ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, pertaining to the redirection of certain PERS employer contributions from the defined benefit trust fund for the purposes of paying off the plan choice rate unfunded actuarial liability to defined contribution member accounts	)))))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 20, 2016, the Public Employees' Retirement Board proposes to adopt the above-stated rule.

2. The Public Employees' Retirement Board 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 Public Employee Retirement Administration no later than 5:00 p.m. on January 14, 2016, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service (406) 444-1421; or e-mail kvladic@mt.gov.

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

NEW RULE I REALLOCATION OF CERTAIN PERS EMPLOYER CONTRIBUTIONS TO DCRP MEMBER ACCOUNTS (1) Pursuant to 19-3-2117, MCA, certain PERS employer contributions for employees participating in the PERS DCRP are allocated to the PERS DBRP to pay off the unfunded actuarial liability created by PERS members who elected to participate in the DCRP, otherwise known as the plan choice rate unfunded actuarial liability (PCR UAL).

(2) MPERA will reallocate those certain PERS employer contributions to each DCRP member's account starting with that member's first payday in the month following the board's verification that the PCR UAL has been fully paid off.

(3) The employer contributions will be credited to the DCRP member's account pursuant to the processes and time frames established in ARM 2.43.2114 and ARM 2.43.3532.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-316, 19-3-2117, MCA

REASON: Chapter 170, L. 2015 recognizes that the Public Employees' Retirement System's Defined Benefit Retirement Plan's (PERS DBRP) unfunded actuarial

liability created by PERS members electing to participate in the DCRP, otherwise known as the plan choice rate unfunded actuarial liability (PCR UAL), will be fully paid off in the near future. MPERA, through its actuary, now believes that the PCR UAL will be fully paid off in the first quarter of 2016.

Section 3, Ch. 170, L. 2015 requires that all employer contributions allocated to the PCR UAL be redirected to DCRP member accounts "the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off." There are over 230 employers with employees participating in the DCRP and over 500 employers with PERS participants. MPERA does not track employer-specific pay periods and is therefore currently unable to identify each employer's first full pay period in any month. MPERA's IT programmers have estimated that it would take 600 hours to program all employers' pay periods, at a cost of $66,600.

Reallocation of the applicable employer contributions to DCRP members on starting with each member's first payday in the month following board verification can be programmed in approximately 70 hours at a cost of $7,770. Based on the employer reporting process established in ARM 2.43.2114 and the two-day window for transmittal of contributions to the record keeper pursuant to ARM 2.43.3532, the reallocated contributions will be credited to the member's account approximately seven days following the payday. The proposed reallocation would also result in the DCRP members receiving the contributions at least one payday earlier than under the "first full pay period" scenario, with no impact on the date the PCR UAL is totally paid off. Given the associated costs of both processes, the board believes it fiscally prudent and fiducially responsible to reallocate the applicable employer contributions on the first payday of the month.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., January 21, 2016.

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 Kris Vladic at the above address no later than 5:00 p.m., January 21, 2016.

6. 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 209

persons based on 2091 Public Employees' Retirement System Defined Contribution Retirement Plan participants.

7. The Public Employees' Retirement Board 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 Public Employees' Retirement Board.

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 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and letter on December 1, 2015.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
Rule Reviewer

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State December 14, 2015.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 17.4.201, 17.30.645, 17.30.1386, 17.30.1401, 17.30.1402, 17.30.1405, 17.30.1406, 17.30.1407, 17.30.1410, 17.30.1411, 17.30.1412, 17.30.1413, 17.30.1414, 17.30.1419, 17.30.1420, 17.30.1421, 17.30.1425, 17.30.1426, 17.30.1602, 17.30.2001, 17.30.2003, 17.38.601, 17.38.602, 17.38.603, and 17.38.607 pertaining to water pollution rules, radiological criteria, state and EPA coordination, pretreatment, definitions, enforcement actions for administrative penalties, purpose, definitions, enforcement procedures, and suspended penalties	)	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL (PROCEDURAL RULES) (WATER QUALITY) (PUBLIC WATER SUPPLY AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On January 14, 2016, at 9:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The board 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., January 5, 2016, 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 for repeal are as follows:

17.4.201 WATER POLLUTION RULES (AUTH: 2-4-201, 2-4-202, MCA; IMP: 75-5-307, MCA), located at page 17-91, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-307(1), MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.645 RADIOLOGICAL CRITERIA (AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA), located at page 17-2753, Administrative Rules of Montana.

REASON: This rule merely prohibits violation of radiological criteria in

Department Circular DEQ-7. Violation of any provision of DEQ-7 is "pollution," as defined in 75-5-301(30)(a), MCA. Causing pollution is prohibited by 75-5-605(1)(a), MCA, and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.1386 STATE AND EPA COORDINATION (AUTH: 75-5-304, MCA; IMP: 75-5-304, 75-5-401, MCA), located at page 17-3002, Administrative Rules of Montana.

REASON: This rule specifies reporting requirements from the Department of Environmental Quality (department) to the Environmental Protection Agency (EPA) regarding MPDES permitting. It was adopted in 1989 to comply with EPA requirements then in effect. Those requirements have since been modified. Current reporting requirements are contained in annual agreements entered into between EPA and the department. Therefore, this rule is unnecessary.

17.30.1401 APPLICABILITY (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3025, Administrative Rules of Montana.

17.30.1402 DEFINITIONS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3025, Administrative Rules of Montana.

17.30.1405 LOCAL LAW (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3029, Administrative Rules of Montana.

17.30.1406 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3029, Administrative Rules of Montana.

17.30.1407 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3031, Administrative Rules of Montana.

17.30.1410 REMOVAL CREDITS (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3033, Administrative Rules of Montana.

17.30.1411 PRETREATMENT PROGRAMS: DEVELOPMENT BY POTW (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3033, Administrative Rules of Montana.

17.30.1412 POTW PRETREATMENT PROGRAMS AND AUTHORIZATION TO REVISE PRETREATMENT STANDARDS: SUBMISSION FOR APPROVAL (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3041, Administrative Rules of Montana.

17.30.1413 APPROVAL PROCEDURES FOR POTW PRETREATMENT PROGRAMS AND POTW GRANTING OF REMOVAL CREDITS (AUTH: 75-5-201,

75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3043, Administrative Rules of Montana.

17.30.1414 REPORTING REQUIREMENTS FOR POTW'S AND INDUSTRIAL USERS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3047, Administrative Rules of Montana.

17.30.1419 CONFIDENTIALITY OF INFORMATION (AUTH: 75-5-201, 75-5-105, MCA; IMP: 75-5-401, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1420 NET/GROSS CALCULATION (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1421 UPSET PROVISION (AUTH: 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3059, Administrative Rules of Montana.

17.30.1425 BYPASS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3063, Administrative Rules of Montana.

17.30.1426 MODIFICATION OF POTW PRETREATMENT PROGRAMS (AUTH: 75-5-201, 75-5-304, MCA; IMP: 75-5-304, MCA), located at page 17-3064, Administrative Rules of Montana.

REASON: Title 17, chapter 30, subchapter 14 was also adopted in December of 1989, in preparation for the Department of Health and Environmental Sciences (now the Department of Environmental Quality) receiving delegation of the federal pretreatment program. However, because of lack of funding, neither department accepted the delegation. Therefore, the pretreatment program for Montana is operated by EPA and these rules have never been implemented. The rules do not reflect current EPA requirements. Therefore, if the department were to seek delegation, it would be better to adopt new rules rather than to modify these rules. Retaining outdated rules for a program that the department does not administer causes confusion.

17.30.1602 EMERGENCY PROCEDURE (AUTH: 75-5-201, MCA; IMP: 75-5-621, MCA), located at page 17-3115, Administrative Rules of Montana.

REASON: This rule merely repeats statutory requirements contained in 75-5-621, MCA. The statute is self-implementing and the rule is therefore unnecessary. Section 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language.

17.30.2001 DEFINITIONS (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at page 17-3171, Administrative Rules of Montana.

REASON: Class of violation definitions in ARM 17.30.2001(1) through (3) are outdated and are no longer necessary. Definitions in ARM 17.30.2001(4) through (7) are for commonly understood terms and are no longer necessary. Therefore, this rule is proposed to be repealed.

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES (AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA), located at page 17-3175, Administrative Rules of Montana.

REASON: The board promulgated ARM 17.30.2001 through 17.30.2006 in April 1998 to establish administrative penalty calculation procedures for the Montana Water Quality Act. The board 's predecessor, the Board of Health and Environmental Sciences, promulgated ARM 17.38.601 through 17.38.607 in February 1995 to establish administrative enforcement procedures and administrative penalties for the Public Water Supply Laws.

Legislation passed in 2005 established a standard set of penalty factors that must be considered in penalty calculations. See 75-5-1001, MCA. In May 2006, the board promulgated new rules to establish a penalty calculation process based on the statutory penalty factors in ARM 17.4.301 through 17.4.308. The new penalty calculations rules apply to penalties assessed under the Water Quality and Public Water Supply Acts. Upon promulgation of the new penalty rules, the majority of the old water quality and public water supply penalty calculation rules were repealed. However, the board did not repeal definitions and some procedural parts of the old rules in order to help guide the department's determination of the gravity factor under the new rules. After nine years of implementation of the new penalty rules, it is apparent that the remaining portions of the old water quality and public water supply penalty rules are no longer needed.

ARM 17.30.2001 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

Most of ARM 17.30.2003(1) and (2) duplicate procedures described in 75-5-611 and 75-5-617, MCA. ARM 17.30.2003(3) describes a standard procedure regarding service of certified mail and is not needed. ARM 17.30.2003(4) states that a notice letter sent in accordance with 75-5-611(1), MCA, satisfies the requirement to send a notice letter as required in 75-5-617(2), MCA. Both sections of law require the department to send a notice letter. Because it is obviously most efficient to send only one notice letter, this declaration in rule is not needed.

ARM 17.30.2003(5) and (6) establish a procedure under which the department may not assess a penalty if the violator submits a letter that certifies that the activity was or is now in compliance or proposes a corrective action plan to return the activity to compliance. The department must respond to the letter within 30 days and determine if the violator's response was adequate. If inadequate or if adequate but not complied with, the department may issue an order that assesses a penalty. These provisions unduly limit the department's enforcement discretion.

ARM 17.30.2003(7) duplicates 75-5-611(2), MCA, and (8) merely references the standard penalty rules.

ARM 17.30.2003(9) is unnecessary if the previous sections are no longer in effect.

17.38.601 PURPOSE (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3667, Administrative Rules of Montana.

REASON: This rule describes the purpose of the PWS rules that establish administrative enforcement procedures and penalties. Because the board is repealing the remaining rules, the purpose statement is no longer applicable.

17.38.602 DEFINITIONS (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3667, Administrative Rules of Montana.

REASON: ARM 17.38.602 is proposed for repeal because it contains definitions for terms used in rules that are proposed for repeal.

17.38.603 ENFORCEMENT PROCEDURES (AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA), located at page 17-3668, Administrative Rules of Montana.

REASON: Because the definitions for class of violation are proposed to be repealed, ARM 17.38.603(1) is no longer needed. ARM 17.38.603(2) unnecessarily lists requirements or conditions that may be included in orders. ARM 17.38.601(3) duplicates statutory language found in 75-6-110(3), MCA. Therefore, this rule is proposed to be repealed.

17.38.607 SUSPENDED PENALTIES (AUTH: 75-6-103, MCA; IMP, 75-6-109, MCA), located at page 17-3673, Administrative Rules of Montana.

REASON: This rule does not conform to existing statutes and is proposed to be repealed.

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., January 21, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine

reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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 repeal 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/ Joan Miles*
JOHN F. NORTH JOAN MILES, CHAIRMAN
Rule Reviewer

Certified to the Secretary of State, December 14, 2015.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.1001, 17.36.345, 17.36.914, 17.38.101, and 17.50.819 pertaining to definitions, adoption by reference, wastewater treatment systems: technical requirements, plans for public water supply or public sewage system, plans for public water supply or wastewater system, and incorporation by reference and availability of referenced documents	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY) (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT) (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS) (SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On January 14, 2016, at 1:00 p.m., the Board of Environmental Review and 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 board and 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., January 5, 2016, 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:

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) through (16) remain the same.

(17) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition).

(a) The board adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Systems" (~~May 2012~~ 2016 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) remains the same.

(b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," ~~2012~~ 2016 edition;

(c) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS (1) remains the same.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, ~~2012~~ 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) through (7) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (19)(b) remain the same.

(20) For purposes of this chapter, the board adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) remains the same.

(b) Department of Environmental Quality Circular DEQ-2, ~~2012~~ 2016 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works;

(c) through (21) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

17.50.819 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) The department adopts and incorporates by reference:

(a) Department Circular DEQ-2, Design Standards for Public Sewage Systems (~~2012~~ 2016 edition), which sets forth design standards for public sewage

systems;

(b) through (3) remain the same.

AUTH: 75-10-1202, MCA
IMP: 75-10-1202, MCA

REASON: The department has modified the wastewater operator certification classification. Before the amendments became effective, there were four classes in Department Circular DEQ-2 (DEQ-2). The department rule amendments combine the four classes into two classes.

The 2012 edition of DEQ-2 contains a reference to the previous four-tiered classification. Therefore, it is necessary to update the Circular. The proposed amendment to DEQ-2 is necessary to direct interested parties to ARM 17.40.202.

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., January 21, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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

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 board and department have determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: */s/ Joan Miles*
JOAN MILES
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ Tom Livers*
TOM LIVERS
Director

Certified to the Secretary of State, December 14, 2015.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.101, 17.36.103, 17.36.106, 17.36.112, 17.36.323, 17.36.326, 17.36.327, 17.36.334, 17.36.802, and 17.36.804 pertaining to definitions, application--contents, review procedures--applicable rules, re-review of previously approved facilities: procedures, setbacks, sewage systems: agreements and easements, existing systems, water supply systems: operation and maintenance, ownership, easements, and agreements, fee schedules, and disposition of fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT)

TO: All Concerned Persons

1. On January 15, 2016, at 9:00 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., January 5, 2016, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) through (64) remain the same.

(65) "Tract" is synonymous with "lot" or "parcel" for the purposes of this chapter.

(65) through (71) remain the same, but are renumbered (66) through (72).

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment adds the definition of "tract," a term

synonymous with "lot" and "parcel." The amendment is necessary to provide terminology consistent with the Sanitation in Subdivisions Act, which uses the term "parcel."

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

(a) through (i)(ii) remain the same.

(iii) direction and percentage of slope across the treatment area or a contour map with a ~~minimum~~ contour interval of at least two feet; and

(iv) through (q) remain the same.

(r) a copy of applicable supporting legal documents~~, including documents relating to easements, covenants, water rights, water user agreements, and establishment of homeowners' associations and local districts~~;

(s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, a letter from the Department of Natural Resources and Conservation stating that the water supply, either:

(i) ~~a letter from the Department of Natural Resources and Conservation stating that the water supply~~ is exempt from water rights permitting requirements; or

(ii) ~~proof of~~ has a water right, as defined in 85-2-422, MCA.

(t) through (v) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(a)(iii) deletes the term "minimum" in the provision requiring that slope maps for sewage treatment areas use a "minimum contour interval of two feet." The term "minimum" is confusing because it can be interpreted to allow contour intervals of greater than two feet (e.g., ten feet). The amendment clarifies that at least a two-foot contour interval is required.

The proposed amendment to (1)(r) deletes the list of required legal documents to be submitted to the reviewing authority to require all documents and agreements relating to the application to be included with the application.

The proposed amendments to (1)(s) require applicants to provide information to the department about the status of the water rights for any proposed water supply using wells or springs. Except for connections to existing public water supply systems, which are addressed under ARM 17.36.328(2)(b)(iv), the amendment would require the applicant to provide a letter from the Montana Department of Natural Resources and Conservation (DNRC) stating that the proposed subdivision water supply is exempt from DNRC permitting requirements or a letter from DNRC stating that the existing water right is adequate for the proposed use. The amendment is necessary to allow the department to better assess the dependability of a proposed subdivision water supply and to help prevent the development of a subdivision when water is not legally available for use or where the proposed development is not legally allowable with the existing water right.

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures for review of subdivision applications by the reviewing authority are as follows:

(a) remains the same.

(b) If a local department or board of health has been certified as the reviewing authority pursuant to 76-4-104, MCA, the local reviewing authority shall, within ~~50~~ 45 days after receipt of a subdivision application, review the application and forward the application to the department together with a recommended action for approval, conditional approval, or denial. The department shall take final action on the application within ten days after receiving the recommendation of the local reviewing authority, but not later than the time remaining in the 55-day or 120-day period set out in (1)(a).

(i) remains the same.

(c) If an application is incomplete, the reviewing authority shall deny the application, setting forth, in writing, the deficiencies to the applicant ~~or~~ and the applicant's representative. If the additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review the resubmitted application within 30 days after receipt. If the review is conducted by a local department or board of health that is certified under 76-4-104, MCA, the department shall make a final decision on the resubmitted application within ten days after the local reviewing authority completes its review. If the additional information is not submitted within 30 days after the date of the denial letter, the review time frames in (a) and (b) apply.

(2) through (4) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to ARM 17.36.106(1)(b), which sets the time frame for review of a subdivision application by a local reviewing authority, replaces 50 days with 45 days. The statutory review period for local reviewing authorities is 45 days. Section 76-4-104(7), MCA. The amendment is necessary to conform the rule to the statute.

The proposed amendment to ARM 17.36.106(1)(c) requires the reviewing authority, when there are deficiencies in an application, to notify both the applicant and the applicant's representative. The current rule could be interpreted as allowing notification to either the applicant or the representative. The amendment is necessary to ensure that both parties are informed of application deficiencies.

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) This rule applies to amendments ~~"~~(rewrites~~"~~) of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, ~~or~~ sewage, or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:

(a) through (8) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-125, MCA

REASON: The proposed amendment clarifies that "rewrites" are synonymous with "amendments" for the purposes of this rule.

17.36.323 SETBACKS (1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2
SETBACK DISTANCES
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
Public or multiple-user drinking water wells/springs	-	100 (4)	100
Individual and shared drinking water wells	-	50 (4)	100
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)
Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (4) (11) (13)

Floodplains	10 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	100 (11) (14)
Mixing zones	100 (4)	-	-
Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)

(1) Sealed components include holding tanks, sealed pit privies, ~~and the components addressed in Department Circular DEQ-4, Chapters 4 and 5~~ raw wastewater pumping stations, dose tanks, and septic tanks. Sealed components must meet the requirements of ARM 17.36.322(4).

Footnotes (2) through (16) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: Table 2 in ARM 17.36.323 contains setback requirements for water and sewer facilities in proposed subdivisions. The proposed amendment to Footnote (1) is necessary to limit the required setbacks to those not already addressed under drainfields/soil absorption systems. Deleting the reference to Chapters 4 and 5 is necessary to avoid conflicts between effluent distribution systems addressed in Chapter 4 and the minimum setback of ten feet between sealed components and drainfields. Applicable components in Chapters 4 and 5 are listed individually in the footnote definition of sealed components rather than referencing the general chapters of the circular.

The proposed amendment to Table 2 adds footnote (4), which allows waivers, to the setback between the wells and the floodplain. This is necessary to allow, through the waiver process, consideration of special construction or siting circumstances that minimize the potential for commingling between flood waters and a water supply.

The proposed amendments also add footnote (4) to storm water ponds and ditches and would allow waivers from the setbacks from storm water ponds and ditches to drinking water wells, sealed components, and other components and drainfields/soil absorption systems. Special circumstances can affect whether these setbacks are necessary. The waiver process will provide a method for considering these circumstances on a case-by-case basis.

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS ~~AND EASEMENTS~~ (1) The applicant shall demonstrate that all public~~,~~ and multiple-user~~, and shared~~ sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.

(2) ~~For public and multiple-user systems, a homeowners' association, county sewer district, or other administrative entity, with the power to charge appropriate fees, must be established as part of the operation and maintenance plan required by department Circular DEQ-4.~~ Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA.

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

~~(3)~~ (4) ~~For public, multiple-user, and shared systems, easements~~ Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be ~~in a form acceptable to the department~~ filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:

(a) in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

~~(4)~~ (5) Users of multiple-user and shared sewage systems must have an agreement that identifies the rights of each user. The user agreement must be signed by all users when the lots are sold. ~~Shared u~~User agreements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments change the title of the rule. This is necessary for the rule title to identify all of the subjects addressed in the rule and to show the order in which they are addressed.

The proposed amendments to ARM 17.36.326(1) exclude shared sewage systems from the requirement to provide an operation and maintenance manual. It is not necessary to have a written manual for shared (two-user) systems. This amendment is also necessary to be consistent with the corresponding requirements for water supply systems in ARM 17.36.334(1). The proposed amendments also add a reference to Department Circulars DEQ-2 and DEQ-4. This is necessary to inform subdivision applicants about additional requirements that may be applicable to some systems as provided in the circulars.

The proposed amendments to ARM 17.36.326(2) revise the ownership requirements for public sewage systems. The amendments are necessary to conform to the statutory requirements in 75-6-126, MCA. The existing rule allows unincorporated associations to own a public sewage system, which is contrary to the statute. Conversely, the statute allows individuals to own a public sewage system, which is not allowed by the current rule. The proposed amendments move the ownership requirements for multiple-user systems to a new ARM 17.36.326(3).

Proposed new ARM 17.36.326(3) restates the ownership provisions for multiple-user sewage systems currently found in ARM 17.36.326(2), but gives the reviewing authority discretion whether to require the creation of an ownership entity

such as a homeowners' association, county district, or other entity. It is not necessary to create an ownership entity in every case, e.g., if a multiple-user system is owned by a single individual.

The proposed amendments to renumbered ARM 17.36.326(4) delete the list of specific sewage systems that may be required to have easements. Because the rule applies to all types of systems, it is not necessary to specifically list each type. The amendments also clarify that easements may be required if needed to allow adequate operation and maintenance of the system or to comply with the provisions in statute that allow mixing zones to cross subdivision boundaries through easements. The proposed amendments also require that easements be in the form of a written easement signed by the grantor or, if the same person owns both parcels, require that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure the easement is valid and effective.

The proposed amendments to renumbered ARM 17.36.326(5) add multiple-user systems to the types of systems required to have agreements that show the rights of each user. The current rule requires agreements only for shared systems. It is necessary to have user agreements for multiple-user systems to ensure that responsibilities for system operation and maintenance are clearly identified.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

~~(1)~~ (2) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information, together with fees as provided in ARM 17.36.802:

(a) through (c) remain the same.

~~(2)~~ (3) ~~Unless a waiver is approved by the department pursuant to ARM 17.36.601, the drainfields and sand mounds for existing systems must be located at least 100 feet from wells.~~ The setbacks requirements in ARM 17.36.323 apply, but may be waived for existing sewage systems pursuant to ARM 17.36.601.

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

~~(4)~~ (5) Existing cesspools~~,~~ and pit privies~~, and holding tanks~~ must be replaced by a system approved under this subchapter. Holding tanks may be allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.327 add a new (1) to

clarify that the provisions of renumbered (2) through (5) apply only to existing non-public sewage systems in subdivisions. The amendments clarify that the requirements applicable to existing public sewage systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to existing public and non-public sewage systems in proposed subdivisions.

The proposed amendments to ARM 17.36.327(1), which is renumbered as (2), clarify that fees apply for review of existing sewage systems. This is not a substantive change, but is necessary to identify all requirements that apply to existing systems.

The proposed amendments to (2), which is renumbered (3), would make existing sewage systems subject to all of the setbacks in ARM 17.36.323, not just the setbacks for drainfields and sand mounds. Compliance with these setback requirements is necessary to protect public health and the environment. The proposed amendments retain the existing setback waiver provision and add the provisions for waivers in ARM 17.36.601. These waivers ensure that setbacks are required only when necessary to protect public health and the environment.

The proposed amendments to ARM 17.36.327(4), renumbered as (5), allow holding tanks to be used if allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). The reference in this rule to the holding tank waiver is necessary to identify provisions applicable to existing systems.

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the ~~multiple-user~~ system~~s~~ will be adequately operated and maintained.

(2) through (5) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.334(1) deletes the reference to multiple-user systems in the second sentence. As recently amended, (1) applies to both public and multiple-user systems, so the limitation in the second sentence to multiple-user systems is erroneous.

17.36.802 FEE SCHEDULES (1) An applicant for approval ~~of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds~~ under this subchapter shall pay the following fees:

~~UNIT~~
~~UNIT COST~~

(a) type of lots:

(i) subdivision lot ~~lot/~~ or parcel $ 125.00

(ii) condominium/townhouse/trailer court/recreational camping vehicle campground unit~~/~~ or space $ 50.00

(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot~~/~~ or parcel $ 75.00

(b) type of water system:

(i) individual or shared water supply system (existing and proposed) per unit $ 85.00

(ii) multiple-user system (non-public):

(A) - each new system ~~each~~ $ 315.00 (plus $105.00/hour for review in excess of four hours)

(B) - new distribution system design per lineal foot ~~$0.50~~ 0.25

(C) - connection to distribution system per lot~~/~~ or unit $ 70.00

(iii) public water system:

(A) new system per ~~DEQ-1~~ component per ARM 17.38.106 fee schedule

(B) - new distribution system design per lineal foot ~~$0.50~~ 0.25

(C) - connection to distribution system per lot~~/~~ or structure $ 70.00

(c) type of wastewater disposal:

(i) existing systems per unit $ 75.00

(ii) new gravity fed system per drainfield $ 95.00

(iii) new gravity-dosed, siphon-dosed, or pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:

(A) per design $ 190.00 (plus $105.00/hour for review in excess of two hours)

~~new pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems~~

(B) per drainfield $ 50.00

(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems~~. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost unit~~ $ 95.00 (plus $105.00/hour in excess of two hours)

(v) multiple-user wastewater system (non-public):

(A) - new collection system design per lineal foot ~~$0.50~~ 0.25

(B) - connection to collection system per lot~~/~~ or unit $ 70.00

(vi) new public wastewater system per ~~DEQ-2~~ component	per ARM 17.38.106 fee schedule
(A) new collection system design per lineal foot	~~$0.50~~ 0.25
(B) connection to collection system per lot~~/~~ or structure	$ 70.00
(d) other:	
(i) deviation from circular per request or ~~per~~ design	$ 200.00 (plus $105.00/hour for review in excess of two hours)
(ii) waiver from rule per request	$ 200.00 (plus $105.00/hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	$ 60.00
(iv) review of revised lot layout document per request	$ 125.00
(v) municipal facilities exemption checklist (former master plan exemption) per application	$ 100.00
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) individual/shared systems per drainfield	$ 60.00 (plus $105.00/hour for review in excess of two hours)
(B) multiple-user non-public systems per lot~~/~~ or structure	$ 30.00 (plus $105.00/hour for review in excess of two hours)
(C) source specific mixing zone per drainfield	$ 200.00
(D) public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) plans exempt from Circular DEQ-8 per lot	$ 40.00
(B) plans subject to Circular DEQ-8 review:	
(I) per design	$ 180.00
(II) per lot	$ 40.00 (plus $105.00/hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements	actual cost

AUTH: 76-4-105, MCA
IMP: 76-4-105, ~~76-4-128~~, MCA

REASON: The proposed amendments clarify that all reviews addressed by this subchapter are covered by these fees. Reviews are not limited to a division of land into one or more parcels, condominiums, mobile home/trailer courts, and recreational camping vehicle campgrounds, but may include amendments to existing subdivision approvals and reissuance of approvals.

The proposed amendments add the review of townhouses to the unit fee charged for condominiums, mobile home/trailer courts, and recreational camping vehicle campgrounds. The proposed amendment is necessary to clarify that a townhouse is different than a condominium, but, due to the similarities in function, both are reviewed under the same fee structure. The department estimates that the change in fee structure will affect approximately ten applicants. The department has historically charged the same fee for townhouses as it has charged for condominiums. There will be no impact to the public from this change.

The proposed amendments delete the reference in public water supply systems to Department Circular DEQ-1. Public water supply systems may be reviewed under either Department Circular DEQ-1 or DEQ-3.

The proposed amendments reduce the existing fee for review of a water or sewer main extension for both multiple-user and public systems from $0.50/lineal feet to $0.25/lineal feet. The amendment is necessary because the review of these facilities is identical under both the Sanitation in Subdivision Act and the Public Drinking Water Act and to provide consistency with ARM 17.38.106. The department estimates that the change in fee structure will affect approximately 35 applicants a year with an approximate savings of $600 per application.

The proposed amendments clarify a program policy that the fee for the review of "gravity-dosed" and "siphon-dosed" systems is the same as the fee charged for the review of "pressure-dosed" applications. This is necessary because all dosed designs require the same level of review. The department estimates that the change in fee structure will affect approximately 150 applicants a year. Since current program policy charges both gravity- and pressure-dosed systems using the same fee structure, there will be no impact to the public from this change.

The proposed amendments add a fee for the review of holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, and experimental systems. The fees are necessary to ensure system compliance with Department Circular DEQ-4. The department estimates that the change in fee structure will affect approximately ten applicants per year. The department has historically charged for the review of these systems at the lowest fee charged for the review of a wastewater treatment system. The proposed rate is consistent with what the department has been charging. There will be no impact to the public from this change.

The proposed amendment deletes the statement that gray water reuse systems will be reviewed at the unit cost. This statement is unnecessary because the fees are based on either a unit cost or an hourly rate.

The proposed amendments delete the reference in public wastewater systems to Department Circular DEQ-2. Public wastewater systems may be reviewed under either Department Circular DEQ-2 or DEQ-4.

The proposed amendments add an hourly fee to the nonsignificance review

rate for complex applications. A new fee has been added for the review of source specific ground water mixing zones as defined in ARM 17.30.518. These reviews require additional time and resources above those for standard mixing zones as each drainfield is evaluated for:

(a) quantity, toxicity, and persistence of the pollutant;
(b) water-bearing characteristics of subsurface materials;
(c) rate and direction of ground water flow;
(d) pollutant migration;
(e) volume of ground water and area available for mixing;
(f) concentration of pollutants within the mixing zone;
(g) length of time pollutants will be present;
(h) proposed boundaries of the mixing zone;
(i) potential impacts to water uses;
(j) compliance monitoring;
(k) contingency plan if pollutants migrate beyond the mixing zone at concentrations greater than the allowed limits; and
(l) specific explanation as to why the proposed mixing zone is the smallest practicable size and why it will have a minimum practicable effect on water users.

It is anticipated that this will affect fifty applications per year with an average charge of $200.00 per application.

17.36.804 DISPOSITION OF FEES (1) The department shall use the fees collected pursuant to ARM 17.36.802 to fund the following functions:

(a) through (d) remain the same.

(e) subject to 75-1-205, MCA, preparation of an environmental impact statement pursuant to ARM 17.4.615 through 17.4.629, including costs of analysis, printing, distribution, and hearing costs, and excluding the costs of information and data gathering which are subject to fee assessment pursuant to 75-1-202, MCA;

(f) through (4) remain the same.

AUTH: 76-4-105, MCA
IMP: 76-4-105, ~~76-4-128~~, MCA

REASON: The proposed amendment to ARM 17.36.804 adds a reference to statutory provisions for uses of environmental impact statement fees. The reference is necessary to identify other requirements that may be applicable to fees for the preparation of environmental impact statements.

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., January 21, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Nicol, 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 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, December 14, 2015.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.431, 18.8.432, 18.8.510A, 18.8.517, 18.8.602, and 18.8.603 pertaining to Motor Carrier Services	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 25, 2016, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on January 14, 2016, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Department of Transportation, Motor Carrier Services, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-9263; TDD/Montana Relay Service (406) 444-7696 or (800) 335-7592; or e-mail dkiely@mt.gov.

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

18.8.431 MAXIMUM ALLOWABLE WEIGHT (1) remains the same.

(2) The maximum allowable gross weight for vehicle combinations hauling divisible loads and operating under the provisions of 23 CFR 658, appendix C, April 1, ~~2010~~ 2015 edition, is 137,800 pounds. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-00012, or at www.gpo.gov.

(3) The maximum allowable gross weight for vehicle combinations hauling divisible loads and operating under 61-10-107(1)(b), MCA, is 137,800 pounds.

AUTH: 61-10-155, MCA
IMP: 61-10-107, MCA

REASON: The proposed amendment to (2) is necessary to update the CFR citation to the most current version so all current federal amendments are incorporated by reference, and to update the address and web site at which copies of the CFR may be obtained. The proposed amendment adding new (3) is necessary to specifically implement a numerical weight of 137,800 pounds for vehicles traveling on U.S. Highway 93 from the Canadian border to ten miles south of the border, or on Montana Highway 16 from the Canadian border to 20 miles south of the border, as set forth in 61-10-107(1)(b), MCA.

18.8.432 MAXIMUM ALLOWABLE WEIGHT ON THE NONINTERSTATE

(1) Maximum allowable weights allowed for vehicle combinations hauling divisible loads and operating on applicable noninterstate highways cannot exceed a gross vehicle weight and single, tandem, or tridem axle weights as described in 23 CFR 658, appendix C, April 1, ~~2010~~ 2015 edition. ~~Information pertaining to the U.S. Code of Federal Regulation (CFR) may be obtained by contacting the Office of the Federal Register, 800 North Capitol Street, Northwest, Suite 700, Washington, DC 20001; phone (202) 741-6000.~~ Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-00012, or at www.gpo.gov.

(2) A department weight analysis of the highway infrastructure will determine the maximum gross weight and axle weights allowed on applicable noninterstate highways. The maximum gross weight and axle weights may be less than those allowed in 23 CFR 658, appendix C, April 1, ~~2010~~ 2015 edition. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-00012, or at www.gpo.gov.

(3) and (4) remain the same.

(5) Permits will be issued for the weights in 23 CFR 658, appendix C, April 1, ~~2010~~ 2015 edition, for the same permit types and under the same fee schedule that is provided in 61-10-125, MCA and subchapter 6 of this chapter. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-00012, or at www.gpo.gov.

(6) remains the same.

AUTH: 61-10-155 MCA
IMP: 61-10-107, 61-10-108, 61-10-121, 61-10-125, MCA

REASON: The proposed amendments are necessary to update the CFR citations to the most current version so all current federal amendments are incorporated by reference, and to update the address and web site at which copies of the CFR may be obtained.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) through (3) remain the same.

(4) Flashing amber lights, visible ~~front and rear, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute,~~ 360 degrees, shall be mounted at each end of a sign with the words "oversize load" or similar wording, on the roof of the flag vehicle. A revolving or strobe light may be substituted for flashing lights. Lights shall be flashing at all times when piloting an oversize load.

(5) All flag vehicles shall be equipped with two-way ~~radio~~ communication.

(6) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-102, 61-10-121, 61-10-122, 61-10-123, 61-10-124, MCA

REASON: The proposed amendments are necessary to bring Montana in compliance with the American Association of State and Highway Transportation Officials (AASHTO) harmonization efforts. AASHTO has commenced a nationwide effort to standardize flag vehicle language and ensure the language does not change between the states. AASHTO standards state the 360-degree lights proposed in (4) are more visible than other types of flashing lights.

18.8.517 SPECIAL VEHICLE COMBINATION (1) A "special vehicle combination" is a truck-trailer-trailer combination of vehicles or truck tractor-semitrailer-trailer-trailer combination of vehicles as defined in statute and in 23 CFR 658, appendix C, April 1, ~~2004~~ 2015 edition. Copies of the regulations may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-00012, or at www.gpo.gov.

(2) through (10)(c) remain the same.

(11) No person may operate any special vehicle combination under 61-10-124(4), MCA, at a speed greater than ~~55 miles per hour~~ the posted speed limit. Violation of this restriction shall result in confiscation of permits.

(12) through (20) remain the same.

AUTH: 61-10-129, 61-10-155, MCA
IMP: 61-10-124, MCA

REASON: The proposed amendment to (1) is necessary to update the rule to the most current version of 23 CFR 658, Appendix C so all current federal amendments are incorporated by reference, and to update the address and web site at which copies of the CFR may be obtained. The proposed amendment to (11) is necessary because the 2015 Legislature changed the allowable speed limit for combination vehicles through SB 375, Section 3. The rule amendment will clarify the combination vehicle speed limit must comply with new statutorily required posted speed limits, or any other special speed limits as posted for construction zones or other emergency situations.

18.8.602 SPEED AND BRIDGE CROSSING CONDITIONS IMPOSED FOR ~~MAXIMUM WEIGHT~~ EXCESSIVE OVERWEIGHT VEHICLES (1) remains the same.

~~(2) On interstate highways, unless specifically noted on the special permit, loads may maintain a maximum speed of 55 mph or the posted speed limit, whichever is less. The vehicle may remain in its own traffic lane and normal traffic will be allowed to pass. Only one overweight vehicle is allowed on a structure at a time.~~

~~(3) On noninterstate highways, unless specifically noted on the special permit, loads may maintain a maximum speed of 55 mph or the posted speed limit, whichever is less. When speed restrictions over structures are imposed, two flag vehicles or one flag vehicle and one flag person, equipped with high visibility clothing and hand-signaling devices, are required. For purposes of this section, high visibility clothing shall be a flagger's vest, shirt, or jacket, orange, yellow, strong yellow-green or fluorescent versions of these colors. Hand signaling devices shall be a stop/slow~~

~~paddle 18 inches wide and octagonal in shape, with letters at least 6 inches high. The background of the stop face shall be red with white letters and border.~~

~~(4) Before crossing any noninterstate structure or structures, the hauling unit shall come to a complete stop approximately 50 feet from the end of the structure. After flag vehicles or flag persons have stopped all traffic onto the structure, the overweight vehicle shall proceed at a speed not to exceed five miles per hour with the center of the unit directly over the centerline of the roadway of the structure. There shall be no alteration of the speed (changing of gears) while on the structure or approach. Flag vehicles or flag persons shall not permit any other traffic on the structure until the overloaded vehicle is off the structure.~~

~~(5) Any violation of any of the above conditions, or axle weights and axle spacing, will automatically prohibit the owner from receiving any other permits for roading or hauling the vehicle in violation or any other similar vehicle under his jurisdiction or control.~~

~~(6) For purposes of this rule, the word "structure" shall mean any bridge, overpass, etc.~~

(2) On interstate or noninterstate highways, loads may not exceed a maximum speed of 55 mph or the posted speed limit, whichever is less. Only one overweight vehicle is allowed on a bridge at a time. Stopping or shifting gears on any bridge is prohibited. Additionally, one or more of the following conditions may apply when listed as a restriction on the special permit:

(a) vehicle must reduce speed to a maximum of 10 miles per hour before and while crossing the bridge, remain in driving lane, maintain at least two feet from the shoulder, and provide a minimum of one rear flag vehicle, while other non-overweight traffic may travel simultaneously in all lanes; or

(b) vehicle must reduce speed to a maximum of 10 miles per hour before and while crossing the bridge, center vehicle over roadway centerline, and provide a minimum of two pilot vehicles, while all other traffic is prohibited on the bridge. The two required pilot vehicles must adhere to the following conditions when pilot vehicles are part of the conditions on the permit:

(i) interstate highway travel requires a minimum of two rear pilot vehicles; or

(ii) noninterstate highway travel requires a minimum of one front and one rear pilot vehicle.

(c) additional restrictions may be imposed on a case-by-case basis depending on specific bridge conditions and complexity of the movement.

(3) A reasonable accommodation route variance will be allowed for vehicles to deviate from permitted interstate routes within a two mile radius of an interstate interchange for accessing of services, without a requirement for additional pilot or escort vehicles. Any bridge crossing on the accommodation route must be approved through department bridge review or in compliance with applicable noninterstate bridge crossing requirements.

(4) All traffic control required by a special permit condition must comply with ARM 18.8.510A and the Manual on Uniform Traffic Control Devices.

(5) Violation of any permit restrictions on bridge crossings, axle weights, or axle spacing may prohibit future permit issuance and operation.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125, 61-10-141, MCA

REASON: The proposed amendments are necessary to address safety concerns expressed both internally within MDT and externally from motor carriers, the pilot car industry, and the public regarding overweight vehicle bridge crossings. The proposed technical amendments were developed with MDT bridge engineer analysis, in accordance with the Manual for Bridge Evaluation, Dynamic Load Allowance section. The proposed amendments are also necessary to bring Montana in compliance with the American Association of State and Highway Transportation Officials (AASHTO) harmonization efforts. AASHTO has commenced a nationwide effort to standardize flag vehicle language and ensure the language does not change between the states.

18.8.603 OVERWEIGHT TERM PERMITS ~~(1) An excess axle weight term permit cannot be issued to a vehicle configuration for 25,000 pounds, 30,000 pounds, 35,000 pounds or 40,000 pounds until a vehicle weight analysis has been conducted by the department. The permit must be approved and issued by the MCS Helena office.~~

~~(2)~~ (1) A vehicle configuration that can be permitted only under a route analysis cannot be issued a term excess axle weight permit. The permit can be issued for a single trip only, for a route specified on the permit.

AUTH: 61-10-155, MCA
IMP: 61-10-121, 61-10-125, MCA

REASON: The proposed amendment is necessary to delete the section which repeats statutory language found at 61-10-125, MCA. Under 2-4-305, MCA, an administrative rule must not unnecessarily repeat statutory language.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Kiely, Department of Transportation, Motor Carrier Services, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-9263; or e-mail dkiely@mt.gov, and must be received no later than 5:00 p.m., January 21, 2016.

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 Dan Kiely at the above address no later than 5:00 p.m., January 21, 2016.

6. 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 4830 persons based on the 48,297 of Montana-based registered and permitted vehicles in the 2014 calendar year.

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 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail and e-mail on August 6, 2015.

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.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State December 14, 2015

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to authorization for probation and parole officers to carry firearms, firearms training requirements, and department procedures pertaining to firearms	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 13, 2016, at 10:00 a.m., the Department of Corrections will hold a public hearing in the auditorium of the Scott Hart Building, 301 N. Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on January 8, 2016, to advise us of the nature of the accommodation that you need. Please contact Dauneen Durrant, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-4333; fax (406) 444-7909; or e-mail DDurrant2@mt.gov.

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

NEW RULE I AUTHORIZATION FOR PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS, FIREARMS TRAINING REQUIREMENTS, AND DEPARTMENT PROCEDURES PERTAINING TO FIREARMS (1) A currently appointed probation and parole officer is authorized to carry and deploy a department-issued firearm in the performance of official duties as provided in the department's written Probation and Parole Bureau Standard Operating Procedures.

(2) Within the initial time parameters required under 44-4-404, MCA, a probation and parole officer shall successfully complete the department's POST-certified Basic Training Course for Probation and Parole Officers including the firearms training component and the firearms proficiency standards established for public safety officers by the Public Safety Officer Standards and Training Council (Council) under ARM 23.13.215. The firearms proficiency standards must be met by the probation and parole officer only for the particular firearm issued by the department to the probation and parole officer.

(3) The department's written Probation and Parole Bureau Standard Operating Procedures governing the carrying of firearms and use of force must cover the following topics:

(a) required firearms training courses and certification procedure;

(b) type(s) of department-issued firearms permitted to be carried by probation and parole officers;

(c) circumstances under which a probation and parole officer is permitted to carry a firearm or is prohibited from carrying a firearm;

(d) circumstances under which a probation and parole officer is authorized to use a firearm in the deployment of deadly force;

(e) control and storage of department-issued firearms;

(f) monitoring and documenting the use of a firearm by a probation and parole officer; and

(g) any specific procedures or requirements pertaining to a probation and parole officer carrying a concealed firearm.

AUTH: 46-23-1002, MCA
IMP: 46-23-1002, MCA

4. STATEMENT OF REASONABLE NECESSITY

The rule is necessary because firearms training requirements and proficiency standards serve to protect probation and parole officers, the probationers and parolees under the department's supervision, and the general public. In addition, the rule is necessary under 46-23-1002, MCA, to provide express authority for probation and parole officers to carry firearms. A recent legislative audit report cited 46-23-1002, MCA, and noted that the department had not adopted a rule concerning authorization for probation and parole officers to carry firearms and concerning firearms training requirements. The rule is necessary to rectify that oversight which arose as a result of the department's belief that the statutes and rules cited in this statement of reasonable necessity as well as the department's Probation and Parole Bureau Standard Operating Procedures, fulfilled its obligation under 46-23-1002, MCA.

The department has comprehensive Probation and Parole Bureau Standard Operating Procedures that include authority and processes for probation and parole officers to carry firearms in the performance of their official duties and also include firearms training requirements that are consistent with statutes (44-4-401 et seq, MCA) and administrative rules (ARM 23.13.201, et seq.) governing qualifications, training requirements, and certifications for public safety officers. Probation and parole officers employed by the departments are public safety officers under 44-4-401(1)(g), MCA. The Montana Public Safety Officer Standards and Training Council (Council) has jurisdiction in matters pertaining to public safety officer training and certification. The Council's standards for appointment of public safety officers including certification requirements are contained in ARM 23.13.201. The Council has adopted firearms proficiency standards for public safety officers in ARM 23.13.215. In accordance with its statutory obligation under 44-4-404, MCA, the department applies the Council's standards and certification requirements to the probation and parole officers that it employs.

The items in (3)(a) through (f) of the rule are taken from the statement of legislative intent included in the compiler's comments for 46-23-1002, MCA. Item (3)(g) is included in the rule because 46-23-1002(2), MCA, refers to concealed firearms and

the department's Probation and Parole Bureau Standard Operating Procedures already appropriately includes procedures related to concealed carrying of a firearm by a probation and parole officer. The concealed weapons permitting requirements of 45-8-316, MCA, do not apply to probation and parole officers by reason of the exemption in 45-8-317(1)(f), MCA.

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: Dauneen Durrant, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-4333; fax (406) 444-7909; or e-mail DDurrant2@mt.gov, and must be received no later than 5:00 p.m., January 21, 2016.

6. Colleen Ambrose, Department of Corrections, 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 to Michele Morgenroth, P.O. Box 201301, Helena, Montana, 59620-1301 or e-mail to mmorgenroth@mt.gov 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 but have not been fulfilled as the bill sponsor is deceased.

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

/s/ Colleen E. Ambrose
Colleen E. Ambrose, Attorney
Rule Reviewer

/s/ Mike Batista
Mike Batista
Director
Department of Corrections

Certified to the Secretary of State December 14, 2015.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IV pertaining to implementing the Medicaid rate as the reimbursement rate the State of Montana will pay health care providers for services provided to individuals in the care or custody of the Department of Corrections or the Department of Public Health and Human Services	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 14, 2016, at 9:00 a.m., the Department of Corrections will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on January 11, 2016, to advise us of the nature of the accommodation that you need. Please contact Russ Danaher, Department of Corrections, Clinical Services Division, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-9648; fax (406) 444-9550; or e-mail RDanaher@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to implement 53-6-1312, MCA, which establishes the Medicaid schedule of rates as the reimbursement rates that the State of Montana (State) pays for health care services provided to an individual who does not qualify for Medicaid, Medicare, a health insurer, or another private or governmental program that pays for health care costs and is:

(a) in the custody of the Department of Corrections; or

(b) a resident, by commitment or otherwise, of the Montana State Hospital, the Montana Mental Health Nursing Care Center, the Montana Chemical Dependency Center, or the Montana Developmental Center.

(2) The State will process these health care claims through the Department of Public Health and Human Services' Medicaid claims processing agent.

AUTH: 53-1-203, 53-6-1318, MCA
IMP: 53-6-1312, MCA

NEW RULE II A PROVIDER MUST ENROLL IN MEDICAID AND ACCEPT THE MEDICAID REIMBURSEMENT RATE TO RECEIVE PAYMENT BY STATE

(1) To receive payment from the State for health care services provided to an individual identified in 53-6-1312, MCA, a provider must:

(a) be enrolled as a Montana Medicaid provider;

(b) accept the Montana Medicaid rates as full payment for all health care services; and

(c) comply with the requirements of this subchapter.

(2) A provider who accepts an individual identified in 53-6-1312, MCA, as a patient is agreeing to accept the Medicaid rate as payment in full.

(3) In service settings where an individual identified in 53-6-1312, MCA, is accepted as a patient by a provider who arranges for services by other providers, all providers performing services are deemed to have accepted reimbursement from the State at the Montana Medicaid rates.

(4) A provider may not "balance bill" or seek payment in addition to, or in lieu of, the payment by the State. "Balance bill" means a provider bills the patient, or responsible party, the difference between the amount the state reimburses for services and what the provider chooses to charge.

AUTH: 53-1-203, 53-6-1318, MCA
IMP: 53-6-1312, MCA

NEW RULE III PROVIDER REQUIREMENTS (1) Except for the administrative rules listed in (2), the provider requirements of ARM Title 37, chapter 85, subchapter 4, "Provider Requirements," apply to the delivery of health care services provided to an individual identified in 53-6-1312, MCA. For the purposes of this subchapter, a reference to "Montana Medicaid" or "Medicaid" in ARM Title 37, chapter 85, subchapter 4 is understood to mean payments made under 53-6-1312, MCA.

(2) The following administrative rules do not apply to providers receiving payment for services provided to an individual identified in 53-6-1312, MCA:

(a) ARM 37.85.407, Third Party Liability;

(b) ARM 37.85.411, Provider Rights;

(c) ARM 37.85.415, Medical Assistance Medicaid Payment; and

(d) ARM 37.85.416, Statistical Sampling Audits.

(3) A provider who disputes a payment is entitled to an administrative hearing on the matter according to the procedures of the department responsible for payment. A provider who is aggrieved by a final written decision is entitled to a judicial review of the decision.

AUTH: 53-1-203, 53-6-1318, MCA
IMP: 53-6-1312, MCA

NEW RULE IV COST SHARING DOES NOT APPLY (1) The cost sharing requirements of ARM 37.85.204 and [NEW RULE VII, MAR Notice No. 37-730] do not apply to the individuals identified in 53-6-1312, MCA. An individual identified in

53-6-1312, MCA, is neither a member nor a program participant as defined at 53-6-1302, MCA.

AUTH: 53-1-203, 53-6-1318, MCA
IMP: 53-6-1312, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (DPHHS) has adopted rules to implement 53-6-1312, MCA, which the 64th Legislature (2015) enacted as part of the Health and Economic Livelihood Partnership Act (HELP Act), Chapter 368, 2015 Session Laws of Montana.

In some circumstances, the State of Montana (State) is obligated to pay for the health care of individuals in the custody of the department or in the care of DPHHS and residing at the Montana State Hospital, the Montana Mental Health Nursing Care Center, the Montana Chemical Dependency Center, or the Montana Developmental Center. These rules implement the Legislature's decision to set the Medicaid rate as the amount the State will pay for health care provided to individuals identified in 53-6-1312, MCA. In order to provide for consistency and seamless administration of claims for which the respective departments are responsible under 53-6-1312, MCA, the department's proposed rules are identical to the implementing rules adopted by DPHHS.

The department's authority for these proposed rules, in addition to 53-6-1312, MCA, is 53-1-203(1)(d), MCA. The latter statute states that the department has authority to use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out the department's functions under this title. The department uses 53-1-203, MCA, as the authority for some of its rules.

The department considered the alternative of not adopting rules and proceeding with 53-6-1312, MCA, as self-enacting legislation but decided that adopting rules requiring providers to enroll in Medicaid and providing a method of promptly processing claims was in the best interest of the State and the providers.

DPHHS and the department considered processing the claims without using the State's Medicaid claims-processing agent because these are claims for health care costs that are paid with state funds only. DPHHS and the department determined that processing claims through the State's Medicaid claims-processing agent would take advantage of economies of scale and be a process familiar to health care providers. All provider claims for services to individuals identified in 53-6-1312(2), MCA, will be administered by DPHHS through its MMIS agent.

New Rule I

The department is proposing this rule to provide the context for the subchapter.

New Rule II

The Legislature established the Medicaid rate as the maximum amount the State will pay for health care provided to individuals identified in 53-6-1312. MCA. The department is proposing to require a health care provider who wants to receive payment from the State to enroll as a Medicaid provider and comply with the requirements of this new subchapter of administrative rules. This will make it possible for the Medicaid claims-processing agent to pay the claims and will simplify the administrative burden for the State and providers.

New Rule II requires a provider who accepts the State payment for some services to accept the State payment rate for all covered services and for all services arranged by the provider. This is necessary for the State to pay the Medicaid rate for all health care services to individuals identified in 53-6-1312, MCA.

New Rule II also prohibits "balance billing." The amount paid by the State will be full payment to the provider. This is necessary to prevent the patient or responsible party from being billed for an amount in addition to the Medicaid rate.

New Rule III

The department is proposing to make the Medicaid provider requirements stated in ARM Title 37, chapter 85, subchapter 4 also applicable to a provider billing the State for health care services to individuals identified in 53-6-1312, MCA, unless the requirement is specifically excluded in New Rule III. Adopting these procedures establishes a consistent method for coding and processing claims that is already familiar to providers and their billing staff and already in place for the State.

The Medicaid provider requirements that will not apply to claims for payment by the State under 53-6-1312, MCA, are ARM 37.85.407, Third Party Liability, ARM 37.85.411, Provider Rights, ARM 37.85.415, Medical Assistance Medicaid Payment and ARM 37.85.416, Statistical Sampling Audits. The department does not deem the foregoing Medicaid provisions to be necessary for prompt, efficient claim processing.

The department is also proposing to provide an administrative review process for claims disputes because a process for a provider and each department to review and resolve disputes is advisable and in the best interest of providers and the State and the administrative process for Medicaid claims payment does not apply to these claims. It would be inequitable for providers to have the right to a hearing concerning disputed Medicaid claims and for providers required under 53-6-1312, MCA, to be paid at Medicaid rates on non-Medicaid claims not to have a right to a hearing. The issues involved in the disputed claims of both will likely be identical.

New Rule IV

The department is proposing not to impose cost-sharing requirements. The administrative costs of attempting to collect cost-sharing payments from individuals in the care or custody of the State outweigh any benefits of a cost-sharing program.

Fiscal Impact

The department estimates that it could realize a 30% savings in the cost of laboratory, outside medical, and pharmaceutical costs. The estimated savings for SFY 2016 is $967,257 ($3,224,189 @ 30%). The estimated savings are projected to increase by 6% each year.

5. The effective date of 53-6-1312, MCA, was November 2, 2015, when the Centers for Medicare and Medicaid Services (CMS) approved the State's request for a waiver. Under the authority of 2-4-309, MCA, the department is proceeding with this procedural rulemaking with an anticipated retroactive effective date of January 1, 2016.

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: Russ Danaher, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-9648; fax (406) 444-9550; or e-mail RDanaher@mt.gov, and must be received no later than 5:00 p.m., January 22, 2016.

7. The Legal Services Office, Department of Corrections, 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 to Michele Morgenroth, P.O. Box 201301, Helena, Montana, 59620-1301; or e-mail to mmorgenroth@mt.gov 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, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on October 29, 2015.

11. 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.

/s/ Colleen E. Ambrose
Colleen E. Ambrose, Attorney
Rule Reviewer

/s/ Mike Batista
Mike Batista
Director
Department of Corrections

Certified to the Secretary of State December 14, 2015.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I feral swine mandatory reporting and the amendment of ARM 32.2.401 fees, 32.3.212, additional requirements for cattle, and 32.3.220, semen shipped into Montana	)))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 23, 2016, the Department of Livestock proposes to adopt and amend the above-stated rules.

2. The Department of Livestock 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 Department of Livestock no later than 5:00 p.m., January 15, 2016, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

NEW RULE I FERAL SWINE MANDATORY REPORTING (1) Any person, including, but not limited to, landowners, tenants, or persons responsible for property oversight in Montana who knows or has reason to believe feral swine as defined in 81-29-101, MCA, are present on private or public property must report such knowledge to the Department of Livestock.

(2) The presence of feral swine must be reported by phone within 24 hours to the Department of Livestock.

(3) The Department of Livestock shall report the presence of feral swine to other state agencies with an expressed interest in the presence of feral swine.

AUTH: 81-2-102, 81-29-103, 81-29-106, MCA
IMP: 81-2-102, 81-29-103, 81-29-106, MCA

REASON: The department proposes to adopt this new rule because the 2015 Legislature granted the department additional authority to control and eradicate feral swine. Feral swine is invasive and destroys agricultural and wild life resources in many states and Canadian provinces, including Saskatchewan and Alberta. Much of the range expansion is caused by aspiring hunters, seeding swine into new areas. Senate Bill 100 (2015) (SB100) established reporting requirements and made it illegal to import, transport, possess, feed, hunt, trap, or kill a feral swine, except as allowed by statute, or to profit from the release, hunting, trapping, or killing of a feral

swine. The department proposes New Rule I based on the enactment of SB100, which establishes a notification requirement for feral swine.

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

32.2.401 DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION FEES (1) through (2)(g) remain the same.

(h) Pullorum authorized testing agent license	50.00

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

(b) Alternative livestock tags - elk (medium)	~~42.00~~ 64.50

(c) through (l) remain the same.

AUTH: 81-2-102, ~~81-2-107~~, MCA
IMP: 81-1-102, 81-2-502, 81-2-704, MCA

REASON: The department proposes to amend this rule to establish a fee for pullorum authorized testing agent license following the establishment of the program in August of 2011 in ARM 32.3.1505(7). The proposed pullorum authorized testing agent license would affect approximately 12 licensees.

The department proposes to amend this rule to increase the fee for alternative livestock tags as the unit price of the tag has risen in price from $1.47 per tag to $2.37 per tag. The new shipment costs are $2.37 per bag x 25 tags per bag, equaling $59.25 plus $5.25 postage and handling per bag totalling $64.50. The proposed fee increase would affect approximately 33 alternative livestock producers with an average of 875 animals.

The citation 81-2-107, MCA, is being deleted as it carries no authority for rulemaking.

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) through (4) remain the same.

(5) Sporting bovines originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test within ~~six~~ twelve months prior to importation if they:

(a) are six months of age and older; or
(b) have attended at least a single sporting event; or
(c) are being imported for a specific sporting event.

(6) through (14) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-703, 81-2-704, MCA

REASON: The department proposes to amend this rule to provide greater consistency between states for the interstate movement of sporting bovine while still adequately addressing the risk of tuberculosis in this sporting class of livestock.

32.3.220 SEMEN SHIPPED INTO MONTANA (1) ~~All s~~ Sires shall ~~must~~ not ~~have been~~ be used for natural service while ~~the~~ semen is being collected and certified for artificial insemination.

(2) Bovine semen ~~may not be~~ transported into Montana for the purpose of artificial insemination ~~and bovine semen may not be used for artificial insemination unless it~~ must originate~~s~~ from bulls that at the time of collection ~~whose health status conforms to the requirements that follow~~:

(a) ~~All bulls must~~ meet all of Montana's import requirements; or

(b) ~~All bulls must be~~ are permanent residents of an approved certified semen services (CSS) facility, having completed all CSS required testing. ~~the bull stud, and a licensed accredited veterinarian must certify that the testing is being done. A permanent resident is a bull that has passed all testing requirements and is qualified to remain in the stud as long as it meets the biannual requirements:~~

~~(i) All bulls must be interpreted to be free of Tuberculosis by the state disease regulatory officials on the basis of an official Tuberculosis test within 60 days prior to the first collection of semen destined for use in artificial insemination, and annually thereafter.~~

~~(ii) All bulls must be interpreted to be free of Brucellosis by the state regulatory officials on the basis of official test conducted by a state federal laboratory within 60 days prior to the first collection of semen destined for use in artificial insemination, and be interpreted to be Brucellosis free by the state regulatory officials on the basis of an official test as recognized by the Code of Federal Regulations each six months thereafter. Bulls permanently residing at a bull stud in a class free area may (at the state veterinarian's discretion) be exempt from the Brucellosis testing.~~

~~(iii) All bulls must pass three negative examinations for three consecutive weeks for Trichomonas fetus following the last natural service performed and within 60 days prior to the first collection of semen destined for artificial insemination, and one negative examination each six months thereafter. The inpouch method (or equivalent method as determined by the state veterinarian) must have been used. If the inpouch or equivalent was not used then six negative tests for six consecutive weeks are required.~~

~~(iv) All bulls must pass two approved negative blood tests 30 days apart, or the titre shall be shown to be stabilized if present, for Leptospirosis within 60 days prior to the first collection of semen destined for use in artificial insemination, and each six months thereafter.~~

~~(v) All bulls must be negative to Bovine Virus Diarrhea (BVD) using culture of the blood serum, or semen. If the culture is positive then isolate and reculture in 21 days. If the culture is negative, reculture in 14 days; if still negative the bull may be returned to the bull stud and semen may be collected 30 days later.~~

~~(vi) Bulls must not be showing evidence of infection with Paratuberculosis, Bluetongue disease, or Bovine Leukosis.~~

(3) Bovine semen destined for use in artificial insemination in Montana must be treated using ~~a recognized procedure and recognized chemotherapeutic agents to prevent transmission of Campylobacter fetus and other pathogenic microorganisms. Those recognized at this time are:~~

~~(a) semen treated to achieve a final concentration of 50 micrograms tylosin, 250 micrograms gentamicin, and 150/300 micrograms linco spectrin per milliliter of frozen semen as described by Lorton and Shin to the National Association of Animal Breeders (NAAB), 1986, (Lorton, 1986; Shin, 1986; 11 NAAB Technical Conference, 1986), or~~

~~(b) semen treated in accordance with the~~ procedures and chemotherapeutic agents recognized as acceptable by the United States Animal Health Association and the National Association of Animal Breeders.

~~(4) All tests must be conducted according to specifications adopted by the United States Animal Health Association and approved by the United States Department of Agriculture, Agricultural Research Service and the official order dated the 26th day of September 1990 by the Board of Livestock recognizing certified semen service (CSS) health standards as equal to Montana requirements will be continued.~~

~~(5) All tests must be reported on the uniform certificate recommended by the United States Animal Health Association on page 170, 1962 proceedings of the United States Animal Health Association, or other form subsequently approved by the United States Animal Health Association, in applying for the annual permit to transport bovine semen into Montana to be used in artificial insemination.~~

(6) through (8) remain the same but are renumbered (4) through (6).

AUTH: 81-2-102, ~~81-20-101~~, MCA
IMP: 81-2-102, 81-2-403, 81-2-703, 81-2-704, 81-2-706, ~~81-20-101~~, MCA

REASON: The department proposes to amend this rule to remove language that specifies Certified Semen Services (CSS) testing requirements. This language is unnecessary when animals are permanent residents of a CSS facility. The department also proposes to remove language that specifies chemotherapeutic agents to be used for semen in place of more broad requirements that procedures used be approved by both the United States Animal Health Association (USAHA) and the National Association of Breeders. The department also proposes to remove a reference to an outdated official order and to the 1962 proceedings of the USAHA.

Citation 81-20-101, MCA, is being stricken as it applies to poultry and eggs rather than semen. Citations 81-2-403, 81-2-703, 81-2-704, and 81-2-706, MCA, are being added to further implement this rule regarding documentation, authorization, and notification for shipping semen into the state of Montana.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 21, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, and 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 they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. January 21, 2016.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 26, based upon any person potentially coming in contact with feral swine in the state of Montana, 67 sporting bovine producers, 33 alternative livestock producers, and a combined 142 semen collection facilities and private semen managers, and 12 pullorum authorized testing agent licensees.

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor of SB100 (NEW RULE I) was contacted by e-mail on November 27, 2015, and by regular USPS.

11. 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.

DEPARTMENT OF LIVESTOCK

BY: */s/ Martin Zaluski*
Martin Zaluski
Interim Executive Officer
Board of Livestock
Department of Livestock

BY: */s/ Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State, December 14, 2015.

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.23.301 pertaining to licensee assessments	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 4, 2016, the Board of Milk Control (board) and the Department of Livestock (department) propose to amend the above-stated rule.

2. The Department of Livestock 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 Department of Livestock no later than 5:00 p.m. on January 13, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The board proposes to amend the following rule as follows, new matter underlined, deleted matter interlined:

32.23.301 LICENSEE ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act are levied upon the Milk Control Act licensees of this department.

(a) A fee of ~~$0.08~~ $0.07 per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

~~(b) A fee of $0.08 per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.~~

~~(c)~~(b) A fee of ~~$0.04~~ $0.035 per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Milk Control Act sold by a producer.

~~(d)~~(c) A fee of ~~$0.04~~ $0.035 per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) and (3) remain the same.

AUTH: 81-1-102, 81-23-104, 81-23-202, MCA
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes to amend the above-stated rule:

- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2017;
- to establish a single assessment rate for distributors, consistent with 81-23-202(2)(c), MCA; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The 12.5% reduction in assessment rates potentially will affect approximately 132 businesses. The assessment is estimated to be reduced approximately $74,000.

Under past practice, the Milk Control Bureau excluded butter, cream cheese, and cheese from the assessment. The definition of "milk" in 81-23-101(1)(h), MCA, does not exclude these products. Beginning in Fiscal Year 2017, the Milk Control Bureau will no longer exclude these products from the assessment. The assessment for butter, cream cheese, and cheese will affect approximately 68 businesses. The assessment is estimated to be approximately $94,000.

The reduced assessment rate and the elimination of the assessment exclusion result in a cumulative assessment increase of approximately $20,000.

4. The department intends to adopt the proposed amendment effective July 1, 2016.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 21, 2016.

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 a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., January 21, 2016.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a

public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 14, based upon there being approximately 132 businesses licensed by the Milk Control Bureau that are currently operating.

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

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

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

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

/s/ Scott Mitchell
Scott Mitchell
Chair
Board of Milk Control

/s/ Martin Zaluski
Martin Zaluski
Executive Officer
Department of Livestock

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

Certified to the Secretary of State December 14, 2015.

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.24.506 and 32.24.511 pertaining to producer committee and pooling plan definitions	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

To: All Concerned Persons

1. On March 4, 2016, the Board of Milk Control (board) and the Department of Livestock propose to amend the above-stated rules.

2. The Department of Livestock 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 Department of Livestock no later than 5:00 p.m. on January 13, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The board proposes to amend the following rules as follows, new matter underlined, deleted matter interlined:

32.24.506 PRODUCER COMMITTEE (1) The producer committee has authority to approve all transfers of quota and to review all requests for hardship or equitable relief and has authority to control and direct the marketing of surplus milk as specified in ARM 32.24.523.

(2) The producer committee ~~shall~~ consists of at least five members, each of whom is a pool dairyman who produced pool milk during the month prior to the meeting. The producer committee must have an odd number of members ~~one eligible producer for each 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total of each pool plant's pool milk receipts, divided by the total August pool milk, rounded to the nearest 10%, and divided by .01~~.

(3) The Board of Milk Control appoints the members of the producer committee.

(a) Pool dairymen interested in serving on the producer committee must apply to the Board of Milk Control.

(b) The Board of Milk Control selects the producer committee members as follows:

(i) A committee member must be appointed from the pool dairymen delivering milk to each pool plant for each 20%, rounded, of the total pool-wide receipts of raw pool milk received by the pool plant from its reported group of pool dairymen in the prior month of June. The calculation is done by using the total of

each pool plant's prior June raw pool milk received from its group of pool dairymen, divided by the pool-wide total raw milk receipts in the prior month of June, rounded to the nearest 20% and divided by 20%.

(ii) A minimum of at least one committee representative will be appointed from the pool dairymen delivering to each pool plant.

(iii) If the number of pool dairymen applying to represent the pool dairymen delivering to a pool plant is less than the calculated allotment of producer committee members representing pool dairymen delivering to that pool plant, or if no pool dairyman delivering to the pool plant applies to serve on the producer committee, the Board of Milk Control may appoint an applicant who delivers to a different pool plant.

(iv) If the calculated number of committee members is less than five or is an even number, the Board of Milk Control may select an appointee from the group of applicants without regard to the pool plant so that the committee has at least five members and has an odd number of members.

(c) When a vacancy occurs, the Board of Milk Control will appoint a committee member to complete the term of the departing committee member.

(d) The producer committee members will serve terms of two calendar years beginning January 1, 2016, and every two years thereafter.

~~(3)~~ (4) A representative of the Milk Control Bureau ~~The administrator or his designated representative~~ will attend, participate, and maintain a record of each producer committee meeting. The representative of the Milk Control Bureau ~~administrator or his designated representative~~ will not have a vote in any decision of the producer committee.

~~(4)~~ (5) The Milk Control Bureau ~~producer committee~~ will notify the manager of ~~invite~~ each pool plant ~~manager~~ or ~~his~~ a designated representative ~~to attend its~~ of scheduled meetings. No ~~pool plant~~ manager or designated representative will have a vote in any decision of the producer committee.

~~(5)~~ (6) Producer committee meetings will ~~not~~ be held ~~without at least ten days~~ after reasonable ~~written~~ notice has been given to each committee member, the Milk Control Bureau ~~administrator~~, and each ~~plant~~ manager of a pool plant or ~~their~~ the designated ~~representatives~~ representative.

~~(6) The producer committee members will serve terms of two years each, and have the option of serving additional two year terms. Vacancies on the committee will be filled in the same manner as the original appointment. Each committee member will be selected by all eligible pool producer representatives of each pooled plant.~~

(7) A majority ~~Seven voting members~~ of the producer committee ~~shall constitute~~ constitutes a quorum for the transaction of business. A majority vote of committee members present ~~shall be~~ is sufficient to make an official decision.

(8) Committee members will be compensated by the Milk Control Bureau in accordance with 2-15-124(7), MCA.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule:

- to provide for appointment of the producer committee by the Board of Milk Control and establish the process by which dairymen are appointed to the committee;
- to improve the process of attaining quorum;
- to improve the process of identifying and selecting committee members willing to participate on the producer committee;
- to achieve cost savings through the reduction of the size of the producer committee;
- to specify the length of committee member terms and beginning of terms;
- to provide for reasonable notices of meetings;
- to set the compensation for members of the producer committee by rule; and
- to include all authorities of the producer committee in the rule establishing the committee.

Based on June 2015 production, there are three pool plants. The proposed amendments could result in a producer committee with a membership of seven with the following appointments: three committee members who are Darigold – Bozeman dairymen; one committee member who is a Meadow Gold – Billings dairyman; two committee members who are Meadow Gold – Great Falls dairymen; and one committee member appointed by the Board of Milk Control to maintain an odd number of members. If there are insufficient applications from pool plant dairymen, at-large appointments may be made by the board.

The proposed amendments are estimated to save approximately $800 per in-person meeting and approximately $12 per conference call meeting.

32.24.511 POOLING PLAN DEFINITIONS The following definitions apply in subchapter 5 unless the context otherwise requires:

(1) through (4) remain the same.

(5) "Pool dairyman" means any dairy farmer~~, except a producer handler~~ who produces milk~~,~~ within the state of Montana~~,~~ which is marketed to or through a pool handler.

(6) and (7) remain the same.

(8) "Pool plant" means any milk plant located within the pool area, excluding a milk plant operated by a producer handler, which receives milk from a pool dairyman during the month and which is ~~approved~~ licensed by the Montana Department of Livestock and operated by a distributor licensed by the Milk Control Bureau ~~for the receipt and disposition of grade 'A' milk at which grade 'A' milk is received and/or processed during the month~~.

(9) remains the same.

(10) "Producer handler" means any person who operates a dairy farm, and produces milk on such farm, which milk is received and processed ~~and/or packaged~~ in a milk plant operated by such person, and disposed of to retail or wholesale outlets in the pool area during the month, provided that the producer handler receives no dairy products in fluid form during the month from another person,

except for milk ~~and/or fluid milk products~~ of 2500 pounds, or 5% of the producer handler's class I milk dispositions, whichever is less.

(11) through (13) remain the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The board proposes to amend the above-stated rule:

- to eliminate the exclusion of a producer handler from the definition of pool dairyman since a producer handler operates a dairy farm that may market a portion of milk production to a pool handler.
- to exclude a milk plant operated by producer handler from the definition of pool plant, since a producer handler cannot receive (purchase) more than the volume of milk in (10). Milk produced and utilized by a producer handler is not "received from another person." A person who receives (purchases) more milk than allowed in (10) is a pool plant.
- to clarify the definitions of pool dairyman and pool plant for rules established for the producer committee in ARM Title 32, chapter 24, subchapter 5.

The financial impact of the proposed amendments on pool dairymen, pool handlers, pool plants, and the Milk Control Bureau will be insignificant. The change in definition of pool plant will result in the Montana Correctional Enterprises milk plant not being included in pooling calculations as a pool handler. In the period from November 2014 through October 2015, the Montana Correctional Enterprises milk plant paid an average of $1,341 per month more into the pool settlement reserve than it received from the pool settlement reserve. Removing Montana Correctional Enterprises from being classified as a pool plant will reduce workload for the Milk Control Bureau in its pooling and audit procedures, but the workload will not be reduced enough to allow operational cost savings to be realized for the bureau through reductions in personnel costs.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 21, 2016.

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 a written request for a hearing and submit this request along with any written comments they have to the same address as in 4 above. The written request for hearing must be received no later than 5:00 p.m., January 21, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or

from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7, based upon there being 61 active pool dairymen licensed by the Milk Control Bureau.

7. The board and Department of Livestock maintain lists 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.

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.

/s/ Scott Mitchell
Scott Mitchell
Chair
Board of Milk Control

/s/ Martin Zaluski
Martin Zaluski
Executive Officer
Department of Livestock

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

Certified to the Secretary of State December 14, 2015.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I regarding the Rye Creek Stream Depletion Zone	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Concerned Persons

1. On January 21, 2016, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 19, 2016, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-0581, fax (406) 444-0533, e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I RYE CREEK STREAM DEPLETION ZONE (1) There is designated a Rye Creek Stream Depletion Zone. Rye Creek Stream Depletion Zone means an area of approximately 378.66 acres or 0.59 square miles located approximately ten miles southeast of the town of Darby, Montana in Ravalli County and is generally described as follows:

(a) Beginning approximately 0.13 miles west of the intersection of Dugout Gulch Road and Rye Creek Road in the SE1/4 of Section 26, Township 3N, Range 20W, the stream depletion zone extends 700 feet on either side of Rye Creek eastward to the intersection of Rye Creek and North Fork Rye Creek roads. From the intersection of North Fork Rye Creek and Rye Creek roads the stream depletion zone extends 700 feet on either side of Rye Creek approximately 0.63 miles east on Rye Creek Road, terminating on United States Forest Service property in the SE1/4 of Section 25, Township 3N, Range 20W. Extending 700 feet on either side of the North Fork of Rye Creek the stream depletion zone extends approximately 1.21 miles north on North Fork Rye Creek Road from its intersection with Rye Creek Road to its terminus on United States Forest Service property in the S1/2 of Section 24, Township 3N, Range 20W. The legal land descriptions are in the following table:

Quarter Section	Section	Township	Range
SESE	26	3 North	20 West
S1/2	25	3 North	20 West
NW	25	3 North	20 West
S1/2	24	3 North	20 West

(2) A map of the area within the Rye Creek Stream Depletion Zone described in (1) is posted at http://dnrc.mt.gov/divisions/water/water-rights/stream-depletion-zones/rye-creek.

(3) Within the Rye Creek Stream Depletion Zone, ground water appropriations that are exempt from permitting are subject to statutory restrictions and provisions set forth in 85-2-306 and 85-2-381, MCA.

AUTH: 85-2-380, MCA
IMP: 85-2-380, MCA

REASONABLE NECESSITY: 85-2-380, MCA, authorizes the department to designate stream depletion zones. A petition to designate a stream depletion zone was filed with the department by Randy Overton of Water Source LLC on May 15, 2015, on behalf of Jeffrey and Nancy Ince, Leonard Skarvan, and J.H. Tenzer. The petition was signed by water right owners who have water rights consisting of 15 percent of the flow rate of the surface water rights in Rye Creek in the area estimated to be affected. A hydrogeologic assessment was completed by a hydrogeologist, and the zone is located in a basin closed pursuant to 85-2-344, MCA. All the requirements of 85-2-380(1) and (2), MCA, were met by the petition requiring the department to initiate rulemaking.

A determination to initiate rulemaking proceedings was issued by the department on October 2, 2015. The proposed rule establishes the Rye Creek Stream Depletion Zone consistent with the requirements set forth in 85-2-102(23) and 85-2-380, MCA. Within the Rye Creek Stream Depletion Zone, ground water appropriations that are exempt from permitting are subject to statutory restrictions and provisions set forth in 85-2-306 and 85-2-381, MCA.

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on January 21, 2016.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this notice of public hearing on proposed adoption 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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. 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 Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ John E. Tubbs
John Tubbs
Director
Natural Resources and Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State on December 14, 2015

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

In the matter of the amendment of ARM 37.85.105 and 37.86.1807 pertaining to Effective Dates of Montana Medicaid Provider Fee Schedules	)))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015 the Department of Public Health and Human Services published MAR Notice No. 37-728 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1826 of the 2015 Montana Administrative Register, Issue Number 20.

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 December 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The Department of Public Health and Human Services (department) is updating the fiscal impact to the notice of proposed amendment based on the Centers for Medicare and Medicaid Services' publication of the Medicare DMEPOS calendar year 2016 fee schedule on November 23, 2015. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment may directly impact small businesses. Due to the late release of the Medicare fee schedule and the small business impact determination the department is extending the comment period for the proposed rule amendments to ensure provider and public comment are taken into consideration.

4. ARM 37.86.1807 remains as proposed.

5. ARM 37.85.105 remains as proposed, but with the following changes to the original proposal, new matter underlined, deleted matter interlined:

<u>37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES</u> (1) and (2) remain as proposed.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) through (d) remain as proposed.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~July 1, 2015~~ January 1, 2016.

(f) through (k) remain as proposed.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, January 2016, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective January 1, 2016. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2016~~ February 1, 2016.

(m) through (o) remain as proposed.

(p) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2016~~ July 1, 2015.

(q) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-402, MCA

6. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

ARM 37.85.105

The department is proposing to change the fee schedule effective date in (3)(c), (3)(d), (3)(e) ~~(3)(l)~~, ~~(3)(p)~~, and (3)(s) from July 1, 2015 to January 1, 2016, and the effective date for (3)(l), pertaining to items provided for in ARM 37.86.1807, from January 1, 2016 to February 1, 2016 to reflect the current procedure codes and reimbursement amount for codes that are reimbursed with a resource-based relative value scale (RBRVS) Medicare methodology. Section (3)(p) will remain with the July 1, 2015 fee schedule date, because the department determined there were no substantive changes to the ambulance fee schedule. These amendments will permit the department to update fee schedules to reflect the most current Medicare fees, additions, deletions, or changes to procedure codes. The department is proposing to change the fee schedule effective date in (3)(d) and (3)(e) from July 1, 2015 to January 1, 2016 to reflect the addition of two new dental preventive procedure codes for adults and changes to the Dental and Denturist Program Provider Manual. The department decided to add the dental procedure codes to the fee schedule based on recommendations from the Montana Dental Association that these procedure codes are evidence-based in the prevention of dental caries. The updated Dental and Denturist Program Provider Manual, found at https://medicaidprovider.mt.gov/18, incorporates the changes from MAR Notice No. 37-732.

The effective date for the fee schedule referenced in (3)(l) is being changed from January 1, 2016 to February 1, 2016 because the changes to the fee schedule

include a reduction in fees for some items and fee reductions cannot be applied retroactively.

7. The fiscal and small business impact statement is new text being added to the proposal notice as follows:

Fiscal and Small Business Impact

The department estimates the adoption of the calendar year 2016 Medicare durable medical equipment fee schedule and the department established incontinent supply fee schedule will affect 301 durable medical equipment providers and 134,318 eligible members.

Adoption of the fee schedules will result in an estimated general fund savings of $571,181 for the 2016 Medicare fee schedule and $294,065 for incontinence supply fee schedule change.

Adoption of the Calendar Year 2016 Medicare DMEPOS Fee Schedules will have a direct impact on businesses that dispense prescribed durable medical equipment; the department expects the reimbursement to these facilities to be reduced by an estimated $1,648,907 in total funds.

For businesses that dispense prescribed incontinence supplies, the department expects the reimbursement to these facilities to be reduced by an estimated $848,917 in total funds.

8. The department intends to adopt these rules as effective on January 1, 2016.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

10. 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 4, 2016. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Shannon McDonald for
Susan Callaghan, 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 December 14, 2015.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.121 pertaining to miscellaneous fees charged by the Business Services Division	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 15, 2016, 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 public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on January 7, 2016, 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:

44.5.121 MISCELLANEOUS FEES (1) through (7) remain the same.

(8) Amendment of designation of registered agent for pesticide license	5.00
(9) Surety bond, cashier's check, or certificate of deposit	15.00
(10) Amendment of surety bond, cashier's check, or certificate of deposit	5.00

(8) and (9) remain the same, but are renumbered (11) and (12).

AUTH: 2-15-403, 2-15-405, 20-7-604, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, 82-1-104, MCA
IMP: ~~2-6-103,~~ 2-15-403, 2-15-405, 20-7-604, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, 82-1-104, MCA

REASON: The Secretary of State is required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law." Each fee "must be commensurate with the overall costs of the office," "must reasonably reflect the prevailing rates charged in the public and private sectors for similar services," and "fees collected by the secretary of state must be deposited to an account in the enterprise fund type to the credit of the secretary of state." An "enterprise fund" structure means the Secretary of State operates as a proprietary fund agency. It 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. See Montana Operations Manual, 302 Government Accounting Overview. The amendment in (9) is to set a filing fee for textbook surety bonds and security in the form of surety bonds, cashier's checks, or certificates of deposit for geophysical exploration. The amendments in (8) and (10) are to set filing fees for amendments to the business filings in (9) and for the amendment to the designation of registered agent for pesticide license as set out in existing (7). The authority and implementation statutes were reviewed and updated.

4. Pursuant to 2-4-302, MCA, the Secretary of State has determined the cumulative dollar amount for all persons of the proposed fees in (8) and (10) is $40 and the number of persons affected is 8 based on the historical annual filing data for amendments to designations of registered agents for pesticide licenses, surety bonds, cashier's checks, and certificates of deposit.

5. Pursuant to 2-4-302, MCA, the Secretary of State has determined the cumulative dollar amount for all persons of the proposed fee in (9) is $600 and the number of persons affected is 40 based on the historical annual filing data for surety bonds, cashier's checks, and certificates of deposit.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to 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., January 21, 2016.

7. 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.

8. 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.

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 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 14th day of December, 2015.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XI, pertaining to a Deferred Retirement Option Plan (DROP) for members of the Highway Patrol Officers' Retirement System	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 29, 2015, the Public Employees' Retirement Board published MAR Notice No. 2-43-535 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1778 of the 2015 Montana Administrative Register, Issue Number 20.

2. The Public Employees' Retirement Board has adopted the following rules as proposed: New Rule I (2.43.4006), II (2.43.4009), III (2.43.4010), IV (2.43.4013), VI (2.43.4016), VII (2.43.4017), VIII (2.43.4018), X (2.43.4023) and XI (2.43.4024).

3. The Public Employees' Retirement Board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE V (2.43.4015) ESTIMATED MONTHLY DROP ACCRUAL

(1) Once a member files an application to participate in the DROP and the participant's DROP period begins, ~~the participant may be paid~~ estimated monthly DROP accruals will be paid into the participant's DROP account.

(2) and (3) remain as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1005, MCA

NEW RULE IX (2.43.4020) EMPLOYMENT AFTER THE DROP PERIOD

(1) remains as proposed.

(2) The participant's monthly service retirement benefit payments will begin the month following the month in which the participant terminates post-DROP HPORS-covered employment.

(3) remains as proposed.

AUTH: 19-2-403, 19-6-1003, MCA
IMP: 19-6-1003, 19-6-1007, MCA

4. The Public Employees' Retirement Board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: An employee of the Legislative Services Division noted that it may be helpful to clarify under NEW RULE V that the estimated accruals may be deposited to the participant's DROP account, not directly to the participant.

RESPONSE 1: The board agrees and has amended NEW RULE V to address this concern.

COMMENT 2: An employee of the Legislative Services Division noted that the term "post-DROP employment" in NEW RULE IX could be misinterpreted and suggested it be clarified using the term "participant terminates HPORS employment."

RESPONSE 2: The board agrees with this comment, in general, and has amended NEW RULE IX to address the concern.

COMMENT 3: A commenter suggested the board adopt a rule with a contingent voidness clause because the HPORS DROP has not yet been approved by the Internal Revenue Service (IRS). The commenter suggested that this rule would put HPORS members on notice that if they do enter the HPORS DROP there is some risk that the DROP might not be approved by the IRS and in such event, DROP participants may be required to pay money back to the retirement system if they have ended their DROP period and been paid their DROP benefit.

RESPONSE 3: The board is satisfied that the contingent voidness clause listed in Section 10, Ch. 258, L. 2015 and contained in the most recent codification of the 2015 Montana Code Annotated is sufficient to put HPORS members on notice that there is some risk that an unfavorable ruling from the IRS is possible. Rules are not supposed to duplicate statute. The board will ensure that HPORS members are fully advised of the issue at the time they apply to participate in the DROP.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
Rule Reviewer

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State December 14, 2015

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 ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 15, 2015, the Department of Administration published MAR Notice No. 2-59-522 pertaining to the proposed adoption and amendment of the above-stated rules at page 1547 of the 2015 Montana Administrative Register, Issue Number 19.

2. No comments were received.

3. The department has adopted NEW RULE I (ARM 2.59.319) and NEW RULE II (ARM 2.59.320) exactly as proposed.

4. The department has amended ARM 2.59.303, 2.59.308, 2.59.315, and 2.59.318 exactly as proposed.

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 December 14, 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 ADOPTION

TO: All Concerned Persons

1. On October 15, 2015, the Department of Administration published MAR Notice No. 2-59-533 pertaining to the proposed adoption of the above-stated rules at page 1556 of the 2015 Montana Administrative Register, Issue Number 19.

2. The department has adopted the following rules as proposed: New Rule I (ARM 2.59.415), New Rule III (ARM 2.59.417), New Rule IV (ARM 2.59.418), New Rule V (ARM 2.59.419), New Rule VI (ARM 2.59.420), and New Rule VII (ARM 2.59.421).

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

NEW RULE II (ARM 2.59.416) NET WORTH DEFINITION – CALCULATION – DETERMINATION (1) For purposes of ARM 2.59.417 and 2.59.418, "net worth" means the sum of regular reserves~~,~~ and 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~~ ARM 2.59.417 and 2.59.418 using quarterly net worth for the period in which the security is purchased.

(3) A security that complies with ARM 2.59.417 and 2.59.418 at the time of purchase is not in violation of ARM 2.59.417 and 2.59.18 at a later date due to a subsequent decline in net worth.

AUTH: 32-3-701, MCA
IMP: 32-3-701, 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 Montana Credit Union Network (MCUN) is a trade association made up of the eight state-chartered credit unions in Montana. MCUN commented on the definition of "net worth" in New Rule II. MCUN commented that "net worth" is

a common industry term and the definition proposed by the department is different from the commonly understood definition used by the National Credit Union Administration (NCUA) in its regulations. MCUN commented that this could cause confusion and be the basis for disagreements.

RESPONSE 1: The department agrees that the definition of "net worth" proposed in New Rule II is different from the NCUA definition. The department sought to give credit unions more latitude to make investments using a broader definition of "net worth" than the NCUA uses. But the department agrees with MCUN that credit unions already calculate "net worth" for NCUA purposes and it is burdensome and unnecessary to require credit unions to do two different calculations of "net worth." Therefore, the department has amended New Rule II to be consistent with the NCUA definition of "net worth."

COMMENT 2: MCUN commented that its member credit unions would like to see an expansion of the investment rules to allow revenue bonds.

RESPONSE 2: The department agrees that a new investment rule is necessary to address revenue bonds. The department will propose a new rule on this topic in a separate rulemaking so as not to delay the effective date of these rules.

In addition, the department changed "these rules" in ARM 2.59.416(2) to "ARM 2.59.417 and 2.59.418" to clarify the reference.

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 December 14, 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 AMENDMENT

TO: All Concerned Persons

1. On October 15, 2015, the Department of Administration published MAR Notice No. 2-59-534 pertaining to the proposed amendment of the above-stated rules at page 1563 of the 2015 Montana Administrative Register, Issue Number 19.

2. No comments were received.

3. The department has amended ARM 2.59.1710, 2.59.1724, and 2.59.1743 exactly as proposed.

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 December 14, 2015.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.4907 pertaining to Patient-Centered Medical Homes	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Commissioner of Securities and Insurance, Montana State Auditor, published MAR Notice No. 6-220 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1796 of the 2015 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 6.6.4907, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

6.6.4907 PATIENT-CENTERED MEDICAL HOME REPORTING--SPECIFIC QUALITY MEASURES REQUIRED (1) A qualified or provisionally qualified patient-centered medical home (PCMH) shall report annually to the commissioner on its performance related to certain standards and health care quality measures, as prescribed by the commissioner. A PCMH health care provider that provides care to adults only, or both children and adults, shall choose at least three of the five quality measures listed in (3)(a) through (e) to report to the commissioner. A PCMH shall choose four out of five measures for the 2016 reporting year, for the report due in March 2017 and all subsequent years.

(2) A PCMH health care provider that provides care only to children, referred to as a pediatric practice, shall choose at least the child immunization performance measure in (3)(c). Reporting on depression screening in (3)(e) is optional for pediatric practices until the 2017 reporting year, for the report due in March 2018. At that time and for subsequent years, all pediatric clinics shall report on both the depression and immunization measures.

(3) through (5) remain as proposed.

(6) Annually, the data on standards and quality measures are due to the commissioner on March 31 for the previous calendar year. ~~For the initial report, data must be submitted to the commissioner for the reporting period January 1, 2014 through December 31, 2014, by March 31, 2015.~~

(7) through (10) remain as proposed.

3. The department has thoroughly considered the comments and testimony received. The following comments were received by the December 2, 2015, deadline:

COMMENT NO. 1: One commenter wrote to express their support of the rule and consideration shown to primary care practices with regard to reducing data reporting burdens.

RESPONSE NO. 1: The department appreciates the support and acknowledgment of its efforts to work in a collaborative way with the stakeholder council and other interested parties.

COMMENT NO. 2: The department received comments from members of its staff indicating some minor edits that were needed to clarify the intent of the proposed language and to eliminate outdated instructions.

RESPONSE NO. 2: A clarification was made to indicate that the "4 out of 5" measures requirement would continue in the years following 2017. A similar change was made for pediatric clinics. Outdated instructions for 2015 were removed in (6).

/s/ Nick Mazanec	/s/ Christina L. Goe
Nick Mazanec	Christina L. Goe
Rule Reviewer	General Counsel

Certified to the Secretary of State December 14, 2015.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 32.28.101 through 32.28.2213 pertaining to the Board of Horse Racing	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Livestock transfers the above-stated rules to the Department of Commerce, pursuant to Title 23, chapter 4, part 1, MCA.

2. This transfer is required because the Legislature transferred the administrative function and responsibilities of the program from the Department of Livestock to the Department of Commerce in Senate Bill 213, Ch. 23, L. 2015.

3. The transferred rules are assigned the following numbers under the Department of Commerce:

OLD	NEW	
32.28.101	8.22.2301	BOARD ORGANIZATION
32.28.201	8.22.2401	PROCEDURAL RULES
32.28.202	8.22.2402	DEFINITIONS
32.28.203	8.22.2403	INSTITUTION OF PROCEEDINGS BY PETITION
32.28.204	8.22.2404	INSTITUTION OF PROCEEDINGS BY NOTICE
32.28.205	8.22.2405	INTERVENTION
32.28.206	8.22.2406	WHO MAY APPEAR
32.28.207	8.22.2407	STAY OF SUMMARY IMPOSITION OF PENALTY
32.28.208	8.22.2408	HEARING EXAMINERS
32.28.301	8.22.2501	INTRODUCTION
32.28.302	8.22.2502	BOARD OF STEWARDS
32.28.401	8.22.2601	POWERS AND DUTIES OF EXECUTIVE SECRETARY
32.28.501	8.22.2701	LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS
32.28.502	8.22.2702	ANNUAL LICENSE FEES
32.28.503	8.22.2703	OWNER AND BREEDER BONUSES
32.28.504	8.22.2704	JOCKEY INCENTIVE AWARD PROGRAM
32.28.505	8.22.2705	PURSE DISBURSEMENT FORMULA
32.28.601	8.22.2801	GENERAL PROVISIONS
32.28.602	8.22.2802	CLERK OF SCALES
32.28.603	8.22.2803	CUSTODIAN OF JOCKEY ROOM

32.28.604	8.22.2804	IDENTIFIER
32.28.605	8.22.2805	PADDOCK JUDGE
32.28.606	8.22.2806	RACING SECRETARY
32.28.607	8.22.2807	SECURITY DIRECTOR
32.28.608	8.22.2808	STARTER
32.28.609	8.22.2809	STEWARDS
32.28.610	8.22.2810	TIMERS
32.28.611	8.22.2811	VETERINARIAN: OFFICIAL
32.28.612	8.22.2812	DIRECTOR OF RACING
32.28.613	8.22.2813	ASSISTANT STARTER
32.28.614	8.22.2814	VALET
32.28.701	8.22.2901	GENERAL PROVISIONS
32.28.702	8.22.2902	AGENTS FOR JOCKEYS
32.28.703	8.22.2903	EXERCISE PERSONS
32.28.704	8.22.2904	GROOMS
32.28.705	8.22.2905	JOCKEYS
32.28.706	8.22.2906	JOCKEYS - APPRENTICE
32.28.707	8.22.2907	OWNERS
32.28.708	8.22.2908	PLATERS (FARRIERS, SHOERS, BLACKSMITHS)
32.28.709	8.22.2909	PONY PERSONS
32.28.710	8.22.2910	TRAINERS
32.28.711	8.22.2911	VETERINARIANS
32.28.712	8.22.2912	PAST PERFORMANCE LINES AND CHARTING
32.28.713	8.22.2913	PHOTO COMPANIES
32.28.714	8.22.2914	TOTE COMPANIES
32.28.801	8.22.3001	GENERAL REQUIREMENTS
32.28.802	8.22.3002	WEIGHT-PENALTIES AND ALLOWANCES
32.28.803	8.22.3003	DECLARATIONS AND SCRATCHES
32.28.804	8.22.3004	CLAIMING
32.28.805	8.22.3005	WALKING OVER
32.28.806	8.22.3006	PADDOCK TO POST
32.28.807	8.22.3007	POST TO FINISH
32.28.808	8.22.3008	OBJECTIONS - PROTESTS
32.28.809	8.22.3009	DEAD HEATS
32.28.1101	8.22.3101	DIRECTOR OF SIMULCAST NETWORK
32.28.1102	8.22.3102	DIRECTOR OF SIMULCAST FACILITY
32.28.1103	8.22.3103	GENERAL PROVISIONS
32.28.1104	8.22.3104	PORTION OF EXOTIC WAGERING FOR PURSES
32.28.1401	8.22.3201	GENERAL RULES
32.28.1402	8.22.3202	PERMISSIBLE MEDICATION
32.28.1501	8.22.3301	GENERAL PROVISIONS
32.28.1502	8.22.3302	DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING

32.28.1503	8.22.3303	ALCOHOL AND DRUG TESTING
32.28.1601	8.22.3401	GENERAL RULES
32.28.1602	8.22.3402	DUTIES OF THE LICENSEE
32.28.1603	8.22.3403	DUTIES OF THE PARIMUTUEL MANAGER
32.28.1604	8.22.3404	IMPROPER OPERATION
32.28.1605	8.22.3405	PROGRAMS
32.28.1606	8.22.3406	TYPES OF BETS
32.28.1607	8.22.3407	EQUIPMENT AND OPERATION
32.28.1608	8.22.3408	THE MUTUEL SYSTEM
32.28.1609	8.22.3409	POST TIME
32.28.1610	8.22.3410	CLOSING OF BETTING
32.28.1611	8.22.3411	BREAKAGE, MINUS POOLS AND COMMISSIONS
32.28.1612	8.22.3412	DISTRIBUTION OF POOLS
32.28.1613	8.22.3413	DEAD HEATS
32.28.1614	8.22.3414	ENTRY OR MUTUEL FIELD
32.28.1615	8.22.3415	DEAD HEATS INVOLVING ENTRY OR MUTUEL FIELD
32.28.1616	8.22.3416	DAILY DOUBLE FEATURE
32.28.1617	8.22.3417	QUINELLA FEATURE
32.28.1618	8.22.3418	TWIN QUIN FEATURE
32.28.1619	8.22.3419	EXACTA BETTING
32.28.1620	8.22.3420	REFUNDS
32.28.1621	8.22.3421	WITHHOLDING TAX
32.28.1622	8.22.3422	DEFINITION OF EXOTIC FORMS OF WAGERING
Subchapter 17	Subchapter 35	RESERVED
32.28.1801	8.22.3601	TRIFECTA
32.28.1802	8.22.3602	REQUIREMENTS OF LICENSEE
32.28.1803	8.22.3603	POOL CALCULATIONS
32.28.1804	8.22.3604	TWIN TRIFECTA
32.28.1805	8.22.3605	PICK (N) WAGERING
32.28.1806	8.22.3606	SUPERFECTA SWEEPSTAKES
32.28.1807	8.22.3607	TRI-SUPERFECTA WAGERING
32.28.1808	8.22.3608	SUPERFECTA
32.28.1809	8.22.3609	PICK THREE POOLS
32.28.1901	8.22.3701	MATCH BRONC AND WILD HORSE RIDE DEFINITIONS
32.28.1902	8.22.3702	DRAWING STOCK FOR ENTRIES
32.28.1903	8.22.3703	PROGRAMS FOR MATCH BRONC RIDES
32.28.1904	8.22.3704	MATCH BRONC RIDE OFFICIALS
32.28.1905	8.22.3705	EQUIPMENT
32.28.1906	8.22.3706	CONDUCT OF MATCH BRONC RIDES
32.28.1907	8.22.3707	HUMANE TREATMENT OF RODEO ANIMALS
32.28.2001	8.22.3801	ADVANCE DEPOSIT WAGERING

		DEFINITIONS
32.28.2002	8.22.3802	REQUIREMENTS TO CONDUCT ADVANCE DEPOSIT ACCOUNT WAGERING
32.28.2003	8.22.3803	RESERVED
38.28.2004	8.22.3804	RESERVED
32.28.2005	8.22.3805	ADVANCE DEPOSIT ACCOUNT WAGERING HUB OPERATOR APPLICATION AND LICENSE REQUIREMENTS
32.28.2006	8.22.3806	RESERVED
32.28.2007	8.22.3807	ADVANCE DEPOSIT ACCOUNT WAGERING FEES
32.28.2008	8.22.3808	ESTABLISHMENT OF AN ADVANCE DEPOSIT ACCOUNT
32.28.2009	8.22.3809	OPERATION OF AN ADVANCE DEPOSIT ACCOUNT
32.28.2010	8.22.3810	RESERVED
32.28.2011	8.22.3811	DISTRIBUTION OF SOURCE MARKET FEE FOR ADVANCE DEPOSIT ACCOUNT WAGERING
32.28.2012	8.22.3812	ENFORCEMENT AND PENALTIES FOR ADVANCE DEPOSIT ACCOUNT WAGERING STATUTE OR RULE VIOLATIONS
32.28.2201	8.22.3901	DEFINITIONS
32.28.2202	8.22.3902	LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON FANTASY SPORTS - FEES
32.28.2203	8.22.3903	FANTASY SPORTS PARIMUTUEL NETWORK DUTIES – LICENSE REQUIREMENTS
32.28.2204	8.22.3904	PARIMUTUEL NETWORK DIRECTOR – LICENSE REQUIREMENTS
32.28.2205	8.22.3905	FANTASY SPORTS PARIMUTUEL HUB
32.28.2206	8.22.3906	PARIMUTUEL FACILITY – LICENSE REQUIREMENTS
32.28.2207	8.22.3907	FANTASY SPORTS COORDINATOR
32.28.2208	8.22.3908	GENERAL CONDUCT OF FANTASY SPORTS PARIMUTUEL WAGERING
32.28.2209	8.22.3909	FANTASY SPORTS PARIMUTUEL OPERATIONS
32.28.2210	8.22.3910	THE PARIMUTUEL SYSTEM
32.28.2211	8.22.3911	IMPROPER OPERATION
32.28.2212	8.22.3912	REVIEW AND AUDIT OF RECORDS - REPORTING REQUIREMENTS - ENFORCEMENT

32.28.2213 8.22.3913 UNLAWFUL ACTIVITY

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State December 14, 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 AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 15, 2015, the Superintendent of Public Instruction published MAR Notice No. 10-16-124 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1578 of the 2015 Montana Administrative Register, Issue Number 19.

2. The Superintendent has amended ARM 10.16.3122, 10.16.3346, 10.16.3512, 10.16.3518, 10.16.3560, and 10.16.3661 as proposed.

3. ARM 10.16.3505 is not being amended at this time.

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

10.16.3508 SPECIAL EDUCATION DUE PROCESS HEARING (1) A parent as defined in 34 CFR 300.30 or public agency as defined in 34 CFR 300.33 may request an impartial due process hearing involving the ~~education or~~ educational placement, evaluation, possible identification of a student with disabilities, or the provision of FAPE to the child. 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) through (4) remain as proposed.

(5) All pleadings ~~and discovery~~ shall be filed with the OPI 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.

10.16.3509 APPOINTMENT OF IMPARTIAL HEARING OFFICER

(1) remains as proposed.

(a) promptly advise the ~~LEA and~~ public agency, parent, ~~legal guardian,~~ or ~~surrogate parent~~ other parties as identified in ARM 10.16.3508(1) of the request for due process hearing; and

(b) and (b)(i) remain as proposed.

(ii) Upon receiving a request for hearing, the Superintendent of Public Instruction shall mail to each party a list of the names of three 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~~.

(iii) Each party shall have three business days to rank the proposed hearing officers on the list in order of preference.

(iv) The Superintendent of Public Instruction shall make the appointment from the names ranked by the parties.

(2) remains as proposed.

(3) A party may submit one written request to the Superintendent of Public Instruction to remove an appointed impartial hearing officer for personal or professional conflict of interest or bias with a supporting affidavit showing the particular facts which constitute good cause for disqualifying the appointed hearing officer. Such a request may be made within ten days of the appointment of the hearing officer. The decision of the Superintendent is final and not subject to interlocutory appeal.

10.16.3510 SCHEDULING CONFERENCE AND NOTICE OF HEARING

(1) and (1)(a) remain as proposed.

(b) a schedule for discovery~~, including~~;

(c) a 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~~;

(d) the extent to which prehearing motions will be allowed, and if allowed, a schedule ensuring such motions do not unnecessarily delay the hearing;

(e) the extent to which post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order will be required;

(c) through (g) remain as proposed but are renumbered (f) through (j).

(2) and (3) remain as proposed.

(4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued at the hearing officer's discretion after stipulation by 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, 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, and the complexity of the case.

(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~~ public agency is located.

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) remains as proposed.

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

(2) through (5) remain as proposed.

10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER

(1) through (1)(b) remain as proposed.

(c) upon request of a party, as deemed ~~necessary~~ appropriate by the hearing officer, allow for the taking of testimony by video, audio, or 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) through (f) remain as proposed.

(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~~ Educational records of 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.

(4) remains as proposed.

10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) through (6) remain as proposed.

~~(7) A court of competent jurisdiction may award reasonable attorneys' fees to a prevailing party in accordance with 34 CFR 300.517.~~

(8) remains as proposed but is renumbered (7).

10.16.3660 EARLY ASSISTANCE PROGRAM (1) remains as proposed.

(2) A parent, guardian, adult student, LEA or other public agency as defined in 34 CFR 300.33, or their representative may request early assistance in any issue related to a student's free appropriate public education or any 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 10.15.3007, et seq. ~~The Early Assistance Program does not require formal, written application. 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.~~ Assistance may be requested by contacting

the Office of Public Instruction Legal Division Dispute Resolution Office.

(3) and (4) remain as proposed.

10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint alleging the LEA or public agency as defined in 34 CFR 300.33 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) and (2)(a) remain as proposed.

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

(c) through (e) remain as proposed.

(3) The complaint must be filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and a copy provided by the complainant to the LEA, ~~or other party if the complaint is filed by the LEA~~ or public agency serving the child. ~~The dispute resolution office may return the complaint for a more complete statement of the issue and contact the complainant orally or in writing to discuss the details of the complaint before acceptance and filing of the complaint.~~ An insufficient complaint not meeting the requirements in (2) may be returned to the complainant.

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

(a) through (10) remain as proposed.

(11) If within the timelines identified in the Final Report ~~one year of issuance of the final report,~~ the 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) through (c) remain as proposed.

(12) Prior to implementing the final report order, and prior to implementing sanctions against the LEA or public agency, and if the LEA or public agency alleges that the office 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.

(13) remains as proposed.

5. The Superintendent has repealed ARM 10.16.3514, 10.16.3515, 10.16.3517, and 10.16.3571 as proposed.

6. The Superintendent has thoroughly considered the comments and testimony received. A summary of the comments received and the Superintendent's response are as follows:

ARM 10.16.3122

COMMENT 1: Disability Rights Montana (DRM) objected to the amendment related to residency, but recognized that it would require legislation for statutory amendments to effect any real change to the residency requirements for enrollment of a special education student in a school district. Concern was raised about relying on the residency statute in 1-1-215, MCA, when parents are divorced and in cases where a child is a ward of the state.

COMMENT 2: Private attorney Andrée Larose expressed general agreement with DRM comments regarding residency, but added that there should be a review of school district obligations under state and federal law before amending the rule and stated that ARM 10.16.3341 also needed to be revised.

COMMENT 3: Other commenters opposed changes to this rule stating it would lead to situations where no school would accept responsibility for the child and force parents to sue districts to determine responsibility. One commenter stated the rule is working fine and that there is no data to support a change.

COMMENT 4: Michael O'Neil on behalf of AWARE, Inc. (AWARE) opposed the change to residency requirements stating this amendment would have negative consequences for a variety of students living outside of their district of residence and for those living in licensed group homes. He believes the change would create uncertainty, may cause discrimination against students with disabilities, and potentially create barriers to students receiving the services they need. He also asked many questions related to interpretation of the rule.

COMMENT 5: The advocacy group Parent's Let's Unite for Kids (PLUK) stated that restricting the residency definition would be a conflict with the districts' child find duty and the duties under the McKinney-Vento Homeless Act.

RESPONSE: Superintendent Juneau thanks all commenters for the comments. This amendment, however, is necessary to avoid conflicting with law, and does not alter the state and federal laws which address enrollment of special education students. Section 20-7-420, MCA specifically states "… a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215." This statutory requirement controls over the conflicting administrative rule.

The McKinney-Vento Homeless Act (Public Law 100-77) has a broad definition of homelessness, requires admission to school of a homeless student, and would control over a Montana administrative rule. With respect to concerns regarding students in foster or group homes, 20-5-321, MCA, requires mandatory out-of-district attendance agreements allowing a student to enroll in a school district outside of the student's school district of residence for children under the protective care of the state, adjudicated to be a youth in need of intervention or delinquent, or living in foster homes or group homes licensed by the state. Section 20-9-130, MCA, addresses the responsibility of districts when a student is in a detention

facility. Caretaker relative placements are addressed in 20-5-501 through 20-5-503, MCA, allowing enrollment of a student living with relatives other than a parent or guardian. This myriad of state and federal laws addresses special education students enrolling in out-of-district schools. When a situation arises that is not covered by these other laws, the residency statute (1-1-215, MCA) controls over conflicting language in an administrative rule. The existing language causes more confusion than clarity, is superseded by law, and, as such, the rule will be amended as proposed.

Changes to ARM 10.16.3341 cannot be considered at this time because they were not part of the original notice. Further, it is not appropriate to answer questions on interpretation of rule in this, or other responses.

ARM 10.16.3346

COMMENT 6: Andrée Larose stated that she supported the proposed correction to the error in (9), but offered suggested changes to other sections of the rule that were not contemplated in the proposed rule notice.

COMMENT 7: AWARE stated support for this amendment correcting a typo.

COMMENT 8: DRM is opposed to all physical restraint of students and requested the rule be amended to disallow this practice, or if allowed, that it be allowed only when implemented by fully trained staff in appropriate MANDT or other approved restraint methods, and that no prone restraint or restraint in which staff lie on top of a student be allowed.

RESPONSE: Superintendent Juneau thanks the commenters for the comments but will amend the rule as proposed to correct the error. The OPI plans to engage stakeholders in a more broad discussion regarding seclusion and restraint before proposing further amendments to this rule.

ARM 10.16.3505

COMMENT 9: Many oral and written comments were received from parents, educators, advocacy groups, three Montana legislators, and other entities raising concerns and often objecting to the proposed amendments to the procedure for addressing parental disagreement with an annual renewal of a student's IEP. Many commenters were concerned the new language was not supportive of parental involvement, parents were being left out of the process, and districts were being given too much power. Commenters expressed concern that the change would force parents and schools into an adversarial process, shifted the balance, and a due process hearing would be a financial burden most parents could not afford. Some parents indicated the problem was not with lack of parent response but lack of response to parental concerns by school districts; districts could use this as a means to avoid providing services; and districts do not give parents any credibility for their knowledge about their children.

Commenters stated that even for well-educated parents, the task of going into

the IEP meeting to advocate for their child was daunting; some parents would feel intimidated by having to provide written comments and favored continued face-to-face meetings; and for less educated parents or those with limited English, it may lead to nonparticipation in the process.

Some commenters expressed the idea that parent consent was critical to ensuring the integrity of the IEP and that ignoring their true educational needs was often the cheapest and most expedient way for districts to go.

Some commenters proposed options to implement parts of IEPs that were agreed upon while continuing to negotiate the parts that were not agreeable.

PLUK provided many comments in general agreement with other comments and also stated the rule amendments would escalate adversarial relationships and would pose additional problems for parents who are isolated due to low literacy, disability, poverty, or live in isolated rural areas.

Several commenters asked whether there was data showing a need for the change.

AWARE opposed the proposed rule change asserting parental consent and involvement are fundamental to the IEP process; that the change would allow districts to implement IEPs in direct opposition to parents' wishes; could open up potentially destructive inconsistencies in approach and practice between school and home; and that the changes shift the power in the IEP process away from families and leaves school district responsibilities ambiguous and undefined.

Gary Mihelish, on behalf of the National Alliance on Mental Illness Helena (NAMI), suggested the changes were contrary to the spirit of the IDEA which is to encourage parental involvement.

Montana Association of School District Attorneys (MASDA) and a group of special education directors and special education cooperatives commented that the proposed changes would increase procedural requirements for school districts. MASDA requested additional time be provided to parents to consider a newly proposed IEP before a prior written notice is sent. These commenters support the revisions to the extent they will permit school districts to implement new annual IEPs when parents refuse to sign but object to the burden of the additional procedural safeguards. They are also concerned that the rule amendments will result in a more adversarial process.

Concern was raised by several commenters that the "reasonable amount of time" requirement is too vague. Comments were submitted that providing definite time frames in which parties had to respond to the other would be helpful.

Alternative language was proposed by several commenters.

RESPONSE: Superintendent Juneau thanks all the commenters and expresses great appreciation for the thoughtful and considerate written comments and those made at the public hearing.

The proposed draft language attempted to provide a balanced process for school districts to implement an IEP annual renewal and offer an appropriate education to a student when parental consent to an annual renewal of an IEP could not be obtained. The U.S. Department of Education provided comments on the parental consent provision of the IDEA, 73 Fed. Reg. 73011(2008) stating: "States are free to create additional parental consent rights, such as requiring parental

consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents' exercise of these rights does not result in a failure to provide FAPE to the child."

The proposed amendments are consistent with the requirements of the IDEA and were intended to address situations when an LEA may become out of compliance with federal law if a student's educational program could not be appropriately revised and implemented, and to ensure that special education students continued to receive an appropriate education when disagreement arose.

The OPI recognizes parental participation as critical to the IEP development process, and the proposed rule amendments did not remove parents from fully participating with development of their child's annual IEPs. However, given the volume of expressed concerns and opposition to the rule amendments, this proposed amendment will be removed from consideration at this time and the existing language of ARM 10.16.3505 will remain.

ARM 10.16.3508

COMMENT 10: Andrée Larose requested that (1) be revised to state: "A parent as defined in 34 CFR 300.30, a public agency as defined in 34 CFR 300.33, or individuals to whom parental rights have been transferred pursuant to 34 CFR 300.520 may request an impartial due process hearing..." and also requested changes to (2) including the requirement that the OPI develop a model due process complaint request form and make it readily available to the public, and requested that (6) be added providing: "Only those individuals or agencies identified in (1) of this rule are proper parties to an impartial due process hearing."

RESPONSE: Superintendent Juneau thanks this commenter for the comments. With regard to the comments on (1), the proposed rule has been amended to include the federal citation in the definition of "parent." 34 CFR 300.507 states a parent or public agency may file a due process complaint. All parental rights under the IDEA transfer to students when they turn 18 (ARM 10.16.3502). No further clarification is necessary within this rule.

With regard to the comment on (2), the OPI has a model form readily available to the public. Receiving the form from the Legal Division is consistent with the OPI and IDEA emphasis on dispute resolution.

With regard to the proposed addition of a new (6), the OPI believes it is clearly set out in (1) and 34 CFR 300.507(a)(1) who may file a complaint and upon what matters a complaint may be filed. The OPI will not be adding any further requirements at this time.

COMMENT 11: A due process hearing officer commented with regard to (1), suggesting that the party filing the request for a hearing, or any other pleadings, should be required to certify that a copy has been mailed to the other party. With regard to (4), the commenter suggested that the language "and if required, the LEA must send prior written notice" is unclear. With regard to (5), the suggestion was made that all time periods be calculated in accordance with the Montana Rules of

Civil Procedure, and asking for clarification of who pleadings are filed with and whether they can be filed only electronically.

RESPONSE: The rule will require that a party must mail a copy of a due process hearing request to the other party. Adding a requirement that the mailing must be certified adds unnecessary legal complexity for a potential pro se party.

The entirety of (4) is consistent and helps ensure compliance with an overlooked requirement of IDEA.

Section (5) has been amended, deleting reference to discovery, but retaining the filing of pleadings both electronically and by mail. IDEA has specific, shortened timeframes which are not consistent with the Montana Rules of Civil Procedure time periods.

COMMENT 12: AWARE stated that the proposed changes to this rule could prove challenging and may cause inequities for families with fewer resources.

RESPONSE: The Superintendent thanks the commenter for the comment, but has no specific response to address this concern which appears to be outside of the scope of the rule amendments.

ARM 10.16.3509

COMMENT 13: Several comments were received objecting to the removal of the strike list process for selecting an impartial hearing officer, and suggested providing a means for a party to request removal of an appointed hearing officer. Comments suggested continuing the process for ranking potential hearing officers for a specific case.

COMMENT 14: DRM objected to the proposed changes regarding appointment of a hearing officer without input from the parties, stating that allowing the parties some choice helps retain neutrality, eliminate bias, promote fidelity in the hearing officer's decisions, and keeps families engaged and fully informed throughout the special education process. They also feel proceeding with this amendment will result in more parents requesting review of a due process decision in federal court.

One commenter suggested that (1)(a) should be amended to provide that the Superintendent shall promptly advise "the public agency, parent or other individuals, as identified in ARM 10.16.3508, of the request for due process hearing."

RESPONSE: Superintendent Juneau thanks the commenters for the comments. ARM 10.16.3509 is amended to include a process by which parties to a due process hearing may rank three potential hearing officers and file a motion for removal of a hearing officer. Section (1)(a) has also been amended as suggested.

ARM 10.16.3510

COMMENT 15: A due process hearing officer commented about the

requirement for a prehearing scheduling conference in ARM 10.16.3510 as well as ARM 10.16.2512 would require two prehearing conferences, and regarding (5), suggesting the hearing officer should not be required to defend an extension of time.

Another comment suggested that the hearing officer consider the complexity of the case when issuing an extension of time.

COMMENT 16: A commenter suggested revising (1) to include addressing when the public agency should provide the parent with the child's complete education records without a discovery request.

Consideration of prehearing motions was also commented upon.

RESPONSE: Superintendent Juneau thanks the commenters for the comments.

At least two pre-hearing conferences are contemplated by the rules. The hearing officer does not have to defend a decision for an extension of time, but must consider the ramifications of such an extension on the student at issue. The proposed language related to these two comments will not be changed.

The Superintendent agrees with adding language about consideration of the complexity of a case.

With respect to requiring the public agency to provide a complete copy of the student's records to the other party, the Superintendent does not plan to change the proposed language. Each due process hearing has different issues related to different aspects of a student's education. For the parents to automatically receive a complete copy of a student's education records may not be appropriate in every case.

The Superintendent agrees that pre-hearing motions may cause undue delay in a due process hearing and language has been clarified regarding pre-hearing motions.

ARM 10.16.3511

COMMENT 17: A due process hearing officer commented it was not appropriate for a hearing officer to be allowed to informally confer with the parties.

RESPONSE: Superintendent Juneau thanks the commenter for the comment and has amended the rule for clarification regarding informal resolution of a dispute.

ARM 10.16.3513

COMMENT 18: A commenter pointed out a typo in the proposed rule. The commenter objected to the phrase "within the discretion of the hearing officer" regarding the allowable methods of discovery as he fears it would allow a hearing officer to prohibit discovery completely. The commenter suggests instead referring to the Montana Administrative Procedures Act.

RESPONSE: Superintendent Juneau thanks the commenter for the comments and has corrected the typo. The remainder of the proposed language will

not be amended, however. The language in this rule intends to give the hearing officer discretion to control all aspects of the hearing, including discovery. MAPA does not control due process hearings which are conducted pursuant to federal law (IDEA).

ARM 10.16.3520

COMMENT 19: MASDA raised objections to allowing video or audio testimony of witnesses who are unavailable or whose presence would be costly as being contrary to the IDEA and prejudicial to the rights of all parties, citing a recent court decision from Connecticut. Another commented that the rule should be clear that testimony by video or audio can be taken by deposition and also at the hearing, and another comment suggested alternative language regarding video or audio testimony.

Several comments were received objecting to allowing hearsay evidence.

MASDA also suggested clarifying that educational records as self-authenticating only when such records meet the definition of "education records" in FERPA.

RESPONSE: Superintendent Juneau thanks the commenters for the comments.

Although IDEA provides that the parties to a due process hearing have the right to present evidence, confront, cross-examine, and compel the attendance of witnesses, the U.S. Department of Education has not interpreted this language to exclude telephonic testimony. In Letter to Anonymous, 23 IDELR 1073 (1995), a query specifically related to telephonic testimony, the U.S. Department of Education Office of Special Education Programs stated that decisions regarding the conduct of a due process hearing are left to the discretion of the hearing officer, and the appropriate challenge to the hearing officer's discretion is by appeal. As such, the OPI will clarify when video or telephonic testimony may be considered, but adopt rules leaving this matter up to the discretion of the hearing officer.

The Superintendent agrees that the Montana Rules of Evidence are adequate to address allowable hearsay and the language allowing hearsay evidence has been removed.

ARM 10.16.3523

COMMENT 20: A due process hearing officer questioned whether this rule should be read as including an interlocutory appeal or if this provided an opportunity to bar interlocutory appeals.

AWARE raised concerns that parents may not pursue a due process hearing because of a fear of facing financial ruin if the district were awarded legal fees. They recommended using language generally understandable to the public including pertinent IDEA references that more clearly explains and defines a family's limited risk to being held liable for legal fees.

RESPONSE: Superintendent Juneau thanks the commenters for the

comments and has amended the proposed language for clarity and deleted the reference to attorneys' fees as not necessary in rule.

ARM 10.16.3660

COMMENT 21: Andrée Larose commented that the provisions for initiating early assistance was confusing and requested it be clarified and made easier.

COMMENT 22: AWARE stated the proposed amendments replaced clear, generally understandable language with complex legalese that is incomprehensible without researching legal references and could limit a family's understanding of what EAP services they could access.

RESPONSE: Superintendent Juneau thanks the commenters for their comments and has amended the proposed language for clarity.

ARM 10.16.3662

COMMENT 23: Andrée Larose commented that (1) and in other places in the proposed rules should refer to "public agency," not just "LEA." She also questioned whether the OPI had the authority to establish a filing date vs. a receipt date which could limit the consideration of a violation occurring more than one year before the filing date; requested adding language to provide for extensions based on reasonable necessity rather than "exceptional circumstances"; suggested adding language for the dispute resolution officer to consider the potential negative impact on the student if an extension is requested; objected to allowing a year for corrective actions before sanctions are imposed; and requested a two year look-back period.

DRM also objected to increasing the time for compliance to one year as they feel it would allow a district to continue to deny FAPE for an additional year.

RESPONSE: Superintendent Juneau thanks the commenters for their comments and revised the rule to include "public agency."

Federal rules 34 CFR 300.151-153 refer to "filing" a state complaint, not a receipt date. The rules will retain language regarding "filing" as consistent with federal law and regulation.

Section (3) was revised in order to clarify when a complaint may be returned for insufficient information.

34 CFR 300.152(b) sets out when an extension of time is allowable and specifically states "exceptional circumstances." OPI will retain the heightened standard for allowing a continuance consistent with the federal rule.

The proposed language has been clarified to address concerns regarding the timeline for LEA compliance with required corrective action in a State Complaint Final Report.

The OPI will not be extending the look back period beyond the one year required in 34 CFR 300.153(c). The OPI agrees with the comments to the federal regulations which address concerns with a longer look back period: "we believe a one year timeline is reasonable and will assist in smooth implementation of the State

complaint procedures. The references to longer periods for continuing violations and for compensatory services claims in current 34 CFR 300.662(c) were removed to ensure expedited resolution for public agencies and children with disabilities. Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale they are unlikely to be resolved." 71 Fed. Reg. 46606 (2006).

COMMENT 24: Several commenters commented on, or offered suggestions for rules not part of the original rule notice. Other commenters asked questions about intent, implementation, or interpretation of rule.

RESPONSE: Superintendent Juneau thanks the commenters about their concern regarding these issues but is unable to address them in this rule notice. These comments will be considered if further amendments to special education rules are considered.

/s/ Ann Gilkey	/s/ Denise Juneau
Ann Gilkey	Denise Juneau
Rule Reviewer	Superintendent of Public Instruction

Certified to the Secretary of State December 14, 2015.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.102.1152 pertaining to deferrals	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Montana State Library published MAR Notice No. 10-102-1502 pertaining to the proposed amendment of the above-stated rule at page 1800 of the 2015 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Colet Barow
Colet Bartow
Chairman
Montana State Library

Certified to the Secretary of State December 14, 2015.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.17.103, 24.17.127, and 24.17.501, and the repeal of ARM 24.17.526, pertaining to prevailing wage rates for public works projects	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 29, 2015, the Department of Labor and Industry published MAR Notice No. 24-17-310 regarding the public hearing on the proposed amendment and repeal of the above-stated rules on page 1813 of the 2015 Montana Administrative Register, Issue No. 20.

2. On November 20, 2015, a public hearing was held at which time no comments, either oral or written, were received. Additional comments were received during the comment period.

3. The department has amended ARM 24.17.103, 24.17.127, and 24.17.501 and repealed ARM 24.17.526 as proposed.

4. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's responses to those comments:

COMMENT 1: After the public had opportunity to speak as opponents or proponents and the rules hearing had closed, the department, pursuant to 2-3-103, MCA, allowed the public to speak on other matters to which it claims jurisdiction. At this time Loren Ward, Sheet Metal and Air Conditioning Contractors National Association (SMACNA), noticed some inconsistencies in the prevailing wage rates between the Heating and Air Conditioning (HVAC) and the Sheet Metal Workers classifications. While these comments were made outside of the time for commenting at hearing, the department believes the comments are pertinent to these rules, and fell within the general comment period, and therefore responds herein. The commenter said these two classifications have identical duties, and surveying for both of them may be leading to inconsistencies in the rates. The commenter asked how the department enforces compliance for these two occupations and asked the department to consider removing the HVAC classification from future prevailing wage publications.

RESPONSE 1: The department has observed differences between the two classifications during onsite job visits. An example of Sheet Metal work that would not be properly classified as HVAC is the installation of stainless steel panels and kitchen equipment in a commercial application. The cutting and fitting of the stainless steel panels (tin) would be classified as Sheet Metal and not HVAC. An

example of HVAC work that would not be properly classified as Sheet Metal would be the installation of a new furnace in a building. The adjustment and installation of the new system would be classified as HVAC and not Sheet Metal. In the last example, the department identifies the possibility of a contractor looking for HVAC in the rate schedule and mistakenly classifying their workers as Laborer Group 2, if HVAC is removed. Plumbers do service work on HVAC systems, but do not install new systems on new construction projects, so using the plumbers' collective bargaining agreement (CBA) would be inappropriate. However, since the Sheet Metal, Air, Rail, Transportation (SMART) CBA covers both HVAC and Sheet Metal, the department views combining all data submitted by union Sheet Metal contractors as the correct way to use that data. The department rejects the suggestion to remove HVAC from the rate schedules.

COMMENT 2: In an e-mail, Jennifer Furtney, Office Manager, SMART Local 103, submitted a letter on behalf of John Carter, Business Manager, SMART Local 103, providing additional data and documents detailing the duties of HVAC and Sheet Metal Workers for inclusion in the rate-setting process during the comment period.

RESPONSE 2: The department has reviewed the information submitted. The department has incorporated the duties provided into the rate schedule and believes it will assist contractors in properly classifying their workers. The department has also incorporated the data as appropriate and has revised the rates for the HVAC and Sheet Metal classifications in line with the rate-setting standards. Revised rates are identified below in paragraphs 4 through 7.

5. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2016" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Heating and Air Conditioning

District	Wage		Benefit	
1	~~$21.40~~	27.33	~~$ 6.86~~	15.39
2	~~$27.97~~	27.33	$15.39	
3	~~$21.79~~	27.33	~~$ 9.95~~	15.39
4	~~$19.85~~	27.33	~~$16.01~~	15.39

6. The following rates and description of work performed in the "Montana Prevailing Wage Rates for Building Construction Services 2016" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Sheet Metal Workers

District	Wage		Benefit	
1	~~$26.53~~	27.33	~~$11.77~~	15.39
2	$27.33		$15.39	
3	~~$27.12~~	27.33	~~$12.98~~	15.39
4	~~$25.33~~	27.33	~~$ 8.54~~	15.39

Testing and balancing, commissioning and retro-commissioning of all air-handling equipment and duct work. Manufacture, fabrication, assembling, installation, dismantling, and alteration of all HVAC systems, air veyer systems, and exhaust systems. All lagging over insulation and all duct lining. Metal roofing.

7. The following rates in the "Montana Prevailing Wage Rates for Heavy Construction Services 2016" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Heating and Air Conditioning

Wage	Benefit
~~$30.31~~ 27.33	~~$16.01~~ 15.39

8. The following description of work performed in the "Montana Prevailing Wage Rates for Heavy Construction Services 2016" publication, incorporated by reference in the rule, has been amended as follows, stricken matter interlined, new matter underlined:

Sheet Metal Workers

Testing and balancing, commissioning and retro-commissioning of all air-handling equipment and duct work. Manufacture, fabrication, assembling, installation, dismantling, and alteration of all HVAC systems, air veyer systems, and exhaust systems. All lagging over insulation and all duct lining. Metal roofing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 14, 2015.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.204.401 and 24.204.404 fees, 24.204.409 military training, 24.204.507 course requirements for limited permit applicants, and 24.204.607 code of ethics, and the repeal of 24.204.2115 renewals	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 29, 2015, the Board of Radiologic Technologists (board) published MAR Notice No. 24-204-38 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1818 of the 2015 Montana Administrative Register, Issue No. 20.

2. On November 19, 2015, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. One comment was received by the November 27, 2015, deadline.

3. The board has thoroughly considered the comment received. A summary of the comment and the board's response is as follows:

COMMENT 1: One commenter stated the $20 renewal fee increase for licensees in ARM 24.204.404 is unreasonable. Realizing the increase is for permit holders, the commenter reconsidered and agreed with the fee increase.

RESPONSE 1: The board appreciates all comments made during rulemaking, and notes that the radiologic technologists' renewal fee will increase $25 per year, while the limited permit holder fee will increase $20 per year.

4. The board has amended ARM 24.204.401, 24.204.404, 24.204.409, 24.204.507, and 24.204.607 exactly as proposed.

5. The board has repealed ARM 24.204.2115 exactly as proposed.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
MIKE NIELSEN, RPA, BOARD 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 December 14, 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 ADOPTION

TO: All Concerned Persons

1. On October 15, 2015, the Board of Behavioral Health (board) published MAR Notice No. 24-219-28 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1614 of the 2015 Montana Administrative Register, Issue No. 19.

2. On November 6, 2015, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the November 13, 2015, deadline.

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

COMMENT 1: Several commenters supported the new rules as a good balance between ensuring consumer protection and allowing qualified clinicians to utilize psychological testing and assessments in practice.

RESPONSE 1: The board acknowledges the comments and agrees that board regulation must balance protection of consumers with allowing qualified people to practice.

COMMENT 2: Two commenters noted an error in the fifth paragraph of the reasonable necessity statement. The commenters stated that the current DSM (Diagnostic and Statistical Manual of Mental Disorders) does not use the multiaxial system, but only a single axis.

RESPONSE 2: The board acknowledges the inadvertent error regarding the DSM-5. The board's intent is that licensees use the current version of the DSM. Because the language is in the reasonable necessity statement and not in rule text, no further response is necessary.

COMMENT 3: One commenter noted that in forensic application, psychological test results are frequently reviewed by an expert and subject to vigorous cross-examination in open court. The commenter believed the new rules will enable psychological testing in rural areas of the state where psychologists may not be available. Noting that unqualified licensees who utilize psychological testing would be practicing outside their scope and violating ethics requirements, the commenter urged the board to adopt the new rules exactly as proposed.

RESPONSE 3: The board acknowledges the comments and is adopting the rules as amended in response to other comments as set out below.

COMMENT 4: A number of commenters opposed the new rules asserting the rules adopt a stricter standard for licensees than is necessary, and noted that licensees know their competence and are always subject to board disciplinary action if they practice outside the scope of their licensure.

RESPONSE 4: The board disagrees that the rules adopt an unreasonably strict standard. The board further responds that the Governor's amendatory veto to Senate Bill 235 required the board to "articulate the minimum standards of education and training required for their licensees to be authorized to conduct psychological testing." The rules meet the requirements of state statute and set reasonable standards.

COMMENT 5: One commenter opposed the new rules and asserted the rules will hold licensees to an unjustified higher standard by requiring specific academic courses for master's level clinicians, but not for psychologists.

RESPONSE 5: The board disagrees that licensees are held to an unjustified higher standard because psychological assessment training is part of the education required of a psychologist to obtain a postgraduate degree. The rules clarify the education necessary to perform psychological assessments by board licensees.

COMMENT 6: Two commenters noted that sex offender evaluations by Montana Sex Offender Treatment Association (MSOTA) members have been used in court proceedings for 35 years, with at least some non-PhD members qualified as experts.

RESPONSE 6: The board agrees that pursuant to 46-18-111, MCA, MSOTA-credentialed licensees are statutorily authorized to perform psychosexual evaluations. The board also agrees that this credentialing constitutes sufficient education and training to perform those evaluations. The board is amending NEW RULE II to clarify that MSOTA credentials are sufficient to perform the various evaluations MSOTA members currently perform for the court system.

COMMENT 7: Opposing the specific academic requirements in NEW RULE II, three commenters urged the board to adopt language to allow master's level clinicians to conduct psychological testing if they obtain education and training, and comply with supervision requirements. The commenters asserted that the requirements fail to

acknowledge skills gained through experience and training over the course of a career.

RESPONSE 7: The board agrees that in certain cases, licensees who do not have the specific education required by the rule may nonetheless have the background necessary to perform psychological assessments. The board is amending NEW RULE II by adding (4) to allow licensees to request board approval to perform assessments if they do not meet the criteria set out in (1), (3), or (5).

COMMENT 8: A number of commenters opposed the requirement in NEW RULE II(1) that licensees must submit documentation to the board to show competency in psychological testing, and asserted that it is not the board's responsibility to verify licensee aptitude in specific treatment modalities or therapeutic services. The commenters stated it is reasonable for licensees to maintain the required documentation in their personal records regarding competency in any area of treatment provided.

RESPONSE 8: The board agrees that it is not necessary for licensees to submit documentation except as provided in (4). The board is amending NEW RULE II(1) to require licensees to maintain required documentation in their own records and provide such documentation to the board upon request.

COMMENT 9: One commenter objected to grandfathering licensees who performed psychological assessments prior to October 14, 2011, because these licensees have the same or very similar education as the commenter. The commenter noted that anyone not grandfathered will be required to complete additional education and supervision at the clinician's expense. On this basis, the commenter disagreed with the board's determination that the proposed new rules will have no significant and direct impact on Montana small businesses. The commenter suggested that the new requirements apply equally, to ensure a fair playing field.

RESPONSE 9: The board agrees with the comment and is amending NEW RULE II(5) to change the grandfathering date to the effective date of this rule. The board notes that the original grandfathering date was the date the previous rules regarding this issue were adopted in MAR Notice No. 24-219-22. However, because the previous rules did not set minimum standards, the board agrees it is not proper to treat current providers differently. By adopting a current grandfathering date, all providers will be treated similarly and new licensees are on notice of the requirements. The grandfathering date provides a reasonable means to transition to the new rule.

COMMENT 10: A commenter asked for a definition of "regionally accredited program" as used in NEW RULE II(1)(a). The commenter also asked where the board obtained the items required in the academic training in (1)(a), and asserted that the board only gathered information from those not interested in "other mental health professionals" conducting psychological testing.

RESPONSE 10: The board's intent is that "regional accreditation" means accreditation by any one of the seven regional accreditation agencies recognized by the United States Department of Education (USDE). The term means that a licensee can obtain education anywhere in the United States or can take online courses from any institution that has been accredited by one of the seven USDE accrediting bodies. The board disagrees with the characterization of how it gathered the items listed in the required academic training. The rule follows the language of the Wisconsin rules which sets out the necessary educational components for conducting psychological assessments. The board is adding (2) to NEW RULE II to define "regionally accredited program."

COMMENT 11: Numerous commenters opposed the new rules because Montana suffers from a shortage of mental health services, specifically in the particular field of sexual offender evaluation and treatment. The commenters stressed the state should avoid any policy that further restricts access to care and forces rural Montanans to travel hundreds of miles to obtain testing from one of the 214 licensed psychologists in Montana. The commenters further asserted that the rules could impede cases in the social service, correctional, and court systems.

RESPONSE 11: The board agrees that it is vital to maintain enough providers of mental health services, especially for rural areas and for sexual offender treatment. The board does not believe NEW RULE II as amended will limit the number of providers.

COMMENT 12: Two commenters asserted that by imposing specific academic requirements to perform psychological assessments, the board would be attempting to restrict trade for master's level clinicians.

RESPONSE 12: The board disagrees that the requirements of the rule unreasonably restrict trade. The requirements set minimum standards that are generally accepted standards of practice and that are specifically required by statute.

COMMENT 13: One commenter questioned whether the board researched the rules enough and whether adequate notice was given to principal providers of psychological testing to get input and reaction.

RESPONSE 13: The board has worked on this issue for years and followed all rulemaking requirements of the Montana Administrative Procedure Act.

COMMENT 14: Two commenters requested the board amend NEW RULE II to clarify that only the educational requirements for specific instruments used by a specific practitioner would apply. In the commenters' opinion, full training in the delivery of a specific IQ test, for example, would not be required if the practitioner did not give IQ tests as part of the practitioner's assessment battery of tests.

RESPONSE 14: The board's rule sets proper minimum standards and avoids piecemeal qualifications that erode the statutory requirement to set minimum standards.

COMMENT 15: Two commenters expressed concern that the reasonable necessity statement is too detailed and will mislead licensees to believe the proposed rules are insufficient and must be explained. One stated it contains excessive detail that appears regulatory and opined that it is inappropriate to include language in an "introductory statement" that expands the rules without being adopted in rule.

RESPONSE 15: The board responds that the referenced "introductory statement" is not simply an "introduction," but is a "reasonable necessity" statement required by the Montana Administrative Procedure Act. Because the rule does not specify a required amount of education or training by its explicit terms, the description in the statement is only general guidance. The plain language of the rule controls and that language does not have specific credit hours or numbers of assessments. It is up to licensees to determine if they have the amount of education and supervised training necessary to competently perform psychological assessments.

COMMENT 16: Two commenters stated that the reasonable necessity contains an inaccurate statement in that commenters disagreed with the description of Senate Bill 235 (2009) and asserted the bill did not "expand the category of professionals" able to perform psychological assessments. The commenters stated that counselors have been authorized to do psychological testing since the licensing law was passed in 1983.

RESPONSE 16: The board appreciates the comments and notes the language of the two bills as set out in the reasonable necessity statement are the Legislature's most current statement of the law. The title of Senate Bill 235 states its provisions were "expanding the exemption from licensing as a psychologist to include psychological testing, evaluation, and assessment by qualified members of other professions." The title of House Bill 530 states it was "revising the definition of 'social work' to clarify that the term includes the use of diagnoses and administering, evaluating, and assessing tests."

COMMENT 17: A commenter objected to the "mentioning" of two psychological instruments licensees may administer, stating there are innumerable instruments available. The commenter cautioned that this could "lay the groundwork" for the Montana Board of Psychologists' attempt to define which psychological evaluative instruments LCPCs and LCSWs can utilize. The commenter noted that a similar situation in Indiana was determined in court to be an attempt at restriction of trade.

RESPONSE 17: The board disagrees that the mention of two tests has any intent other than to give examples.

COMMENT 18: One commenter requested the board define "psychological assessments." The commenter also asked whether the definition includes psychosexual evaluations and risk evaluations.

RESPONSE 18: Psychosexual evaluations are included as an assessment and, as indicated by the amendments to NEW RULE II, MSOTA-credentialed members are considered qualified to perform them under the rule.

COMMENT 19: Two commenters opposed the new rules as unnecessary restrictions and asserted that the competency-based rules adopted by the board over four years ago are working. The commenters stated there have been no reports of testing violations, nor any data suggesting harm to the public.

RESPONSE 19: The board acknowledges the comments and disagrees the rules are unnecessary due to the statutory requirement to adopt minimum standards.

4. The board has adopted NEW RULE III (24.219.1004) exactly as proposed.

5. The board has adopted NEW RULE I (24.219.1002) and II (24.219.1003) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I LICENSEES AUTHORIZED TO PERFORM PSYCHOLOGICAL ASSESSMENTS (1) remains as proposed.

(a) a licensed clinical professional counselor or licensed clinical social worker who satisfies the requirements in [NEW RULE II](1), (3), (4), or ~~(2)~~ (5);

(b) through (d) remain as proposed.

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)~~ (3), (4), and (5), 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 licensee has completed and can document to the board, if requested, the following information demonstrating generic and specific qualifications to perform psychological assessments:

(a) and (b) remain as proposed.

(2) For purposes of this rule, "regionally accredited program" means a program accredited by one of the seven regional accreditation agencies recognized by the United States Department of Education.

(3) A credentialing level designated and approved by statute for psychological assessments meets the requirements as set out in (1). For example, 46-18-111, MCA, authorizes members of the Montana sex offender treatment association to perform psychosexual evaluations.

(4) A licensed clinical professional counselor or licensed clinical social worker whose education was not from a regionally accredited program must obtain board

approval before conducting psychological assessments. The licensee must demonstrate their education is substantially equivalent to the content set out in (1).

~~(2)~~ (5) 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~~ December 25, 2015.

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

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 December 14, 2015

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

In the matter of the amendment of ARM 37.86.3503, 37.88.101, 37.89.103, 37.89.114, and 37.89.509 pertaining to compliance to ICD-10-CM	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-724 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1415 of the 2015 Montana Administrative Register, Issue Number 18.

2. The department has amended the following rules as proposed: ARM 37.89.103, 37.89.114, and 37.89.509.

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:

37.86.3503 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SEVERE DISABLING MENTAL ILLNESS

(1) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of (1)(a)~~,~~ or (b), ~~or~~ and (c). The person must also meet the requirements of (1)(d). The person:

(a) has been involuntarily hospitalized for at least 30 consecutive days because of a mental disorder at Montana State Hospital ~~at least once~~ within the past 12 months; or

(b) has ~~recurrent thoughts of death,~~ recurrent suicidal ideation within the past 12 months, a history of suicide attempts, or a specific plan for ~~committing~~ completing suicide; ~~or~~ and

(c) has a primary diagnosis of one of the following ~~except for~~ (excluding "mild, not otherwise specified (NOS)," unspecified, or due to "physiological disturbances and physical factors~~,~~") ~~has a DSM diagnosis of~~:

(i) schizophrenia, ~~schizophrenia spectrum, and other psychotic disorders~~ delusional disorder, schizophreniform disorder, schizoaffective disorder;

(ii) bipolar ~~spectrum~~ I disorder and bipolar II disorder;

(iii) major depressive disorder;

(iv) ~~anxiety disorders~~ panic disorder with agoraphobia or panic disorder without agoraphobia;

(v) obsessive-compulsive disorder;

~~(v)~~ (vi) posttraumatic stress disorder~~s~~;

(vi) remains as proposed, but is renumberd (vii).

~~(vii)~~ (viii) autism spectrum disorder~~s~~; and

(d) has ongoing functioning difficulties because of the mental illness for a period of at least six months or ~~for~~ a predictable period over six months, as indicated by the presence of at least three of the following indicators:

(i) and (ii) remain as proposed.

~~(iii) an inability to maintain housing due to mental illness;~~

(iv) through (vi) remain as proposed, but are renumbered (iii) through (v).

~~(vii)~~ (vi) the person maintains ~~a living arrangement~~ housing only with ongoing supervision, is homeless, or is at imminent risk of homelessness due to mental illness; or

(viii) remains as proposed, but is renumbered (vii).

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains as proposed.

~~(2) For mental health services provided to an adult Medicaid client under the Montana Medicaid program, a maximum of 24 sessions may be reimbursed per state fiscal year for individual and family outpatient therapy billed under 2015 Current Procedure Terminology codes 90832, 90833, 90834, 90836, 90837, 90838, 90846, and 90847 only. Prior authorization must be obtained for additional sessions.~~

~~(3)~~ (2) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of ~~(3)~~(2)(a) or (b). The person must also meet the requirements of ~~(3)~~(2)(c). The person has:

(a) a DSM diagnosis with a severity specifier of moderate or severe bipolar I disorder, bipolar II disorder, ~~spectrum~~ or major depressive disorder; or

(b) through (c)(iv) remain as proposed.

~~(4) The department may waive a requirement for prior authorization when the provider can document that:~~

~~(a) there was a clinical reason why the request for prior authorization could not be made at the required time; or~~

~~(b) a timely request for prior authorization was not possible because of a failure or malfunction of equipment that prevented the transmittal of the request at the required time.~~

~~(5) The prior authorization requirement will not be waived except as provided in this rule.~~

~~(6) Under no circumstances may a waiver under (4) be granted more than 30 days after the initial date of service.~~

~~(7) Review of authorization requests by the department or its designee will be made with consideration of the adult intensive outpatient therapy services Clinical Management Guidelines (2015). A copy of the Adult Intensive Outpatient Therapy Services Clinical Management Guidelines (2015) can be obtained from the following web site: https://montana.fhsc.com/ or by a request in writing to the Department of~~

~~Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, P.O. Box 202905, Helena, MT 59620-2905.~~

(8) and (9) remain as proposed, but are renumbered (3) and (4).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 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: A commenter stated that for services described in ARM 37.86.3503(1)(a) and (b) the mental health provider does not have a mechanism to bill for the services if these are the only criteria met. The commenter requested a billing code be attached to each of these requirements.

Response #1: The mental health provider is providing assessment services and can bill for those services even if the individual does not have a severe disabling mental illness (SDMI).

Comment #2: A commenter requested a clarification in ARM 37.86.3503(1)(a) on the qualifications that an individual who as a minor was committed to the Montana State Hospital (MSH); and the minor, now an adult, has not had any mental health symptoms since discharge from the MSH. A commenter stated that according to ARM 37.86.3503(1)(a) this minor would meet the definition of SDMI.

Response #2: It was not the intent of the department that individuals admitted to MSH years ago should be the only criteria to qualify for having a SDMI. The department added the qualifying statement "within the last 12 months." The department changed ARM 37.86.3503(1) to meet the requirement of ARM 37.86.3503(1)(a) or (1)(b) and (1)(c). The individuals must also meet the requirements of ARM 37.86.3503(1)(d).

Comment #3: A commenter expressed concern that those individuals admitted to MSH due to illicit-drug use or criminal activity would meet the criteria for SDMI.

Response #3: It was not the intent of the department that individuals admitted to MSH years ago should be the only criteria to qualify for having a SDMI. The department added the qualifying statement "within the last 12 months." The department changed ARM 37.86.3503(1) to meet the requirement of ARM 37.86.3503(1)(a) or (1)(b) and (1)(c). The individuals must also meet the requirements of ARM 37.86.3503(d).

Comment #4: A commenter stated that in ARM 37.86.3503(1)(b) "recurrent thoughts of death" is a subjective assessment and persons categorized as anti-social personality disorder or malingering may meet the criteria for severe disabling mental illness which has not been the case in the past.

Response #4: The department removed "recurrent thoughts of death." "Recurrent suicidal ideation within the last three months" was added. The department added history of suicide attempt(s). In addition, a specific plan for "committing" was changed to "completing."

Comment #5: A commenter stated that for persons who use the threat of suicide to access mental health services and do not meet SDMI criteria, a mental health provider does not have a billable code for payment of services rendered.

Response #5: The mental health provider is providing assessment services to determine if the individual has a SDMI. Please see Response #1.

Comment #6: Two comments related to the exclusion of physiological disturbances and physical factors in the SDMI criteria. The mental health providers do have individuals that exhibit psychotic symptoms only due to medical conditions. The commenters request that the text "due to physical disturbances and physical factors" be removed from the exclusionary statement.

Response #6: The department believes that a medical professional and not the mental health provider more appropriately serves individuals exhibiting psychotic behaviors due to a medical condition. This will remain an exclusion.

Comment #7: A commenter asked for clarification in ARM 37.86.3503(1)(c), if the definition still allows for "unspecified" disorder?

Response #7: No, "unspecified" disorder is not allowed. Unspecified is excluded and was added for clarification.

Comment #8: A commenter expressed concerned that in ARM 37.86.3503(1)(c)(iii) depressive disorder diagnosis would now include persistent depressive disorder (formerly dysthymia) and premenstrual dysphoric disorder. In the past, these disorders did not meet the SDMI criteria.

Response #8: It was not the department's intent to include persistent depressive disorder or premenstrual dysphoric disorder. The department clarified what diagnoses are acceptable. Bipolar spectrum was changed to "bipolar I disorder" and "bipolar II disorder." Depressive disorder was changed to "major depressive disorder."

Comment #9: A commenter was concerned that in ARM 37.86.3503(1)(c)(iv) "anxiety disorder" would now include generalized anxiety disorder, selective mutism, and specific phobias which have not previously met the SDMI criteria.

Response #9: It was not the department's intent to include the additional disorders. The department changed the anxiety disorders to "panic disorder with agoraphobia" and "panic disorder without agoraphobia" to clarify what is included in SDMI.

Comment #10: A commenter stated that the exclusion of personality disorders from the SDMI criteria will create significant barriers to serve individuals who have been formerly eligible and need of service. The diagnoses specifically referenced are paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, histrionic and narcissistic personality disorder, obsessive compulsive disorder, and dependent personality disorder. The commenter recommended that personality disorders, which have historically been included in the SDMI criteria, be included.

Response #10: It was not the intent of the department to exclude "obsessive compulsive disorder." The department has added this disorder to the SDMI criteria. The department will include only "borderline personality disorder." It is not the intent to grandfather anyone that does not meet the definition of "borderline personality disorder" effective October 1, 2015. A reasonable transition plan written by the mental health provider would be expected to move these individuals from SDMI-covered services to more appropriate services.

Comment #11: A commenter stated the additional requirement of three functionality indicators was concerning. The commenter recommends the department continue to require only two indicators of functionality needed for SDMI criteria in ARM 37.86.3503(1)(d).

Response #11: The department added an additional two indicators to the functioning difficulties. The department will request in ARM 37.86.3503(1)(d) three indicators be identified in the area of functioning difficulties. The department believes this will not put any undue hardship on the mental health provider to assess an appropriate SDMI.

Comment #12: A commenter stated that ARM 37.86.3503(1)(d)(iii) appears to be redundant to ARM 37.86.3503(1)(d)(iv).

Response #12: The department agrees with this comment. The department has combined ARM 37.86.3503(1)(d)(iii) and (vi). ARM 37.86.3503(1)(d)(vi) now states "inability to maintain housing without ongoing supervision; is homeless; or is at imminent risk of homelessness due to mental illness."

Comment #13: A commenter would like the catch line for ARM 37.86.3503(1)(c)(v) updated to "trauma and stressor related disorders" to be consistent with the DSM 5.

Response #13: The department appreciates the comment; however, it is the department's intent to cover posttraumatic stress disorder only.

Comment #14: A commenter requested further consideration and review of diagnoses currently qualified within the Children Mental Health Bureau. There is concern that when these youth transition to adult services they will no longer be covered by the SDMI criteria.

Response #14: The department agrees that youth transitioning to adult services is difficult. The department has a transition team with primary focus of youth transitioning to adult services. The transition team is making every effort to ensure a smooth transition for the youth to adult services.

Comment #15: A commenter would like the department to delete the phrase "complications due to premature discharge" in ARM 37.89.509(8)(a). This phrase is used often in the 72-hour crisis stabilization program.

Response #15: The department has a mechanism under ARM 37.89.509(8)(a) that the mental health provider can request an informal review if a person was discharged prematurely due to complications. The department is unclear how this is detrimental to the mental health provider of a 72-hour crisis stabilization program.

Comment #16: A commenter would like the department to consider the inclusion of substance use-related disorders. This is an ongoing contributing factor in a 72-hour crisis program.

Response #16: The program is designed for individuals in a mental health crisis. It is understood, by the department, that many times an individual may be under the influence of substances. The department will not include substance use disorder.

Comment #17: A commenter stated in ARM 37.88.101 a maximum of 24 sessions may be reimbursed per state fiscal year. The Centers for Medicare and Medicaid (CMS) essential benefit plan cannot have limits placed on outpatient services. This section should be deleted to be compliant with CMS.

Response #17: The department deleted the limits on 24 outpatient sessions from the rule and any reference to prior authorization.

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.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

Robert Runkel for Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State December 14, 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 AMENDMENT

TO: All Concerned Persons

1. On October 15, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-725 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1661 of the 2015 Montana Administrative Register, Issue Number 19. On October 29, 2015, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 1823 of the 2015 Montana Administrative Register, Issue Number 20.

2. The department has amended the following rules as proposed: ARM 37.86.2803 and 37.86.3003.

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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS
(1) through (23) remain as proposed.

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 as proposed.

(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 (e) remain as proposed.

(f) lactation services ~~provided in a certified baby-friendly hospital approved by the department and~~ performed by nonphysician providers, i.e., certified lactation 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

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: Several commenters expressed concern about the requirements of the "Baby Friendly Initiative." Commenters stated the hardline requirement, that infant formula not be offered, leads to mothers feeling shame or inadequate. Overall, commenters felt the initiative was unfriendly. Commenters are advocating that the "Baby Friendly" designation not be a prerequisite to obtain Medicaid funding for their lactation program.

RESPONSE #1: The department thanks the commenters for expressing their concerns. The department is removing the "Baby Friendly" designation requirement from the rule.

COMMENT #2: One commenter stated that another requirement of the "Baby Friendly" program is to only allow healthy newborns in the nursery for less than one hour per day. The commenter said this requirement caused the hospital's satisfaction scores to drop because mothers would like to check their baby into the nursery to shower or take a nap. The commenter is requesting that the "Baby Friendly" designation requirement be removed.

RESPONSE #2: The department thanks the commenter for expressing their concern. The department is removing the "Baby Friendly" designation requirement from the rule.

COMMENT #3: One commenter states that typically, private insurance will cover three outpatient follow-up lactation visits. The commenter asks why Medicaid patients should have substandard care.

RESPONSE #3: The department thanks the commenter for expressing their concern. The department is removing the "Baby Friendly" designation requirement from the rule. All outpatient hospitals will be able to bill Montana Medicaid for the allowed lactation services.

COMMENT #4: One commenter stated that the burden of documentation that nursing staff must do, under the "Baby Friendly" designation, takes away from face-to-face patient care. This burden leads to greater expenses and could potentially lead the institution to increase the cost of healthcare they deliver. The commenter advocates for the "Baby Friendly" designation to be removed.

RESPONSE #4: The department thanks the commenter for expressing their concern. The department is removing the "Baby Friendly" designation requirement from the rule.

COMMENT #5: One commenter stated that parents had to hide things, like pacifiers, from staff because they felt judged for using these items. This commenter cites review articles from 2007 and 2012 where there was not any significant difference in long-term breast-feeding outcomes in two of the mainstays of the "Baby Friendly" initiative, i.e., not allowing pacifier use and cup feeding. The commenter summarized by stating that the restrictive regulations ended up being "family unfriendly" and several regulations have not shown to improve long-term breast-feeding outcomes. The commenter is also asking that the "Baby Friendly" designation not be a determining factor in the funding of outpatient lactation services and be removed as a requirement.

RESPONSE #5: The department thanks the commenters for expressing their concerns. The department is removing the "Baby Friendly" designation requirement from the rule.

COMMENT #6: One commenter stated support of the Medicaid proposal regarding lactation support and favors the changes outlined in the proposal.

RESPONSE #6: The department would like to thank the commenter for their support of the rule.

COMMENT #7: Several commenters said they liked that Medicaid was looking at how it can expand and support lactation services.

RESPONSE #7: The department would like to thank the commenters for their support of the rule.

COMMENT #8: Alexis Sandru, attorney from the Legislative Services Division, sent a comment to the department indicating that 53-6-141, MCA, in ARM 37.86.3001 and 37.86.3002, has been repealed.

RESPONSE #8: The department has removed this statute from the implementing citations in these two rules.

/s/ Francis X. Clinch
Francis X. Clinch, 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 December 14, 2015

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

In the matter of the amendment of ARM 37.79.304 and 37.79.326 pertaining to Healthy Montana Kids (HMK)/CHIP dental benefits and evidence of coverage	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-729 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1832 of the 2015 Montana Administrative Register, Issue Number 20.

2. The department has amended the above-stated rules 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: Commenters were concerned about three dental procedure codes that would be deleted from covered codes. Their concern was that these codes are essential to the ABCD dental practice standard for qualified dental providers.

Response #1: The department appreciates this comment and will ensure the codes related to the practice standard will be added as covered codes for those qualified providers with a specialty code for the ABCD practice standard.

Comment #2: A commenter asked if the reimbursement methodology related to Healthy Montana Kids (HMK) is changing.

Response #2: The proposed amendments will not affect the payment methodology for the HMK dental program. Payment remains at 85% of billed charges up to the $1900 limit.

Comment #3: A commenter asked for further clarification for the need for prior authorization for general anesthesia.

Response #3: The HMK benefit for general anesthesia has not changed. The rule further clarifies the age when prior authorization is needed when medically necessary. This is not to be confused with HMK Plus/Medicaid program, which is a separate program.

Comment #4: A commenter asked why these changes were not discussed at the Dental Medicaid Advisory Committee.

Response #4: HMK/CHIP is not a part of the Dental Medicaid Advisory Committee. The department will add a HMK/CHIP segment to the committee.

Comment #5: A commenter asked if there were any other changes to the CHIP/Medicaid children's dental program of which they are not aware of.

Response #5: Again, HMK/CHIP and HMK Plus/Medicaid are two separate programs. All proposed changes for HMK/CHIP dental benefit have been published in the MAR notice.

Comment #6: A commenter asked if and when the adoption of the benchmark plan was implemented.

Response #6: When the CHIP State Plan was originally implemented, the state employee dental plan was chosen as the benchmark. Over the years, the program has had items added or deleted that were outside the coverage of the state employee dental plan. This proposed amendment is to more closely align the HMK program with the CMS approved state plan.

Comment #7: A commenter asked if benefits for HMK/CHIP members would switch to that of the State Employee Dental Benefit Plan.

Response #7: No, only the covered codes will be similar and can be viewed at the link outlined on the rule notice.

4. These rule amendments are effective January 1, 2016.

/s/ Shannon McDonald for
Susan Callaghan, 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 December 14, 2015.

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

In the matter of the adoption of New Rules I through X pertaining to the implementation of the Montana health and economic livelihood partnership (HELP) program	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 29, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-730 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1837 of the 2015 Montana Administrative Register, Issue Number 20.

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

NEW RULE I (37.84.101) HELP ~~PROGRAM~~ ACT: PURPOSE (1) remains as proposed.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-131, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, MCA

NEW RULE II (37.84.102) HELP ~~PROGRAM~~ ACT: DEFINITIONS

(1) "Advance Benefit Notice (ABN)" means a notice that providers give to the participant when they have determined that a service or item is a noncovered benefit of the ~~Health and Economic Livelihood Partnership (~~HELP~~) Program~~ Plan. The ABN provides notice to the participant that the participant is responsible for the full payment of the particular service.

(2) remains as proposed.

(3) "Aligned Medicaid Alternative Benefit Plan" means a service plan available to HELP members that is equivalent to the Medicaid services described in ARM Title 37, chapters 86 and 88.

(3) and (4) remain as proposed, but are renumbered (4) and (5).

~~(5)~~ (6) "Benefits" means the services a ~~participant~~ person is eligible to receive. The HELP Program benefits are stated in ~~its~~ the Evidence of Coverage or the Aligned Medicaid Alternative Benefit Plan as applicable.

(6) through (8) remain as proposed, but are renumbered (7) through (9).

~~(9) "Early and periodic screening, diagnostic, and treatment (EPSDT) services" means services as defined in ARM Title 37, chapter 86, subchapter 22.~~

(10) remains as proposed.

(11) "Evidence of Coverage (EOC)" means a document that explains covered services, defines the ~~plan's~~ HELP Plan's obligations, and explains the rights and responsibilities of the ~~plan~~ HELP Plan participant.

(12) "Experimental, investigational, and unproven" means any drug, device, treatment, or procedure that meets any of the following criteria:

(a) through (f) remain as proposed.

(g) it is experimental, investigational, unproven, or not a generally acceptable medical practice in the ~~predominate~~ predominant opinion of independent experts utilized by the administrator of each plan; or

(h) it is not experimental or investigational in itself pursuant to the above and would not be medically necessary, but it is being provided in conjunction with the provision of a treatment, procedure, device, or drug ~~which~~ that is experimental, investigational, or unproven.

(13) through (15) remain as proposed.

(16) "Health and economic livelihood partnership (HELP) plan" means the participant's benefits as described in the evidence of coverage, the network of providers, the coordination of care, and the claims processing that is administered by the third-party administrator pursuant to the HELP Act.

~~(16)~~ (17) "Health and economic livelihood partnership (HELP) program" means a Medicaid coverage program for persons as authorized at Title 53, chapter 6, part 13, MCA, and as implemented in accordance with that part, 53-2-215, MCA, 42 U.S.C. 1315 (2015), 42 U.S.C. 1396d(y) (2015), and other applicable state and federal authorities for those persons who are eligible for the HELP Program as authorized under 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) (2015)~~, exclusive of those individuals exempt pursuant to 53-6-1305(3), MCA, and served under Title 53, chapter 6, part 1, MCA~~.

(18) "Healthy behavior plan" means a program implemented to improve the health of participants by providing services focused on the promotion or maintenance of good health.

(17) remains as proposed, but is renumbered (19).

~~(18)~~ (20) "Inpatient hospital services" means ~~services that are ordinarily furnished in an acute care hospital for the care and treatment of a patient under the direction of a physician, dentist, or other practitioner as permitted by federal law~~ services or supplies provided to the participant who has been admitted to a hospital as a registered bed patient and who is receiving services under the direction of a participating provider with staff privileges at that hospital, including a critical access hospital. The facility must:

(a) be licensed or formally approved as an acute care or critical access hospital by the officially designated authority in the state where the institution is located; and

(b) remains as proposed.

~~(19) "Medicaid state plan benefit" means the Medicaid services described in ARM Title 37, chapter 86.~~

(20) remains as proposed, but is renumbered (21).

~~(21)~~ (22) "Medically necessary" or "medically necessary covered services" means services and supplies that are necessary and appropriate for the diagnosis,

prevention, or treatment of physical or mental conditions as specified in the HELP ~~Program~~ Plan Evidence of Coverage provided in [New Rule IV].

(23) "Member" means an individual enrolled in the Montana Medicaid Program under 53-6-131, MCA, or receiving Medicaid-funded services under 53-6-1304, MCA.

(22) remains as proposed, but is renumbered (24).

~~(23) "Nonemergency transportation service" means travel furnished by a licensed motor carrier or by a private vehicle.~~

~~(a) Nonemergency transportation service does not include ambulance services.~~

~~(b) A motor carrier operated by the Indian Health Service (IHS) or by a federally recognized Indian Tribe, which meets all applicable standards for a class B public service commission license, need not be licensed for the purposes of this subchapter.~~

~~(24)~~ (25) "Outpatient ~~hospital~~ facility services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to an outpatient by or under the direction of a physician, dentist, or other practitioner as permitted by federal law. The facility must:

(a) be licensed or formally approved as ~~a~~ an acute care or critical access hospital by the officially designated authority in the state where the institution is located; and

(b) remains as proposed.

~~(25)~~ (26) "Participant" means an individual enrolled in the HELP Program established in Title 53, chapter 6, part 13, MCA, and Title 39, chapter 12, MCA. A participant ~~who~~ is eligible for and enrolled with the HELP Program and ~~who can receive covered benefits as determined by the department under this subchapter or 42 U.S.C. 1396a. An individual who meets the criteria of 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) (2015) is eligible to be a participant. An individual is not a participant while an eligibility hearing decision is pending or during any period a hearing officer determines the individual was not eligible for HELP Program coverage benefits~~ receiving benefits through the HELP Plan.

~~(26)~~ (27) "Participating provider" means a health care professional or facility that is ~~enrolled in the HELP Program~~ participating in either the HELP Plan network or the Medicaid program.

(27) remains as proposed, but is renumbered (28).

~~(28)~~ (29) "Premium" means a fee owed by an individual as a participant in the HELP ~~Program~~ Plan.

(29) remains as proposed, but is renumbered (30).

~~(30) "Qualifying life event" is a change in a participant's life that allows them to change benefit plans, examples are pregnancy and the onset of a disability.~~

(31) remains as proposed.

(32) "Third party administrator (TPA)" means an entity ~~with a certificate of registration to conduct business in Montana in accordance with 33-17-603, MCA. TPA~~ appropriately authorized, as may be required by Montana law, to provide administrative services ~~include~~ including, but ~~are~~ not limited to, claims processing, maintaining an adequate network of participating providers, coordination ~~and~~

~~continuation~~ of care, health education, notices, quality assurance, reporting, case management services, and customer service.

(33) "Tribal health services" means a ~~facility or location owned and operated~~ service provided by a federally recognized American Indian Tribe or tribal organization under a P.L. 93-638 agreement~~, which provides diagnostic, therapeutic (surgical and nonsurgical), and rehabilitation services to tribal members either in an inpatient or outpatient setting~~.

~~(34) "Wellness program" means a program implemented to improve the health of participants by providing services focused on the promotion or maintenance of good health.~~

(35) remains as proposed, but is renumbered (34).

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-131, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, MCA

NEW RULE III (37.84.103) HELP ~~PROGRAM~~ ACT: ELIGIBILITY FOR COVERAGE (1) remains as proposed.

(2) HELP Program coverage, as specified in (1), is inclusive of a person who is ~~over the age of~~ 19 ~~and under the age of 65~~ through 64 years of age, ~~who~~ has a modified adjusted gross income at or below 138% of FPL as appropriate to the household size, and ~~who~~ is not:

(a) and (b) remain as proposed.

(c) disabled as determined for purposes of social security; or

(d) in one of the other categories for Medicaid coverage that are excluded from Medicaid expansion coverage by the language of the applicable federal ~~statute~~ authority~~; or~~

~~(e) receiving coverage through the standard Medicaid state plan as a person who is:~~

~~(i) medically frail;~~

~~(ii) an American Indian or Native Alaskan; or~~

~~(iii) excluded otherwise by federal law~~.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-131, 53-6-1304, MCA

NEW RULE IV (37.84.106) HELP ~~PROGRAM~~ ACT: BENEFITS PLANS

(1) Coverage ~~of health care services~~ for a ~~participant~~ person in the HELP Program, except as provided in (2), is provided through the HELP ~~TPA benefits p~~Plan.

(2) ~~A participant may be excluded from the HELP TPA benefits plan and receive coverage through the standard Medicaid state plan if the participant~~ A person eligible under the HELP Program may be excluded from the HELP Plan and receive coverage through the Aligned Medicaid Alternative Benefit Plan if the person:

(a) lives in a geographical area, including an Indian reservation, ~~for which~~ where the TPA is unable to make arrangements with sufficient numbers and types of health care providers to offer services to participants; ~~or~~

(b) needs continuity of care that would not otherwise be available or cost-effective through the TPA, including American Indians and Alaska Natives~~.~~;

(c) has been determined by the department to have exceptional health care needs, including, but not limited to, a medical, mental health, or developmental condition; and

(d) is exempt by federal law, including all individuals with incomes up to 50 percent of the FPL, from premium or cost-sharing obligations and other exemptions not waived by CMS.

(3) The department adopts and incorporates by reference the HELP ~~Program~~ Plan Evidence of Coverage (EOC) dated January 1, 2016, which is available on the department's web site at http://dphhs.mt.gov/MontanaHealthcarePrograms.

(4) The HELP ~~Program~~ Plan EOC describes the health care benefits, inclusive of limitations upon those benefits, available to the HELP ~~Program~~ Plan participants.

(5) Services that are ~~not covered,~~ not reimbursable, not medically necessary, experimental, investigational, unproven, or performed in an inappropriate setting are not covered benefits in the HELP ~~Program~~ Plan.

(6) remains as proposed.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1305, MCA

NEW RULE V (37.82.301) MAGI AS THE MEASURE OF INCOME

(1) Effective January 1, 2014, except for ~~participants~~ members receiving aged, blind, or disabled benefits or benefits based on participation in a Medicaid home and community-based services waiver, a ~~participant's~~ person's income must be determined in accordance with 42 U.S.C. 1396a(e)(14) (2015), which establishes modified adjusted gross income (MAGI) as the required measure of income.

~~(2) There is no resource test for participants whose income is calculated based on MAGI.~~

(3) remains as proposed, but is renumbered (2).

AUTH: 53-6-113, MCA
IMP: 53-6-131, MCA

NEW RULE VI (37.84.107) HELP ~~PROGRAM~~ ACT: HELP PLAN PREMIUMS (1) A HELP ~~Program~~ Plan participant must pay ~~an annual~~ a premium~~,~~ ~~billed monthly,~~ equal to two percent of the prorated share of the participant's annual household income. The premium will be billed in twelve equal monthly amounts.

(2) A participant, except as provided in (4) and (5), for whom ~~a due premium has not been paid and remains owing~~ an overdue premium is owed, ~~may~~ will be disenrolled from coverage ~~until the department has been compensated for the overdue premium~~ as provided in (3).

(3) The process for collection of overdue premiums is as follows:

(a) and (b) remain as proposed.

(c) Unless the ~~person~~ participant states the intent not to reenroll, the department may reenroll the person in the HELP ~~Program~~ Plan when the Department of Revenue assesses the unpaid premium through the participant's income tax.

(4) remains as proposed.

(5) A participant is not subject to disenrollment for failure to pay a premium if the participant meets two of the following criteria:

(a) through (c) remain as proposed.

(d) participation in any of the following health behavior activities developed by a health care provider or the TPA or approved by the department:

(i) ~~participation in~~ a Medicaid health home;

(ii) ~~participation in~~ a patient-centered medical home;

(iii) ~~participation in~~ a cardiovascular disease, obesity, or diabetes prevention program;

(iv) ~~participation in~~ a program requiring the participant to obtain primary care services from a designated provider and to obtain prescriptions from a designated pharmacy;

(v) ~~participation in~~ a Medicaid primary care case-management program established by the department;

(vi) ~~participation in~~ a tobacco use prevention or cessation program;

(vii) ~~participation in~~ a substance abuse treatment program; or

(viii) ~~participation in~~ a care coordination or health improvement plan administered by the TPA~~;~~. ~~or~~

~~(ix) participation in a department-approved wellness program.~~

~~(6) A premium payment is assessed for a participant's coverage based upon retroactive eligibility.~~

(6) A participant may reenroll at any time by payment of the premium.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1307, MCA

NEW RULE VII (37.84.108) HELP ~~PROGRAM~~ ACT: HELP PLAN COPAYMENTS (1) ~~Except as provided in this rule each participant in the HELP Program must pay to the provider of service the copayments as described in ARM 37.85.204, not to exceed the cost of service.~~ Except as provided in this rule each participant in the HELP Plan must pay to the provider of service copayments as described below not to exceed the cost of service.

(2) All HELP Plan participants receive a credit in the amount of their premium obligation towards the first copayments accrued up to two percent of household income.

(3) Premiums and copayments combined may not exceed an aggregate limit of five percent of the annual family household income.

(4) Participants with incomes at or below 100 percent of the FPL are responsible for the following copayments:

(a) inpatient hospital - $75 per discharge;

(b) nonemergency services provided in an emergency room - $8;
(c) pharmacy-preferred brand drugs - $4;
(d) pharmacy-non-preferred brand drugs, including specialty drugs - $8;
(e) professional services - $4;
(f) outpatient facility services - $4;
(g) durable medical equipment - $4; and
(h) lab and radiology - $4.

(5) Participants with incomes above 100 percent of the FPL are responsible for the following copayments:

(a) inpatient hospital - 10 percent of provider reimbursed amount;
(b) nonemergency services provided in an emergency room - $8;
(c) pharmacy-preferred brand drugs - $4;
(d) pharmacy-non-preferred brand drugs, including specialty drugs - $8;
(e) professional services - 10 percent of provider reimbursed amount;
(f) outpatient facility services - 10 percent of provider reimbursed amount;
(g) durable medical equipment - 10 percent of provider reimbursed amount; and
(h) lab and radiology - 10 percent of provider reimbursed amount.

~~(2)~~ (6) ~~Additional copayments may not be charged if, during the current benefit year the participant has paid in total, three percent of the participant's annual income in copayments.~~ Copayments are subject to a quarterly aggregate cap of one-quarter of three percent of the annual household income. Copayments may not be charged in a quarter after a household has met the quarterly aggregate cap.

~~(3)~~ (7) Copayments may not be charged for:

(a) through (c) remain as proposed.

~~(d) pregnancy services;~~

(e) remains as proposed, but is renumbered (d).

~~(f)~~ (e) eyeglasses purchased by the Medicaid program under a volume purchasing agreement; and

(f) other services exempt by applicable federal authority.

~~(g) EPSDT;~~
~~(h) transportation services;~~
~~(i) family planning services;~~
~~(j) emergency services;~~
~~(k) hospice;~~
~~(l) independent laboratory and x-ray services; and~~
~~(m) tobacco cessation.~~

~~(4)~~ (8) Copayments may not be charged for services rendered in circumstances of third party liability (TPL) claims where the HELP ~~Program~~ Plan is the secondary payer under ARM 37.85.407. If a service is not subject to TPL, but is covered by the HELP ~~Program~~ Plan, copayments are applied.

~~(5) The following categories of persons are exempt from copayments:~~
~~(a) American Indian and Alaska Native;~~
~~(b) pregnant women;~~
~~(c) individuals under age 21;~~
~~(d) terminally ill individuals; and~~

~~(e) individuals covered under the Breast and Cervical Cancer Treatment Program.~~

~~(6) Premiums and copayments combined may not exceed an aggregate limit of five percent of the annual family household income.~~

(9) Copayments may not be charged to the participant until the claim has processed through the claims adjudication process and the provider has been notified of payment and amount owing.

~~(7)~~ (10) Providers may only charge participants for the following services if the participant signs an ABN for the specific service prior to services being provided:

(a) and (b) remain as proposed.

(c) ~~unproved~~ unproven services;

(d) services performed in an inappropriate setting; ~~and~~

(e) services that are not medically necessary~~.~~; and

(f) investigational services.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1306, MCA

NEW RULE VIII (37.84.109) HELP ~~PROGRAM~~ ACT: HELP PLAN REIMBURSEMENT (1) Covered services for participants in the HELP ~~Program enrolled with the TPA~~ Plan, except as otherwise provided in (2), are reimbursed directly by the TPA according to the schedule found at https://medicaidprovider.mt.gov.

(2) The following services received by participants enrolled ~~with the TPA~~ in the HELP Plan are reimbursed directly through the department:

(a) through (3) remain as proposed.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-1305, MCA

NEW RULE IX (37.84.112) HELP ~~PROGRAM~~ ACT: HELP PLAN PROVIDER QUALIFICATIONS (1) As a condition of participation in the HELP ~~Program~~ Plan, all providers must comply with all applicable state and federal statutes, rules, and regulations governing the Montana Medicaid Program and all applicable Montana statutes and rules governing licensure and certification.

(2) Any health care provider that is currently subject to exclusion by the U.S. Department of Health and Human Services (HHS) or that is suspended or terminated by the Medicaid or the Medicare program or by a state Medicaid program may not be enrolled as a HELP ~~Program~~ Plan provider or receive reimbursement from the department for the delivery of health care or other services to participants.

(3) through (6) remain as proposed.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1305, MCA

NEW RULE X (37.84.115) HELP ~~PROGRAM~~ ACT: HELP PLAN GRIEVANCE AND APPEAL PROCESS (1) remains as proposed.

(2) The TPA ~~acts under the oversight of the department in all grievance and appeal processes~~ will cooperate with the department in all grievances and appeal processes.

AUTH: 53-2-215, 53-6-113, 53-6-1305, 53-6-1318, MCA
IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1305, 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:

New Rule II (37.84.102):

Comment #1: One comment was received regarding the definition of adjudication process in proposed New Rule II(2). The commenter believes that the clause "which is finalized by the provider receiving the remittance advice," should be removed as the commenter feels the definition is clear without this statement.

Response #1: This definition was described at the public hearing; however, the definition has been stricken from the draft of the rules and proposed New Rule VII(9) has been amended to add clarification of the adjudication process.

Comment #2: One comment was received regarding proposed New Rule II(6) pertaining to what recourse is a provider allowed for collection of nonpaid copayments. Will providers routinely waive copayments due to administrative complexity?

Response #2: Proposed New Rule II is the definition section for this subchapter. Proposed New Rule II(6) is a definition of the term "copayment," which is used throughout this subchapter. The department has no authority to direct a provider by rule how to collect copayments. That decision is made by the provider consistent with its business practices.

Comment #3: One comment was received regarding the definition of "experimental" and "unproven" in proposed New Rule II(12). The commenter requested the defined term be changed to, "experimental, investigational, and unproven," as the word "investigational" is used in (b), (g), and (h).

Response #3: The department agrees that "investigational" should be used in the defined term. The definition, as adopted, includes the term "investigational."

Comment #4: One comment was received regarding the use of the HELP Program versus HELP Plan throughout the document.

Response #4: The department agrees with the commenter and has added a new definition of HELP Plan in New Rule II(16), and updated the definition of HELP Program. The rules were updated throughout to clarify this change.

Comment #5: One comment was received regarding definition of inpatient hospital services in New Rule II(21) that inpatient hospital services are based on place, "in an acute care hospital," not type of service.

Response #5: The department agrees with the commenter and the definition has been modified.

Comment #6: One comment was received regarding the use of the word "predominate" in proposed New Rule II(12)(g) versus "predominant."

Response #6: The department agrees with the commenter regarding word selection and the rule will be adopted with the suggested change.

Comment #7: One comment was received regarding proposed New Rule II(24) definition of outpatient hospital services. The commenter is concerned that the definition describes services and is not dependent on facility type, as in the case of inpatient services. This seems inconsistent with the definition of "inpatient hospital services."

Response #7: Outpatient hospital services are defined in relation to setting. Outpatient hospital services are those services provided without overnight hospital admission in a licensed or formally approved acute care or critical access hospital. The definition is consistent with how the term is used throughout the department's Medicaid-related administrative rules. The definition was updated to be outpatient facility services to match the term used in proposed New Rule VII.

Comment #8: One comment was received regarding the definition of Participating Provider in proposed New Rule II(26). The commenter requests the definition be changed to state the following: "Participating provider means a health care professional or facility that is participating in the Third Party Administrator's HELP Program provider network."

Response #8: The TPA will not be responsible for the delivery of certain services available to all persons in the new coverage population. Consequently, the TPA will not be responsible for the enrollment of all providers of services. The definition of participating provider has been clarified to include providers that are enrolled both directly through the department's Medicaid system and through the TPA's provider network.

Comment #9: One comment was received regarding the definition of participant in New Rule II(26). The HELP Act distinguishes between the terms "member" and "participant." The commenter contends the definition of "participant" should be clearer and a definition of "member" should be included.

Response #9: The department agrees with the comment and has amended the rule as adopted.

Comment #10: Several comments were received regarding the definition of Third Party Administrator in proposed New Rule II(32). The commenter does not feel that 33-17-603, MCA, applies to the Third Party Administrator that provides services for plans such as the HELP Program, as the HELP Program is not funded by a policy of insurance, but rather is in the nature of a self-funded plan. The commenter requests the text be changed to, "Third party administrator means an entity whose services include, but are not limited to, claims processing, maintaining an adequate network of participating providers, coordination and continuation of care, health education, notices, quality assurance, reporting, case management services, and customer service."

Response #10: The department has rewritten the rule to remove the citation to 33-17-603, MCA, and to provide instead that the third party administrator be appropriately authorized, as required by Montana law, to provide administrative services. As rewritten, the rule requires the third party administrator to be in compliance with applicable Montana law in the conduct of its responsibilities under the contract.

Comment #11: One commenter, regarding proposed New Rule II(32), thinks the rules should include a definition of what constitutes an "adequate network of participating providers."

Response #11: The department agrees that the HELP Act requires the TPA to provide an adequate provider network and the department will monitor provider coverage and access in the TPA network through the contractual relationship. The department will consider implementing through further rule adoption particular criteria to govern network adequacy as performance develops and monitoring becomes better established.

Comment #12: One commenter, regarding proposed New Rule II(33), is concerned that the HELP Act requires the TPA to collect premiums but that is not stated in proposed New Rule II(33).

Response #12: Since proposed New Rule II is a definition section, it does not include a substantive requirement. The department agrees that the TPA must collect premiums and that requirement is clearly stated in statute and in the department's contract with the TPA. Consequently, it was not necessary to express the requirement in rule.

Comment #13: One commenter, regarding proposed New Rule II(33), is concerned that the word "continuation" was used without stating what is expected.

Response #13: The department agrees and is removing the word "continuation" from the definition.

New Rule III (37.84.103)

Comment #14: One comment was received on clarifying the age ranges of eligibility for the HELP Program. In proposed New Rule III(2) the commenter suggests changing the wording to state, "HELP Program coverage, as specified in (1), is inclusive of a person who is at least 19 years of age but under the age of 65 who has a modified adjusted gross income at or below 138% of FPL as appropriate to the household size and who is not…"

Response #14: The department has revised the rule language for clarity.

Comment #15: One comment was made regarding proposed New Rule III(2)(d). The commenter requests wording be revised to cite the specific federal statute that provides the categories of persons who are excluded.

Response #15: There are several types of federal authorities that provide for the exemption of certain categories of persons from participation in the department's TPA arrangement. Since the department is being kept apprised of those exemptions on an ongoing basis by the Centers for Medicare and Medicaid (CMS), it has not been feasible to compile a comprehensive list. The department has revised the rule to include all applicable federal authority.

New Rule IV (37.84.106)

Comment #16: One comment was received regarding those individuals who are exempt from participation in the alternative benefit plan administered by the TPA in proposed New Rule IV(2)(a) through (d). The commenter requests the sections of proposed New Rule IV(2)(a) through (d) be stricken and replaced with the following:

"(a) individuals who live in a region, that may include all or part of an Indian reservation, where the TPA is unable to contract with sufficient providers (as described in the TPA alternative benefit plan SPA);

(b) individuals who are medically frail;

(c) individuals who the state determines have exceptional health care needs, including but not limited to a medical, mental health, or developmental condition;

(d) individuals who the state determines, in accordance with objective standards approved by CMS (as described in the TPA alternative benefit plan), require continuity of coverage that is not available or could not be effectively delivered through the TPA; and

(e) individuals exempted by federal law from premium or cost-sharing obligations whose exemption is not waived by CMS, including all individuals with incomes up to 50 percent of the FPL."

Response #16: The department agrees the rule needed clarification and has adopted new language in New Rule IV(2).

Comment #17: One comment was received regarding proposed New Rule IV(2)(a) pertaining to those individuals who will be excluded from the HELP Program and who will receive services through the Medicaid State Plan if the TPA is unable to make arrangements with sufficient number and types of health care providers in the geographic area in which the participant lives, or if the participant needs continuity of care that is not available or cost effective through the TPA. The commenter is questioning the standard that the department will use to make these decisions.

Response #17: Due to the geographic and demographic variance in Montana, the department will monitor these provisions closely and address any inadequacies through the TPA contract. The department has identified that American Indian individuals need continuity of care that is not available through the TPA. Other individuals will be identified on a case-by-case basis.

Comment #18: One comment was received regarding proposed New Rule IV(5). The commenter is concerned that the subsection of rule is poorly worded and unclear.

Response #18: The department agrees the rule language requires clarity and has rewritten the rule for adoption.

New Rule V (37.82.301)

Comment #19: One comment was received regarding the proposed New Rule V(1) regarding the MAGI determination. The commenter is concerned that as the rule is written, it could be interpreted to mean that a participant's income must be measured by MAGI for all income determination purposes. The commenter suggests the rule be changed to the following:

"(1) Effective January 2, 2014, except for participants receiving aged, blind, or disabled benefits or benefits based on participation in a Medicaid home and community-based services waiver or otherwise described in 42 U.S.C. section1396a(e)(14)(D), as a non-MAGI population, a participant's income must be determined for the purposes of the HELP Program in accordance with 42 U.S.C. section 1396a(e)(14)(2015), which establishes adjusted gross income (MAGI) as the required measure of income."

Response #19: The MAGI eligibility criteria is used for other Medicaid eligibility categories in addition to the HELP Program; therefore, the department will be adopting the rule as proposed.

Comment #20: One comment was received regarding proposed New Rule V(2). The commenter is concerned that this section is irrelevant to the HELP Act and a repetition of language in federal statute and rule. It gives new Medicaid participants

an advantage over recipients in the existing Medicaid. A person with substantial net worth could receive public benefits.

Response #20: The department agrees proposed New Rule V(2) was confusing and not needed and is not adopting the proposed section.

New Rule VI (37.84.107)

Comment #21: One comment was received regarding proposed New Rule VI(1) pertaining to the term "annual." The commenter feels the term should be defined.

Response #21: The term "annual" means 12 months. The rule language has been clarified.

Comment #22: One comment was received regarding proposed New Rule VI(2) pertaining to the use of the word "may." The commenter is concerned the term "may" should be changed to "shall."

Response #22: The department agrees and has modified the final rule as suggested.

Comment #23: The department received comments regarding proposed New Rule VI(5)(d)(ix) pertaining to the wellness program. A commenter feels that the department should adopt rules with more detail regarding what constitutes a wellness program. Another commenter pointed out that a healthy behavior plan, not wellness program, is the term used in Senate Bill 405 (SB405).

Response #23: The term "healthy behavior plan" has been adopted in place of wellness program in New Rule II(18). As the HELP Program matures and data and experience are available, the department will review what it accepts as a healthy behavior plan and may adopt more detailed rules.

Comment #24: One comment was received regarding clarifying proposed New Rule VI(2). The commenter expressed concern with the clarity of (2) and suggested the rule be written as follows:

"(2) A participant, except as provided in (4) and (5), for whom a premium, which has become due and has not been paid and remains owing after the time period in (3) may be disenrolled from coverage until the department has been compensated for the overdue premium."

Response #24: The department agrees with the commenter that there is the need for clarity in the section. The department has clarified the language in (2) and has added a new (6) for further clarification in the adopted rule.

Comment #25: One comment was received regarding proposed New Rule VI(3)(a) pertaining to TPA's requirement to provide the department with a copy of each notice

sent to every delinquent participant. The commenter expressed concern that this requirement would become administratively burdensome to both the TPA and the department. The commenter suggested having the TPA send a periodic report of premium deficiencies as directed by the department.

Response #25: The department has determined that this process is what is currently needed to accurately track these individuals. The rule has been adopted as proposed.

Comment #26: The department received one comment regarding proposed New Rule VI(6) pertaining to the term "retroactive eligibility." The commenter is concerned that the term is not defined and this subsection is unclear and notes that the term was not used in the HELP act.

Response #26: The department agrees that proposed New Rule VI(6) is unclear and is removing this subsection.

Comment #27: One comment was received regarding proposed New Rule VI(5)(d)(i) through (ix) pertaining to concerns that as the rule is written a participant has the option to choose which two programs he or she will participate in to avoid disenrollment for unpaid premiums. The commenter suggests revising the rule to require that the department determine whether the program in which the participant is enrolled is appropriate and beneficial to the participant. The commenter is also concerned that the rule does not address how long a participant may continue to participate in any of the programs, and what will happen to the premiums owed during that time period.

Response #27: The Third Party Administrator will utilize health coordinators to review participants' appropriate and beneficial use of the health behavior programs.

New Rule VII (37.84.108)

Comment #28: One comment was received regarding proposed New Rule VII(5) pertaining to the three percent copayment cap. The commenter is concerned that the cap on copayments of three percent of the participant's annual income is not provided for in the HELP Act.

Response #28: Section 53-6-1306(2), MCA, provides that the copayment cannot be greater than the maximum amount allowed under federal law. The maximum allowed cost share, inclusive of copayments and premiums, is five percent of the annual household income. The total permissible cost share of five percent less the two percent required for premiums equals a maximum copayment at a three percent cap. The rule has been adopted as proposed. The department moved (6) to (3) to improve clarity.

Comment #29: Several comments were received regarding the services exempt from copayments in proposed New Rule VII(8). Commenters noted that the rule included exemptions that do not appear in the language in SB405.

Response #29: The department has modified the rule as adopted to state in rule only those bases for exception from the copayment requirement that are authorized by state or federal statutory authority or are not feasible for the application of copays due to circumstances to which copayments cannot be applied. Other types of circumstances previously stated that do not meet these criteria have been deleted.

Comment #30: Two comments were made that pregnant women are not eligible for the HELP Program but the copayment section states that pregnancy services and pregnant women are exempt from copayments. The commenters would like to have it clarified about what happens if a women in the HELP Program becomes pregnant.

Response #30: If the department knows a woman is pregnant when she applies for Medicaid, she must be enrolled under the pregnancy category. If a woman becomes pregnant while in the HELP Program, she has the option in accordance with federal authority of remaining in the expansion category rather than shifting to the pregnant category. The references to pregnancy services at (7)(d) and pregnant women at (8)(b) have been deleted. See response #29.

Comment #31: One comment was received regarding the proposed New Rule VII(11) as the requirements in rule do not match the requirements set forth in the RFP Section 3.2.1.F (2). The commenter suggests changing the wording of proposed New Rule VII(10) to the following:

"(a) noncovered services;
(b) experimental services;
(c) unproven services;
(d) investigational services;
(e) services performed in an inappropriate setting;
(f) services that are not medically necessary per the TPA definition; and
(g) services requiring prior authorization or other administrative function for which prior authorization requests were not obtained."

Response #31: The department has added investigational services in the rule as adopted and has corrected the spelling error in the unproven services.

Comment #32: The department received comments regarding proposed New Rule VII(5). The commenters are concerned that the individuals exempted from copayment do not appear in 53-6-1306, MCA.

Response #32: Section 53-6-1306(2), MCA, requires the department to "adopt a copayment schedule that reflects the maximum copayment amount allowed under federal law." The individuals listed in proposed New Rule VII(5) are exempt under

federal law. The department has stricken this section as to not duplicate what is already in federal statute.

New Rule VIII (37.84.109)

Comment #33: One comment was received regarding proposed New Rule VIII(1) and (2). The commenter would like the wording changed to remove the wording regarding participants in the HELP Program enrolled with the TPA.

Response #33: Some participants in the TPA program will be receiving certain particular types of services that are not within or not available through the TPA program and therefore those services are to be reimbursed through the department's Medicaid reimbursement system. The rule therefore, of necessity, specifies those services that are to be billed directly to the department. The rule has been adopted as proposed.

New Rule IX (37.84.112)

Comment #34: One comment was received requesting clarification of proposed New Rule IX.

Response #34: Proposed New Rule IX sets forth the requirements that a provider meet to receive reimbursement from the HELP Program. The requirements set forth are those that are generally required in accordance with federal law applicable to the provision of Medicaid-funded health care services.

New Rule X (37.84.115)

Comment #35: One comment was received regarding proposed New Rule X(1). The commenter expressed concern that currently ARM 37.5.103, concerning applicable due process hearing procedures for Medicaid members, does not reference the HELP Program. The commenter suggests updating ARM 37.5.103 to add reference to the HELP Program.

Response #35: ARM 37.5.103(1)(i) references the medical assistance program (Medicaid) which is inclusive of the HELP Program. The rule has been adopted as proposed.

Comment #36: One comment was received regarding proposed New Rule X(2) pertaining to the department rather than the TPA conducting fair hearings. The commenter suggested updating proposed New Rule X(2) to state: The TPA will cooperate with the department in all grievances and appeal processes.

Response #36: The department agrees with the commenter and has updated the final rule as suggested.

Comment #37: One comment was received regarding proposed New Rule X. The commenter is concerned that the sentence "The role of the TPA...for rule adoption" should be deleted, as it does not give any direction to the department.

Response #37: The department notes that this sentence is not in rule. It was included in the statement of reasonable necessity as part of the rationale for proposed New Rule X, which now cannot be changed.

Other Comments

Comment #38: One comment was received regarding the usage of the wording of annual household income versus annual income. The commenter noted that in the rules the wording used is annual household income; however, in the statement of reasonable necessity annual income is used.

Response #38: The wording of "annual household income" in the rule is the correct language.

Comment #39: One comment was received regarding a concern that there are not any rules implementing HELP Act Sections (8) and (16).

Response #39: Section 8 is codified as 53-6-1311, MCA, Medicaid program reforms. The department is in the process of implementing this statute and will be proposing future rules. Section 16 is codified as 39-12-103, MCA. The department does not have rulemaking authority over this section and anticipates it will be implemented by the Montana Department of Labor and Industry.

Comment #40: One comment was received regarding a concern that there are not any rules implementing HELP Act Sections 19 and 21 regarding limits on malpractice claims.

Response #40: Section 19 is codified as 25-3-106, MCA, and Section 21 is codified as 27-2-205, MCA. The department does not have rulemaking authority over these sections. These sections also appear to be self-enacting and do not require administrative rules to implement.

Comment #41: Two comments were received regarding the performance measurements described in the notice of proposed rules at page 1853, stating that these measurements reveal nothing regarding value received by beneficiaries or personal responsibility.

Response #41: This section of the notice is not a proposed rule. Section 53-6-196, MCA, requires the department to include performance-based measures in some rules, which is the case with this notice.

Comment #42: One comment was received regarding continuous eligibility. The commenter is concerned that SB405 did not create 12-month continuous

eligibility. The rules do not include any means of disenrolling participants when their income climbs above 138 percent of the federal poverty level (FPL). There is no requirement that participants report income changes and there is no annual redetermination. Does the department intend perpetual eligibility once an applicant enrolls?

Response #42: Eligibility determination will be conducted annually; perpetual eligibility is not allowed. Continuous eligibility for HELP is contingent upon the participant complying with New Rule VI regarding premium payment.

Comment #43: One comment was received regarding the extent to which a third party may pay premiums on behalf of a participant. The commenter stated while the CMS 1115 waiver addresses this issue the rule does not.

Response #43: The language of proposed New Rule VI is written in a manner so as to not preclude the payment by a third party of the premium owed by a participant.

Comment #44: One comment was received in support of the new rules.

Response #44: The department thanks the commenter for the comment.

Additional Changes:

The following are additional changes made by the department after further review of the rules.

A new definition of Aligned Medicaid Alternative Benefit Plan was added to replace the standard Medicaid state plan benefit throughout the rule. Definitions regarding nonemergency transportation, Medicaid state plan benefit, qualifying life event, and early and periodic screening, diagnostic and treatment (EPSDT) have all been stricken from the rule, as the terms are no longer used within the rules. The definition for Tribal Health Services has been updated to clarify that these are services provided by an Indian tribe not a type of facility.

4. These rule adoptions are effective January 1, 2016.

/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 December 14, 2015

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

In the matter of the adoption of New Rules I through IV pertaining to implementing the Medicaid rate as the reimbursement rate the State of Montana will pay health care providers for services provided to individuals in the care or custody of the Department of Corrections or the Department of Public Health and Human Services	)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 29, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-731 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1854 of the 2015 Montana Administrative Register, Issue Number 20.

2. The department has adopted the following rules as proposed: New Rule II (37.2.1102) and III (37.2.1103).

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

NEW RULE I (37.2.1101) PURPOSE (1) The purpose of these rules is to implement 53-6-1312, MCA, which establishes the Medicaid schedule of rates as the reimbursement rates that the State of Montana (State) pays for health care services provided to an individual who does not qualify for Medicaid, Medicare, a health insurer, or another private or governmental program that pays for health care costs and is:

(a) through (2) remain as proposed.

AUTH: 53-6-1318, MCA
IMP: 53-6-1312, MCA

NEW RULE IV (37.2.1104) COST SHARING DOES NOT APPLY (1) The cost sharing requirements of ARM 37.85.204 and [New Rule VII, MAR Notice No. 37-730] do not apply to the individuals identified in 53-6-1312, MCA. An individual identified in 53-6-1312, MCA, is neither a member nor a program participant as defined at 53-6-1302, MCA.

AUTH: 53-6-1318, MCA

IMP: 53-6-1312, 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: A commenter said the wording of New Rule I is confusing because in addition to individuals who are not covered by Medicaid, the reimbursement rate set by 53-6-1312, MCA, applies if the health care services are not covered by Medicare, a health insurer, or another private or governmental program that pays for health care costs.

RESPONSE #1: The department agrees and is changing the wording of New Rule I(1) in the final rule as adopted.

COMMENT #2: A commenter said that New Rule IV requires clarification. If this section applies to individuals who do not qualify for State Plan Medicaid or the Montana Health and Economic Livelihood Partnership (HELP) Act, this should be stated in rule.

RESPONSE #2: The department agrees and is changing the wording of New Rule IV in the final rule as adopted.

5. These rule adoptions are effective January 1, 2016.

/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 December 14, 2015

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

In the matter of the amendment of ARM 37.86.1006 pertaining to the establishment of an annual payment limit for dental services provided through Medicaid	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-732 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1859 of the 2015 Montana Administrative Register, Issue Number 20.

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

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (5) remain as proposed.

(6) Medically necessary dental services outlined in (5)(c) through (e), excluding anesthesia services, are subject to an annual limit of $1,125 per benefit year. A benefit year begins on July 1st, and ends the following June 30th. Members determined categorically eligible for Aged, Blind, and Disabled (ABD) Medicaid, in accordance with ARM 37.82.204, are not subject to the annual limit.

(7) through (18) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 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: Eight commenters offered examples of patients with disabilities or individuals who are senior citizens who require treatment in a hospital environment under anesthesia, describing the severity of their condition, and the cost to return them to a healthy state. These are complex interventions. Others who may go over the annual limit are pregnant woman or individuals with complex medical conditions such as organ transplant, cancer treatment, or a referred patient from a cardiologist. All these examples would take the member over the limit. They are requesting the department to allow exceptions to the limit that is listed in the proposed rule.

RESPONSE #1: The department appreciates the comments and thanks the commenters for the thoughtful examples and recommended solution. The department has decided to exclude the aged, blind, and disabled population from the monetary limit. Diagnostic, preventive, denture, and anesthesia services were previously excluded from the annual limit.

COMMENT #2: A commenter stated multiple concerns regarding: (1) the dental cap, because dentists may choose not to participate because they might be in the midst of a treatment plan and the money runs out, (2) this new policy is false hope to members that they have insurance and they might not be able to find a dentist to provide care, (3) a Federally Qualified Health Center (FQHC) will not be equipped to handle the surge of patients, and finally, (4) if the cap is placed, how will dentists request increased funding (an extension).

RESPONSE #2: The department appreciates the comments and thanks the commenter for his/her concern regarding this issue. The department has updated the proposed rule to exclude the aged, blind, and disabled population from the monetary limit. Dentists and other adult members will need to be aware of the status of expenditures prior to services. If they are near reaching their cap, a private pay agreement will need to be established. The department will continue to monitor access issues related to member demand, private practice, and FQHC appointment availability.

COMMENT #3: A commenter questioned if there will be preapproved exceptions to the cap. These exceptions should be outlined within the rule and not subject to a determination after the service is performed.

RESPONSE #3: The department appreciates the comment and thanks the commenter for a recommendation to resolve this issue. The department will not have a preapproved exception to the $1,125 cap, but has excluded the aged, blind, and disabled population from the monetary limit. Diagnostic, preventive, denture, and anesthesia services are also excluded from the annual monetary cap.

COMMENT #4: A commenter expressed concern regarding: (1) the Prospective Payment System at a FQHC being applied to the limit, even if some of those services are exempt under the rule; and (2) the cap for those adults who are aged and disabled.

RESPONSE #4: The department appreciates the comment and thanks the commenter for a recommendation to resolve this issue. The department has excluded the aged, blind, and disabled population from the monetary limit. Payment methodology for services rendered at a FQHC will be the ongoing prospective payment system per visit for all other adults. This amount will be deducted from the annual dollar limit/cap.

COMMENT #5: A commenter recommends that the department not include, in the annual dollar limit, the periodontal treatment codes D4341, D4342, and D4910.

RESPONSE #5: The department's analysis of past dental service utilization and projections of the new expansion group, paired with national utilization trends, tells us the $1,125 annual limit will meet a high level of sufficiency. The department's partners at the Montana Dental Association stated that dentists have the ability to "stage" or "prioritize" treatment plans to work through health conditions. Since the original analysis, additional procedure codes have been eliminated from the annual limit. The department is confident the $1,125 dental treatment limit is sufficient to meet the members' dental needs.

4. This rule amendment is effective January 1, 2016.

/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 December 14, 2015

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

In the matter of the amendment of ARM 38.5.1902 pertaining to Cogeneration and Small Power Production	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 24, 2015, the Department of Public Service Regulation published MAR Notice No. 38-5-232 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1442 of the 2015 Montana Administrative Register, Issue Number 18.

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

38.5.1902 GENERAL PROVISIONS (1) through (4) remain as proposed.

(5) All purchases and sales of electric power between a utility and a qualifying facility that is not eligible for standard offer rates shall be accomplished according to the terms of a written contract negotiated ~~contract~~ between the parties ~~or in accordance with the applicable standard tariff provisions as approved by the commission~~. The utility shall compute the avoided costs for a qualifying facility that is not eligible for standard offer rates at the time the qualifying facility requests a contract. Only qualifying facilities having a nameplate capacity not greater than 3 MW are eligible for standard offer rates. All purchases and sales of electric power between a utility and a qualifying facility that is eligible for standard offer rates shall be accomplished according to the terms of a written contract between the parties or in accordance with the applicable standard tariff provisions as approved by the commission. The utility shall recompute short-term and long-term avoided costs for standard offer rates following submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229. ~~Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility larger than 3 MW may be accomplished at a rate which is a negotiated term of the contract between the utility and the qualifying facility.~~ The contract shall specify:

(a) through (7) remain as proposed.

3. The department has fully considered the written and oral comments on the proposed rule. In this case, there were no opponents to the proposed amendment. A summary of the comments received and the department's responses, including the principal reasons for and against adoption, are as follows:

COMMENT 1: Greycliff Wind Prime, LLC (Greycliff) proposed Version C to reduce barriers to amicable contract formation and increase the incentive to negotiate rather than litigate. Greycliff asserted that nothing in law requires a competitive solicitation process to set avoided cost rates, and that the existing rule has hampered negotiations between the utilities and large qualifying facilities (QFs). It acknowledged that under certain circumstances, competitive solicitations may be used to set avoided costs rates, but said that relying on solicitations that are never held runs afoul of the Public Utility Regulatory Policies Act (PURPA), that short term rates do not encourage or enable long-term contracts, and that a conflict exists between the rule and 69-3-603, MCA.

Greycliff compared the risks presented by QF contracts to the risks presented by rate based utility assets. It alleged discriminatory treatment of QFs by the utility with respect to certain assumptions about the future, and alleged that QF contracts have certain advantages. Greycliff also discussed the potential for wind development in Montana and the need to comply with the Clean Power Plan. It also made certain arguments, including legal arguments, in response to broader comments by the Montana Consumer Counsel (MCC) and NorthWestern Energy (NorthWestern).

RESPONSE 1: Although Version C would clearly require negotiations, it would also add new requirements that would need to be administered and adjudicated. Creating a new process for summary ruling or a more specific standard for negotiations would likely invite additional litigation. Also, a summary ruling process could force customers to pay more than avoided cost for QF power, thereby violating the principle of consumer indifference. For these reasons, the commission declines to adopt Version C, and finds that revised Version B will be simpler to administer and better ensure customer indifference. The commission finds that it need not resolve all of the broader legal and policy disagreements between Greycliff, NorthWestern, and MCC in this rulemaking proceeding.

COMMENT 2: The MCC emphasized the principle of consumer indifference, and asserted that for larger QFs, "the route to a long-term contract has been through a competitive solicitation." According to MCC, competitive solicitations "offer a superior means of determining avoided cost." It suggested adding a requirement for periodic competitive solicitations, but also recognized the complexity of defining such a process: "The issues involved in designing a role for competitive solicitations do not appear to be amenable to resolution by means of . . . the proposal currently before the Commission." It recommended broadening the scope of this proceeding or Docket N2015.9.74. It urged the commission to reject Version C.

In addition to its comments regarding competitive solicitations, the MCC proposed to eliminate rate levelization for large QFs. It also proposed to add new provisions concerning legally enforceable obligations (LEOs), utility resource acquisitions, and adjustments to new contracts based on subsequent commission decisions.

RESPONSE 2: The commission disagrees that competitive solicitations have been the primary route to long-term contracts for large QFs. In practice, the utility and large QFs have utilized contested case procedures to determine long-term avoided cost rates pursuant to 69-3-603, MCA. As the MCC acknowledged, creating new requirements for periodic solicitations is beyond the scope of this rulemaking proceeding. With this proceeding concluded, such requirements may be considered in Docket N2015.9.74. As discussed above, the commission declines to adopt Version C.

The commission finds that MCC's proposals to eliminate rate levelization for large QFs and add new provisions concerning LEOs, utility acquisitions and contract adjustments are beyond the scope of this rulemaking proceeding.

COMMENT 3: NorthWestern commended the commission "for addressing the contradictory administrative provisions" regarding large QFs. According to NorthWestern, the competitive solicitation rule serves an important regulatory purpose, and the "policy reasons that supported the competitive solicitation requirement in 1992 are still present." However, it also recognized an apparent conflict between certain rules, and said the commission has "wide latitude" in implementing PURPA. NorthWestern warned against creating conflicts with the Electric Procurement Guidelines, and suggested that if the commission repeals the competitive solicitation rule, it should do so based on reasonable necessity.

NorthWestern stated that Version A could be workable, but strongly opposed Version C. According to NorthWestern, Version A "eliminates the current conflict between ARM 38.5.1902(5) and ARM 38.5.1903(2)(b)," but does not eliminate implementation uncertainty. It proposed the revised Version B to preserve the same substantive provisions as the original Version B, but more clearly maintain the distinction between large QFs and standard offer QFs. According to NorthWestern, revised Version B also clarifies that the utility's obligation to compute avoided cost when it begins negotiations with a large QF, and to base that computation on what it knows at that time.

RESPONSE 3: The commission agrees with NorthWestern that revised Version B is preferable to Versions A and C, and finds that adopting revised Version B is reasonably necessary for several reasons.

First, revised Version B will better ensure consumer indifference to QF contracts. Because NorthWestern's own generation resources have not been selected through competitive solicitation processes, requiring large QFs to be selected through such a process does not ensure customer indifference.

Second, the commission shares NorthWestern's concern about the apparent conflicts between certain rules. A conflict also exists between the competitive solicitation rule, which makes long-term contracts contingent on a solicitation, and 69-3-603, MCA, which creates an ongoing right to petition the commission for long-

term rates. *See e.g.* Dkts. D2014.4.43, D2015.8.64. As a result, the competitive solicitation rule has not been followed in practice.

Third, policies favoring competitive solicitations remain in effect, and are not in conflict with revised Version B. *See* Mont. Code Ann. §§ 69-8-419(2)(d), 69-3-2005(1)(a); Mont. Admin. R. 38.5.2010, 38.5.8212.

Fourth, as the federal agency responsible for overseeing states' implementation of PURPA, FERC's legal opinion is persuasive in this case because it is consistent with Montana's existing practice, which allows QFs to petition the commission to enforce PURPA rights. 16 U.S.C. § 824a-3(h) (2015). Harmonizing the commission's rule with FERC's decision should clarify this issue and reduce litigation.

Finally, the commission agrees with NorthWestern that revised Version B appropriately clarifies the utility's obligation to calculate avoided costs and the distinction between large QFs and standard offer QFs.

COMMENT 4: Martin Wilde, commenting on behalf of WinDATA, LLC and Montana Marginal Energy, LLC, observed that the commission itself recently approved a long-term, forecasted rate for a large QF outside of the context of a competitive solicitation. Mr. Wilde suggested that the competitive solicitation requirement has caused additional litigation because NorthWestern has relied on it to refuse to negotiate. Mr. Wilde urged the commission to adopt any of the versions proposed.

RESPONSE 4: The commission agrees that it has approved long-term avoided cost rates outside a competitive solicitation process. *See e.g.* Dkt. D2014.4.43. It adopts revised Version B to encourage negotiation in lieu of contested case proceedings, and to better ensure customer indifference.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

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

Certified to the Secretary of State December 14, 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 AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-937 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1673 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 5, 2015, a public hearing was held to consider the proposed amendment and repeal. Bob Story, Executive Director of the Montana Taxpayers Association, appeared and testified at the hearing and also provided written comments. The department received additional written comments from Jim Hagenbarth of Hagenbarth Livestock, in Dillon, Montana.

3. The department amends ARM 42.21.158 and 42.21.162, and repeals ARM 42.21.124, as proposed, effective January 1, 2016.

4. Based upon the comments received and upon further review, the department amends ARM 42.21.165 as proposed, effective January 1, 2016, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.21.165 LIVESTOCK REPORTING AND PER CAPITA FEE PAYMENT

(1) through (3) remain as proposed.

(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 shall use the owner's reported or estimated livestock counts from the previous ~~year(s)~~ year to estimate the livestock type and count for the current year. For livestock owners with livestock located on property owned by someone else that have not self-reported by the March 1 deadline, the department shall estimate the livestock owner's livestock type and count based on the livestock numbers provided by the landowner.

(5) remains as proposed.

(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~~ may 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.

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: Bob Story, Executive Director, Montana Taxpayers Association (MonTax), commented that MonTax agrees with the proposed changes to ARM 42.21.158, stating that these changes are all designed to eliminate unneeded language.

RESPONSE 1: The department appreciates Mr. Story's support of the amendments to ARM 42.21.158.

COMMENT 2: Mr. Story commented on the proposed amendment of ARM 42.21.162(3), questioning the necessity of the reference to 30 days after acquisition of property, wondering if that deadline is required by statute. He commented that this seems to create unnecessary paperwork because all property in place on January 1 must be reported by March 1. Regardless of when the property is acquired, it is not taxable until January 1.

Mr. Story stated that he has the same concerns regarding livestock reporting requirements. Again, he questions the purpose of the reporting requirement, as the livestock may be gone by January 1 when it would be taxable.

RESPONSE 2: The department appreciates Mr. Story's comments. The language "30 days after acquisition of the property" in ARM 42.21.162(3) primarily pertains to the acquisition of motor vehicles and subsequent application for exemption. The acquisition and registration of motor vehicles may be at any time during the year; the above language allows an application for exemption of motor vehicle taxes within 30 days after acquisition. Section 15-6-231(7), MCA, does not require this deadline; it does however allow the department to adopt rules necessary for the implementation and administration of exemption applications.

With regard to livestock reporting, 15-24-903, MCA, requires all livestock owners to report by March 1 of each year the county location and number of livestock owned as of February 1. Department staff met with the Department of Livestock during the drafting stage of Senate Bill 62, L. 2015, and the meeting included a discussion about possibly changing the reporting dates. However, the only date change included in the final bill was for per capita fee reporting.

COMMENT 3: Mr. Story commented on the requirement in the proposed amendments to ARM 42.21.165(4), stating that 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 shall assume they have livestock. He stated that language seems too open-ended, as the reporting could have occurred anywhere from five to ten years previously. If a livestock owner had reported in the previous

year and didn't file in the following year that would be something for the department to rely on. But if they had not reported for two years, there may be an explanation for that. He commented that he would like to see the look-back period changed to a specific number of years, preferably one. That would eliminate the possibility of the department stating that an owner had reported ten years ago and because they have not reported since the department assumes the owner still has that livestock.

RESPONSE 3: The department agrees that the verbiage "previous year(s)" could be misleading and has further amended ARM 42.21.165(4) to remove that language and make the process more clear.

COMMENT 4: Jim Hagenbarth, of Hagenbarth Livestock in Dillon, submitted comments relating to the proposed amendments to ARM 42.21.165. He stated that he has a grazing unit in Montana and also in Idaho and the cattle are moved back and forth depending on the time of year. In the past, this has resulted in the owner being taxed on cattle that were not actually in the state for a portion of the year.

Mr. Hagenbarth commented that the legislature subsequently enacted 15-24-922, MCA, which allowed a livestock owner to file for and receive a refund of excess taxes paid for livestock not in state during a portion of the year. Mr. Hagenbarth understands the need to update the tax code, but wants to ensure that the proposed amendments to ARM 42.21.165 do not change the process currently in place under 15-24-922, MCA.

RESPONSE 4: The department appreciates Mr. Hagenbarth's comments, and assures him the amendments to ARM 42.21.165 will not change the process currently in place under 15-24-922, MCA.

His question appears to stem from the department's proposed addition of 15-24-922, MCA, as an implementing citation for ARM 42.21.165 as amended. The addition is directly related to the department's repeal of another rule supported by that statute. The relevant language from the repealed rule, ARM 42.21.124, was relocated into this rule and the statute was added as an implementing citation to support that language addition.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 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 AMENDMENT

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-938 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1679 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 4, 2015, a public hearing was held to consider the proposed amendment. James C. Wangerin and Walter Wangerin appeared and testified at the hearing. Other members of the public attended the hearing, but did not testify. The department also received written comments from James C. Wangerin.

3. Based upon the comments received and after further review, the department has amended ARM 42.15.214 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) remains as proposed.

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and inactive duty training for service not described in (1)(b) or (1)(c);

(b) through (3) remain as proposed.

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: James C. Wangerin stated that the documentation required from a National Guard member to verify the right "active duty" status required to qualify for an exemption is not well defined in ARM 42.15.214. He stated that the Servicemembers Civil Relief Act (SCRA) certificate and the fact that the federal government does not withhold based on a determined exemption eligibility should be sufficient for the department to make the same determination. He further stated that the SCRA certificate should be conclusive evidence of eligibility for the exemption and feels that this certificate should be included in the proposed amendments to the rule as an item for determining eligibility.

RESPONSE 1: The department agrees that the SCRA certificate is a good resource to help substantiate a service member's branch of service and duty status, and appreciates Mr. Wangerin's efforts to make the department aware of this tool.

However, the SCRA certificate cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service. The certificate itself states, "SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by the SCRA, as defined in accordance with 10 U.S.C. 101(d)(1)."

COMMENT 2: Mr. Wangerin stated that if the federal Defense and Accounting Service (DFAS) does not withhold Montana taxes from the pay of a National Guard member, that should be sufficient proof that the member is exempt from the Montana withholding tax.

RESPONSE 2: The absence of Montana tax withholding cannot be relied upon as definitive proof that an individual is exempt from Montana income tax, because withholding amounts are susceptible to errors. This is evident in the situation with Montana's National Guard service members, who should have Montana tax withheld from their wages. An employer not withholding income tax from an employee's pay does not discharge the employee's liability for those income taxes.

COMMENT 3: Mr. Wangerin commented that the President of the United States has declared a state of national emergency in all years since September 11, 2001. Under the declaration, the National Guard continually conducts training in anticipation of acts of terrorism, both within the United States and overseas. This declaration should be sufficient to qualify National Guard members for exemption during annual training and inactive duty training. Once there is no longer a national emergency declaration, a guard member's pay would no longer be exempt.

RESPONSE 3: Section 15-30-2117, MCA, does not provide a blanket exemption for the National Guard for periods when the President of the United States has declared a state of national emergency unless the guard member's orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 4: Mr. Wangerin also stated that when a service member returns from overseas and is on a mandatory 30-day paid leave status, the pay received for that time period should also be exempt from withholding.

RESPONSE 4: Section 15-30-2117, MCA, does not provide an exemption for service members during a period of time following their return home from overseas duty unless their orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 5: Mr. Wangerin further summarized his questions regarding the proposed amendments as follows:

One: Prior to January 1, 2016, should the SCRA certificate be considered prima facie evidence of National Guard pay exemption for the period covered?

Two: After January 1, 2016, should the SCRA certificate be considered prima facie evidence of National Guard pay exemption for the period covered?

Three: Is National Guard pay exempt from Montana income tax if the guard member's Title 32 orders are in response to a national emergency?

Four: Is National Guard pay exempt for Montana income tax if the guard member is under Title 32 orders in response to a contingency operation?

Five: Is National Guard pay exempt from Montana income tax if the guard member is under Title 32 orders in support of or participating in a training mission, or for training in anticipation of a mission in response to a contingency operation?

RESPONSE 5: Regarding one and two, as provided in the department's response to Comment 1, the SCRA certificate is a good resource to help substantiate a service member's branch of service and duty status, but it cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

Regarding three, National Guard members serving during periods when the President of the United States has declared a state of national emergency would qualify for the exclusion when they are ordered to active duty pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation in accordance with 15-30-2117, MCA.

Regarding four, if a National Guard member is serving on active duty ordered under Title 32 for a "homeland defense activity," as defined in 32 U.S.C. 901, and that service member is part of a unit engaged in a "contingency operation," as defined in 10 U.S.C. 101, then the salary received by that service member is likely exempt from Montana income tax pursuant to 15-30-2117(2)(b)(ii)(B), MCA.

Regarding five, National Guard members who provide support or conduct training activities during, leading up to, or following a contingency operation, would not necessarily qualify for the exclusion. The only time they would qualify for an exemption is when a servicemember's orders are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, in accordance with 15-30-2117, MCA, and when the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 6: Mr. Wangerin stated that national disasters are included in the definition of a contingency operation under the National Defense Authorization Act for fiscal year 2012 (Publication L112-81, enacted December 31, 2011) and, therefore, a guard member's service in accordance with the Act should be considered service in a contingency operation.

RESPONSE 6: If a National Guard member's duty meets the definition of a contingency operation, as defined in 10 U.S.C. 101, then the guard member's salary would be exempt pursuant to 15-30-2117(2)(a)(ii)(B), MCA. Since this is already provided for in ARM 42.15.214, there is no need to provide any additional explanation.

COMMENT 7: Mr. Wangerin stated that the SCRA certificate should be considered prima facie evidence for the period covered. National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders issued in response to a national emergency.

National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders issued in response to a contingency operation. This provision would also apply to dual-status military technicians who are serving as trainers in anticipation of a mission related to overseas contingency operations.

National Guard pay is exempt from Montana income tax if the guard member is serving under Title 32 orders in support of a training mission or for training in anticipation of, or in support of, a mission in response to a contingency operation.

RESPONSE 7: As detailed in Response 1, and again referenced in Response 5, the department recognizes the SCRA certificate as a good resource, but it cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

Section 15-30-2117, MCA, does not provide an exemption for service members who are training or providing other support in anticipation of a mission related to overseas contingency operations unless their orders for that time period are issued pursuant to Title 10, U.S.C., or when their specific service is deemed a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 8: Mr. Wangerin commented that that the exclusion of annual training in the proposed amendment to ARM 42.15.214(2)(b) should be deleted, as annual training can occur as part of a contingency operation.

RESPONSE 8: The department appreciates Mr. Wangerin's suggestion and has further amended ARM 42.15.214(2)(a) to address the issue he raises. The change in the rule will clarify that the exclusion does not apply to annual training or inactive duty training unless such service qualifies as a "contingency operation" or a "homeland defense activity."

COMMENT 9: Mr. Wangerin requested that the department make additional amendments to ARM 42.15.214 in support of the testimony and comments offered at the hearing. He asked the department to further amend the rule to include the following:

A definition for "active duty" to include any duty performed by a National Guard member pursuant to Title 10 U.S.C., or Title 32 U.S.C. for homeland defense activity or contingency operation; and language stating that a guard member

supporting a military operation is considered to be participating in a contingency operation and combat duty is not required; that a contingency operation is created when a governor requests federal assistance in responding to a major disaster or emergency and also includes any operations in connection with national emergencies in response to acts of terrorism; that an SCRA certificate is sufficient evidence for exemption from Montana income tax if National Guard pay is received under Title 32; and that National Guard members should be exempt for the following: active duty in the air defense alert program, dual status military technicians called to active duty under Title 32 as trainers related to overseas contingency operations, duty under Title 32 for a southwest border mission, while on mandatory 30-day leave following overseas duty, annual training and inactive duty training missions or for training in anticipation of a contingency operation, active guard and reserve duty.

RESPONSE 9: The department appreciates Mr. Wangerin's suggestions, but disagrees with the need to further amend the rule.

Section 15-30-2117, MCA, provides a definition of "active duty" in the National Guard, which is duty performed by a National Guard member pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

The department agrees that if a National Guard member is ordered to service as part of one of these situations, then their salary should be excluded from the calculation of Montana income tax. National Guard service in the air defense alert program, as a dual status military technician, as a trainer, while on mandatory leave following overseas duty, while performing annual or inactive duty training, or in any other situation may or may not qualify for the exemption depending on if the service member is ordered to duty pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32 U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

As previously explained, the SCRA certificate is a good resource, but cannot be relied upon as a definitive verification to determine the military salary exclusion for Title 32 service.

COMMENT 10: Mr. Wangerin also suggested that the department amend ARM 42.15.514(2) to set out when military compensation is not exempt, as follows:

Pay under orders of state active duty in the National Guard;

Pay under Title 32 orders when the member is not in a deployable unit;

Pay under Title 32 when there is no declaration of national emergency or a declaration of war by Congress.

RESPONSE 10: The department appreciates Mr. Wangerin's additional suggestions for amendments, but disagrees with the need to further amend the rule.

The department agrees that in most cases, duty performed in these particular situations will not qualify for the exemption. In every case, the determination needs to be made based on if the National Guard service member is ordered to duty pursuant to Title 10 U.S.C., or Title 32 U.S.C. for a "homeland defense activity," as defined in 32

U.S.C. 901, or a "contingency operation," as defined in 10 U.S.C. 101, and the person was a member of a unit engaged in a homeland defense activity or contingency operation.

COMMENT 11: Walter Wangerin testified stating his support for the comments and statements made by James Wangerin.

RESPONSE 11: The department appreciates the comments from both Mr. James Wangerin and Mr. Walter Wangerin. Their contributions provide the department with helpful insight into ways the department can better serve members of the military.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 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 ADOPTION

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-939 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1682 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 5, 2015, a public hearing was held to consider the proposed adoption. Senator Llew Jones; Eric Feaver, MEA-MDT; Gina Satterfield; Bob Vogel, Montana School Boards Association; Pat Audet, Associate Director, School Administrators of Montana; Dianne Burke, Executive Director, Montana Quality Education Coalition; Erica Smith, Attorney, Institute for Justice; Wen Fa, Attorney, Pacific Legal Foundation, Association of Christian Schools International, Foothills Christian Community School, and Helena Christian School; Bob Story, Executive Director, Montana Taxpayers Association; Jeff Laszloffy, President/CEO, Montana Family Foundation; Brent Mead, Executive Director, Montana Policy Institute; Matt Brower, Executive Director, Montana Catholic Conference; Jake Penwell, Montana State Director, ACE Scholarships; Michael Chartier, State Programs and Government Relations Director, Friedman Foundation for Educational Choice; and Senator Kris Hansen appeared and testified at the hearing. Other members of the public attended the hearing but did not testify.

The department also received written comments from Senator Jones; Mr. Mead; Mr. Fa with Ethan Blevins and Joshua Thompson, Pacific Legal Foundation; Amrita Singh, Americans United for Separation of Church and State; Patrick Elliott, Freedom From Religion Foundation; Hilary Bernstein, Regional Director, Anti-Defamation League; Dale Schowengerdt, Solicitor General, Montana Department of Justice; Kimberlee Colby, Director, Center for Law and Religious Freedom with Rev. Dr. Matthew Harrison, President, Lutheran Church-Missouri Synod, and Dr. Keith Wiebe, President, The American Association of Christian Schools; Michael Sheridan; Robert Filipovich; Verne Beffert; Paulette Hutcheon; Barbara Ross; Scott Rosenzweig; Kenneth Younger; James Paugh; Gary Lusin; Chuck Halter; LindieAnn; Gayle Venturelli; RoseAnn Aronsen; Kiersten Alton; Chris Barndt; Dan Bos; J. R. Brannon; Jacqualine Brannon; Ann Brigham; Marjorie Centifanto; Patrick De Jong; Beckie Evins; Liz Flikkema; Dennis Hardin; Jim Holmquist; Roy Keim; Ardie Keim; Char Klein; Mark Klein; Mike Lang; Shilloy Lowe; Marlene Newton; Eric Olsen; Martin O'Neil; Curtis Owen; Joel Pattengale; Christine Pummel; Vonnie Roller; Hyla Thompson; Nancy Watson; Diane Welna; Marylou Sytsma; Laura Rhodes; Matt Regier; Jeri Miller; Michael Kassity; James Freyholtz; Margaret Foster; Willeen

Erpenbach; Helen Emmelkamp; Patricia Earnest; Faith DeWaay; Kimberly Adams; Pam Birkeland, Madison County Supt. of Schools; Rick Duncan, Supt. Powell County High School District; Daniel Grabowska, Park County Schools Supt.; Steve Engebretson, Dawson County Supt. of Schools; Teri Harris, Fromberg Public School Supt.; Dr. Glen Johnson, Dillon Elementary Schools Supt.; Dan Kimzey, Hamilton High School Principal; Brenda Krueger, Ruder Elementary Principal, Columbia Falls; Steve Love, Charlo Schools Supt.; Cathy Sessions, Teton County Supt. of Schools; Jule Walker, Plevna Schools Supt.; Christine Bilant, Federal Projects Director, Kalispell Public Schools; and Trevor Utter, Eureka Middle School Principal.

3. The department adopts New Rule I (42.4.802) and New Rule III (42.4.804) as proposed.

4. Based on the comments received and upon further review, the department adopts New Rule II (42.4.803), as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (42.4.803) 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~~ is located on the department's web site at ~~revenue.mt.gov~~ svc.mt.gov/dor/educationdonations. ~~the~~ The student scholarship organization shall include the following information on the application:

(a) remains as proposed.

(b) the student scholarship organization's representative's name, title, phone number, and e-mail address; and

(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) and (3) remain as proposed.

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

COMMENT 1: Eric Feaver, MEA-MFT, testified that Senate Bill (SB) 410, L. 2015, states that the tax credit must be administered in compliance with the provisions of Articles V and X of the Montana Constitution and the department drafted the proposed new rules with reference to the Constitution pursuant to SB 410. Mr. Feaver stated that he commends the department for interpreting SB 410 as written.

RESPONSE 1: The department appreciates Mr. Feaver's comments in this matter.

COMMENT 2: Gina Satterfield commented that if private schools want to control their curriculum they need to avoid allowing government involvement in their

school and that, therefore, she is a proponent of the proposed new rules prohibiting some private institutions from being identified as a qualified education provider.

RESPONSE 2: The department appreciates Ms. Satterfield's testimony in this matter.

COMMENT 3: Bob Vogel, Montana School Boards Association (MTSBA), concurred with Mr. Feaver's comments. Mr. Vogel stated that MTSBA supports the adoption of the proposed new rules. Mr. Vogel commented that MTSBA believes the proposed new rules properly implement SB 410, Section 7, which requires SB 410 to be administered in compliance with the provisions of Articles V and X of the Montana Constitution. Mr. Vogel stated that MTSBA's principles and guidelines require it to honor the intent of the Montana Constitution, including the prohibition of direct or indirect sectarian aid. Mr. Vogel stated that the clarity of the language of Articles V and X of the Montana Constitution is evident by considering the deliberations of the Montana Constitutional Convention. Mr. Vogel provided a transcript of the Montana Constitutional Convention. Mr. Vogel also pointed out that SB 410, Section 30, contains a severability clause which prevents the entirety of SB 410 from being ruled invalid if a portion of it is ruled invalid.

RESPONSE 3: The department appreciates Mr. Vogel's comment, and specifically the comments that describe the constitutional requirements that the department must follow.

COMMENT 4: Pat Audet, Associate Director, School Administrators of Montana (SAM), concurred with Mr. Feaver's comments. Mr. Audet testified that SAM has adopted resolutions strongly opposing any public means of funding to nonpublic private religious schools, including tax credits. Mr. Audet stated that SAM gives its full support to the department's proposed new rules.

RESPONSE 4: The department appreciates Mr. Audet's comments in this matter.

COMMENT 5: Dianne Burke, Executive Director, Montana Quality Education Coalition, testified in support of the department's adoption of the proposed new rules in accordance with the provisions of the Montana Constitution. Ms. Burke further commented that the coalition is comprised of public school districts, educational organizations, Montana school administrators, rural educators, the MTSBA, the MEA-MFT, and school business officials.

RESPONSE 5: The department appreciates Ms. Burke's comments in this matter.

COMMENT 6: Llew Jones, State Senator and primary sponsor of SB 410, L. 2015, testified in opposition to the proposed new rules. Senator Jones stated that the department has failed to follow legislative intent and, further, in its justification the department acknowledges that it is not following the legislative intent. He stated

that the structure of the three branches of government -- legislative, executive, and judicial -- does not empower an agency to ignore the legislative intent and, in this instance, in not vetoing SB 410 the executive gave a nod of approval to the legislation as written. Any question of constitutionality is to be decided by the judicial branch of government.

Senator Jones submitted 52 letters sent by Montana legislators to Chairman Thomas of the Revenue and Transportation Interim Committee in support of Senator Jones' position.

RESPONSE 6: The department appreciates Senator Jones' time in this manner and understands his position. The department does not agree there is a circumvention of the legislative branch's authority. The department notes that the bill itself directs the department to administer the new law in a constitutional manner, drawing attention to specific portions of the Montana Constitution. In the department's opinion the tax credit is at the very least an indirect payment, and therefore may not be made available to sectarian schools.

COMMENT 7: Senator Jones stated that there was extensive discussion regarding the constitutionality of SB 410 in the final House Appropriations hearing. In support of this statement, he played recorded excerpts from that committee hearing as part of his testimony at the rule hearing.

Following the submission of the recording, Senator Jones stated that there was extensive discussion regarding the constitutionality of SB 410. He further stated that he disagrees with the department's assertion that the unconstitutionality of SB 410, as passed, was a foregone conclusion if intent was followed.

Senator Jones also clarified that his references to "all students" included all public and private school students. Senator Jones further stated SB 410 was intended to offer enhanced student opportunity for all students.

RESPONSE 7: The department applauds Senator Jones' intention to enhance education opportunities; however, the opportunities as the bill states must abide by the constitutional requirements.

COMMENT 8: Senator Jones stated that it has always been his intention that the provisions of SB 410 be constitutional. He further commented that, ultimately, this question will be decided by the judicial branch. He reiterated that it is in fact the responsibility of the judicial branch to make that determination and that the department is acting outside the scope of its authority by choosing not to follow legislative intent and by making a constitutional determination at the agency rulemaking level.

RESPONSE 8: The department does not agree that the proposed rulemaking exceeds the department's authority. Rather, the proposed rulemaking follows the plain language of the bill and the instructions of the Legislature requiring the implementing agency to abide by the Montana Constitution. The department agrees that the courts will ultimately decide the constitutional questions at issue, but the

department also has responsibilities to follow the mandates of the Montana Constitution and is doing so with the rules as proposed.

COMMENT 9: With regard to proposed New Rule I, Erica Smith, attorney with the Institute for Justice, testified that the department lacks authority to adopt this rule as it imposes requirements on the scholarship program not contemplated by the Legislature.

Ms. Smith stated that the constitutional provisions relied on by the department apply only to public appropriation and tax credits are not public appropriations, and referenced various judicial venues which have supported this conclusion.

Ms. Smith further stated that the department's incorrect interpretation regarding the proposed new rule jeopardizes other Montana tax credit programs that allow donations to religious groups such as college contribution credits, qualified endowment credits, the dependent care assistant credit, and the elderly care credit.

Ms. Smith also stated that proposed New Rule I violates clauses of the U.S. Constitution relating to free exercise, establishment, and equal protection, and discriminates against religious families.

RESPONSE 9: The department thanks Ms. Smith and the Institute for Justice for contributing to this rulemaking process. The department is acting within its authority to propose these rules implementing the statute. Senate Bill 410, Section 17, provides specific rulemaking authority to the department, stating "The department may adopt rules, prepare forms, and maintain records that are necessary to implement and administer sections [7 through 17]." Section 7 (15-30-3101, MCA), in particular, states that "The tax credit for taxpayers donations under [sections 7 through 17] must be administered in compliance with Article V, section 11(5) and Article X, section 6 of the Montana constitution." The department's proposed rule follows these legislative instructions. The tax credits here are unique to donations to private schools and are limited by these two specific constitutional provisions, which distinguishes this tax credit from other allowable tax credits.

COMMENT 10: Wen Fa, attorney with the Pacific Legal Foundation, testified on behalf of the Association of Christian Schools International, Foothills Christian Community School, and Helena Christian School. Mr. Fa stated that it is his conclusion that the proposed new rules violate the First and Fourteenth Amendments of the U.S. Constitution because the proposed new rules overtly discriminate against religion. Furthermore, Mr. Fa concluded that the proposed new rules do not follow the intent of the Legislature. Mr. Fa presented statistics relating to private and religious school enrollments and the percentage of students who would be ineligible for the scholarships, as well as how the proposed rules would prevent many students who attend Montana high schools from being eligible for the scholarships. Mr. Fa further stated that the restrictions in the proposed new rules interfere with an individual's right to choose what school to attend and are contradictory to the intent of the Legislature.

RESPONSE 10: The department thanks Mr. Fa and the Pacific Legal Foundation for contributing to this rulemaking process. The department does not

agree that the proposed rules violate the U.S. Constitution. The rules follow the instructions of the Legislature to implement the bill in accordance with the Montana Constitution. Additionally, the proposed rules do not interfere with an individual's right to choose to attend a particular school.

COMMENT 11: Jeff Laszloffy, President/CEO, Montana Family Foundation, offered an overview of school choice legislation in other states and in Montana. Mr. Laszloffy stated similar arguments as previous opponents' testimony that the department is acting outside of its rulemaking authority by making a determination of constitutionality and that this question should be determined by the judicial branch, not an agency.

Mr. Laszloffy asked the department to respond as to who in the department participated in the decision to exclude sectarian schools. Were the Governor's Office, Office of Public Instruction, or the teachers' union involved?

RESPONSE 11: The department thanks Mr. Laszloffy for his comments, but disagrees with his assessment of the proposed rulemaking. The department, as part of the executive branch, has consulted with the Governor's office regarding the department's proposed rules. The Office of Public Instruction and the teachers' unions were involved in the legislative process also.

COMMENT 12: Kris Hansen, State Senator, testified as an opponent to the proposed new rules. Senator Hansen stated that in addition to the testimony already received, the department has added additional language to the qualified education provider definition that is not supported by statute and that a rulemaking agency cannot add to or delete from a definition adopted by the Legislature.

Senator Hansen stated that the department's statement of reasonable necessity for proposed New Rule I is inadequate and does not clearly state a reasonable necessity. It states only that the law says you have to follow these two constitution sections, which prohibit a direct or indirect appropriation or payment from a public fund, which is just restating the Montana Constitution. It is not providing a statement of reasonable necessity for the implementation of the rule.

RESPONSE 12: The department thanks Senator Hansen for her attendance at the hearing and for her comments. However, the department's reasonable necessity sufficiently indicated the purpose of the rule. The department's decision to propose New Rule I is predicated on implementing SB 410 in compliance with Section 7 (15-30-3101, MCA) of the bill and the additional overall requirement that all laws administered by the department must meet the requirements of the Montana Constitution.

COMMENT 13: Senator Hansen commented that the department and the proponents of the rule refer to or emphasize indirect appropriation or indirect payment and she is not sure how the department feels this is an indirect appropriation or an indirect payment. She further commented that this is not a correct understanding, the tax credit is not an indirect appropriation or payment, and

the Legislature clearly did not intend to exclude sectarian education. In summary, Senator Hansen stated that proposed New Rule I should be deleted in its entirety.

RESPONSE 13: Art. V, Section 11(5) and Art. X, § 6, of the Montana Constitution, regarding "indirect payment or appropriation" is very broad. The department is following the intent of the drafters of the Montana Constitution, intending this phrase in particular to require exclusion of such direct or indirect monetary benefits as targeted tax credits.

COMMENT 14: Brent Mead, Executive Director, Montana Policy Institute, commented that he agrees with the previous testimony that the department did not follow the legislative intent when preparing the proposed new rules and did not follow the Montana Administrative Procedures Act (MAPA) when it failed to take the primary sponsor's comments into consideration. He stated that if the executive branch had issues with SB 410 it should have been addressed through the use of a veto.

RESPONSE 14: The department thanks Mr. Mead for his time in this matter. The department's notice of hearing, identification of the proposed rules, consideration of all comments, including the bill sponsor's, and ultimately the rule hearing process are in compliance with MAPA.

COMMENT 15: Matt Brower, Executive Director, Montana Catholic Conference, testified on behalf of the Roman Catholic Church in Montana. Mr. Brower offered statistics relating to Catholic schools across the state and the students who attend those schools. He stated he agrees with previous testimony that tax credits are not appropriations, that scholarship funds do not constitute public money, and that the department is improperly excluding religiously affiliated schools from the definition of qualified education provider.

RESPONSE 15: The department thanks Mr. Brower and the Montana Catholic Conference for its comments during the hearing. The department believes Mr. Bower's comments have been addressed in the responses to Comments 6, 9, and 13.

COMMENT 16: Michael Chartier, State Programs and Government Relations Director, Friedman Foundation for Educational Choice, testified as an opponent to the proposed new rules, stating that they are arbitrary and capricious and the authority to determine constitutionality rests with the judiciary. Mr. Chartier also stated that religious schools should not be excluded by the proposed new rules because the vast majority of Montana private schools are religious and a parent's decision on the educational environment for their children would be undercut.

RESPONSE 16: The department thanks Mr. Chartier for his comments during the proceedings. The rules as proposed do not interfere with a parent's choice as to what school their child will attend. With respect to the remaining

comments by Mr. Chartier, these have been addressed in the department's response to Comment 8.

COMMENT 17: Jake Penwell, Montana State Director, ACE Scholarships, testified as an opponent to the definition of a qualified education provider as set out in proposed New Rule I. Mr. Penwell also offered information regarding school choice in Montana and the scholarship program operated by ACE Scholarships in Montana, which currently offer 275 scholarships to Montana students. Mr. Penwell also provided statistics relating to private school enrollment in Montana.

RESPONSE 17: The department thanks Mr. Penwell and Ace Scholarships for their participation in the implementation of SB 410 and for the statistical testimony.

COMMENT 18: Bob Story, Executive Director, Montana Taxpayers Association, testified that in addition to the comments already offered in opposition to the proposed new rules, the statute already defines a qualified education provider and the only exclusions are public schools and home schools. He stated that statutes are interpreted plainly with a prohibition to inserting what was omitted, or omitting what was inserted. He stated that only the Legislature can make a change to the definition. Mr. Story further stated that he agrees that it is up to the judiciary to rule on constitutionality, not the rulemaking agency.

RESPONSE 18: The department thanks Mr. Story and the Montana Taxpayers Association for their comments on this rulemaking proposal. While the department generally agrees with the statements that statutes are to be interpreted plainly, SB 410 has specific legislative directives to follow the Montana Constitution, which the department is following with its proposed new rules. Any direct or indirect appropriation or payment to a sectarian entity cannot exist and therefore a sectarian institution as it relates to the tax credit is not allowable.

COMMENT 19: Senator Hansen thanked the department's staff for the time they have spent with her in terms of talking about how the legislation will be implemented once it is declared constitutional, which she commented she hopes is sooner rather than later. She further commented that she thinks the department is really working hard on making the legislation operational. It is the constitutional question that needs to be decided and she commented that she does not believe that the department is the place for that decision to be made.

RESPONSE 19: The department thanks Senator Hansen for her comments.

COMMENT 20: Mr. Filipovich thanked the department for its work in preparing the proposed new rules. Mr. Filipovich commented that the tax credit in SB 410 is already provided in Montana's charitable giving and tax credit laws. Mr. Filipovich commented that the definition of qualified education provider (QEP) is vague and could be manipulated to eventually allow the tax credit to home schools. He also commented that the statement: "A nationally recognized standardized

assessment test or criterion referenced test" is vague and that these terms, unless more specifically defined, may not be readily recognized by the average citizen.

Mr. Filipovich also stated that that there should be more detail in the definition of student scholarship organizations (SSO), such as: must the SSO be located in Montana; must the QEP be located in Montana; can a QEP also be a SSO; or questions regarding interest and reporting by a SSO.

RESPONSE 20: The department thanks Mr. Filipovich for his suggestions regarding the possible manipulation of the tax credits and other issues in SB 410.

Many of Mr. Filipovich's statements are questioning the language in the statutes, which would require legislative change. Therefore, the department is not commenting on his statements here.

The department has written proposed New Rule II to verify that the SSOs and QEPs meet their statutory requirements.

COMMENT 21: Ms. Bernstein stated her organization's support for the proposed new rules and urged the department to adopt the rules, thereby ensuring that the law complies with the Montana Constitution. Ms. Bernstein explained that the Anti-Defamation League (ADL) is a leading civil rights and human relations organization dedicated to combating anti-Semitism and all forms of bigotry, defending democratic ideals, and securing justice and fair treatment for all. The ADL is in agreement with the department's analysis that proposed New Rule I is necessary in order for the tax credit scheme to conform to the constitutional prohibition of direct or indirect appropriations or payment from any public fund for any sectarian purpose.

In support of this position, Ms. Bernstein cites *Lockey v. Davey*, 540 U.S. 712 (2004), wherein the U.S. Supreme Court held that it was permissible for the State of Washington to exclude the study of theology from an otherwise inclusive state-funded scholarship aid program. The court determined that the program was not presumptively unconstitutional, even though the program facially discriminated with respect to religion. Rather, the Court held that Washington had merely chosen not to fund a distinct category of instruction. Ms. Bernstein stated that here the department makes a similar choice with respect to tax credits in order to comply with the Montana Constitution.

RESPONSE 21: The department thanks Ms. Bernstein for her comments.

COMMENT 22: Mr. Elliott commented and thanked the department for the proposed new rules and for its defense of the Constitutions of the United States and Montana.

Mr. Elliot called attention to the Colorado Supreme Court which recently struck down an effort to give taxpayer-funded scholarships to students attending private religious schools. *Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist.*, 2015 CO 50, 351 P.3d 461 (1960). Mr. Elliott also cited to *Lockey,* as well as several other court cases, in support of the provisions in the proposed new rules that limit the definition of qualified education provider to only those types of organizations that may receive public subsidies.

RESPONSE 22: The department thanks Mr. Elliot for his comments on the propriety of the proposed rules.

COMMENT 23: Ms. Singh submitted comments in support of proposed New Rule I. Ms. Singh stated that if the proposed rule is not adopted as written, the state will forego tax dollars if the funds are instead provided to a scholarship organization that, in turn, provides the funds to a private school for student tuition. This would create a private school voucher program.

Ms. Singh further stated that 15-30-3102, MCA (2015), requires the tuition tax credit program be administered in compliance with Articles V and X of the Montana Constitution. These provisions of the Constitution prohibit the direct or indirect appropriations or payment from any public fund to any sectarian or religious purpose. Accordingly, the proposed new rule properly limits the definition of a quality education provider.

Ms. Singh stated that tuition tax credits, at a minimum, constitute an indirect appropriation and may not flow to private religious schools. There is no meaningful difference between a tax credit and direct government reimbursement of private and religious schools. She further stated that when the government grants a tax benefit, it foregoes income, and without the provisions of the proposed new rule, it may indirectly aid a private religious school.

RESPONSE 23: The department thanks Ms. Singh for her comments.

COMMENT 24: Ms. Singh further commented that the opponents to proposed New Rule I claim that other states with similar constitutional provisions have tax credit programs that have survived constitutional challenges. However, she stated that the constitutions in those states that have upheld tuition tax credits do not contain a prohibition on indirect appropriation or aid to sectarian institutions, citing to the Arizona, Illinois, and Minnesota Constitutions.

RESPONSE 24: The department thanks Ms. Singh for her comments.

COMMENT 25: Ms. Singh further commented that religious schools can use religious hiring criteria. If religious schools were to receive the state tuition tax credit they should no longer be able to discriminate in hiring, as the U.S. Constitution does not permit the state to aid discrimination.

RESPONSE 25: The department thanks Ms. Singh for her comments.

COMMENT 26: The department received written comments from several citizens expressing their support of proposed New Rule I and collectively stating that the department is correct in its conclusion that the Montana Constitution does not permit the proposed tax credit for donations to sectarian schools.

Ms. Ross commented that public funds may not be used for religious purposes.

Mr. Rosenzweig commented that Montana has a great constitution and expressed his appreciation for Montana's public servants.

Mr. Younger commented that tax dollars should not and cannot be used to support religion.

Mr. Paugh commented that he objects to the entire SB 410 and states that he considers this legislation to be an attempt to rewrite Montana's Constitution.

Mr. Lusin expressed his strong support for the proposed new rules, and in particular the rule regarding qualified education providers and student scholarship organizations. He stated that the new rule is critical as written in order to assure that contributions for educational purposes be given to people and organizations highly qualified to teach and provide education to Montana's children. Mr. Lusin stated he does support the tax credit, but only to those qualified.

Mr. Hatler expressed his support for the proposed new rules and commented that the government should keep out of religion and religion should keep out of government.

Mr. Beffert expressed support for proposed New Rule I, stating that the proposed new rule fully complies with Articles V and X of the Montana Constitution.

RESPONSE 26: The department thanks Ms. Ross, Mr. Rosenzweig, Mr. Younger, Mr. Paugh, Mr. Lusin, Mr. Hatler, and Mr. Beffert for their comments.

COMMENT 27: The department received written comments from multiple public school administrators. Collectively, the administrators expressed their support for proposed New Rule I, stating that the proposed new rule properly adheres to the provisions of Articles V and X of the Montana Constitution by prohibiting public funds or monies being used to aid or fund sectarian schools.

Those administrators commenting were Ms. Birkeland, Mr. Duncan, Mr. Grabowska, Mr. Engebretson, Ms. Harris, Dr. Johnson, Mr. Kimzey, Ms. Krueger, Mr. Love, Ms. Sessions, Ms. Walker, Ms. Bilant, and Mr. Utter.

RESPONSE 27: The department appreciates these comments from the public school administrators and thanks Ms. Birkeland, Mr. Duncan, Mr. Grabowska, Mr. Engebretson, Ms. Harris, Dr. Johnson, Mr. Kimzey, Ms. Krueger, Mr. Love, Ms. Sessions, Ms. Walker, Ms. Bilant, and Mr. Utter for providing them.

COMMENT 28: Mr. Fa commented that the department did not follow legislative intent when it excluded sectarian schools from the definition of "qualified education provider." As stated in *Bell v. Dep't of Licensing*, 182 Mont. 21 (1976), an administrative rule cannot "engraft additional and contradictory requirements on the statute." *Bell* at p. 23. Nor can it add "noncontradictory requirements on the statute which were not envisioned by the legislature." *Id*. The department's proposed new rule seeks to add a new requirement to the eligibility criteria that has no relationship to the Legislature's criteria.

Mr. Mead also commented that the department's definition of "qualified education provider" does not follow the legislative intent and that by not taking the opportunity to address its concerns through an amendatory veto by the Governor, rather than through the rulemaking process, the department is in violation of MAPA.

Mr. Mead stated the department is now violating the Montana Constitution by using powers properly belonging to the Legislature and the Judiciary.

Mr. Sheridan presented comments supporting those made by Mr. Fa and Mr. Mead regarding the definition of "qualified education provider."

RESPONSE 28: The department's proposed rule does not seek to add new language, but provides for implementation of the statute, in compliance with the directive of the Legislature and the Montana Constitution. Further, the department disagrees that its proposed rule defining qualified educator is contrary to 15-30-3102, MCA, but rather the proposed rule follows the legislative intent and plain language as described in 15-30-3101, MCA. The Governor could not have provided an amendatory veto in that he did not receive the bill until after the Legislature had adjourned.

COMMENT 29: Mr. Fa commented that Montana statute states that student scholarship organizations "may not restrict or reserve scholarships for use at a particular education provider or any particular type of education provider." Section 15-30-3103(b), MCA. The department must disqualify organizations that violate this nondiscrimination clause, but the department would demand discrimination against religiously affiliated education providers through proposed New Rule I.

RESPONSE 29: The department's rules do not violate the nondiscrimination clause; rather, its actions follow the Montana Constitution.

COMMENT 30: Mr. Fa commented that proposed New Rule I violates the Free Exercise Clause and the Equal Protection Clause of the U.S. Constitution by prohibiting the free exercise of religion.

The right to free exercise means that government cannot withhold benefits because of religious decisions. Any law burdening religious practice must be justified by a compelling governmental interest that is narrowly tailored to advance that interest. *Sherbert v. Verner*, 374 U.S. 398 (1963). This proposed new rule cannot satisfy that strict standard.

The proposed new rule violates the Equal Protection Clause by discriminating against religious families by blocking access to private charitable help based on their choice of a religious school. A law that discriminates based on religion is unconstitutional unless "it is justified by a compelling interest that is narrowly tailored to advance that interest." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 530, 533 (1993). Meddling with the flow of private tuition dollars to schools on the basis of religious affiliation serves no compelling government interest.

Ms. Colby submitted comments supporting Mr. Fa's comments regarding the violation of the Free Exercise Clause and Equal Protection Clause.

Mr. Sheridan also submitted comments supporting Mr. Fa's comments regarding the violation of the Equal Protection Clause.

RESPONSE 30: The department disagrees with Mr. Fa's conclusions. The rule does not prohibit the free exercise of religion. The proposed rule neither withholds benefits from any individual or group, nor burdens religious practice. As

proposed, the rule follows the Montana Constitution by disallowing indirect appropriations or payments to sectarian QEDs.

COMMENT 31: Ms. Colby commented that in addition to the violations set out in Mr. Fa's comments, the proposed new rule also discriminates against religiously affiliated institutions, and violates the U.S. Constitution's Establishment Cause and Free Speech Clause. *Lemon v. Kurtzman*, 403 U.S. 602, 612-14 (1971), held in part that for a law or regulation statute to satisfy the Establishment Clause it must first have a secular legislative purpose, and second, its principal or primary effect must be one that neither advances nor inhibits religion. The proposed rule violates this test because its primary effect would be to inhibit religious practice.

Ms. Colby further commented that the proposed rule violates the Free Speech Clause because it discriminates against religious viewpoints from which schools provide education. Ms. Colby commented that the proposed rule not only singles out schools that have a religious affiliation, it also applies to schools even if they are not affiliated with any church, sect, or denomination if they are accredited by a faith-based organization. This is religious viewpoint discrimination and is unconstitutional.

RESPONSE 31: The rules as proposed do not interfere in any way with religiously affiliated institutions or inhibit the advancement of religious viewpoints. The religious-based organizations can continue to teach as they have in the past regardless of the proposed rules as written.

COMMENT 32: Mr. Fa commented that the U.S. Supreme Court has held that dollars donated through tax credit programs are not public funds and the department has no legitimate interest in preventing students from accessing private dollars if they choose to attend a religious school. *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011).

RESPONSE 32: The department has responded to these same concerns in its responses to Comments 6, 9, 13, and 18.

COMMENT 33: Mr. Fa additionally commented that the proposed rule violates the Establishment Clause of the U.S. Constitution by dictating that privately donated scholarship money cannot go to students who want to attend a religious school. This Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring). Under this Clause, governments may not treat religions on a lesser footing than other groups and may not dictate who gets privately donated dollars based on their religion.

RESPONSE 33: The department disagrees with Mr. Fa's conclusion that the department is dictating who can receive privately donated dollars or commenting on a person's standing in the community. The department is following the limits of appropriations or payments of public funds to sectarian schools or QEDs as is required in the Montana Constitution and as provided in responses to Comments 6, 9, 13, and 18.

COMMENT 34: Ms. Colby commented that numerous courts have determined that a tax credit is not an appropriation or payment; it is a reduction in a taxpayer's liability. The tax credit does not involve public funds or monies and does not provide aid to religious schools, it promotes education by providing scholarships to students who may or may not choose to attend a religiously affiliated private school. *See, e.g., Walz v. Tax Comm'n*, 397 U.S. 664 (1970); *Kotterman v. Killian,* 972 P.2d 606 (Ariz. 1999); *Arizona Christian School Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011).

Mr. Schowengerdt offered comments in agreement with Ms. Colby's statements.

Mr. Sheridan also commented that the proposed tax credit is not an appropriation and does not expend public funds and, therefore, is not unconstitutional. He further commented that a tax credit is not a spending of public funds, but rather permits a taxpayer to retain money that rightfully belongs to the taxpayer.

RESPONSE 34: The department thanks Ms. Colby, Mr. Schowengerdt, and Mr. Sheridan for their comments. The department has provided a response to these concerns in its responses to Comments 6, 9, 13, and 18.

COMMENT 35: Mr. Schowengerdt stated that the Montana Department of Justice does not believe that proposed New Rule I is authorized or required by the Montana Constitution and would put Montana's Constitution in conflict with the U.S. Constitution. Mr. Schowengerdt concluded that the proposed new rule would likely be held unconstitutional because it categorically excludes religious entities from an otherwise neutral benefits program without sufficient reason. *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1255 (10th Cir. 2008); *see also Badger Catholic, Inc. v. Walsh,* 620 F.3d 775, 780 (7th Cir. 2010); *Church of Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 532 (1993); *Burlington N. R.R. v. Ford,* 504 U.S. 648, 651 (1992); *Montana State Welfare Bd. v. Lutheran Social Servs.,* 156 Mont. 381 (1971). The Department of Justice does not believe that such a constitutional challenge would be defensible in federal court.

RESPONSE 35: The department does not agree that proposed New Rule I puts the Montana Constitution in conflict with the U.S. Constitution. As proposed, the rule does not exclude religious entities from neutral benefits, but limits the donations based on the language of the Montana Constitution.

COMMENT 36: Mr. Schowengerdt also stated that the department does not have the authority to adopt proposed New Rule I because the tax credit is not a direct or indirect appropriation by the state to a religious entity under Montana law.

Mr. Schowengerdt cited to the First Judicial District Court decision of *MEA-MFT v. McCulloch,* 2012 Mont. Dist. LEXIS 20, in support of his argument. That decision held that tax credits are not an appropriation because they do not spend money from the State treasury. The District Court reasoned that the money, whether in the form of a tax credit or tax refund, is not set aside for a public purpose.

Rather, the money is a tax refund or credit that a taxpayer may or may not claim. In the case of a credit, it is money that was never in the general fund, and in the case of refund, it would be money that the state is not entitled to keep. *Id.*

Also cited by Mr. Schowengerdt is *Montana State Welfare Bd. v. Lutheran Social Servs.*, 156 Mont. 381 (1971), which rejected the notion that funds given to an individual who uses them to pay for services at a private institution is an appropriation.

Mr. Schowengerdt commented that no funds would be appropriated to private schools under SB 410. Individuals who donate money for tuition assistance to students are given a tax credit, not direct financial aid. That the donation may end up as tuition paid at a private religious school is a result of the individual's choice, not a government appropriation.

Senator Jones also provided the District Court decision in *MEA-MFT v. McCulloch* as well as the Montana Supreme Court decision in that same matter, *MEA-MFT v. McCulloch*, 2012 MT 211, 366 Mont. 266, 291 P.3d 1075, in support of his argument that the tax credit is not an appropriation.

RESPONSE 36: The department thanks Mr. Schowengerdt and Senator Jones for their comments on the case law. These are district court cases that the courts will have to consider in any interpretation of the language of SB 410. The cases did not determine whether the structure here of providing a tax credit for donations to an SSO is an indirect appropriation or payment to a sectarian organization. The department has provided additional response to these concerns in its responses to Comments 6, 9, 13, and 18.

COMMENT 37: The department received similar written comments from several citizens expressing their opposition to proposed New Rule I, stating that banning religious-based schools from participating in the tax credit is unconstitutional discrimination. These individuals stated that the U.S. Supreme Court has ruled that tax credits are not an appropriation and therefore religious schools should not be excluded via the proposed rule. These individuals further stated that SB 410, as written, presents a great opportunity for all students to have access to the schooling that is right for them individually, and ask that the rule be amended to allow for donations to scholarships for all students, not just a chosen few.

These comments were submitted by the following individuals: Mrs. Alton, Mrs. Barndt. Mr. Bos, Ms. Brannon, Mr. Brannon, Mrs. Brigham, Mrs. Centifanto, Mr. De Jong, Ms. Evins, Ms. Flikkema, Mr. Hardin, Mr. Holmquist, Mr. Keim, Ms. Keim, Mrs. Klein, Mr. Klein, Mr. Lang, Mrs. Lowe, Mrs. Newton, Mr. Olsen, Mr. O'Neil, Mr. Owen, Mr. Pattengale, Mrs. Pummel, Mrs. Roller, Ms. Thompson, Mrs. Watson, Mrs. Welna, Mrs. Sytsma, Mrs. Rhodes, Mr. Regier, Mrs. Miller, Mr. Kassity, Mr. Freyholtz, Mrs. Foster, Mrs. Erpenbach, Ms. Emmelkamp, Miss Earnest, Mrs. DeWaay, and Mrs. Adams.

RESPONSE 37: The department appreciates hearing from these individuals and has provided a response to their concerns in the responses to Comments 6, 9, 13, and 18.

COMMENT 38: The following written comments in opposition to the proposed new rules were also received:

LindieAnn stated that tax credits for Christian schools should be allowed.

Ms. Venturelli expressed her support for SB 410, Section 7, wherein the Legislature stated that the tax credits must be administered in compliance with the Montana Constitution and commenting that she believes SB 410 is in full alignment with the Constitution.

Ms. Arnosen commented that excluding religious schools from the tax credit is discrimination and that every child deserves every opportunity.

RESPONSE 38: The department thanks these individuals for their comments. The department followed the directive of the Legislature and the provisions of the Montana Constitution by drafting New Rule I.

COMMENT 39: With regard to proposed New Rule II, Mr. Story testified that it is going to be difficult for scholarship organizations to comply with the requirements as set out because the organizations may not know who will be applying for the scholarships until the organization has been established.

RESPONSE 39: While a student scholarship organization may not know every QEP that it will provide scholarships to, it should know many of them and will have the opportunity to update the department when more information becomes available to them.

COMMENT 40: Mr. Story further commented that the limitation to students in Montana schools in proposed New Rule II was not included in SB 410 and that the department is including provisions in this rule not contemplated in SB 410.

Mr. Mead also objected to New Rule II(2), stating that it includes additional restrictions not set out by the Legislature.

Senator Hansen stated that she is in agreement with Mr. Story's comments regarding the technical problems he identified with proposed New Rule II.

RESPONSE 40: The department appreciates these comments, but the statutes are clear that all students must be Montana students and all QEPs must comply with Montana education laws.

COMMENT 41: Mr. Story and Mr. Mead both testified that proposed New Rule II(1)(d) is a "catch-all" that is intended to cover anything else not in the proposed new rules. Mr. Story commented that this should be stricken and addressed more specifically through the rulemaking process at a later time if the department finds it necessary.

Mr. Mead commented that (1)(d) does not set a boundary on what information the department is seeking from private organizations. He proposed that (1)(d) be deleted, because it is over-broad and threatens the privacy of charitable nonprofits. The department must ensure that information gathered from private charitable organizations serves a valid public interest.

RESPONSE 41: The department agrees with Mr. Story and Mr. Mead and has deleted (d) from New Rule II(1).

COMMENT 42: Mr. Mead further commented that proposed New Rule II(2) expands the definition of "student scholarship organizations" against the intent of the Legislature. Mr. Mead also stated that proposed New Rule II(2) restricts how funds may be spent by a scholarship organization, even when those funds are not derived from the subject tax credit program. These restrictions seem to apply to all funds, not just those derived by SB 410 credits. The proposed new rule should be amended to clarify that it only applies to the tax credit program authorized by SB 410. As proposed, it could be interpreted to apply to all scholarship organizations.

Mr. Schowengerdt agreed with these comments, stating that Montana currently grants tax credits that benefit religious entities, such as the College Contribution Credit and the Qualified Endowment Credit, both administered by the department. However, the department has not prohibited tax credits for donations that may incidentally benefit religious entities in these examples, and it should follow the same policy in administering SB 410.

RESPONSE 42: The department disagrees that proposed New Rule II limits the spending an SSO may engage in outside of the SB 410 tax credit program. Other concerns in this comment have been addressed in the department's response to Comment 9.

COMMENT 43: Mr. Story commented that it might be useful if proposed New Rule III could clarify how the credit limitations apply to pass-through entities and how those contributions will be apportioned among stockholders.

Senator Hansen stated that she is in agreement with Mr. Story's comments regarding the technical problems he identified with proposed New Rule III.

RESPONSE 43: As proposed, New Rule III(4) clearly indicates that pass-through entities receive a credit in proportion to ownership percentages.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 2015

BEFORE THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE
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 INTERIM COMMITTEE POLL OF THE LEGISLATURE ON PROPOSED RULE ACTION BY THE DEPARTMENT OF REVENUE

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-939 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1682 of the 2015 Montana Administrative Register, Issue Number 19.

2. Section 2-4-403, MCA, requires the interim committee that has subject matter jurisdiction over an agency to conduct a poll of the members of the Legislature when 20 or more legislators object to a proposed rule. As of October 31, 2015, the Legislative Services Division had received 20 written objections to the Department of Revenue's proposed New Rule I in MAR Notice No. 42-2-939, which falls under the jurisdiction of the Revenue and Transportation Interim Committee under 5-5-227, MCA. Further written objections were received after October 31, 2015.

3. The Revenue and Transportation Interim Committee conducted a poll of the members of the Legislature starting on November 10, 2015, and ending on November 24, 2015, at 5:00 p.m. The question raised in the poll was as follows:

Proposed Rule I in MAR Notice No. 42-2-939 (Qualified Education Provider)

_____ The proposed rule IS CONSISTENT WITH legislative intent.

_____ The proposed rule IS CONTRARY TO legislative intent.

4. As provided in 2-4-403, MCA, the Department of Revenue was given an opportunity to present a written justification for proposed New Rule I and the written justification was provided with the polling materials.

5. Section 2-4-404, MCA, provides that the results of an interim committee poll must be admissible in any court proceeding involving the validity of the proposed rule. It provides further that if a majority of the members of both houses finds that the proposed rule or adopted rule is contrary to the intent of the Legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

6. The vote of the Senate on proposed Rule I in MAR Notice No. 42-2-939 is as follows:

15 Senators voted the proposed rule IS CONSISTENT WITH legislative intent; and

30 Senators voted the proposed rule IS CONTRARY TO legislative intent.

7. The vote of the House of Representatives on proposed Rule I in MAR Notice No. 42-2-939 is as follows:

36 Representatives voted the proposed rule IS CONSISTENT WITH legislative intent; and

59 Representatives voted the proposed rule IS CONTRARY TO legislative intent.

8. The poll materials, vote summary, and ballots are available by contacting the Legislative Services Division, P.O. Box 201706, Room 110, State Capitol, 1301 East Sixth Avenue, Helena, MT 59620-1706; telephone (406) 444-3064 or fax (406) 444-3036. Alternatively, the poll materials that were received by the members of the Legislature are available on the Revenue and Transportation Interim Committee website: http://leg.mt.gov/css/Committees/Interim/2015-2016/Revenue-and-Transportation/.

9. Section 2-4-306(3), MCA, requires the results of this poll to be published with MAR Notice No. 42-2-939 if proposed New Rule I is adopted by the Department of Revenue.

/s/ Fred Thomas
Senator Fred Thomas
Chairman

/s/ Tom Jacobson
Representative Tom Jacobson
Vice Chairman

Certified to the Secretary of State December 2, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of 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 AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 15, 2015, the Department of Revenue published MAR Notice No. 42-2-942 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1709 of the 2015 Montana Administrative Register, Issue Number 19.

2. On November 5, 2015, a public hearing was held to consider the proposed amendment and repeal. Merv Gunderson from American Legion Post 30 in Belgrade; Reverend Scott Wipperman from the First Presbyterian Church in Helena; Brad Robinson from the Archie Bray Foundation; and Bob Story, Executive Director of the Montana Taxpayers Association, appeared and testified at the hearing. Mr. Story provided his comments in written form as well. The department also received written comments from Sheila Rice, Executive Director of NeighborWorks, in Great Falls, and Matthew Brower, Executive Director of the Montana Catholic Conference.

3. The department amends ARM 42.20.106, 42.20.156, 42.20.171, 42.20.173, 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 repeals ARM 42.20.509, 42.20.510, 42.20.517, and 42.20.621 as proposed, effective January 1, 2016.

4. Based upon the comments received and after further review, the department amends ARM 42.20.102 and 42.20.301 as proposed, effective January 1, 2016, but with the following changes from the original proposal, 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~~ prior to March 1, 2014, must submit an application for exempt status along with the application fee stated in ~~(16)~~(17) 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 as proposed.

(2) The department may extend the March 1 deadline to June 1, for tax year 2016, if the applicant was unable to apply for the current year due to a physical or mental infirmity that existed between January 1 and June 1 of the tax year in which the applicant is applying that prevented timely filing of the application.

(3) The department may extend the March 1 deadline to June 1, for tax year 2016, on a case-by-case basis, if the property on the application was exempt in a year prior to 2014, and the applicant:

(a) submits a written statement, plus any supporting documentation, explaining any circumstances that prevented timely filing of the application; and

(b) provides a completed application, including all applicable supporting documentation, postmarked no later than June 1 of the year for which benefit is sought.

(2) through (2)(c)(ii) remain as proposed, but are renumbered (4) through (4)(c)(ii).

(iii) stating the specific use of the real or personal property~~.~~; or

(d) has not been granted tax-exempt status by the IRS, as stated by the applicant that such exemption does not exist.

(3) through (10) remain as proposed, but are renumbered (5) through (12).

~~(11)~~(13) 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)~~(7) must be submitted with the application;

(b) and (c) remain as proposed.

(d) the department shall notify the applying entity that the application has been approved and a notice of exemption on the property has been filed with the county clerk and recorder;

(e) through (h) remain as proposed.

~~(12)~~(14) 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)~~(4) must be submitted with the application and also include:

(a) through (h) remain as proposed.

(13) remains as proposed, but is renumbered (15).

~~(14)~~(16) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), tribal government, nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under

Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201, MCA:

(a) and (b) remain as proposed.

(c) if a property is tax-exempt, as stated in ~~(12)~~(14)(b), and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA; and

(d) remains as proposed.

~~(15)~~(17) 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. If IRS form 990 is not available, a copy of the current year's financial statements may be substituted. When multiple properties are being applied for, the payments may be consolidated and submitted on one instrument. The instrument must clearly identify the individual properties for which the payments are being made and the amount paid for each property. 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~~

(b) $25 for parcels with improvements; or

~~(e)~~(c) $0 for nonprofit entities with gross receipts less than $5,000.

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 within 30 days after receiving a classification and appraisal notice from the department~~, whichever is later~~. The form must be filed with the department.

(2) and (3) remain as proposed.

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

COMMENT 1: Regarding the proposed amendments to ARM 42.20.102, Merv Gunderson, representing American Legion Post 30 in Belgrade, asked why, if all of the documentation was provided in 2014, there is a change now that requires them to provide new paperwork to receive a property tax exemption. He stated that there are many American Legion and Veterans of Foreign Wars Posts (VFW) across the state with buildings and property, some that have been donated to the posts and are not functional, and again asked why it is necessary to repeat the process. He commented that Post 30 received a donation of land that they are currently trying to donate to a state agency and asked if it will have to be assessed. He further

commented that his post has been providing information to the department for the past twenty years or so and does not understand why it all has to be resubmitted if 15-6-203, MCA, has not changed.

RESPONSE 1: The department appreciates Mr. Gunderson's comments and questions. The purpose of the new statute passed in 2015 was to establish a current and accurate list of all exempt properties and to have all exemptions processed in a uniform and consistent manner as set forth in current law.

Exemption laws have changed over the years, and the information the department currently has on file may no longer be accurate. To ensure that the information on file with the department is current and accurate, applicants need to provide the department with updated documentation to prove that the applicant continues to qualify for exemption. Applicants that were granted exemptions in tax years 2014 or 2015 are not required to reapply.

As to Mr. Gunderson's question regarding the land donated to Post 30: it should be exempt so long as the land meets the statutory requirements for the exemption.

COMMENT 2: Mr. Gunderson further commented that it is his understanding that the veterans' clubhouse exemption exempts American Legion clubhouses from property taxes. Post 30 changed their name and applied for the exemption in 2014. Does the proposed rule change require the post to go through the application process once again?

RESPONSE 2: Post 30 would not need to reapply if they applied and the department granted an exemption in tax years 2014 or 2015.

COMMENT 3: Reverend Scott Wipperman, representing the First Presbyterian Church in Helena, requested clarification on the two-year deadline in ARM 42.20.102, and asked if church properties will need to reapply or if churches are exempt from the proposed rule change.

RESPONSE 3: The department appreciates Reverend Wipperman's comments and questions. Churches and other entities are required to reapply in 2016, unless they applied for and were granted exemption in tax years 2014 or 2015.

Churches are not exempt from the reapplication required by the new law or by the proposed rule change that implements the new law if they applied for and were granted exemption prior to tax year 2014.

COMMENT 4: Matthew Brower, Executive Director of the Montana Catholic Conference (MCC), commented that the rule amendment could place a significant administrative burden on both of the Roman Catholic dioceses of Montana. The applicable statute and proposed rules appear to envision situations where owners of real property have relatively few parcels that qualify for tax-exempt treatment. This does not reflect the situation of the Roman Catholic Church in Montana.

Mr. Brower explained that the Roman Catholic Church owns hundreds of individual parcels of tax-exempt real property for which exemption renewal application must be submitted due to the enactment of HB 389. While the documentation requirements set forth in ARM 42.20.102(5) for an individual renewal application are not burdensome, providing this for hundreds of individual parcels will require a significant investment of time. Because the church is organized as a corporation solely in each diocese, the renewal application process places a significant burden on financial services departments with limited resources. Pulling and reproducing archived documents and producing proof and determining fees for each parcel will require considerable time and effort. Compliance with the proposed rules could require the financial services departments to hire temporary help. Mr. Brower also noted that the proposed rules require those submitting renewal applications to provide information already available to the department via the Montana cadastral.

Mr. Brower commented that it is unclear whether or not entities that own multiple tax-exempt parcels will be required to submit individual renewal applications for each parcel or whether such entities will be permitted to submit a bulk renewal. For entities such as the two Roman Catholic dioceses in Montana, a streamlined bulk renewal application could facilitate compliance and somewhat ease the administrative burden such organizations otherwise face. A simplified process would also be more in accord with the intent expressed by the sponsor of HB 389. Representative Essmann made it clear he did not want the reapplication process to impose a significant burden on owners of tax-exempt real properties. However, that is precisely what the department's proposed amendments will do to organizations like the Roman Catholic dioceses of Montana.

For the reasons submitted by Mr. Brower, the MCC urges the department to reconsider the proposed amendments to ARM 42.20.102 and modify them to reduce the administrative burden they threaten to impose on their dioceses and other organizations owning large numbers of parcels entitled to tax-exempt treatment.

RESPONSE 4: The department appreciates MCC's comments and understands how it may be burdened when required to provide multiple documents for the hundreds of parcels for which they are seeking an exemption. Many existing exempt entities, however, have received approval for property tax exemptions from various authorities for more than 50 years, without ever providing updated documentation. The impetus behind the new law and the reapplication process is to update the department's records. Separate records are maintained for each individual parcel. The department determines whether to grant an exemption on a per parcel basis. Therefore, it is imperative that the department receive sufficient information on each parcel for which the entity is seeking exemption.

COMMENT 5: Regarding ARM 42.20.102(15), as proposed, Mr. Brower commented that in addition to requiring payment of a renewal application fee, significant documentation must accompany the renewal application, including a copy of IRS form 990 identifying the gross receipts of the entire organization. However, because Roman Catholic dioceses and parishes are not required to file an IRS form

990, the MCC suggests that the rule explicitly exempt those entities not required to file such a form from this requirement.

RESPONSE 5: The department appreciates MCC's comment regarding the filing of Form 990s with the Internal Revenue Service. Montana's exemption application law allows entities with gross receipts of $5,000 or less to not pay the department's administrative fee to process their real property tax exemption application. The department must have sufficient information to allow it to determine which applicants qualify for the fee exemption. The department understands MCC's concern and has amended ARM 42.20.102(17) to allow entities who do not file the Form 990 to submit financial statements reflecting gross receipts. As amended, the rule will also allow for consolidated payments on multiple properties.

COMMENT 6: Reverend Wipperman inquired how the department is going to notify nonprofit organizations of the proposed new requirement. Nonprofits are generally staffed mostly with volunteers. He stated that he only accidently found out about this new requirement because one of the church's employees is also a part-time employee of another nonprofit that subscribes to a newsletter that contained the information. He commented that it is likely many nonprofits are completely unaware of this requirement and with this 60-day window from January 1 through March 1, he wonders if the department is effectually raising taxes on nonprofits because they will fail to notice this. He asked what is being done to notify the nonprofits that they need to reapply for their exemptions.

RESPONSE 6: The department shares Reverend Wipperman's concerns. The tight timing between the new law taking effect and the statutory filing date has created a challenge for the department with regard to the notification process. The department mailed an application and cover letter to property owners whose property was exempted prior to tax year 2014. The cover letter explains that the new law requires reapplication by March 1, 2016. The department began mailing the applications and letters in early December.

The Property Assessment Division is also working closely with the department's Public Information Office to arrange for print and broadcast news media coverage to be distributed across the state and in organization membership newsletters of nonprofits and other owners of tax-exempt property. The department issued a statewide news release on November 30.

The department asked for and received some good suggestions for getting the word out at the public hearing on these rules, and remains open to more suggestions from the public.

Additionally, the department may waive the March 1, 2016, deadline for tax year 2016 if a physical or mental infirmity existed at sufficient levels between January 1 and June 1, 2016, which prevented timely filing on March 1, 2016. The department may also waive the March 1 deadline to June 1, 2016, for tax year 2016 only, if the real property taxpayer or entity received an exemption prior to 2014 and the applicant submits a written statement along with any documents explaining the circumstances that prevented the timely filing of the application and provides a

completed application postmarked no later than June 1, 2016. The department has added this waiver language to ARM 42.20.102.

COMMENT 7: Reverend Wipperman also asked what is required in the reapplication process. Is it a restating of the nonprofit entity's name and checking a box on a form? He said the packet Mr. Gunderson presented at the hearing seemed to indicate that the process would be fairly involved. Reverend Wipperman also questioned if 60 days is adequate for an organization to assemble the necessary information.

RESPONSE 7: Reverend Wipperman brings forth good questions. The required supporting documentation for all organizations will include their articles of incorporation if the applicant is a corporation; the constitution or by-laws if the applicant is not a corporation; the deed to the property; their Federal Internal Revenue Service Tax Exempt Status letter; a photograph of the building; and a letter of specific use for the property. For example, if applying for a religious exemption the letter of specific use would state how the property is used such as religious worship, Sunday school, bible study, etc.

Additional supporting documentation may be required if applying for exemption types such as educational, nonprofit healthcare, parsonage, cemetery or low-income housing.

COMMENT 8: Brad Robinson, of the Archie Bray Foundation, attempted to clarify some of the confusion by stating that it is his understanding that while specific codes may not have changed, there are new rules and code updates that require the new applications.

RESPONSE 8: The department appreciates Mr. Robinson's effort to help clear up confusion. His understanding is correct. House Bill (HB) 389 identified specific types of exemptions that are required to submit an updated application. Whether or not a statute covering a specific type of entity changed, if the relevant statute was included in HB 389, that entity (exemption type) is required by the new law to reapply in 2016.

COMMENT 9: Mr. Gunderson asked about the fee involved with reapplying, stating that they have paid fees twice for the two applications the post has submitted and wondering if it is a different fee; a more expensive fee; or just an add-on fee to make the department some revenue.

RESPONSE 9: The department has not historically charged a fee to apply for property tax exemption in the past. The fee for this reapplication is now required by statute. The fees will help to offset the costs associated with processing the new applications.

To make the fee schedule simpler and easier for applicants to understand, the department has amended it to eliminate two payment tiers. The amended schedule retains the $0 fee for certain nonprofit entities and the $15 fee for vacant

land. The change replaced three fees ranging from $20 to $35 with a single $25 fee for land with improvements and/or structures.

COMMENT 10: Mr. Gunderson asked about the department using e-mail to inform currently registered nonprofits of the new requirements. He advised that many of the legion posts do not use e-mail and that they mostly communicate with their members directly during community activities.

RESPONSE 10: If the nonprofit is currently exempt, and if their mailing address on file with the department is also current, they will receive a cover letter via postal mail with information and a new application in December.

The department also notified associations and organizations affiliated with smaller nonprofit entities and asked for assistance in informing those entities that wouldn't otherwise be directly contacted because they are not currently in the department's database.

COMMENT 11: Bob Story, Executive Director of the Montana Taxpayers Association (MonTax), asked how long the department has been collecting information on nonprofits and if there is a possibility that there are some that are not on any mailing lists the department can use for notification of the new filing requirements.

RESPONSE 11: The department appreciates Mr. Story's question. It is very likely that there are many smaller nonprofit entities not on any of the department's current mailing lists. The exemption application process has not always been handled by the department and was not centralized in the Helena office until 1981. Prior to that there was little documentation collected on exempt properties in Montana. The department will use any available resources to notify smaller nonprofits of the necessity to reapply.

COMMENT 12: Mr. Story stated that MonTax appreciates the department's work on these particular rules.

He further commented that the issue of notifying the nonprofits is of significant importance and provided suggestions for achieving that goal, such as notifying the council of churches, contacting organizations that may be useful in disseminating the information, and sending out a general press release.

Mr. Story also stated that he has some concerns about locating the small, more isolated, nonprofits and making the process of payments as painless as possible. He commented that it is his understanding that larger nonprofits have a requirement to file with the Attorney General's Office so there may be a way to coordinate with that entity for additional information.

Mr. Robinson also advised that he has past experience with the Montana Nonprofit Association and recommends them as a source for contacting the nonprofits in the state to advise them of the new filing requirements.

RESPONSE 12: The department shares the concern about getting the word out and appreciates and will consider these suggestions. The department issued a statewide news release on November 30.

COMMENT 13: Mr. Story asked if the March 1 deadline is set by statute or by rule.

RESPONSE 13: The March 1 deadline is set by statute.

COMMENT 14: Mr. Robinson asked if it is a one-time reapplication fee, will it be ongoing every "x" number of years, or be required annually?

RESPONSE 14: An entity will be required to pay the initial application fee in 2016. If the application is granted, the department will not require another renewal unless subsequent changes in use or ownership occur.

If an appraiser observes a change in the exempt property, such as a retail business in operation, the appraiser will contact the tax exemption management analyst in the department's Helena office. The management analyst will mail an application to the entity to reapply for exemption. The reapplication will determine if the entity continues to meet the statutory and rule requirements to remain exempt. The entity would need to submit the supporting documentation and accompanying fee in this situation. If the change occurs prior to December 31, 2021, the applicant will be required to pay the application fee.

COMMENT 15: Mr. Robinson asked what the definition is of a "purely public charity" as stated in the proposed amendment to ARM 42.20.102(11). He said he is unfamiliar with that term, even though he has worked for nonprofits for several years.

RESPONSE 15: In 15-6-201(2), MCA, the term "institutions of purely public charity" includes any organization that meets the following requirements: the organization offers its charitable goods to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), IRC, as amended. The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances, entertainment, or other similar types of fundraising. It also states, in part, "agricultural property owned by purely public charity is not exempt, if the agricultural property is used by the charity to produce unrelated business taxable income."

COMMENT 16: Mr. Robinson further stated that 15-6-201, MCA, specifically refers to those 501(c)(3) nonprofits under the Internal Revenue Code and asked what about those entities which are not 501(c)(3) nonprofits, such as the American Legion Posts? He stated that there appears to be 26 or 27 additional subchapters to IRC 501(c). Therefore, should there be additional language in the proposed amendment stating that if you are not a "purely public charity" you will be required to reapply?

RESPONSE 16: Section 15-6-201, MCA, covers many types of organizations who can apply for exemption. These include educational, nonprofit healthcare, water associations, religious, etc. For the most part, these types of organizations will have an IRS Tax Exempt Status of 501(c)(3), but do not come under the definition of "institutions of purely public charity" as defined in 15-6-201(2)(c)(i)(A), MCA. Also, they have their own subsets under 15-6-201, MCA, and because they were identified in House Bill 389, they must reapply for exemption as well. Organizations, such as chambers of commerce, civic leagues, pleasure, recreational, or social clubs, etc., although nonprofit, are not covered by any exemption statute in the Montana Code Annotated and could not apply for exemption.

There may have also been some confusion in the notice due to the inclusion of the purely public charity language in the proposed amendments to ARM 42.20.102(11) where the process is defined when "institutions of purely public charity" apply for an exemption but the property is vacant. In this situation, the charity has up to 8 years to place the property into its charitable purpose. If that fails to happen, the charity could be responsible for up to 8 years in back taxes. The 8-year exemption is allowed only for "institutions of purely public charity" as defined in 15-6-201, MCA, and the department determined it was important to include a reference to the "purely public charity" in ARM 42.20.102 for that reason.

COMMENT 17: Mr. Robinson also asked if there will be a physical reassessment of each exempt property by the department.

RESPONSE 17: The department will conduct a physical inspection of each property applying for exempt status.

COMMENT 18: Mr. Robinson asked for a definition of class 3 and class 4 properties and questioned how the new rules would apply to the Archie Bray Foundation, a 501(c)(3), with land and manufacturing, all of which is done for the charitable purposes of providing a place for the artists to work and learn their trade. He asked what comes of having a clay manufacturing facility that sells the clay to schools throughout the state, as well as to local artists.

RESPONSE 18: Class 3 is agricultural property and class 4 is residential, commercial, or industrial property, as set out in 15-6-133 and 15-6-134, MCA.

When the application for the Archie Bray Foundation is submitted, and after the department has completed a physical inspection of the property, the department's tax exemption management analyst will review the available information and make a determination on the property's tax-exempt status. A definitive answer on whether the property continues to meet current law cannot be given until the application and supporting documentation are reviewed.

COMMENT 19: Mr. Gunderson thanked the department for the hearing and for all of the information provided. He stated that many of the American Legion Posts are both 501(c)(3)s and 501(c)(19)s. He suggested contacting the adjuncts

for the American Legion, the VFW, the Disabled American Veterans, and the Vietnam Veterans of Montana to get the information out to all the posts.

RESPONSE 19: The department appreciates Mr. Gunderson's good suggestions on how to further reach out to these organizations and is pleased to know that he found the hearing informative.

COMMENT 20: Mr. Robinson also inquired if there is an appeal process if an entity misses the deadline and if there is any penalty.

RESPONSE 20: Any applicant that has been denied exemption may appeal to the Montana Tax Appeal Board. The department does not apply a separate penalty for missing the reapplication deadline.

COMMENT 21: Sheila Rice, Executive Director of NeighborWorks in Great Falls, commented regarding the proposed amendments to ARM 42.20.102(12). Ms. Rice stated that low-income housing exemptions are available for projects that do not use low-income housing tax credits, so some of the requirements in the proposed rule are not applicable.

Ms. Rice provided edit suggestions for proposed ARM 42.20.102(12), below, and explained that she based them on information she received from the department that if an entity applying for an exemption in 2014 would have advised the department that they had been approved as a 501(c)(3) by the IRS but had not yet received the written approval, the department would have held the application until the documentation was received.

The revisions suggested by Ms. Rice for the proposed amendments to ARM 42.20.102(12) are as follows. In (b), add language permitting a reason to be given for the absence of an IRS exemption letter, or a statement explaining that the IRS exemption letter is pending. In (e), add "or if a project is not a tax credit project." In (g) and (h), add "if applicable" to the end of each.

RESPONSE 21: The department appreciates Ms. Rice's suggested edits to ARM 42.20.102(12), but doesn't find them appropriate for this rule.

In explanation, (12) speaks specifically to organizations that apply for exemption under 15-6-221, MCA, the low-income housing statute. To qualify for exemption under this statute, organizations must meet more stringent requirements than are required for exemption under 15-6-201, MCA.

Some of the additional documentation required to qualify under 15-6-221, MCA, includes, but is not limited to, proof of rent restrictions and eligibility for Board of Housing tax credits. Applicants are also required to hold a public meeting to demonstrate necessity for the low-income housing and must produce documentation showing there are specific restrictions on the use of the property.

NeighborWorks currently qualifies for exemption as an "institution of purely public charity" under 15-6-201, MCA. While the organization owns the tax-exempt land, the mobile homes situated on that land are owned by individuals. Habitat for Humanity is another example of an organization that qualifies under this same

statute because participating individuals own the property and will eventually pay property taxes on it.

Department staff is available to answer questions and assist organizations with the application process if needed. If an entity feels they would qualify for exemption under a different governing statute, they can reapply and provide updated documentation to the department for status change consideration.

COMMENT 22: With regard to the proposed amendments to ARM 42.20.301, Mr. Story commented that the statement "whichever is later" is unnecessary and should be stricken as there is only one applicable date. He commented that the statement "[t]o be considered for the current tax year, an application must be filed on a form available from the department within 30 days after receiving a classification and appraisal notice from the department, whichever is later" just gets back to previous language.

RESPONSE 22: Mr. Story is correct. The phrase "whichever is later" should have been stricken as part of the proposed amendments to the rule. The department has amended the rule accordingly and appreciates Mr. Story bringing attention to this error.

COMMENT 23: Also relating to the 30-day deadline language that appears throughout the proposed amendments, Mr. Story commented that he thinks it would be helpful if there was actually a defined name for the date on the form, e.g., a postmark, the date you send it, appraisal date, or a final date of appeal would be a good date to have on the form. A firm date would eliminate confusion regarding the appeal deadline. That way, if mailings to different groups were done on different dates, each mailing could contain a specific deadline date.

RESPONSE 23: The deadline of 30 days after receiving a notice is determined from the date on each notice type issued by the department. By working from the actual date printed on a classification and appraisal notice, application response, determination letter, etc., the date being used is readily verifiable by both parties. The department appreciates Mr. Story's suggestion, but has concluded it is appropriate to leave the language as proposed.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.4.2902, 42.4.2904, and 42.4.2905 pertaining to tax credits for historic property preservation	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Department of Revenue published MAR Notice No. 42-2-945 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1862 of the 2015 Montana Administrative Register, Issue Number 20.

2. On November 19, 2015, a public hearing was held to consider the proposed amendment. No members of the public appeared to testify at the hearing. The department received written comments from Nick Kujawa, President, Kujawa Development, LLC.

3. The department amends ARM 42.4.2902 and 42.4.2905 as proposed.

4. Based upon the comments received and after further review, the department amends ARM 42.4.2904 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.4.2904 OWNERSHIP OF HISTORIC PROPERTY (1) and (2) remain as proposed.

(3) A lessor who elects under U.S. Treasury regulation 26 C.F.R. 1.48-4(f) and (g) to pass the federal rehabilitation credit to a lessee may not claim the Montana credit and, correspondingly, a lessee to whom the federal rehabilitation credit is transferred is entitled to claim the Montana credit.

(3) through (5) remain as proposed, but are renumbered (4) through (6).

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

COMMENT 1: Nick Kujawa, President, Kujawa Development, LLC, stated that as a developer focused on preservation and redevelopment of historic Montana buildings, he appreciates the department clarifying and aligning the rules governing the implementation of the Montana Historic Preservation Tax Credit Program with the legislative intent behind them, as well as their coordination with the federal Historic Preservation Tax Credit.

RESPONSE 1: The department appreciates Mr. Kujawa's comments and willingness to work with the department to better align the state rules with the federal rules.

COMMENT 2: Mr. Kujawa commented that the proposed deletion of ARM 42.2.2904(3) removes a conflict with federal rules relating to a pass-through lessee's utilization of historic preservation tax credits that created a difficulty for developers intending to utilize both Montana and federal historic preservation tax credits. He further commented, however, that even with the proposed deletion, the rules fail to address the issue of a federal pass-through lessee's ability to utilize the Montana tax credits.

Mr. Kujawa stated that while the proposed amendment to ARM 42.4.2904 provides some guidance, the amended rule does not sufficiently address the question of whether a federal pass-through lessee can claim the Montana tax credits and suggests that rather than completely deleting (3), the department amend that section to read, "Third parties to whom the federal rehabilitation credit is transferred shall be entitled to claim the Montana credit and, correspondingly a building owner who incurs the cost of rehabilitating an historic structure and elects under federal law to pass the federal rehabilitation tax credit to a third party shall be disqualified from claiming the Montana credit."

RESPONSE 2: After further review, the department agrees that the proposed amendments to ARM 42.9.2904 did not address the issue of a federal pass-through lessee's ability to utilize the Montana tax credits. Rather than striking ARM 42.9.2904(3) entirely, as was originally proposed, the department has revised the language in that section to more specifically identify the federal pass-through lessee's claim to the credit.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 2015

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, and 42.22.1311 pertaining to the trended depreciation schedules for valuing property	)))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 29, 2015, the Department of Revenue published MAR Notice No. 42-2-946 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1866 of the 2015 Montana Administrative Register, Issue Number 20.

2. On November 19, 2015, a public hearing was held to consider the proposed amendment. No members of the public appeared to testify at the hearing and no written comments were received.

3. The department amends ARM 42.21.113, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, and 42.22.1311 as proposed.

4. Upon determination that a portion of the language as proposed to be changed represented a statutorily required valuation source, the department amends ARM 42.21.123, as proposed, but with the following changes to restore the required language, new matter underlined, deleted matter interlined:

42.21.123 FARM MACHINERY AND EQUIPMENT (1) remains as proposed.

(2) The market value for farm machinery and equipment shall be the ~~most current quick sale as shown in the online version of the Green Guide known as the Equipment Watch, as of October of the year prior to the year of the appraisal. This online guide may be reviewed in the department or purchased from the publisher at equipmentwatch.com or Dataquest, 1290 Ridder Park Drive, San Jose, California 95131.~~ "average wholesale" value as shown in the Iron Solutions, Northwest Region Official Guide, Fall Edition, for the year previous to the year of the assessment. This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, 1195 Smizer Mill Road, Fenton, Missouri 63026-3480.

(3) For all farm machinery and equipment that cannot be valued under (2), the department has developed a manual to value the equipment. This manual will be used in conjunction with the depreciation schedule in (5) when valuing farm equipment and machinery. The purpose of the manual developed by the

department is to arrive at values which approximate ~~quick sale~~ average wholesale value. The department's farm machinery manual is ~~hereby~~ incorporated by reference. Customers can contact the department to obtain copies.

(4) and (5) remain as proposed.

(6) A trended ~~quick sale~~ average wholesale value shall be applied to equipment if:

(a) the equipment cannot be valued under (2) but ~~a quick sale~~ an average wholesale value is available for the same make and model with a different year new; and

(b) the equipment cannot be valued under (4) or the value as calculated under (4) results in a higher value being placed on a piece of farm equipment than the last year listed in the guide cited in (2) for the same make and model. The trended ~~quick sale~~ average wholesale value for farm equipment shall be ascertained by trending the ~~quick sale~~ average wholesale value as found in the guide in (2), for the same make and model with a different year new. The trend factors are the same as those mentioned in (4).

(7) If the methods mentioned in (2) through (5) cannot be used to ascertain ~~quick sale~~ average wholesale value for farm machinery and equipment, the owner or applicant must certify to the department the year acquired and the acquired price before that value can be applied to the schedule in (8).

(8) The trended depreciation schedule referred to in (2) through (6) is listed below and shall be used for tax year 2016. The schedule is derived by using the guide listed in (2) as the data base. The values derived through use of the trended depreciation schedule will approximate ~~quick sale~~ average wholesale value.

YEAR NEW/ACQUIRED	TRENDED % GOOD WHOLESALE
2016	80%
2015	~~54%~~ 75%
2014	~~48%~~ 66%
2013	~~47%~~ 61%
2012	~~46%~~ 55%
2011	~~44%~~ 53%
2010	~~43%~~ 51%
2009	~~41%~~ 44%
2008	~~40%~~ 44%
2007	~~39%~~ 45%
2006	~~38%~~ 40%
2005	~~38%~~ 38%
2004	~~38%~~ 36%
2003	~~36%~~ 32%
2002	~~35%~~ 28%
2001	~~34%~~ 25%
2000 and older	~~30%~~ 20%

(9) and (10) remain as proposed.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 14, 2015

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.5.114 and 44.5.115 pertaining to fees charged by the Business Services Division for the filing of annual reports	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 12, 2015, the Secretary of State published MAR Notice No. 44-2-212 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2031 of the 2015 Montana Administrative Register, Issue Number 21.

2. The Secretary of State has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of December, 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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(Board of Dentistry)

24.138.406 and other rules - Dental Auxiliaries Functions - Dentist Licensure by Credentials - Dentist Licensure by Credentials for Specialists - Dental Hygiene Limited Access Permit - Denturist Intern - Converting Inactive License to Active - Reactivation of an Expired License - Military Training or Experience - Continuing Education - Screening Panel - Continuing Education in Anesthesia - Introduction, p. 1099, 1904

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(Board of Outfitters)

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 2015 appear. Vacancies scheduled to appear from January 1, 2016 through March 31, 2016, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of Decemer 1, 2015.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2015

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Nursing Home Administrators (Labor and Industry)			
Mr. Jim Corson	Governor	Chase	11/13/2015
Billings			5/28/2016
Qualifications (if required): 55 years of age or older			
State Compensation Insurance Fund Board of Directors (Montana State Fund)			
Mr. Jack Owens	Governor	Brenneman	11/13/2015
Missoula			5/28/2019
Qualifications (if required): business/private enterprise policy holder			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Board of Architects and Landscape Architects (Labor and Industry)		
Ms. Shelly Engler, Bozeman Qualifications (if required): Lanscape Architect	Governor	3/27/2016
Ms. Maire O'Neill, Bozeman Qualifications (if required): MSU School of Architects	Governor	3/27/2016
Ms. Janet Cornish, Billings Qualifications (if required): Public Representative	Governor	3/27/2016
Mr Nathan Steiner, Billings Qualifications (if required): Landscape Architect	Governor	3/27/2016
Board of Chiropractors (Labor and Industry)		
Dr. Cathleen Fellows, Billings Qualifications (if required): Chiropractor	Governor	1/1/2016
Board of Dentistry (Labor and Industry)		
Ms. Luella Vogel, Great Falls Qualifications (if required): public representative	Governor	3/29/2016
Dr. Terry Klise, Missoula Qualifications (if required): dentist	Governor	3/29/2016
Board of Personnel Appeals (Labor and Industry)		
Ms. Anne L. MacIntyre, Helena Qualifications (if required): labor-management experience and an attorney	Governor	1/1/2016

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Board of Public Education (Higher Education)		
Mr. John W Edwards, Billings	Governor	2/1/2016
Qualifications (if required): resident of District 2		
Children's System of Care Committee (Public Health and Human Services)		
Mr. Bob Peake, Helena	Director	1/1/2016
Qualifications (if required): Appointee of Supreme Court representing youth courts		
Ms. Lesa Evers, Helena	Director	1/1/2016
Qualifications (if required): Other appropriate appointee		
Ms. Cindy McKenzie, Helena	Director	1/1/2016
Qualifications (if required): Appointee by Department of Corrections		
Ms. Zoe Barnard, Helena	Director	1/1/2016
Qualifications (if required): Mental Health Program		
Ms. Sarah Corbally, Helena	Director	1/1/2016
Qualifications (if required): Child Protective Services		
Ms. Rebecca de Camara, Helena	Director	1/1/2016
Qualifications (if required): Developmental Disability Program		
Ms. Jamie Palagi, Helena	Director	1/1/2016
Qualifications (if required): Other appropriate appointee		
Ms. Malayia Hill, Missoula	Director	1/1/2016
Qualifications (if required): Other appropriate appointee		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Children's System of Care Committee (Public Health and Human Services) cont.		
Ms. Kim Monroe, Missoula	Director	1/1/2016
Qualifications (if required): Other appropriate appointee		
Mr. Matt Kunz, Helena	Director	1/1/2016
Qualifications (if required): Other appropriate appointee		
Mr. Dennis Parman, Helena	Director	1/1/2016
Qualifications (if required): Appointee of Superintendent of Public Instruction		
Ms. Cil Robinson, Helena	Director	1/1/2016
Qualifications (if required): Appointee of Youth Justice Council		
Children's Trust Fund (Public Health and Human Services)		
Ms. Patty Butler, Lewistown	Governor	1/1/2016
Qualifications (if required): DPHHS Agency Representative		
Ms. Mary Gallagher, no city listed	Governor	1/1/2016
Qualifications (if required): Agency Representative		
Ms. JoAnn Eder, Red Lodge	Governor	1/1/2016
Qualifications (if required): Public Representative		
Ms. Betty Hall-Munger, Helena	Governor	1/1/2016
Qualifications (if required): Public Representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Commission on Practice of the Supreme Court (Supreme Court)		
Ms. Jean Faure, Great Falls	elected	1/1/2016
Qualifications (if required): none specified		
Community Service Commission (Administration)		
Mr. Kevin Myhre, Lewistown	Governor	1/1/2016
Qualifications (if required): Local Government Representative		
Judicial Nomination Commission (Justice)		
Ms. Mona Charles, Kalispell	Governor	1/1/2016
Qualifications (if required): public representative		
Mental Disabilities Board of Visitors (Governor)		
Mr. Graydon Davies Moll, Ronan	Governor	1/1/2016
Qualifications (if required): Experience with Treatment and Welfare of adults with developmental disabilities		
Mr. Dan Laughlin, Anaconda	Governor	1/1/2016
Qualifications (if required): Experience with Treatment and Welfare of children with serious emotional disturbances		
Montana Children's Trust Fund Board (Public Health and Human Services)		
Ms. Kristina Davis, Great Falls	Governor	1/1/2016
Qualifications (if required): General Public Representative		
Mrs. Catherine Molloy, Helena	Governor	1/1/2016
Qualifications (if required): General Public Representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Potato Commodity Advisory Committee (Agriculture)		
Mr. Brad Haidle, Fallon	Director	3/1/2016
Qualifications (if required): Potato Producer		
Mr. Pat Fleming, Pablo	Director	3/1/2016
Qualifications (if required): Potato Producer		
Small Business Health Insurance Pool Board of Directors (Insure Montana) (State Auditor)		
Ms. Tara Veazey, Helena	Governor	1/1/2016
Qualifications (if required): non-voting representative of the Governor's Office		
Ms. M. Katherine Buckley-Patton, Helena	Governor	1/1/2016
Qualifications (if required): Management Level Knowledge of Medicaid Services		
Mr. Tim O'Leary, Missoula	Governor	1/1/2016
Qualifications (if required): Representing the Small Business Community		
Smith River State Park and River Corridor Advisory Council (Fish, Wildlife and Parks)		
Director Mary Sexton, Helena	Director	3/1/2016
Qualifications (if required): State Parks and Recreation Board Member		
Mr. Joe Lamson, Helena	Director	3/1/2016
Qualifications (if required): Interested Citizen		
Mr. Gary Wolfe, Missoula	Director	3/1/2016
Qualifications (if required): Fish and Wildlife Commission Member		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Smith River State Park and River Corridor Advisory Council (Fish, Wildlife and Parks) cont.		
Mr. Triel Culver, Billings	Director	3/1/2016
Qualifications (if required): Interested Citizen		
Mr. Grant Grisak, Billings	Director	3/1/2016
Qualifications (if required): Agency Representative		
Ms. Jane Kollmeyer, Helena	Director	3/1/2016
Qualifications (if required): Interested Citizen		
Mr. Colin Maas, Helena	Director	3/1/2016
Qualifications (if required): Agency Representative		
Mr. Mike Meloy, Helena	Director	3/1/2016
Qualifications (if required): Smith River Corridor Landowner		
Mr. John Metrione, Helena	Director	3/1/2016
Qualifications (if required): U.S. Forest Service Representative		
Mr. Ned Morgans, Helena	Director	3/1/2016
Qualifications (if required): Smith River Corridor Landowner		
Mr. Joe Sowerby, Missoula	Director	3/1/2016
Qualifications (if required): Smith River Outfitter		
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Dr. James Wright, Butte	Governor	1/1/2016
Qualifications (if required): Advocate of Brain Injured Persons		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Traumatic Brain Injury Advisory Council (Public Health and Human Services) cont.		
Mr. Charles Gutierrez, Vaughn Qualifications (if required): Survivor	Governor	1/1/2016
Dr. Richard Felix, Saint Ignatius Qualifications (if required): Advocate for Brain-Injured Persons	Governor	1/1/2016
Water Well Contractors Board (Natural Resources and Conservation)		
Mr. Pat Byrne, Great Falls Qualifications (if required): Water Well Contractor	Governor	1/1/2016
Youth Justice Council (Justice)		
Sheriff Craig Anderson, Glendive Qualifications (if required): Law Enforcement, Judge, Judiciary	Governor	3/1/2016
Commissioner Laura Obert, Townsend Qualifications (if required): Local Government	Governor	3/1/2016
Mr. Tim Brurud, Havre Qualifications (if required): Private Non-Profit Agency	Governor	3/1/2016
Judge Mary Jane Knisely, Billings Qualifications (if required): Law Enforcement, Judge, Judiciary	Governor	3/1/2016
Mr. Adam Stern, Livingston Qualifications (if required): Local Government	Governor	3/1/2016

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Ms. Laura Bomboy Singley, Lewistown	Governor	3/1/2016
Qualifications (if required): Law Enforcement, Judge, Judciary		
Mr. Chaz McGurn, Helena	Governor	3/1/2016
Qualifications (if required): Under 24, has been or is under the Jurisdiction of the Juvenille System		
Mr. Randy Shipman, Dillon	Governor	3/1/2016
Qualifications (if required): Public Agency		
Mrs. Michelle Miller, Butte	Governor	3/1/2016
Qualifications (if required): Competency Addressing Youth Violence		
Ms. Kelly McIntosh, Dillon	Governor	3/1/2016
Qualifications (if required): Private Non-Proft Agency		
Mr. Dave Bailon, Kalispell	Governor	3/1/2016
Qualifications (if required): Volunteer work with delinquents and potential delinquents		
Ms. Anna Fischer, East Helena	Governor	3/1/2016
Qualifications (if required): Under 24, has been or is under the jurisdiction of the Juvenille Justice System		
Mr. Peter Ohman, Bozeman	Governor	3/1/2016
Qualifications (if required): Public Agency		
Mr. Jack Shevalier, Helena	Governor	3/1/2016
Qualifications (if required): Under 24, has been or is under the Jurisdiction of the Juvenile Justice System		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2016 THROUGH MARCH 31, 2016

Board/current position holder	Appointed by	Term end
Youth Justice Council (Justice) cont.		
Ms. Kristina Lucero, Helena	Governor	3/1/2016
Qualifications (if required): Special experience and competence in addressing problems related to school violence		
Mr. Braeden Quinn, Missoula	Governor	3/1/2016
Qualifications (if required): Special experience and competence in addressing problems related to school violence		
Ms. Geri Small, Lame Deer	Governor	3/1/2016
Qualifications (if required): Special experience and competence in addressing problems related to disabilities		