~(4) The only instances when the current year VBR will be less than the prior year VBR are~~:~~

~~(a) in the case of class four improvements that have been partially or wholly destroyed;~~

~~(b) when the neighborhood group percentage change is negative and there is new construction; or~~

~~(c)~~ when land use changes have occurred.

~~(10) In all other situations, the current year VBR will be the greater of the value determined through application of the formula in (4) or the prior year VBR.~~

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASON: The department proposes amending ARM 42.20.502 due to the enactment of SB 157, L. 2015, which generally revised reappraisal laws, and changed the reappraisal cycle from six years to two years, with the exception of forest land (class ten) properties. The new law also removed the phase-in provision from all but class ten properties.

The department proposes amending the rule to update the year in (1) to coincide with the current reappraisal cycle and to strike all references to class three and class four from the rule. Because the change in legislation removed the phase-in from those property types, the VBR references and calculations in this rule no longer apply.

The department further proposes revising the title of the rule to make it clear that the rule now applies to forest land only.

42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR ~~CLASS THREE, CLASS FOUR, AND~~ CLASS TEN PROPERTY (1) For tax years 2015 through 2020, the department is required to determine the current year phase-in value for each property in ~~class three, class four, and~~ class ten annually. The current year phase-in value is determined by subtracting the 2014 reappraisal value from the 2015 reappraisal value multiplied by the applicable phase-in percentage, the product of which is added to the 2014 reappraisal value. The calculations of the phase-in values are represented by the following formula:

2015 Phase-in value =
[(2015 full reappraisal value - 2014 full reappraisal value) x 16.66%]
+ 2014 full reappraisal value

2016 Phase-in value =
[(2015 full reappraisal value - 2014 full reappraisal value) x 33.32%]
+ 2014 full reappraisal value

2017 Phase-in value =
[(2015 full reappraisal value - 2014 full reappraisal value) x 49.98%]
+ 2014 full reappraisal value

2018 Phase-in value =
[(2015 full reappraisal value - 2014 full reappraisal value) x 66.64%]
+ 2014 full reappraisal value

2019 Phase-in value =
[(2015 full reappraisal value - 2014 full reappraisal value) x 83.30%]
+ 2014 full reappraisal value

2020 Phase-in value =
2015 full reappraisal value

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASON: The department proposes amending ARM 42.20.503 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and changed the reappraisal cycle from six years to two years, with the exception of forest land (class ten) properties. The new law also removed the phase-in provision from all but class ten properties.

The department proposes amending the rule to remove references to class three and class four from the rule content and the rule title because the phase-in no longer applies to those property types.

42.20.505 ~~ASSESSMENT~~ CLASSIFICATION AND APPRAISAL NOTICES AND VALUATION REVIEWS FOR FOREST LAND PROPERTY (1) As required by 15-7-102, MCA, the ~~assessment~~ classification and appraisal notice shall include:

(a) the reappraisal value;

(b) the current year phase-in value for forest land property;

(c) the total amount of mills levied against the property in the prior year; and

(d) a statement that the notice is not a tax bill~~; and~~

~~(e) amount of appraised value exempt from taxation under 15-6-222, MCA~~.

(2) A taxpayer may seek a department review of any of the required valuation items set forth in (1)(a)~~,~~ and (b)~~, and (e) of this rule~~. Additionally, a taxpayer may request a review of any of the methods used to determine those values which are shown in (1)(a)~~,~~ and (b)~~, and (e)~~.

AUTH: 15-1-201, 15-7-111, MCA
IMP: ~~15-6-201,~~ 15-7-102, 15-7-111, MCA, and Sec. 11, Ch. 463, L. 1997

REASON: The department proposes amending ARM 42.20.505 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and changed the reappraisal cycle from six years to two years, with the exception of

forest land (class ten) properties. Senate Bill 157 removed the homestead and comstead exemptions and also removed the phase-in for all but class ten properties.

The department proposes amending the language in the rule to conform to the legislative changes and proposes updating the name of the department's classification and appraisal notice in (1).

The department further proposes amending the rule title to correspond with the rule language as amended and proposes striking an implementing statute that no longer applies to the rule.

42.20.516 APPLICATION OF PHASE-IN PROVISIONS FOR ~~CLASS THREE, CLASS FOUR, AND~~ CLASS TEN PROPERTIES THAT DECREASE IN VALUE DUE TO REAPPRAISAL (1) The department will not apply a phase-in percentage calculation to ~~class three, class four and~~ class ten properties when the reappraisal value decreased as a result of the reappraisal of those properties. The value to be used for assessment purposes for those properties will be the reappraisal value.

~~(2) The reappraisal value is subject to any applicable homestead and comstead exemptions.~~

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-7-111, MCA

REASON: The department proposes amending ARM 42.20.516 due to the enactment of Senate Bill 157, L.,2015, which generally revised reappraisal laws, eliminated the phase-in of values for all but class ten (forest land) properties, and removed the homestead and comstead exemptions.

The department proposes striking the references to class three and four property from the rule content and rule title, and proposes striking all of (2) to remove the reference to the homestead and comstead exemptions because they no longer apply.

42.20.602 STEPS IN DETERMINING THE CLASSIFICATION OF AGRICULTURAL LAND (1) Steps in the agricultural classification process may include the use of ~~the~~:

(a) ~~USDA Farm Service Administration (FSA) field delineations, called line work, for initial identification of general agricultural land use~~ department land use maps;

(b) ~~initial~~ internal desktop land use classification, using the criteria for each agricultural land use;

(c) on-site field reviews, operator and land owner interviews, and inspection by local department appraisal staff; and

~~(d) producer responses to photomaps mailed to all individual operators; and~~

~~(e) digitally identifying each producer's agricultural land use in~~

(d) a Geographic Information System (GIS) to digitally identify each producer's agricultural land use.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-201, 15-7-202, 15-7-208, MCA

REASON: The department proposes amending ARM 42.20.602 to reflect the department's current process for classifying agricultural land.

The department further proposes citing an additional rulemaking statute for the rule.

42.20.615 APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) through (4)(e) remain the same.

(f) the owner, the owner's immediate family members, the owner's agent, employee, or lessee submits a ~~farm and ranch~~ personal property reporting form that significantly reduces the amount of property reported from the prior year to the extent there is convincing evidence that the property is no longer a viable agricultural unit.

(5) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-202, MCA

REASON: The department proposes amending ARM 42.20.615 as a matter of housekeeping to update a form name in (4)(f). The farm and ranch reporting form is now referred to as a personal property reporting form.

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND TOTALING LESS THAN 160 ACRES (1) through (11) remain the same.

(12) A parcel or parcels of land less than 20 acres that meet all of the following criteria will remain classified and valued as agricultural land or as nonqualified agricultural land as defined in 15-6-133 and 15-7-202, MCA. The criteria that must be met are:

(a) through (c) remain the same.

(d) since the reduction in acreage occurred, the parcel or parcels have not been further divided or devoted to a residential, commercial, or industrial use, and there are no covenants or other restrictions that when enforced effectively prohibit agricultural use.

(13) through (15) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASON: The department proposes amending ARM 42.20.620 due to the enactment of House Bill 56, L. 2015, which revised subdivision classifications for agricultural land valuation, and to comply with a recent Supreme Court decision that requires land to be classified according to actual use and not anticipated future use.

The department proposes adding the words "when enforced" to (12)(d) to clarify that land will be classified according to its actual use.

42.20.640 VALUATION OF LAND OWNERSHIPS 160 ACRES OR LARGER IN SIZE (1) In accordance with the provisions of 15-7-202, MCA, contiguous parcels of land under one ownership as defined in ARM 42.20.601 160 acres or larger in size shall be valued as agricultural land, provided that no portion of the ownership meets the criteria for forest land classification and there are no covenants, easements, deed restrictions, or other operations of law that when enforced prohibit the land from being used as agricultural, or the land is not used for residential, commercial, or industrial purposes.

(2) remains the same.

(3) Any remaining acreage in the ownership parcel will be classified and assessed as agricultural land provided the land is not used for residential, commercial, or industrial purposes, and that the land doesn't have stated restrictive covenants, easements, deed restrictions, servitudes, ~~conservations~~ conservation easements, or other legal encumbrances that when enforced effectively prohibit agricultural use. If the remaining acreage in the ownership parcel is either used for residential, commercial, or industrial purposes, or has stated covenants or other restrictions that when enforced effectively prohibit agricultural use, the remaining acreage will be classified and valued as ~~class 4~~ class four land.

(4) For contiguous parcels of land that are 160 acres or larger in size, and under one ownership as defined in ARM 42.20.601, any acreage exceeding that which meets the criteria for forest land set forth in ARM 42.20.156, 42.20.705, and 42.20.710, or has stated restrictions that when enforced effectively prohibit agricultural use, or is used for residential, commercial, or industrial purposes, shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.

(5) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-201, 15-7-202, MCA

REASON: The department proposes amending ARM 42.20.640 due to the enactment of House Bill 56, L. 2015, which revised subdivision classifications for agricultural land valuation, and to comply with a recent Supreme Court decision that requires land to be classified according to its actual use and not its anticipated future use.

The department proposes adding the words "when enforced" to three sections of the rule to clarify that land will be classified according to its actual use.

42.20.725 FOREST LAND VALUATION FORMULA (1) and (2) remain the same.

(3) The valuation of forest land shall be based on the average of income and expenses for the most recent ~~five-year~~ ten-year period ending in the calendar year immediately preceding the year published by the department in ARM 42.18.124 and the capitalization rate identified in (5)(c)(i).

(4) through (9) remain the same.

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASON: The department proposes amending ARM 42.20.725 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws.

The department proposes striking "five-year" and adding "ten-year" to the period referenced in (3). Senate Bill 157 requires the department to calculate the value of forest land using the most recent ten-year period of income and expenses instead of the most recent five-year average.

4. The department proposes to repeal the following rules:

42.20.509 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR INDUSTRIAL PROPERTIES (CLASS FOUR)

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASON: The department proposes repealing ARM 42.20.509 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and eliminated the phase-in of values for class four properties, which renders this rule no longer necessary.

42.20.510 BASIC DETERMINATION OF PHASE-IN VALUE FOR CLASS FOUR INDUSTRIAL PROPERTY

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASON: The department proposes repealing ARM 42.20.510 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and eliminated the phase-in of values for class four properties, which renders this rule no longer necessary.

42.20.517 APPLICATION OF HOMESTEAD OR COMSTEAD EXEMPTION TO MIXED USE PROPERTIES

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-7-111, MCA

REASON: The department proposes repealing ARM 42.20.517 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and eliminated the homestead and comstead exemptions, which renders this rule no longer necessary.

42.20.621 2015 CALCULATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR AGRICULTURAL LAND

AUTH: 15-1-201, 15-7-101, 15-7-103, MCA
IMP: 15-7-111, MCA

REASON: The department proposes repealing ARM 42.20.621 due to the enactment of Senate Bill 157, L. 2015, which generally revised reappraisal laws and eliminated the phase-in of values and VBR for agricultural land, which renders this rule no longer necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 17, 2015.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of Senate Bill 157, Senator Bruce Tutvedt, and House Bill 389, Representative Jeff Essmann, respectively, were contacted by letters on both July 6, 2015 and September 21, 2015, and the primary sponsor of House Bill 56, Representative Kerry White, was contacted by letter on September 21, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Any impact on small businesses will be the result of legislative changes. Documentation of the department's

determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III and the amendment of ARM 42.13.301 pertaining to distillery deliveries, alternating proprietor on a manufacturer's premises, contract manufacturing, and the storage of alcoholic beverages	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 9, 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 and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

<u>NEW RULE I DISTILLERY DELIVERIES TO AGENCY LIQUOR STORES</u>

(1) A distillery delivering product to an agency liquor store pursuant to 16-4-311, MCA, shall report each delivery through the department's online reporting system within two business days of the delivery.

(2) The distillery shall maintain at its place of business a bill of lading signed by the individual at the agency liquor store who accepted the delivery. A duplicate copy of the bill of lading shall be given to the agency liquor store. The bill of lading shall contain the:

(a) date of delivery;

(b) agency liquor store number;

(c) number of cases of each product;

(d) product number;

(e) name of the distillery employee who made the delivery; and

(f) name of the agency liquor store employee who accepted the delivery.

(3) A distillery may only make deliveries of products for which a standard price quotation and specification form is on file with the department.

(4) A distillery may deliver product only upon an agency liquor store's request.

(5) The department shall pay the distillery within 15 days from the close of the month in which the distillery reports the delivery. The payment shall be:

(a) the cost per case, based on the product's standard price quotation and specification form on file with the department at the time the product is delivered; and

(b) beginning July 1, 2018, the department's freight rate per case at the time the product is delivered.

AUTH: 16-1-303, MCA
IMP: 16-4-311, MCA

REASON: The department proposes adopting New Rule I due to the passage of House Bill (HB) 506, L. 2015, which amends 16-4-311, MCA, to allow a distillery with an annual production of less than 25,000 gallons to deliver its product directly to a state agency liquor store using its own equipment, trucks, and employees. HB 506 further requires the department to create an electronic reporting system for distilleries to report these deliveries to the department. The effective date of the bill is January 1, 2016, and the date that the department must start paying distilleries for freight is July 1, 2018.

The proposed new rule establishes the reporting requirements for the deliveries, sets forth invoicing requirements, and specifies the price the department will pay distilleries. The department proposes to require distilleries to file reports electronically within 48 hours of delivery. The proposed reporting requirement ensures the proper invoicing of product by the department to agency liquor stores.

NEW RULE II ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) An alternating proprietor arrangement occurs when a tenant manufacturer utilizes the licensed premises and equipment of a host manufacturer to produce and/or package alcoholic beverages.

(2) The tenant must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The tenant and host must seek the department's approval for each alternating proprietor arrangement necessitating approval by the Alcohol and Tobacco Tax and Trade Bureau.

(4) To apply, the tenant and host shall submit a complete application to the department that includes:

(a) documentation of Alcohol and Tobacco Tax and Trade Bureau approval;

(b) a description of the areas and equipment to be used by the tenant;

(c) a copy of the host's floorplan identifying the areas to be used by the tenant; and

(d) a copy of the executed agreement between the tenant and host.

(5) The department shall notify the tenant and host in writing of its approval or denial of the alternating proprietor arrangement within 15 business days of receiving all requested information.

(6) The tenant and host shall notify the department in writing within ten business days of receiving notice from the Alcohol and Tobacco Tax and Trade Bureau that approval for an existing alternating proprietor arrangement has been revoked.

(7) All regulations set forth in Title 27 of the Code of Federal Regulations, in effect on October 5, 2015, addressing alternating proprietor arrangements are adopted by reference, except where the provisions of those regulations may be contrary to or inconsistent with the provisions of Montana law or department rule. Copies may be obtained from the United States Treasury at www.ttb.gov. Failure to comply with those regulations shall constitute a violation of this rule and may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

(8) The tenant shall maintain possession, title, and control over all raw materials and its product on the host's premises.

(9) The tenant's product must be separate and identifiable from the products of all other tenants and the host at all stages of production and through removal of the product from the host's premises.

(10) The tenant and host shall keep separate records of their respective production and removals. The department may make an examination of any records kept by the tenant and host.

(11) The host is prohibited from selling or providing the tenant's product, with or without charge, in the host's sample room, on its licensed premises, or otherwise.

(12) The tenant must adhere to all applicable distribution requirements set forth in the Montana Alcoholic Beverage Code.

(13) In addition to all other requirements imposed by this rule, where the tenant is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the tenant; and

(ii) the tenant shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 10,000 barrel production cap in 16-3-213, MCA, and the 60,000 barrel production cap in 16-3-214, MCA, all beer produced by a tenant at a host's premises shall be considered as part of the tenant's annual nationwide production;

(c) a tenant with an annual nationwide production between 100 and 10,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a tenant providing beer in its sample room that was brewed or fermented at a host's premises. A tenant that brewed and fermented beer at its premises and packaged the beer at a host's premises may provide that beer, with or without charge, in the tenant's sample room; and

(d) a tenant with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a host's premises.

(14) In addition to all other requirements imposed by this rule, where the tenant is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the tenant; and

(ii) the tenant shall pay the tax due on wine sold directly to consumers and retailers; and

(b) a tenant may provide, with or without charge, wine for consumption on its licensed premises that was produced and/or packaged at its premises or a host's premises.

(15) In addition to all other requirements imposed by this rule, where the tenant is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 25,000 gallon production cap set forth in 16-4-310, MCA, all liquor produced by a tenant at a host's premises shall be considered liquor produced by the tenant; and

(c) a tenant distillery with an annual production of 25,000 gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a tenant distillery providing liquor in its sample room that was produced at a host's premises, subject to the production exception in ARM 42.13.805(3). A tenant distillery that produces liquor at its premises and packages the liquor at a host's premises may sell that liquor in the tenant's sample room.

(16) An alternating proprietor arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the tenant and host to administrative action, including revocation of their manufacturing licenses.

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASON: The department proposes adopting New Rule II to allow alternating proprietor arrangements between a tenant and host manufacturer. These arrangements enable a host manufacturer to utilize excess capacity and for tenant manufacturers to produce and/or package alcoholic beverages at another premises. The proposed new rule sets out the process a tenant and host manufacturer must undertake to seek the department's initial approval for an alternating proprietor arrangement, guidelines for operating under the arrangement, and the potential for administrative action based upon a failure to abide by the provisions of the proposed rule.

Additionally, the proposed new rule specifies how the department will count product produced under an alternating proprietor arrangement for purposes of taxes and annual production amounts governing the ability of manufacturers to provide alcohol for consumption on the licensed premises.

NEW RULE III CONTRACT MANUFACTURING (1) Contract manufacturing occurs when a manufacturer utilizes its licensed premises and equipment to produce

and/or package alcoholic beverages for another manufacturer to sell, called the client.

(2) The contract manufacturer and the client must be licensed by the department to manufacture the alcoholic beverages to be produced and/or packaged.

(3) The contract manufacturer and client must seek the department's approval prior to engaging in a contract manufacturing arrangement. To apply, the contract manufacturer and client shall submit a complete application to the department.

(4) The department shall notify the contract manufacturer and client in writing of its approval or denial of the contract manufacturing arrangement within 15 business days of receiving all requested information.

(5) The sale and distribution of alcoholic beverages manufactured by the contract manufacturer may only be conducted as follows:

(a) a contract manufacturer is prohibited from selling or providing the product, with or without charge, in the contract manufacturer's sample room or on its licensed premises;

(b) the contract manufacturer may only sell the product to the client; and

(c) once the client holds title to the product, the client must adhere to all applicable distribution requirements in the Montana Alcoholic Beverage Code, the same as though the client produced the product.

(6) The contract manufacturer and client shall maintain control over their separate business records at all times. The department may make an examination of the records of the contract manufacturer or client.

(7) In addition to all other requirements imposed by this rule, where the client is a brewery:

(a) for purposes of the tax imposed by 16-1-406, MCA:

(i) wholesalers shall pay the tax due on beer purchased from the client; and

(iii) the client shall pay the tax due on beer sold directly to consumers and retailers;

(b) for purposes of the tax imposed by 16-1-406, MCA, the small brewery 10,000 barrel production cap set forth in 16-3-213, MCA, and the 60,000 barrel production cap set forth in 16-3-214, MCA, all beer produced by the contract manufacturer for the client shall be considered as part of the client's annual nationwide production;

(c) a client with an annual nationwide production between 100 and 10,000 barrels may provide, with or without charge, beer in its sample room only if the beer was brewed and fermented at its premises. This restriction includes a prohibition against a client providing beer in its sample room that was brewed or fermented at a contract manufacturer's premises. A client that brewed and fermented beer at its premises and then had the beer packaged at a contract manufacturer's premises may provide that beer, with or without charge, in the client's sample room; and

(d) a client with an annual nationwide production between 10,000 and 60,000 barrels may provide, without charge, beer on its licensed premises that was produced and/or packaged at its premises or a contract manufacturer's premises.

(8) In addition to all other requirements imposed by this rule, where the client is a winery:

(a) for purposes of the tax imposed by 16-1-411, MCA:

(i) wholesalers shall pay the tax due on wine purchased from the client; and

(ii) the client shall pay the tax due on wine sold directly to consumers and retailers; and

(b) the client may provide, with or without charge, wine for consumption on its licensed premises only if the wine was produced by the client. This restriction includes a prohibition against the client providing wine that was produced by a contract manufacturer. A client that produced the wine at its premises and then had the wine packaged at a contract manufacturer's premises may provide that wine, with or without charge, for consumption on its licensed premises.

(9) In addition to all other requirements imposed by this rule, where the client is a distillery:

(a) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, agency liquor stores shall pay the tax due on liquor purchased from the department;

(b) for purposes of the taxes imposed by 16-1-401 and 16-1-404, MCA, and the microdistillery 25,000 gallon production cap set forth in 16-4-310, MCA, all liquor produced by a contract manufacturer for the client shall be considered as part of the client's annual nationwide production; and

(c) a client with an annual production of 25,000 gallons or less may provide, with or without charge, liquor in its sample room only if the liquor was produced at its premises. This restriction includes a prohibition against a client providing liquor in its sample room that was produced at a contract manufacturer's premises, subject to the production exception in ARM 42.13.805(3). A client that produces liquor at its premises and packages the liquor at a contract manufacturer's premises may sell that liquor in the client's sample room.

(10) Except as provided in (9), a contract manufacturing arrangement may only be conducted in accordance with the provisions of this rule. Failure to abide by the provisions of this rule may subject the contract manufacturer and client to administrative action, including revocation of their manufacturing licenses.

(11) The department may approve a contract manufacturing arrangement that does not fit within the bounds of this rule only if the proposed arrangement meets all federal and state alcoholic beverage regulations.

AUTH: 16-1-303, MCA

IMP: 16-1-401, 16-1-404, 16-1-406, 16-1-411, 16-3-213, 16-3-214, 16-4-310, 16-4-311, 16-4-312, 16-4-406, MCA

REASON: The department proposes adopting New Rule III to allow contract manufacturing arrangements between two manufacturers. The proposed rule sets out the process for the manufacturers to request approval from the department and the potential administrative actions for failing to abide by the provisions of the proposed rule. Additionally, the proposed rule specifies how the department will count product produced under a contract manufacturing arrangement for purposes of taxes and annual production amounts governing the ability of manufacturers to provide alcohol for consumption on the licensed premises.

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

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) A licensee may store alcoholic beverages only on ~~the licensee's licensed~~ its premises.

(2) ~~Only~~ A licensee may only store those alcoholic beverages for which the premises are specifically licensed ~~may be received, accepted, or stored~~ or those authorized under an approved alternating proprietor arrangement.

(3) All alcoholic beverages must be purchased through an agency liquor store, a licensed beer wholesaler, table wine distributor, winery, or brewery.

AUTH: 16-1-303, MCA
IMP: 16-1-302, 16-3-201, 16-3-301, 16-6-301, 16-6-303, MCA

REASON: The department proposes amending ARM 42.13.301 to allow for the storage of alcoholic beverages authorized for production or packaging on the premises under an approved alternating proprietor arrangement. The amendment allows a manufacturer of one type of alcoholic beverages to store alcoholic beverages on the premises of a manufacturer producing a different type of alcoholic beverage. For example, it would be permissible to store beer on a winery's premises if that beer was bottled on that premises under an approved alternating proprietor agreement.

5. Following adoption, the department plans to apply the provisions of New Rule I effective January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 18, 2015.

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 506, Representative David Moore, was contacted by letter on May 19, 2015 and September 18, 2015.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of New Rule I will not significantly and directly impact small businesses. Any impact to small businesses will be the result of legislative changes, not the new rule. The adoption and amendment of the remaining above-referenced rules will significantly impact the alcoholic beverage industry because they will allow for additional opportunities for manufacturers. However, because participation is optional the rules do not directly impact the current operation of these businesses. The department's full analysis is available at revenue.mt.gov/rules or upon request from the person in 6.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II, the amendment of ARM 42.11.301 and 42.11.305, and the repeal of ARM 42.11.306, 42.11.307, 42.11.309, and 42.11.310 pertaining to agency liquor stores	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 9, 2015, at 3 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 facing Sanders Street.

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, advise the department of the nature of the accommodation needed no later than 5 p.m. on October 26, 2015. 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 complied with 16-1-303(5), MCA, and convened a negotiated rulemaking committee to draft, amend, and repeal the above-stated rules. The committee was comprised of department staff, agency liquor store owners, an agency liquor store attorney, and a representative of the Montana Tavern Association. The proposed adoption, amendment, and repeal of the following rules contain the language agreed to by the committee and accepted by the department.

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

<u>NEW RULE I DIRECT PRODUCT DELIVERIES FROM A DISTILLERY</u>

(1) An agency liquor store may order product directly from a distillery pursuant to 16-4-311, MCA, without notification to the department.

(2) The date of the invoice issued by the department for product an agency liquor store receives directly from a distillery shall be the date of delivery.

(3) The agency liquor store shall maintain at its place of business a copy of the signed bill of lading provided by the distillery for each delivery.

(4) Within three business days of receiving inventory that is deficient or defective, the agency liquor store shall notify the distillery. If adjustment of the invoice issued by the department is necessary, the agency liquor store shall notify the department within 30 days of product receipt.

AUTH: 16-1-303, MCA
IMP: 16-4-311, MCA

REASON: The department proposes adopting New Rule I due to the passage of House Bill 506, L. 2015, which allows a qualifying distillery to deliver product directly to an agency liquor store instead of sending the product through the state liquor warehouse as an intermediary for the delivery.

Effective January 1, 2016, an agency liquor store may place a product order with the distillery, the distillery will deliver the product to the agency liquor store and notify the department of the product delivered and the department will subsequently invoice the agency liquor store for the product delivered and pay the distillery the quoted price for the product.

The proposed rule will provide agency liquor stores with guidance on its role in this new process. Specifically, (1) makes it clear that the agency liquor stores need not notify the department when placing a direct order for product with a distillery, (2) specifies that the date on the department's invoice will match the date of the product delivery, (3) addresses the agency liquor store's delivery record keeping requirements, and (4) sets forth the time frame to notify and request invoice adjustments.

NEW RULE II AGENCY LIQUOR STORE PROXIMITY TO GROCERY STORES (1) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

(2) The department shall consider a retail establishment to be a grocery store if:

(a) the establishment maintains food inventory with a cost of $5,000 or greater; and

(b) the department determines that the establishment's primary purpose is to sell products other than alcoholic beverages.

(3) An agency liquor store and a grocery store shall not be considered to be adjacent to one another where the stores are located across a street from one another. The department shall consider the agency liquor store and grocery store to be adjacent to one another if:

(a) the agency liquor store and the grocery store share a common internal or external wall; or

(b) there is an absence of a building between the agency liquor store and the grocery store that is owned by a party unrelated to any party with an ownership interest in the grocery store; and

(c) the distance between the nearest exterior wall of the agency liquor store and the grocery store is equal to or less than 100 feet.

(4) The prohibition in (1) does not apply when an agency liquor store was located on the site prior to a grocery store undertaking occupancy adjacent to the agency liquor store.

(5) The definition of a grocery store in (2) and the criteria for stores being adjacent to one another in (3) shall not be applied to determine the location suitability for agency liquor stores that are in operation as of January 1, 2016, unless the agency liquor store elects to relocate or expand an existing store.

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASON: The department proposes adopting New Rule II to inform potential agency liquor store agents how the department will administer the prohibition in 16-2-101(3), MCA, against an agency liquor store being located in or adjacent to grocery stores in communities with populations over 3,000. Specifically, the proposed rule seeks to identify which retailers will be considered to be grocery stores, how the department will determine whether an agency liquor store and a grocery store are adjacent to one another, and clarification on when these requirements will be imposed.

Proposed (2) sets forth the criteria for determining whether a retailer will be considered to be a grocery store. Retailers who carry the proposed cost of food inventory will be considered grocery stores unless the establishment's primary purpose is to sell alcoholic beverages. The $5,000 food value criterion will exclude retailers who carry small amounts of food inventory in their establishments while still allowing agency liquor stores the ability to carry mixers, ice, and other items that complement alcoholic beverages.

Proposed (3) establishes criteria to determine whether an agency liquor store and a grocery store are adjacent to one another. The phrase "adjacent to" is used in 16-2-101(3), MCA, but that statute does not provide guidance to the department on how to make these determinations. The department has interpreted the phrase "adjacent to" as referring to two contiguous stores that are touching as well as stores that are close to one another. The department has incorporated both meanings of the phrase into its proposed rule. First, as proposed, the stores will be considered to be adjacent to one another when they are contiguous based upon a shared wall. Second, as proposed, the stores will be considered to be adjacent to one another when they are close to one another and there is no intervening building between the stores. The department is also proposing that stores across the street from one another would not be considered to be adjacent, because the street would essentially serve the same function as an intervening building.

Proposed (4) addresses the situation where an agency liquor store is located somewhere prior to a grocery store moving into the area. As the department has no regulatory authority over a grocery store, it cannot prevent the grocer from locating next to an existing liquor store. Additionally, the department will not require an agency liquor store to relocate in such situations.

The proposed language in (5) provides an exception for an agency liquor store in operation as of January 1, 2016, so long as the agency liquor store does not relocate or expand. This exception is based upon the location of the agency liquor store rather than identity of the agent. Accordingly, an agency liquor store that remains in the same location but has a change in ownership would still be exempt from the definition of a grocery store in (2) and the criteria for stores being adjacent to one another in (3). The department proposes that when the agency liquor store relocates or expands, then the agent would be subject to (2) and (3).

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

42.11.301 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Adult" means a person ~~21~~ 18 years of age or older.

(2) remains the same.

(3) "Agent" means a person or entity ~~that markets liquor on a commission basis under an agency agreement with the department and provides all the resources, including personnel and store premises, needed to market liquor under the agreement~~ authorized under an agency franchise agreement with the department to operate an agency liquor store.

~~(4) "Average commission percentage" means the simple average of the commission percentage of agents with similar sales volumes.~~

~~(5) "Base year" means the first year of the three-year commission rate review period as it applies in 16-2-101, MCA. For example, the base year is 2010 for the commission rate review that will be conducted in 2013.~~

~~(6) "Commission percentage discount rate" means a specific percentage discount rate granted to an agent operating an agency liquor store. The percentage rate may be adjusted for the term of the franchise agreement.~~

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

~~(8) "Invoice date" means the date an agent receives their liquor order in the agency liquor store.~~

(9) through (11) remain the same, but are renumbered (5) through (7).

~~(12) "Required documents" means, but is not limited to:~~

~~(a) tax returns and schedules for the agency liquor store;~~

~~(b) if combined with other operations, a separate income or profit and loss statement with allocated percentages of the labor operation;~~

~~(c) a copy of one month's utility statement;~~

~~(d) copies of rental or lease contracts or agreements;~~

~~(e) copies of health insurance premium statements;~~

~~(f) copies of liability insurance premiums; and~~

~~(g) copies of quarterly federal forms 941.~~

~~(13) "Sales band" means a group of agents with similar sales volumes.~~

~~(14) "Sales volume" means an agent's purchases from the department at posted price for the applicable calendar or fiscal year.~~

~~(15) "Top 25 items" means the top 25 liquor items (SKUs) sold by agency liquor stores in the state of Montana, based on the highest quantity of cases sold in the previous calendar year.~~

~~(16) "Volume of sales discount" means a percentage discount received by an agent, based on the total fiscal year purchases at posted price from the previous fiscal year, based on invoice date.~~

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASON: The department proposes amending ARM 42.11.301 due to the passage of Senate Bill 193, L. 2015, which revised laws relating to discounts provided to agency liquor stores for liquor products purchased from the state liquor warehouse.

The department proposes striking the definitions "average commission percentage," "base year," "commission percentage discount rate," "invoice date," "required documents," "sales band," "sales volume," "top 25 items," and "volume of sales discount" because these terms will no longer be used in ARM Title 42, chapter 11, subchapter 3.

The department also proposes amending the definition of "adult." The definition of the term "minimum qualified petitioners" utilizes the term "adult" in determining who is qualified to submit a petition to the department to open a new agency liquor store in a community. Amending the age requirement from 21 to 18 will allow additional persons to petition the department on these matters.

The definition of "agent" is also proposed to be amended for better clarity.

42.11.305 OPENING A NEW AGENCY LIQUOR STORE (1) remains the same.

(2) The department shall use the most recent data available from the United States Census Bureau to determine a community's population.

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

~~(3)~~(4) The department ~~may~~ shall conduct a public hearing to open a new agency liquor store when all of the following conditions are met:

(a) The department receives a petition signed by at least the minimum qualified petitioners to open a new agency liquor store in the community. The petition must clearly state that its purpose is to have the department open a new agency liquor store in the community ~~which will be operated by an agent under contract with the department~~. The petition must show the printed name, mailing address, and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate a new agency liquor store in the community. ~~This person must control or expect to control a building in the community that could be used as the new agency liquor store location~~ Agency liquor stores may only be located at premises in which the agent has possessory interest.

(c) through (f) remain the same.

~~(4)~~(5) When all of the conditions in ~~(3)~~(4) are met, the department may hold a public hearing to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a new agency liquor store. The procedures to determine if a public hearing will be held, and if so, the location of the public hearing are:

(a) through (b) remain the same.

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

~~(8)~~(9) If the provisions in ~~(7)~~(8) are not met, the hearing will be held in Helena.

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

~~(10)~~(11) The hearing officer will preside over the hearing, which is not a contested case proceeding as defined in 2-4-102, MCA, and collect the information presented. The hearing will address the following:

(a) whether the department should proceed with its intention to advertise for ~~proposals or bids for~~ a new agency liquor store for the community;

(b) remains the same.

(c) whether any other issues directly related to the operation of the proposed new agency liquor store in the community or its possible effects on the community should be considered in the department's determination of whether to proceed with its intention to advertise for ~~proposals or bids for~~ a new agency liquor store in the community.

~~(11)~~(12) Within six weeks following the public hearing, the hearing officer will submit a report to the department. This report will:

(a) identify all ~~of the~~ issues raised at the hearing;

(b) recommend whether proceeding with the advertisement for ~~proposals or bids for~~ a new agency liquor store is in the best interest of the state and the community; and

(c) remains the same.

~~(12) One week following receipt of the hearing officer's report, the~~

(13) The department ~~will~~ shall decide what action will be taken in response to the hearing officer's recommendations within 30 business days of receipt of the hearing officer's report.

(13) remains the same, but is renumbered (14).

~~(14)~~(15) If the decision is to proceed with advertising for ~~requests for proposals or invitations for bids for~~ a new agency liquor store, the ~~process to select an~~ agent will be ~~conducted in accordance with ARM 42.11.310.~~ selected by competitive sealed bids according to the procedures under the Montana Procurement Act, Title 18, chapter 4, MCA. To be eligible for consideration, a bid must meet all requirements set forth in the department's notice, including but not limited to an initial commission rate not to exceed 16 percent.

~~(15)~~(16) If no ~~proposals or~~ bids are received ~~in response to a request for proposals or invitation for bids,~~ or none of the ~~proposals or~~ bids received meet the minimum requirements specified in the request ~~for proposals or the invitation for bids~~, the department will make no further solicitation for a new agency liquor store in the community for three years. If the conditions in ~~(3)~~(4) and ~~(4)~~(5) are met after the three-year period, the department will begin the solicitation process to open a new agency liquor store in the community.

AUTH: 16-1-303, MCA
IMP: 2-4-102, 16-2-101, 16-2-109, 16-4-201, MCA

REASON: The department proposes amending ARM 42.11.305 to provide information for the public regarding how new agency liquor stores may be opened.

The proposed new language in (2) and (15) was previously located in ARM 42.11.310, which the department is repealing due to recently enacted legislation. The department proposes relocating this portion of the information from the repealed rule here because it remains relevant to how new agency liquor stores may be opened. The department further proposes adding language in newly numbered (15) to specify that a bid will not be eligible for consideration unless it meets the department's notice requirements and does not exceed an initial commission rate of 16 percent.

The department also proposes amending newly numbered (4)(b) to remove the term "control" and restate the language in this section to include the phrase

"possessory interest" because possessory interest is a current requirement. The proposed amendment will also make the language in this rule consistent with other administrative rules regarding alcoholic beverage control.

In newly numbered (13), the department proposes extending the deadline for the department to act on a hearing examiner's recommendations from one week to 30 business days. The proposed time extension will help ensure the department has sufficient time to review the hearing examiner's report in full prior to implementing an action plan.

6. The department proposes to repeal the following rules:

42.11.306 COMMISSION PERCENTAGE DISCOUNT RATE REVIEW

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASON: The department proposes repealing ARM 42.11.306 due to the passage of Senate Bill 193, L. 2015, which generally revised laws regarding the discount rates applied to liquor products purchased from the state liquor warehouse by agency liquor stores. The revisions in the law make this rule no longer necessary.

42.11.307 VOLUME OF SALES DISCOUNT RATE REVIEW

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASON: The department proposes repealing ARM 42.11.307 due to the passage of Senate Bill 193, L. 2015, which generally revised laws regarding the discount rates applied to liquor products purchased from the state liquor warehouse by agency liquor stores. The revisions in the law make this rule no longer necessary.

42.11.309 AGENT REQUESTED COMMISSION PERCENTAGE DISCOUNT RATE REVIEW

AUTH: 16-1-303, MCA
IMP: 16-2-101, MCA

REASON: The department proposes repealing ARM 42.11.309 due to the passage of Senate Bill 193, L. 2015, which generally revised laws regarding the discount rates applied to liquor products purchased from the state liquor warehouse by agency liquor stores. The revisions in the law make this rule no longer necessary.

42.11.310 SELECTION OF AGENT

AUTH: 16-1-303, MCA
IMP: 16-2-101, 16-2-109, 18-4-303, 18-4-304, MCA

REASON: The department proposes repealing ARM 42.11.310 due to the passage of Senate Bill 193, L. 2015, which generally revised laws regarding the discount rates applied to liquor products purchased from the state liquor warehouse by agency liquor stores. The revisions in the law make portions of the language in this rule no longer necessary. The remaining language pertaining to the selection of an agent does still apply and is proposed to be incorporated into ARM 42.11.305, which covers opening a new agency liquor store. Selection of an agent is part of that process.

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 November 18, 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 that 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 and have been fulfilled. The primary sponsors of House Bill 506 and Senate Bill 193, Representative David Moore and Senator Bruce Tutvedt, respectively, were contacted by letters on both May 19, 2015, and September 18, 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 affect the process to become an agency liquor store but will not require any of the current agency liquor stores to operate differently. Therefore there is not a direct and significant impact on those businesses. The department's full impact analysis is available at revenue.mt.gov/rules or upon request from the person in 7.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 5, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 pertaining to the scheduled dates for the 2016 Montana Administrative Register	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 5, 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 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 October 22, 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) 461-5173; 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:

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2015 Register Publication Schedule~~

~~Issue~~	~~Filing (due by noon)~~	~~Publication~~
~~1~~	~~January 5~~	~~January 15~~
~~2~~	~~January 20~~	~~January 29~~
~~3~~	~~February 2~~	~~February 12~~
~~4~~	~~February 17~~	~~February 26~~
~~5~~	~~March 2~~	~~March 12~~
~~6~~	~~March 16~~	~~March 26~~
~~7~~	~~April 6~~	~~April 16~~
~~8~~	~~April 20~~	~~April 30~~
~~9~~	~~May 4~~	~~May 14~~
~~10~~	~~May 18~~	~~May 28~~
~~11~~	~~June 1~~	~~June 11~~
~~12~~	~~June 15~~	~~June 25~~

~~13~~	~~July 6~~	~~July 16~~
~~14~~	~~July 20~~	~~July 30~~
~~15~~	~~August 3~~	~~August 13~~
~~16~~	~~August 17~~	~~August 27~~
~~17~~	~~August 31~~	~~September 10~~
~~18~~	~~September 14~~	~~September 24~~
~~19~~	~~October 5~~	~~October 15~~
~~20~~	~~October 19~~	~~October 29~~
~~21~~	~~November 2~~	~~November 12~~
~~22~~	~~November 16~~	~~November 25~~
~~23~~	~~November 30~~	~~December 10~~
~~24~~	~~December 14~~	~~December 24~~

2016 Register Publication Schedule

Issue	Filing (due by noon)	Publication
1	December 28	January 8
2	January 11	January 22
3	January 25	February 5
4	February 8	February 19
5	February 22	March 4
6	March 7	March 18
7	March 28	April 8
8	April 11	April 22
9	April 25	May 6
10	May 9	May 20
11	May 23	June 3
12	June 6	June 17
13	June 27	July 8
14	July 11	July 22
15	July 25	August 5
16	August 8	August 19
17	August 22	September 2
18	September 12	September 23
19	October 3	October 14
20	October 17	October 28
21	October 31	November 10
22	November 14	November 25
23	November 28	December 9
24	December 12	December 23

(2) remains the same.

AUTH: 2-15-401, MCA
IMP: 2-4-312, MCA

REASONABLE NECESSITY: ARM 1.2.419 is proposed to set dates pertinent to the twice-monthly publication of the Montana Administrative Register during 2016. The

schedule is being proposed at this time in order that it may be adopted in November to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year. The publication date is being changed from Thursday to Friday for business purposes.

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., November 13, 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/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 5th day of October, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.3.307 and 1.3.309 pertaining to rulemaking notice requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 5, 2015, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed 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 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 October 22, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

1.3.307 RULEMAKING, INTRODUCTION (1) through (4)(b)(iv) remain the same.

(v) ~~beginning on July 1, 2013, and ending on July 1, 2015,~~ a statement as to whether a proposed rule significantly and directly impacts small businesses.

(c) through (7) remain the same.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.309 RULEMAKING, PROPOSAL NOTICE (1) through (3)(a)(ii) remain the same.

(iii) If an agency is proposing to adopt a rule that it determines will significantly and directly impact small businesses, the agency shall include a statement of that determination in its proposal notice. ~~This requirement begins on July 1, 2013, and expires on July 1, 2015.~~

(iv) through (4) remain the same.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-111, 2-4-202, 2-4-302, 2-4-305, 2-4-307, MCA

REASON: These amendments are reasonably necessary because the 2015 Montana Legislature passed House Bill 396 repealing the sunset provision of 2-4-111, MCA, effective October 1, 2015.

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., November 13, 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/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 17, 2015.

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of October, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.120 pertaining to trademark fees	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 6, 2015, at 10:00 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 October 22, 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:

44.5.120 TRADEMARK FEES

(1) Registration of mark $ 20.00, plus $20.00 per each additional class

(2) through (7) remain the same.

AUTH: 2-15-405, MCA
IMP: 2-15-405, 30-13-311, 30-13-313, 30-13-315, 30-13-320, MCA

REASON: This rule amendment is reasonably necessary because 30-13-311, MCA, allows the Secretary of State to charge a fee for each class of goods or services that are included in a trademark application. Section 2-15-405, MCA, requires all fees charged by the Secretary of State to be set by administrative rule. The additional fee is commensurate with the overall costs of the office and reasonably reflects the prevailing rates charged in the public and private sectors for similar services. Fees collected by the Secretary of State are deposited into an enterprise account fund. The fund is financed and operated similar to a private business where it is the Legislature's intent to finance or recover all costs primarily through user charges.

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., November 13, 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/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

9. The cumulative amount for all persons of the proposed fee is approximately $4,200 annually based on an average of 2010 through 2014 charges for trademark initial registrations. The number of persons affected is approximately 70.

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

/s/ JORGE QUINTANA	/s/ LINDA MCCULLOCH
Jorge Quintana	Linda McCulloch
Rule Reviewer	Secretary of State

Dated this 5th day of October, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.113 pertaining to registration and registration maintenance fees: fee assessment	))))	CORRECTED NOTICE OF AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On February 12, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 101, 2015 Montana Administrative Register, Issue Number 3. On March 26, 2015, the Department of Environmental Quality published MAR Notice No. 17-368 regarding a notice of extension of comment period on proposed amendment of the above-stated rule at page 298, 2015 Montana Administrative Register, Issue Number 6. On August 13, 2015, the department published the notice of amendment at page 1194, 2015 Montana Administrative Register, Issue Number 15.

2. The rule, in proposed (6) (adopted as (5)) contained an incorrect citation in the original notice of public hearing on proposed amendment and should have read as follows:

17.53.113 REGISTRATION AND REGISTRATION MAINTENANCE FEES: FEE ASSESSMENT (1) through (4)(b) remain as adopted.

(5) The per-ton fee in (4)(a) ~~through (d)~~ and (b) is assessed only if the amount of regulated hazardous waste generated during the previous calendar year is equal to or greater than 1.3 tons.

(6) through (10) remain as adopted.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on September 30, 2015.

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, October 5, 2015.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.1505 pertaining to Motor Carrier Services out-of-service criteria	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 13, 2015, the Department of Transportation published MAR Notice No. 18-156 pertaining to the proposed amendment of the above-stated rule at page 1096 of the 2015 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Transportation

Certified to the Secretary of State October 5, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.402 definitions and 24.101.403 administrative fees, and the repeal of 24.101.401 purpose, 24.101.407 licensing, and 24.101.414 renewal notification	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 27, 2015, the Department of Labor and Industry (department) published MAR Notice No. 24-101-307 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1232 of the 2015 Montana Administrative Register, Issue No. 16.

2. On September 17, 2015, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the September 25, 2015, deadline.

3. The department has amended ARM 24.101.402 exactly as proposed.

4. Following publication of the proposal notice, the 2015 bill being implemented in ARM 24.101.403 was codified. The department is now updating the authority and implementation citations to include the new statute number.

5. The department has amended ARM 24.101.403 with the following changes, stricken matter interlined, new matter underlined:

<u>24.101.403 FEES</u> (1) through (5) remain as proposed.

AUTH: 37-1-101, <u>37-1-321,</u> MCA
IMP: 27-1-717, 37-1-101, 37-1-130, 37-1-134, 37-1-138, 37-1-141, <u>37-1-321,</u> MCA

6. The department has repealed ARM 24.101.401, 24.101.407, and 24.101.414 exactly as proposed.

<u>/s/ DARCEE L. MOE</u>
Darcee L. Moe
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015

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

In the matter of the amendment of ARM 24.171.502 outfitter qualifications	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 14, 2015, the Board of Outfitters (board) published MAR Notice No. 24-171-35 regarding the public hearing on the proposed amendment of the above-stated rule, at page 521 of the 2015 Montana Administrative Register, Issue No. 9.

2. It was subsequently discovered that an error had occurred and the amendments to the rule were not complete when the proposal notice was filed. The board then reissued the proposal notice and rescheduled the public hearing at page 624 of the 2015 Montana Administrative Register, Issue No. 10.

3. On June 25, 2015, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the July 2, 2015, deadline.

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

COMMENT 1: Several commenters generally approved or disapproved the rule changes, without specifying rationale for either position.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: Several commenters favored increasing the experience hours and limiting the available waivers as a means of developing a higher level of outfitter professionalism. The commenters stated there is no replacement for experience in the field and that the increased experience will translate into better prepared, more competent outfitters who can serve the public more safely and more professionally, benefiting the industry and the general public.

RESPONSE 2: The board agrees and notes that these commenters appear to agree with the board's rationale for the proposed amendments.

COMMENT 3: A few commenters supported the amendments and further proposed increasing the requirement to between 150 and 200 experience days with no waivers. One commenter asserted that, because outfitters are the ones who hire the guides that accompany the public in the field, the public needs more experienced,

mature outfitters with the right work ethic and service attitude to make decisions and operate outfitting businesses in Montana. The commenters indicated a significant increase to the experience requirement is needed.

RESPONSE 3: During the process of drafting and proposing these amendments, the board fully considered the reasonableness of increasing the minimum number of experience days to more than 120 and also eliminating waivers. After considering the opposition against the amendments, the board concluded that it is not necessary to require any more days of experience or to further limit the availability of waivers.

COMMENT 4: A few commenters supported the proposed amendments because they meet the policy, intent, and purpose of the board by providing regulations that create an improved degree of competence in the profession.

RESPONSE 4: See RESPONSE 2.

COMMENT 5: One supporter asserted that the increase of 20 days serving clients as a fishing guide is not onerous since it can be achieved during one season for the majority of fishing guides.

RESPONSE 5: The board notes that the changes not only increase the experience days, but also set a minimum number of years in the field. While the board does not fully agree with the conclusions drawn by this commenter, the board is amending the rule exactly as proposed.

COMMENT 6: One commenter supported the amendments because they essentially restore licensure qualifications to the level originally established when outfitters became licensed in 1988.

RESPONSE 6: See RESPONSE 2.

COMMENT 7: Several commenters opposed increasing the minimum required days of experience. The commenters asserted the increase will do little more than provide an unnecessary barrier to market entrance, protect only those already in the industry, and discourage new entrepreneurial talent from entering the profession. The commenters further asserted the change will reduce competition and increase costs of services to the public, ultimately harming the public by causing a negative effect on commerce and tourism in Montana.

RESPONSE 7: The board acknowledges that raising the standard will impact those seeking entry into the industry. However, the majority of the board members believe that the overall anticipated benefits to the industry and the public outweigh any potential negative consequence to individual license applicants.

COMMENT 8: Several commenters expressed concern that the proposed changes will make transferring an outfitting business more difficult, even within families.

RESPONSE 8: The board acknowledges that raising the standard for those seeking industry entry may result in a delayed ability to sell an outfitting business when the purchaser has not already acquired the necessary experience. However, the majority of the board members do not view this as a significant and direct impact on small businesses and concluded that the public benefits of raising the licensing standard will outweigh any potential negative impacts on transferability of an outfitting business.

COMMENT 9: A few commenters noted that eastern Montana lake and river fishing is much different than float and fly fishing, and asserted that a change appropriate for a problem perceived in outfitter qualifications in one part of Montana, may not be appropriate or helpful in other areas of the state. One commenter questioned how three years on whitewater would make a guide better qualified to be an outfitter in another area of the state.

RESPONSE 9: The board recognizes there are many fishing outfitting operations across the state, all with certain unique challenges and hazards due to the water course or body accessed, the means of accessing the water, the weather, terrain, wildlife, etc. Regardless of this diversity, there is at least one licensure qualification that applies to every Montana outfitting operation, and that is experience in the field. By increasing the minimum required field experience, the majority of the board expects to improve public safety and professional conduct, regardless of the particular circumstances of an outfitting operation.

COMMENT 10: A few commenters stated that the amendments will place a significant burden on those who work in the backcountry, because the seasons for pursuing game there are much shorter than other areas. Most backcountry guides have difficulty getting more than 30 days of experience per year.

RESPONSE 10: The board recognizes the amendment may impact backcountry operations disproportionately, but the majority of the board members believe that the overall anticipated benefits to the industry and the public outweigh any potential negative consequences to individual license applicants.

COMMENT 11: One commenter asserted that the increased experience will require those seeking to sell an outfitting business to continue operating and remain liable for the operation for more years until the purchaser can meet the new experience qualification for licensure.

RESPONSE 11: The board acknowledges that raising the standard for those seeking entry into the industry may result in a delayed ability to sell an outfitting business when the purchaser has not already acquired the necessary experience. However, the majority of the board members do not view this as a significant and direct impact on small businesses and believe the public benefits of raising the licensing standard will outweigh any potential negative impact on the transferability of an outfitting business.

COMMENT 12: Several commenters asserted that the board has not identified any particular need for the proposed amendments or stated how the amendments would meet a need or solve a particular problem. Commenters stated the board has provided no data showing the board receives more complaints regarding younger, less experienced outfitters than those with more experience, and likewise, no report of accidents where those outfitting lacked experience or judgment to be operating outfitting businesses. The commenters suggested the board conduct research to determine how to improve outfitting quality by identifying specific objectives and then analyzing the requirements to meet the objectives.

RESPONSE 12: Rather than attempting to address a specific or particularized problem, the majority of the board determined that increasing the minimum amount of required experience in the field will improve public safety and professional conduct.

COMMENT 13: Several commenters opined that no data exists to support the assertion that more experience as a guide will make the guide a better outfitter.

RESPONSE 13: At least one licensure qualification applies generally to every Montana outfitting operation, and that is experience in the field. The majority of the board believes that by increasing the minimum amount of required field experience, the board will license better prepared outfitters who will be more capable of protecting the public and more likely to conduct themselves professionally.

COMMENT 14: One commenter stated that waivers of experience are based on rigorous and specific experiences that exceed the experience of the actual days working in the field that are being waived.

RESPONSE 14: In the process of proposing the rule amendments, the elimination of waivers was briefly suggested and quickly rejected. However, the amendments increase experience days and limit the availability of waivers, which suggests the importance the board places on experience in the field.

COMMENT 15: A commenter pointed out that the licensure examination requires an applicant to have knowledge in many areas, none of which will be better served by an additional 20 days of experience.

RESPONSE 15: The licensure examination and field experience are two separate prerequisites to licensure as an outfitter in Montana. The board fails to see how subject areas tested on the examination are relevant to determining whether the required amount of experience should be increased.

COMMENT 16: A few commenters suggested that outfitters are allowed to use independent contractor guides who are not subject to any minimum number of experience days to serve clients without outfitter supervision. One commenter also suggested a higher risk (safety and compliance) may come with independent

contractors who are allowed to operate without direct outfitter supervision and without meeting minimal qualification requirements.

RESPONSE 16: The board notes that, regardless of whether hired as employees or contracted as independent contractors, guides are subject to the same supervision requirements. To the extent that the comment addresses guide qualifications and the supervision of guides, it falls outside the scope of the current rule notice.

COMMENT 17: Commenters suggested that continuing education would be an alternative to the current proposal, and that the Coast Guard and Fish Wildlife and Parks may have such training available regarding navigation and water safety, as well as fisheries biology. The suggestion was also made that the Fishing Outfitters Association of Montana (FOAM) and the Montana Outfitters and Guides Association (MOGA) could collaborate on sponsoring some of these types of classes for their members as well as for nonmember outfitters, and the board could encourage licensed outfitters and guides to voluntarily participate in such continuing education, which would enhance professionalism.

RESPONSE 17: The board does not believe these suggestions are acceptable alternatives to the proposed increase in required experience. The board appreciates the suggestions, but they fall outside the scope of this rule notice.

5. The board has amended ARM 24.171.502 exactly as proposed.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRPERSON

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

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

Certified to the Secretary of State October 5, 2015

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

In the matter of the adoption of New Rule I pertaining to Short-Term Voluntary Inpatient Mental Health Treatment	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 27, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-723 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1245 of the 2015 Montana Administrative Register, Issue Number 16.

2. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.89.1025) CONTRACTS FOR PAYMENT OF SHORT-TERM INPATIENT TREATMENT (1) through (4) remain as proposed.

(5) Each contract with an eligible provider must provide that reimbursement will be made for up to 14 contiguous days of inpatient care for each eligible patient~~,~~. The 14 day limit must be extended if voluntary treatment is continued pending a hearing scheduled pursuant to 53-21-1205(5), MCA. Reimbursement must be made in the order in which claims from all eligible providers are received by the department until the available funding has been exhausted. The department must notify each eligible provider who has entered into a contract under this rule in writing when 75 percent of the available funding has been exhausted.

(6) The following rates will apply:

(a) inpatient hospital behavioral health unit: an all-inclusive rate of $875 per day, which includes hospitalization, professional fees, laboratory services, medications, minor medical procedures that do not require transfer to another unit of the hospital, evaluating and assessment services, discharge planning, and therapies.

(b) inpatient crisis stabilization program: an all-inclusive rate of $575 per day, which includes crisis facility stay, professional fees, ~~medical procedures,~~ laboratory services related to psychiatric treatment, medications related to psychiatric treatment, evaluating and assessment services, case management, and therapies.

(7) remains as proposed.

AUTH: 53-21-1202, MCA
IMP: 53-21-1202, 53-21-1205, MCA

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

Comment #1: Four comments related to the inpatient crisis stabilization program all-inclusive rate. The comments stated concerns that the inclusion of medical procedures, lab, and pharmacy could possibly hold the facility liable for the expenses of those costs. The commenters recommended that the bundled rate only include those expenses related to psychiatric care and exclude medical procedures.

Response #1: The bundled rate does not include additional reimbursement for extraordinary medical procedures. The department has amended the rule to specify that the bundled rate does not include medical procedures, and includes laboratory services related to psychiatric care and medications related to psychiatric care. If a patient has a medical condition that requires transfer to another facility, this would constitute a discharge from short-term voluntary inpatient treatment at the inpatient crisis stabilization program.

During its consideration of this comment, regarding provider concern over potential liability for unreimbursed expenses, the department also took into account that the proposed rate did not fully reimburse the facility in the event that the commitment court extends the period of voluntary treatment for an additional 5 days pending a commitment hearing, as provided in 53-21-1205(2) and (5), MCA. The department has amended the rule to correct the omission.

This rule provides reimbursement for specified expenses. It does not determine responsibility for expenses not reimbursed under the rule.

Comment #2: One comment related to individuals who come in with another payer source but due to DRG or insurance limits will not have coverage for the full term of the short-term voluntary stay. The commenter would like the department to clarify if the program will provide payment beyond the DRG or insurance limits.

Response #2: The DRG is intended for the course of the care for the episode of the illness. The entire stay is covered by the DRG. A third party, therefore, has a legal liability for the services provided, and reimbursement would not be available under this program. The department has determined no amendment to the proposed rule is necessary.

Comment #3: One comment related to the hospital behavioral health unit all-inclusive rate. The commenter asked whether the all-inclusive rate includes medical procedures when the individual has a medical emergency and whether the inpatient hospital behavioral health unit would be expected to pay from the all-inclusive rate.

Response #3: The bundled rate does not include additional reimbursement for emergency medical expenses. The department has amended the rule to specify that the bundled rate includes minor medical procedures which do not require

transfer to another unit in the hospital. If a patient has a medical condition that requires transfer to another facility or another unit of the same hospital, this would constitute a discharge from short-term voluntary inpatient treatment at the behavioral health unit.

During its consideration of this comment, regarding provider concern over potential liability for unreimbursed expenses, the department also took into account that the proposed rate did not fully reimburse the facility in the event that the commitment court extends the period of voluntary treatment for an additional 5 days pending a commitment hearing, as provided in 53-21-1205(2) and (5), MCA. The department has amended the rule to correct the omission.

This rule provides reimbursement for specified expenses. It does not determine responsibility for expenses not reimbursed under the rule.

Comment #4: A commenter said clarification was needed on what happens when the individual needs to go to an emergency detention bed.

Response #4: Emergency detention is not voluntary; therefore, this would constitute a discharge from short-term voluntary inpatient treatment. The department has determined no amendment to the proposed rule is necessary.

Comment #5: A commenter asked for clarification on how and when the providers will be notified the funds for the program are exhausted.

Response #5: The department will notify the providers in writing when 75% of the program funds have been authorized. Prior authorizations will be approved dependent on funding. The department has amended the rule to clarify this.

4. The department intends to apply this rule retroactively to July 1, 2015. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ Paulette Kohman
Paulette Kohman, Attorney
Rule Reviewer

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

Certified to the Secretary of State October 5, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 44.6.110, 44.6.113, 44.6.202, and 44.6.203 pertaining to the Secretary of State's electronic filing system, the filing of a Title 71 lien, and requirements for filing UCC amendments with the Business Services Division	))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On June 11, 2015, the Secretary of State published MAR Notice No. 44-2-202 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 743 of the 2015 Montana Administrative Register, Issue Number 11.

2. The Secretary of State has amended the above-stated rules as proposed.

3. The Secretary of State has adopted the above-stated rule as proposed: New Rule I (44.2.302).

4. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of October, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 44.5.122 pertaining to fees charged by the Secretary of State	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 30, 2015, the Secretary of State published MAR Notice No. 44-2-206 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1038 of the 2015 Montana Administrative Register, Issue Number 14. On September 10, 2015, the Secretary of State published an amended notice and extension of comment period on the proposed adoption and amendment of the above-stated rules at page 1364 of the 2015 Montana Administrative Register, Issue No. 17.

2. The Secretary of State has amended the following rule as proposed: ARM 44.5.122.

3. The Secretary of State has decided not to adopt New Rule I and will instead rely on the refund policy set forth in 17-8-203, MCA, and ARM 2.4.201 and 2.4.202.

4. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 5th day of October, 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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2015. This table includes those rules adopted during the period July 1, 2015, through September 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 June 30, 2015, this table, and the table of contents of this issue of the Register.

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.

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

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