

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II pertaining to) PROPOSED ADOPTION
implementation of the Sage Grouse)
Stewardship Act)

To: All Concerned Persons

1. The Governor's Office will hold three public hearings at the following dates and times to consider the proposed adoption of the above-stated rules:

3:00 p.m. on January 6, 2016, First State Bank, 1 S 1st Street East, Malta, Montana 59538;

2:00 p.m. on January 7, 2016, Ambulance Barn, 704 1st Street East, Roundup, Montana 59072; and

6:30 p.m. on January 11, 2016, in Dillon, Bureau of Land Management office, 1005 Selway Drive, Dillon, Montana 59725.

2. The Governor's Office 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 Governor's Office no later than 5:00 p.m. on December 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Carolyn Sime, Sage Grouse Resource Program Manager, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-0554; fax (406) 444-6721; or e-mail csime2@mt.gov.

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

NEW RULE I DEFINITIONS Unless the context clearly requires otherwise, to aid in the implementation of the Montana Greater Sage-Grouse Stewardship Act and as used in these rules:

(1) "Agency" for the purposes of the act means a department, agency, or instrumentality of the state of Montana; a political subdivision of the state; or a tribe. "Agency" is not a private individual, private entity, or private organization recognized by the laws of the state of Montana.

(2) "Department" means the Department of Natural Resources and Conservation.

(3) "Invasive weed" means a grass, forb, shrub, or tree (weed) listed on the Montana Invasive and Noxious Weed list or other weed designated by MSGOT as invasive and which has: a known quantifiable negative impact on the quality or quantity of general, core or connectivity sage grouse habitat; or negatively impacts sage grouse populations other than through habitat impacts.

- (4) "MSGOT" means the Montana Sage Grouse Oversight Team.
- (5) "Organization" means a private entity registered with the Montana Secretary of State authorized to conduct business in the state of Montana.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

NEW RULE II GRANTS (1) An applicant shall file an application for a grant under Title 76, chapter 22, part 1, MCA, on a form approved by MSGOT. MSGOT shall publish grant application deadlines on the department's web site.

(2) Completed applications must be submitted with any supporting documentation through the online WebGrant tool on the department web page; or, by other means which MSGOT approves and establishes for submission of applications. Applications submitted by e-mail will not be accepted.

(3) Incomplete applications may be returned.

(4) Applications shall be evaluated at a regularly scheduled meeting of MSGOT.

(5) Evaluation of applications by MSGOT shall be in accordance with Title 76, chapter 22, part 1, MCA.

(6) Applicants for projects approved by MSGOT must enter into an agreement with the department and MSGOT prior to disbursement of funds from the Sage Grouse Stewardship Account.

(7) Grant recipients will be subject to project reporting requirements pursuant to the terms of the agreement.

(8) Monitoring and review of projects will be pursuant to the terms of the agreement.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: "...adopt rules to administer the provisions of this part, including ... eligibility and evaluation criteria for grants distributed pursuant to 76-22-110 [MCA] ... [and] review and monitoring of projects funded pursuant to this part..." This rule partially implements the requirements of that bill.

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: Carolyn Sime, Sage Grouse Resource Program Manager, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-0554; fax (406) 444-6721; or e-mail csime2@mt.gov, and must be received no later than 5:00 p.m., January 22, 2016.

5. Carolyn Sime, Sage Grouse Resource Program Manager, Department of Natural Resources and Conservation, has been designated to preside over and conduct these hearings.

6. The Governor's Office 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 Tim Baker, P.O. Box 200801, 1301 East Sixth Avenue, Helena, MT 59620; fax (406) 444-4151; e-mail tbaker@mt.gov; or may be made by completing a request form at any rules hearing held by the Governor'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 e-mail on November 10, 2015.

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

/s/ Andrew I. Huff
Andrew I. Huff
Rule Reviewer

/s/ Tim Baker
Tim Baker
Governor's Office
State of Montana

Certified to the Secretary of State November 30, 2015.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.40.422 pertaining to) AMENDMENT
updating direct care wage effective)
dates and reimbursement updates) NO PUBLIC HEARING
effective January 1, 2016) CONTEMPLATED

TO: All Concerned Persons

1. On January 11, 2016, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 4, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.422 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~January 1, 2015~~ January 1, 2016 through ~~December 31, 2015~~ December 31, 2016, swing-bed hospitals must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum amounts paid for all direct care and ancillary services workers that will receive the benefit of a direct care and ancillary workers' wage and benefit increase.

(2) remains the same.

(3) The department will pay Medicaid certified swing-bed hospitals located in Montana, in accordance with this rule, lump sum payments in addition to the reimbursement rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in swing-bed hospitals.

(a) The department will determine lump sum payments ~~January 1, 2015~~ January 1, 2016, and again six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (4) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.40.422.

ARM 37.40.422

The proposed amendment to (1) is necessary to update fiscal year 2015 to fiscal year 2016 as the time frame for incorporation of funding for swing-bed direct care wages.

The proposed amendment to (3)(a) is necessary to update January 1, 2015 to January 1, 2016 as the beginning time frame for incorporation of funding for Medicaid direct care wage payments for swing-bed providers.

Fiscal Impact

The department is continuing the methodology for Medicaid swing beds that incorporates the calendar year average nursing facility payment rate calculation. There are 45 hospital/critical access hospital (CAH) swing-bed providers participating in Medicaid that will be impacted by these changes. Thirteen of the providers will participate in the fiscal year (FY) 2016 direct care wage funding in the amount of \$227,774. This includes the original funding and new funding adopted for wages in the 64th session of the Montana Legislature.

The change in funding will implement an approximate 2 percent increase in Medicaid swing-bed provider rates. The total state and federal funds that will be allocated to swing-bed providers in calendar year 2016 is approximately \$6,923,840 inclusive of the provider rate increase and supplemental direct care wage funding. The projected Medicaid swing-bed rate will increase from an average of \$167.67 to \$171.01 inclusive of the direct care wages payment. For providers that do not participate in the direct care wage funding the calendar year average rate will increase from \$163.42 to \$166.75.

5. The department intends to apply this rule amendment retroactively to January 1, 2016. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena

MT 59604-4210, no later than 5:00 p.m. on January 11, 2016. Comments may also be faxed to (406) 444-9744 or e-mailed to dphslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., January 11, 2016.

8. If the agency 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 4.5 persons based on forty-five hospital/critical access hospital (CAH) swing-bed providers.

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

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

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

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

13. 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/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State November 30, 2015.

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

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

TO: All Concerned Persons

1. On January 22, 2016, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation 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 Service Regulation no later than 5:00 p.m. on January 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail asolem@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before October 30, ~~2014~~ 2015. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

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

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2014~~ 2015. A copy of the referenced CFRs is

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

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

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

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov and must be received no later than 5:00 p.m., January 15, 2016.

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

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Aleisha Solem, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., January 15, 2016.

7. If the PSC 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 2 entities based on the 27 entities affected.

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

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

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

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

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State November 30, 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 ADOPTION AND AMENDMENT)))

TO: All Concerned Persons

1. On October 15, 2015, the Department of Agriculture published MAR Notice No. 4-14-228 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1568 of the 2015 Montana Administrative Register, Issue Number 19.

2. The department has adopted New Rule I (4.9.307) and amended ARM 4.9.301 as proposed.

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
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)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Agriculture published MAR Notice No. 4-14-229 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 1571 of the 2015 Montana Administrative Register, Issue Number 19.

2. The department has repealed ARM 4.3.407, 4.4.202, 4.8.103, 4.12.1501, 4.12.1502, and 4.12.1504 through 4.12.1510 as proposed.

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On October 15, 2015, the Department of Agriculture published MAR Notice No. 4-14-230 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1574 of the 2015 Montana Administrative Register, Issue Number 19.

2. The department has amended ARM 4.6.101 and repealed ARM 4.6.501 through 4.6.504 as proposed.

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

COMMENT #1: The one comment received was in support of the proposed changes and recommended that the department act quickly to complete the proposed rule amendment and repeal.

RESPONSE #1: No response necessary as they were supportive of the changes proposed.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

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

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

TO: All Concerned Persons

1. On July 16, 2015, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-445 pertaining to the public hearings on the proposed amendment of the above-stated rules at page 875 of the 2015 Montana Administrative Register, Issue Number 13.

2. The department has amended the following rule as proposed: ARM 12.9.804A.

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

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

(a) remains as proposed.

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

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

(a) through (e) remain as proposed.

(f) if the department determines that it may be effective in helping achieve the objectives of the hunt, the department may request a list of names supplied by a landowner to use in addition to selecting hunters from the hunt roster or other established means of hunter selection;

(g) if the department chooses to use a list of names supplied by a landowner, no more than 25% of the total number of hunters authorized to participate in the hunt may come from the list;

(f) and (g) remain as proposed but are renumbered (h) and (i).

~~(h)~~ (j) any weapons restrictions or area closures that apply during general hunting seasons to areas included in game damage hunts will also apply to hunting conducted during game damage hunts in those same areas; ~~and~~

~~(i)~~ (k) damage hunts may include the harvest of male and female game animals; and

(l) if harvest of antlered animals is authorized, lists of names supplied by landowners shall not be an authorized means of hunter selection.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

12.9.805 SUPPLEMENTAL GAME DAMAGE LICENSES (1) through (4) remain as proposed.

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

~~(a) The price of the supplemental game damage license will be the regular license price of an A9/B12 antlerless elk license or an adjusted price set by the commission.~~

(6) and (7) remain as proposed but are renumbered (5) and (6).

AUTH: 87-2-520, MCA

IMP: 87-2-520, MCA

12.9.1101 MANAGEMENT HUNTS (1) remains as proposed.

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

(3) and (4) remain as proposed.

(5) If the department determines that it may be effective in helping achieve the objectives of the hunt, the department may request a list of names supplied by a landowner to use in addition to selecting hunters from the hunt roster or other established means of hunter selection.

(6) If the department chooses to use a list of names supplied by a landowner, no more than 25% of the total number of hunters authorized to participate in the hunt may come from the list.

(7) If antlered animals are authorized for harvest, lists of names supplied by landowners shall not be an authorized means of hunter selection.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

4. 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: The department received comments expressing concerns that changing the name from management "season" to management "hunt" would

change the approval process from requiring full commission approval to requiring only regional supervisor and district commissioner approval.

Response 1: Changing the name from management "season" to management "hunt" will not affect the approval process. Section 87-1-225, MCA, makes the department responsible for administering game damage hunts. ARM 12.9.1101 was adopted in 2006 pursuant to that statute and has never made game damage hunts subject to full commission approval.

Comment 2: The department received comments regarding the proposed amendment to add "lists of names from landowners" as a method of identifying hunters eligible to participate in game damage or management hunts in addition to use of the hunt roster. Some comments supported this amendment, some opposed, some suggested adding language that restricted the number of landowner identified names, and some comments suggested that a cap or limit should be defined in ARM rather than policy.

Response 2: In response to these comments, the department has amended the proposed language to require that names submitted by landowners be no more than 25% of the total hunters selected for participation in a game damage or management hunt.

Comment 3: The department received comments expressing concerns about landowners potentially charging access fees or accepting payments from hunters participating in game damage or management hunts, particularly if harvest of antlered animals is authorized.

Response 3: The department has amended the proposed language to include a provision that states if harvest of antlered animals is authorized, lists of names supplied by landowners shall not be an authorized means of hunter selection.

Comment 4: The department received comments opposing amending the time period to sign up for the hunt roster from June 15 through July 15 to "dates specified by the department," suggesting it would be confusing, or that the process of randomization would be compromised.

Response 4: The proposed change is intended to allow for greater flexibility to adopt dates that would coincide with changing regulations and deadlines.

Comment 5: The department received comments opposing the amendment to remove the requirement for a hunter to surrender their unused elk licenses in order to receive a supplemental game damage license.

Response 5: Supplemental game damage licenses are established according to 87-2-520, MCA, and nothing in that statute requires surrender of any other license. Hunters receiving supplemental game damage licenses must still comply with all

other provisions of Montana law, including the current limit of harvesting a maximum of two elk per year.

Comment 6: The department received comments expressing concerns about the amendment to remove the requirement for the director to provide conditional approval before the regional supervisor may obtain approval from the district commissioner for implementing a management hunt.

Response 6: There is no requirement in statute for the director to provide conditional approval of a management hunt. Removing this extra step will allow for implementation of hunts in a timely manner.

Comment 7: The department received comments regarding the formatting of the proposal notice.

Response 7: These comments are outside the department's authority. The Secretary of State's office publishes the rule notice, and requires a standard format for writing administrative rules.

Comment 8: The department received comments that all of the issues and recommendations discussed in the game damage program performance audit report should be addressed through amendments to the rules.

Response 8: Many of the issues and recommendations in the audit report are more appropriately addressed through other means.

Comment 9: The department received a comment that a mandatory report documenting the effectiveness of a game damage or management hunt should be required.

Response 9: The department is reviewing ways to improve documentation of all activities related to the game damage program, including evaluation of effectiveness of different types of responses. The department does not believe an amendment to the rules is necessary to accomplish this goal.

Comment 10: The department received comments both in support of and opposition to the harvest of antlered animals.

Response 10: ARM 12.9.804(2)(i) states: "damage hunts may include the harvest of male and female game animals." No change is proposed to that rule. The species and sex of animals that may be taken are specifically determined for each individual hunt.

Comment 11: One comment stated opposition to limiting public comment during the hearing to two minutes.

Response 11: The department conducts its hearings in a fair and consistent manner. The department does not limit public participation to only the hearing. Views and statements can be expressed via written comment.

Comment 12: The department received comments suggesting that more specific information should be added to the hunt roster web site.

Response 12: This comment is outside the scope of this rulemaking. However, department staff will consider these comments as part of an overall review and evaluation of the current information displayed on the web site.

Comment 13: The department received comments in opposition to changing current eligibility requirements and comments suggesting that there should be different land owner eligibility requirements.

Response 13: Nothing in the proposed amendments changes or affects current landowner eligibility requirements.

Comment 14: The department received comments related to the shoulder season proposal.

Response 14: These comments are outside the scope of this rulemaking process. The shoulder season proposal is not set through administrative rulemaking and is a separate process approved by the commission.

Comment 15: The department received a comment suggesting that department personnel should manage the hunts or be available for hire to perform that function.

Response 15: The department is responsible for administering game damage and management hunts. However, the department has not chosen to require that staff be present during the entirety of each hunt.

Comment 16: One comment stated that FWP should pay more attention to public land habitat conditions and wildlife standards under existing National Forest Plans.

Response 16: This comment is outside the scope of this rulemaking.

Comment 17: The department received a comment in favor of allowing a hunter to sign up for more than one hunting district per species on the hunt roster.

Response 17: The department is not considering changing the hunt roster's limitation to one hunting district per hunter per species through these amendments.

Comment 18: The department received a comment that only Montana income taxpayers should be eligible to sign up for the hunt roster.

Response 18: The department is not proposing to amend current percentages of nonresident hunters allowed to participate.

/s/ Aimee Fausser
Aimee Fausser
Rule Reviewer

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State November 30, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On October 15, 2015, the Department of Environmental Quality published MAR Notice No. 17-374 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1593, 2015 Montana Administrative Register, Issue Number 19.

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

3. No public comments or testimony were received.

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, November 30, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
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)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-698 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1624 of the 2015 Montana Administrative Register, Issue Number 19.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. 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.

/s/ Barbara Banchemo
Barbara Banchemo, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.36.604 pertaining to)
updating the annual poverty)
guidelines for the Montana)
telecommunications access program)

TO: All Concerned Persons

1. On July 16, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-712 pertaining to the proposed amendment of the above-stated rule at page 888 of the 2015 Montana Administrative Register, Issue Number 13.

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

3. No comments or testimony were received.

4. The department intends to apply this rule retroactively to February 3, 2015. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

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

In the matter of the adoption of NEW)	NOTICE OF ADOPTION,
RULE I; the amendment of ARM)	AMENDMENT, AND REPEAL
37.87.1201, 37.87.1202, 37.87.1203,)	
37.87.1206, 37.87.1207, 37.87.1215,)	
37.87.1216, 37.87.1217, and)	
37.87.1223; and the repeal of ARM)	
37.87.1210 and 37.87.1214,)	
pertaining to provider participation,)	
program requirements, and)	
reimbursement procedures for)	
psychiatric residential treatment)	
facility (PRTF) services)	

TO: All Concerned Persons

1. On July 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-715 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 985 of the 2015 Montana Administrative Register, Issue Number 14. On August 27, 2015, the Department of Public Health and Human Services published an amended notice of proposed adoption, amendment, and repeal at page 1239 of the 2015 Montana Administrative Register, Issue Number 16.

2. The department has adopted the above-stated rule as proposed: New Rule I (37.87.1226).

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

4. No comments or testimony were received.

5. The department intends to apply these rule adoptions, amendments, and repeals retroactively to October 1, 2015. A retroactive application of the proposed rule adoptions, amendments, and repeals does not result in a negative impact to any affected party.

/s/ Cary B. Lund
Cary B. Lund, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.57.102 and 37.57.106)
pertaining to updating federal poverty)
guidelines to 2015 levels and to align)
Children's Special Health Services)
(CSHS) with the Healthy Montana)
Kids (HMK) financial assistance)
eligibility criteria)

TO: All Concerned Persons

1. On August 13, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-721 pertaining to the proposed amendment of the above-stated rules at page 1130 of the 2015 Montana Administrative Register, Issue Number 15.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. The department intends to apply these rule amendments retroactively to April 1, 2015. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State November 30, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
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)	

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-940 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1686 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 4, 2015, a public hearing was held to consider the proposed amendment. Bob Story, Executive Director of the Montana Taxpayers Association, appeared and testified at the hearing and provided written comments. Other members of the public attended the hearing, but did not testify.

3. The department has amended 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, and 42.22.1315 as proposed.

4. The department is not amending ARM 42.22.1316 and 42.22.1317 at this time.

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

COMMENT 1: Bob Story, Executive Director of the Montana Taxpayers Association (Montax), commented that the new language in ARM 42.22.105 requiring a statement of cash flow is information usually available in federal filings submitted for some types of taxpayers. As long as the information required is basically the same as reported federally, there should be no problem. If the taxpayer is required to generate other information, this will be an added burden on the taxpayer.

Mr. Story stated that the department should strive for uniformity in reporting when the same information is required by federal agencies. He commented that the reason stated for this rule change implies that this is a request when it is actually a requirement, and asked that the department not require a duplicative filing of information that can be obtained elsewhere.

RESPONSE 1: The department agrees that this information is already supplied and/or is available through federal filings for many taxpayers. Additional reporting requirements may not be necessary for the companies already supplying this information. However, there are also companies not regulated by a federal reporting agency that do not supply this information with their report. Therefore, the department finds it necessary to include this provision in the rule in order to request reporting of the information for the purposes of applying consistent appraisal methods to all companies.

COMMENT 2: Mr. Story commented that in ARM 42.22.108 the department proposes to remove the deduction of exempt intangible property from both the numerator and the denominator before calculating the market-to-book ratio. Depending on the make-up and location of the intangible property, this may change the ratio. He stated that Montax would be interested in seeing some actual examples of how this new language affects valuation before they would support the proposed change.

RESPONSE 2: Mr. Story is correct. The department is proposing calculating the market-to-book ratio before the removal of intangibles. The department also understands that this may result in a different ratio than calculating the market-to-book ratio after the removal of intangibles. However, this adjustment will result in a more accurate determination of the contributory value of the property to be removed. For example, motor vehicles are removed from the state-allocated value based on their net book value before any adjustments for intangibles. Thus a market-to-book ratio calculated before the removal of intangibles is the appropriate ratio to use. Per Mr. Story's request, the department is sending actual examples of how the new language will affect valuation directly to Montax.

COMMENT 3: Mr. Story commented that Montax does not think the WSATA-CCAP (Western States Association of Tax Administrators - Committee on Centrally Assessed Properties) appraisal handbook is an accurate or reliable basis for valuation and would like to see ARM 42.22.109 stricken entirely.

RESPONSE 3: The WSATA-CCAP appraisal handbook has existed since the 1950s and is a collaboration of tax administrators located in 14 western states. Following years of CCAP work and substantial public review and input, the current version of the manual was approved and adopted by a majority vote of the WSATA members in 2009. The handbook has also been deemed authoritative by Montana courts.

COMMENT 4: Mr. Story commented that Montax does not agree with the need for the proposed punctuation changes in ARM 42.22.1316 and 42.22.1317.

RESPONSE 4: The department will not proceed with the proposed amendment to these two rules.

COMMENT 5: Mr. Story commented, with regard to ARM 42.22.1317, that Montax would like to see a requirement of course work with an accrediting agency to become an accredited appraiser, not just time on the job.

RESPONSE 5: The department's current rules require the completion of nine courses to become certified as an appraiser. The courses are offered by a number of credible and leading professional appraisal organizations. While the rule does allow for certification through a combination of coursework and experience on a case-by-case basis, that allowance is predicated on the alternative coursework or experience being equal to or greater than the complexity of the courses required in the rule.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 30, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I and II and the amendment of) AMENDMENT
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)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-941 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1694 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 4, 2015, a public hearing was held to consider the proposed adoption and amendment. No members of the public attended the hearing. Written comments were received from Jane Egan, Executive Director of the Montana Society of Certified Public Accountants, and Lindsay N. Sander, State Affairs, Master Limited Partnership Association.

3. The department adopts New Rule I (42.9.108) and New Rule II (42.9.109) and amends ARM 42.9.101, 42.9.102, 42.9.103, 42.9.104, 42.9.105, 42.9.106, 42.9.510, and 42.9.520 as proposed.

4. Upon further review, the department determined that Form PT-AGR will provide the necessary information regarding resident-owned single member LLCs holding an interest in a pass-through entity, making a portion of the proposed amendments to ARM 42.9.501 unnecessary. Therefore, the department amends ARM 42.9.501 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

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 (13) remain as proposed.

5. 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: Lindsay N. Sander, State Affairs, Master Limited Partnership Association (Association), advised that the Association has worked with the department over the last several years to address issues posed by both statutory and regulatory requirements for master limited partnerships (MLPs). She stated that, as a result, the proposed changes to ARM 42.9.106 establish a process for MLPs to apply for a waiver from second-tier reporting requirements.

Ms. Sander further commented that the Association appreciates the department's willingness to work through issues and establish an exemption process for MLPs while meeting the needs of the department.

RESPONSE 1: The department appreciates Ms. Sander's comments and support of the rule amendments.

COMMENT 2: Jane Egan, Executive Director of the Montana Society of Certified Public Accountants (MSCPA), commented that in the MSCPA's opinion, the department is writing new laws, not rules. All state agencies are limited by law to the passing of regulations that enable legislation as enacted. The Montana Supreme Court has stated that administrative rules may not limit the law in any way; they may only enable the laws as written. The Court has ruled on several occasions that passing legislation is a constitutional power reserved for the Montana Legislature.

Ms. Egan further commented that this whole new set of rules mandates a 100 percent audit of LLC taxpayers without an act of the legislature. In general, the MSCPA feels the proposed rules and amendments are an overreach by the department and that the department is placing an enormous burden on small entities. The new rules and proposed amendments are unconstitutional and unnecessarily burdensome and therefore the MSCPA asks the department to "kill" the proposed new rules and amendments.

RESPONSE 2: The department appreciates the comments from Ms. Egan and the members of the MSCPA, but respectfully disagrees with their belief that the proposed rules violate Montana law. The department is statutorily required to adopt rules that "set forth the nature and requirements of all formal and informal procedures available." Section 2-4-201(2), MCA. Moreover, several other statutory provisions found in Title 15 of the Montana Code Annotated, including 15-30-3313, MCA, specifically authorize the department to adopt rules to administer the provisions of Montana's tax code. Given the complexity of state tax issues facing pass-through entities and the administrative challenges in administering those provisions in a fair and equitable manner, the department believes the rules as proposed provide necessary guidance to taxpayers and their representatives.

COMMENT 3: With regard to proposed New Rule I, the MSCPA commented that the requirement to file an affidavit by the taxpayer, stating there is no activity, is not dissimilar to filing a return with no activity. This is an overreach by the

department. Under a tax system of voluntary compliance, a taxpayer should not have to affirm the absence of a filing requirement. The MSCPA further commented that proposed New Rule I should be stricken in its entirety.

RESPONSE 3: New Rule I is intended to provide guidance to inactive pass-through entities. The department proposed this new rule to establish a requirement for information to assist the department in determining the business purpose and filing requirements of registered limited liability companies and partnerships. More than 12,000 entities are registered with the Secretary of State each year. The department is tasked with following up on each one to determine if a filing obligation exists. Through various compliance processes, the department requests and receives signed statements from entities that do not have a filing requirement. As proposed, New Rule I will proactively require this information on an ongoing, more current basis, which should streamline certain processes where the taxpayer needs a determination of good standing from the department.

COMMENT 4: With regard to proposed New Rule II, the MSCPA questions why a simple copy of the IRS determination letter would not accomplish the same result and commented that this proposal is burdensome, unfriendly, and discouraging. This is documentation that should only be provided if the department performs an audit. The names on the K-1s provide enough information for the department to determine a tax-exempt entity. As proposed, New Rule II places a policing function on the taxpayer to ensure that other taxpayers are compliant through the withholding process. This appears to be an attempt to be able to create a penalty assessment for noncompliance. A simple solution would be to require a Form 5500 filing and cross-reference the K-1s.

RESPONSE 4: The requirements for exempt organizations are outlined in the department's rules covering corporation license taxes in ARM 42.23.103. The department is reiterating those requirements in proposed New Rule II for the benefit of the owners in pass-through entities that are considered tax-exempt. Generally, the department requires the tax-exempt entity to apply for tax-exempt status in the state separately from their federal request by filing Montana Form EXPT, Tax Exempt Status Request Form. The department currently requests documentation to establish the entity's status as tax-exempt and sends a state-specific exemption letter. The department regularly encounters owners in pass-through entities that are tax-exempt entities and deemed it appropriate to also provide these requirements in ARM Title 42, chapter 9, which covers pass-through entities.

COMMENT 5: The MSCPA recommended changing ARM 42.9.104(1) and 42.9.106(1) to a distributive share of source income of \$15,000 or more, rather than \$1,000, as this is the highest Montana personal rate which would arrive at a tax of roughly \$1,000. They commented that ARM 42.9.104(7)(a) and (b) and 42.9.105(7)(a) and (b) should be stricken because those provisions would require taxpayers to police each other.

RESPONSE 5: The threshold of \$1,000 provided for in ARM 42.9.104(1), 42.9.105(1), and 42.9.106(1) is in accordance with 15-30-3313(1), MCA, as revised by Senate Bill 386, L. 2015, which eliminated a pass-through entity's requirement to withhold on its nonresident members, partners, or shareholders when their distributive share is less than \$1,000.

The provisions proposed in ARM 42.9.104(7)(a) and (b), 42.9.105(7)(a) and (b), and 42.9.106(9)(a) and (b) establish that withholding will not be assessed if the owner has filed and paid taxes when due. However, the entity may still be liable for penalties and interest if a requirement to withhold existed. The department will hold the pass-through entity liable for penalties and interest on an amount they were required to withhold but didn't (e.g., did not include nonresident owner on composite return and did not have a valid Form PT-AGR for the owner), even though the owner filed and paid taxes. This is an intended penalty on the pass-through entity for not following the withholding requirements. A significant number of entities are not following the law. Many entities are doing the same thing year after year even after the department has informed them of the requirements and what they can do to receive a waiver.

COMMENT 6: With regard to the proposed changes to ARM 42.9.106(2), the MSCPA proposed replacing the new language in (a), (b), and (c) with the following: "The department will waive the requirements to remit tax or pay composite tax if the first-tier pass-through entity files Form PT-AGR."

RESPONSE 6: As proposed, the new language in ARM 42.9.106(6)(a), (b), and (c) expressly outlines the requirements for obtaining a waiver for a "domestic second-tier pass-through entity." The waiver is not automatic by the mere filing of the Form PT-AGR. However, it is considered valid if the prescribed information is received. These requirements are outlined in accordance with 15-30-3313(8), MCA, as revised by Senate Bill 386 and adopted by the 2015 legislature. A revised Form PT-AGR will provide space to report information about the owners of the "domestic second-tier pass-through entity."

COMMENT 7: The MSCPA proposed striking ARM 42.9.501(13) because this filing requirement seems redundant as the Montana source income would be properly reported on the individual's Montana income tax return even if they are a nonresident. An owner of a single member LLC does not have ongoing filing requirements with the IRS.

RESPONSE 7: The filing requirements for disregarded entities are statutorily provided in 15-30-3302(5)(c), MCA, and are outlined in ARM 42.9.501(1) through (11). ARM 42.9.501(13) addresses late filing penalties for late filed Disregarded Entity Information Returns (Form DER-1) and is an appropriate provision to maintain in rule. Furthermore, based on the late file penalty provisions outlined in 15-30-3302(5)(d), MCA, a single member LLC would not be assessed a late filing penalty if the owner filed a timely return, regardless of whether that owner is a resident or nonresident. In other words, the disregarded entity is only assessed a late filing penalty if both the entity and the owner file untimely.

COMMENT 8: The MSCPA proposed striking ARM 42.9.510 in its entirety because if a taxpayer is making an election under IRC 761, their intent is to simplify their future filing requirements and the department has the necessary information from the initial or final filing.

RESPONSE 8: Entities that are disregarded for federal purposes are not disregarded for state purposes. Disregarded entities are required to file an information return in accordance with 15-30-3302(5)(c), MCA. The current filing requirements and deadlines for entities electing to be disregarded under IRC 761 prevent the department from consistently applying the withholding requirements outlined in 15-30-3313, MCA.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 30, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rules I through III and the)	AMENDMENT
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)	

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-943 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1727 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 9, 2015, a public hearing was held to consider the proposed adoption and amendment. Sam Hoffmann, Red Lodge Ales Brewing Company; Kristi Blazer, Montana Beer and Wine Distributors Association; Matt Leow, Montana Brewers Association; Jennifer Hensley, Montana Distiller's Guild; John Iverson, Montana Tavern Association; and Neil Peterson, Gaming Industry Association of Montana, appeared and testified at the hearing. Other members of the public attended the hearing, but did not testify. The department received written comments from John Walker Ross, Ross Orchards; Jennifer Hensley, Montana Distiller's Guild; and Brad Simshaw, Blackfoot River Brewing Company.

3. The department adopts New Rule I (42.13.807) as proposed, effective January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

4. The department amends ARM 42.13.301 as proposed.

5. Based upon the comments received, and after further review, the department adopts New Rule II (42.13.1002) and New Rule III (42.13.1003) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined. The amendments to New Rule III include the addition of language to provide express notice that the department may consider a contract manufacturing arrangement where the client is located outside of Montana, so long as the arrangement is not prohibited by federal or state law.

NEW RULE II (42.13.1002) ALTERNATING PROPRIETOR ON A MANUFACTURER'S PREMISES (1) through (10) remain as proposed.

(11) The host is prohibited from selling, ~~or~~ providing, or distributing the tenant's product, with or without charge, in the host's sample room, on its licensed premises, or ~~otherwise~~ elsewhere.

(12) through (15)(b) remain as proposed.

(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) remains as proposed.

NEW RULE III (42.13.1003) CONTRACT MANUFACTURING (1) through (4) remain as proposed.

(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, or distributing the product, with or without charge, in the contract manufacturer's sample room, ~~or on its licensed premises, or elsewhere;~~

(b) through (9)(b) remain as proposed.

(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) remains as proposed.

(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~~ is not prohibited by federal and state alcoholic beverage regulations. This may include a contract manufacturing arrangement where the client is not located in Montana.

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

COMMENT 1: Sam Hoffmann, of Red Lodge Ales Brewing Company, testified in support of proposed New Rules II and III because the rules allow utilization of his existing brewery facilities for cider production. Mr. Hoffmann submitted that this would benefit his brewery, which could capitalize on excess capacity during slower months, and Montana apple growers, which could have a new in-state market for their products.

Matt Leow, of the Montana Brewers Association, also testified in support of proposed New Rules II and III, stating that the rules may encourage more product production and create jobs, which may help to keep more brewing in Montana. Mr. Leow also stated that it was proper for the department to attribute product production to the tenant and client rather than the host and contract manufacturer.

Kristi Blazer, of the Montana Beer and Wine Distributors Association, testified in support of proposed New Rules II and III, stating that she agrees with Mr. Leow that product production should be attributed to the tenant and client. Ms. Blazer's additional rule comments are addressed in responses five and six below.

John Walker Ross, of Ross Orchards, submitted written comments expressing support of the proposed amendments to ARM 42.13.301 and the opportunity for new cider production at existing facilities under proposed New Rule II.

RESPONSE 1: The department appreciates the industry's support.

COMMENT 2: Jennifer Hensley, of the Montana Distiller's Guild, testified in support of the rules. Ms. Hensley also pointed out a discrepancy between proposed New Rule I(1), stating that a distillery had two business days to report a delivery made to an agency liquor store, and the department's explanation of that rule, referencing that deadline as a 48-hour reporting requirement. Ms. Hensley commented that these two reporting requirements were quite different and requested that the department utilize the two-business day requirement set forth in the proposed rule.

RESPONSE 2: The discrepancy between the proposed rule language and the department's statement explaining the rule was an oversight. The department adopts the rule as proposed and will administer the rule based upon its two-business day reporting requirement.

COMMENT 3: Brad Simshaw, of the Blackfoot River Brewing Company, submitted written comments expressing appreciation for the department's work on proposed New Rules II and III. Mr. Simshaw also questioned why a winery may provide product at its premises that was produced at a host's premises under New Rule II(14)(b), while a small brewery and microdistillery are prohibited from doing the same under proposed New Rule II(13)(c) and (15)(c).

RESPONSE 3: The reason for the disparate provisions in the proposed rules stems from the statutory differences relating to those businesses. A winery is not statutorily required to produce the wine at its premises to allow its consumption there. Under 16-3-411(1)(d), MCA, a winery may "provide, without charge, wine it produces for consumption at the winery." In contrast, a small brewery and microdistillery are statutorily required to produce products on site to allow consumption of those products there. Under 16-3-213(2)(b), MCA, a small brewery may "provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises." Similarly, 16-4-312(3)(a), MCA, allows a microdistillery to "provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for consumption on the premises between 10 a.m. and 8 p.m." Because a winery is not statutorily prohibited from allowing the consumption of wine produced at a host's premises, the department declines to insert this prohibition by administrative rule. Accordingly, the department adopts the rule as proposed.

COMMENT 4: Ms. Hensley submitted that the last sentences of proposed New Rule II(15)(c) and New Rule III (9)(c) may allow a microdistillery to do something that would be prohibited by federal law. These provisions allow a microdistillery to sell in its sample room liquor that was produced at the microdistillery but packaged elsewhere. Ms. Hensley contends that such packaged products cannot be transferred in bond to the premises of the tenant or client.

RESPONSE 4: Federal law specifies how a distilled spirits plant proprietor may transfer and receive spirits in bond. Title 27 of the Code of Federal Regulations, Section 19.402, authorizes bulk spirits to be "transferred in bond between the bonded premises of plants qualified under 26 U.S.C. 5171 or 26 U.S.C. 5181 in accordance with sections 19.403 and 19.733." Thus, bulk spirit may be transferred in bond between a host and tenant or a contract manufacturer and client. Federal law also limits the transfer of taxpaid or tax determined spirits under Title 27 CFR, part 19.

Based upon Ms. Hensley's request, the department agrees to remove the provisions allowing a tenant or client to sell in its sample room liquor that was packaged at the premises of a host or contract manufacturer, and has amended the rule accordingly.

COMMENT 5: Ms. Blazer recommended amending proposed New Rules II and III to clarify the role of the host and contract manufacturer with regard to product distribution. Although Ms. Blazer believes the rules are clear that the tenant and client own the product, she requests clarification that the host and contract manufacturer cannot be involved with product distribution.

RESPONSE 5: The department has amended New Rule II(11) and New Rule III(5)(a) to clarify that a host and contract manufacturer cannot be involved with distributing products owned by a tenant or produced for a client.

COMMENT 6: John Iverson, of the Montana Tavern Association (MTA), stated that the MTA generally supports the rules as proposed, with the exception of proposed New Rule II(13)(d) and New Rule III(7)(d). These provisions allow a brewery with an annual nationwide production between 10,000 and 60,000 barrels to provide, without charge, on its premises beer that was produced at the premises of a host or contract manufacturer. Mr. Iverson submits that a brewery should only be allowed to provide beer at its brewery if the beer was produced at that brewery. Mr. Iverson contends that allowing otherwise thwarts the intention of the law, which is to allow a brewery to provide samples of its own beer, and undermines a customer's expectation that the beer served at the brewery is produced at the brewery.

Neil Peterson, of the Gaming Industry Association of Montana, and Ms. Blazer stated their support of Mr. Iverson's comments.

RESPONSE 6: The reason the proposed rules allow larger breweries to provide beer samples that were not produced at that brewery while small breweries cannot is based upon the difference in the statutory language relating to the sample

privileges granted to breweries of different sizes. Under 16-3-213(2)(b), MCA, a small brewery may "provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises." In contrast, 16-3-214(1)(b), MCA, states that a brewery producing between 10,000 and 60,000 barrels may "provide its own products for consumption on its licensed premises without charge." Because this statute does not require a large brewery to produce its products at its premises to provide samples of that product at its premises, the department declines to insert this requirement by administrative rule. Accordingly, the department adopts the rules as proposed.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 30, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION,
Rules I and II, the amendment of) AMENDMENT, AND REPEAL
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)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-944 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1735 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 9, 2015, a public hearing was held to consider the proposed adoption, amendment, and repeal. Christina Riffle, Liquor Store Owners Association of Montana, and John Iverson, Montana Tavern Association, appeared and testified at the hearing. Other members of the public attended the hearing, but did not testify. No written comments were received.

3. The department adopts New Rule II (42.11.311) as proposed.

4. The department amends ARM 42.11.305, effective December 11, 2015, except for (11), (12), (15), and (16), which will be effective February 1, 2016, when the legislative changes to 16-2-101, MCA, become effective.

5. The department amends ARM 42.11.301 and repeals ARM 42.11.306, 42.11.307, 42.11.309, and 42.11.310 effective February 1, 2016, when the legislative changes to 16-2-101, MCA, become effective.

6. Based upon the comments received, the department adopts New Rule I (42.11.312) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined. New Rule I will be effective January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

NEW RULE I (42.11.312) DIRECT PRODUCT DELIVERIES FROM A DISTILLERY (1) through (3) remain as proposed.

(4) ~~Within three business days of receiving inventory that is deficient or defective, the~~ The agency liquor store shall notify the distillery of any deficient or defective product received. 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~~ six months of the invoice date.

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

COMMENT 1: Christina Riffle, of the Liquor Store Owners Association of Montana, requested amendment of the time frames in proposed New Rule I(4). When a distillery delivers a product directly, the rule proposes a three-day deadline for an agency liquor store to notify the distillery of any deficient or defective product received. It also proposes a 30-day deadline for an agency liquor store to request an invoice adjustment from the department for distillery deliveries. Ms. Riffle requests that both time frames be set to six months, consistent with the time frame to report issues on product received from the department.

RESPONSE 1: Ms. Riffle is correct that there is a six-month deadline for an agency liquor store to request an invoice adjustment for product received from the department. The department has amended New Rule I to set the same six-month reporting deadline for product received from a distillery. The department has also amended the rule to remove the three-day distillery notification deadline, in favor of allowing the parties to set their own notice protocols.

COMMENT 2: John Iverson, of the Montana Tavern Association, expressed appreciation for being allowed to participate in the negotiated rulemaking process.

RESPONSE 2: The department thanks Mr. Iverson and the other committee members for their participation in the process.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State November 30, 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.

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