

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.55.502 pertaining to the)	AMENDMENT
individual loss sensitive dividend)	
distribution plan)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On May 13, 2016, the Montana State Fund proposes to amend the above-stated rule.

2. The Montana State Fund 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 Montana State Fund no later than 5:00 p.m. on April 29, 2016, to advise us of the nature of the accommodation that you need. Please contact Curtis Larsen, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana, 59604-4759; telephone (406) 495-5255; fax (406) 495-5023; or e-mail cularsen@mt.gov.

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

2.55.502 INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN

(1) through (5) remain the same.

(6) Individual retrospectively rated policies that have not reached a final premium determination as of the dividend valuation date and optional deductible policies ~~shall~~ are not be eligible for a dividend declared by the board under this rule. This section applies to policies with policy effective dates ~~after December 31, 2006~~ before July 1, 2016.

(7) through (9) remain the same.

AUTH: 39-71-2315, 39-71-2323, MCA

IMP: 39-71-2323, MCA

REASON: When the Montana State Fund general dividend process was first implemented, retrospectively rated policies typically did not reach a final determination of premium by the date losses and premiums were valued for purposes of the general dividend. The timing of the dividend process has changed such that retrospectively rated policies are now generally finalized by the dividend valuation date established by the board of directors. Since the dividend is a fixed amount and is declared by the State Fund board of directors based on State Fund's capital adequacy, it is now appropriate to allow retrospectively rated policies to participate in the general dividend as long as a final determination of the premium for the retrospectively rated policy has been made.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Curtis Larsen, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5255; fax (406) 495-5023, or e-mail cularsen@mt.gov. Any comments must be received no later than 5:00 p.m., May 6, 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 Curtis Larsen at the above address no later than 5:00 p.m., May 6, 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 2600 persons based on 26,000 policyholders.

7. The Montana State Fund 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 Curtis Larsen, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; faxed to the office at (406) 495-5023, e-mail cularsen@mt.gov; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

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, do not apply.

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

/s/ Curtis E. Larsen
Curtis E. Larsen, Interim General Counsel
Rule Reviewer

/s/ Lance Zanto
Lance Zanto
Chair of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State March 28, 2016.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to pesticide) PROPOSED ADOPTION
certification and training fees)

TO: All Concerned Persons

1. On April 29, 2016, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on April 22, 2016, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144 fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I PESTICIDE CERTIFICATION AND TRAINING - FEES

(1) All fees for services are payable upon purchase or on receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to allowing additional purchases or providing additional services, such as inspections. The fees shall be as follows:

- (a) pesticide study manuals: a maximum fee of \$15 for each study manual; and
- (b) pesticide applicator training courses:
 - (i) initial pesticide applicator training courses: a maximum fee of \$75; and
 - (ii) fall pesticide core and category-specific training courses: a maximum fee of \$30.

AUTH: 80-8-105(2)(q), 80-8-109, MCA
IMP: 80-8-105(2)(q), 80-8-109, MCA

REASON: Fees the department charges for pesticide study manuals and training are not listed in administrative rule but may be established according to 80-8-105(2)(q), MCA. Twenty study manuals that are used in commercial and governmental pesticide applicator, pesticide dealer, and farm applicator training are available to prospective applicators. All individuals or organizations that choose to

purchase a pesticide study manual or manuals are charged a minimum fee(s) by the department to cover costs of development and printing of the manual(s). Purchase of study manuals is not mandatory, applicators may opt to certify by examination without having purchased or studied from a manual.

The fees for pesticide applicator training and recertification are not listed in administrative rule. Training is offered to those wishing to become certified as a pesticide applicator and those taking continuing education to qualify to renew their license or permit. The department offers a three-day initial training, fall core training and category-specific training. The fee for training offered by the department covers the expected costs of conducting training, e.g., meeting space, training materials, and speaker costs. The cost of providing a three-day initial training has increased; the proposed increase will allow the department to cover the expenses associated with providing the training.

ECONOMIC IMPACT: The current manual fee varies with the type of manual(s) purchased. The fees range from \$7 to \$15. The maximum proposed fee for a manual will be \$15. Typically between 750 and 1,000 pesticide study manuals are sold annually to approximately 600 new commercial, government, and farm applicators. Manual sales typically generate between \$11,250 and \$15,000 in revenue a year. The average fee per individual or organization has typically been between \$19.00 and \$25.00.

Attendance at an initial training varies but is generally between 25 and 110. Between 485 and 600 pesticide applicators attend fall core recertification training and between 110 and 300 attend category-specific recertification training annually. Attending training is optional; pesticide applicators retain the option of certifying and recertifying by examination. An individual wishing to become a licensed or permitted pesticide applicator and attending initial training would incur a cost of \$75 for the training course, an increase of \$25 over the current fee of \$50.

Commercial and government pesticide applicators may recertify by taking 12 continuing education (CE) credits in the category in which they are certified in the established qualification period. Dealers may recertify by taking 12 continuing education (CE) credits. Continuing education is available from the department and a variety of other sources. Training costs will vary depending on whether a prospective applicator and licensed applicator chooses to attend training courses and the number of training courses they choose to attend. The proposed cost for non-initial training is \$30, a \$5 increase over the current fee of \$25. Costs associated with meeting 12 CEs through recertification training typically ranges from \$100 to \$200.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT

59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than May 9, 2016.

5. The Department of Agriculture 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, e-mail, and mailing address of the person and specifics for which program(s) 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 Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this notice of public hearing on proposed adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The bill sponsor notice 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 adoption of the above-referenced rule will not significantly and directly impact small businesses.

DEPARTMENT OF AGRICULTURE

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

Certified to the Secretary of State March 28, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the 2018 Biennium Federal)
Community Development Block Grant)
(CDBG) Program – Planning Grants)

TO: All Concerned Persons

1. On April 28, 2016, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., April 26, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail bmartello@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PLANNING GRANTS (1) The Department of Commerce adopts and incorporates by reference the 2017-2018 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants as rules for the administration of the 2017-2018 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Planning Bureau web site at <http://comdev.mt.gov/Programs/CDBG/PlanningActivities/Applying>.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development

Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

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 the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCDBG@mt.gov, and must be received no later than 5:00 p.m., May 6, 2016.

5. Maria Jackson, Planning Specialist, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

/s/ MEG O'LEARY
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State March 28, 2016.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of)	AMENDED NOTICE OF PUBLIC
ARM 10.10.301, 10.10.301B through)	HEARING ON PROPOSED
10.10.301D, 10.10.304, 10.10.311,)	AMENDMENT AND REPEAL
10.10.319, 10.10.320, 10.10.504,)	
10.10.613, 10.10.614, 10.15.101,)	
10.16.3817, 10.20.102, 10.20.104,)	
10.20.105, 10.21.101H, 10.22.102,)	
10.22.104, and 10.23.102 and the)	
repeal of ARM 10.30.405 pertaining)	
to school finance)	

TO: All Concerned Persons

1. On March 4, 2016, the Superintendent of Public Instruction published MAR Notice No. 10-10-127 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 363 of the 2016 Montana Administrative Register, Issue Number 5.

2. On May 5, 2016, at 9:00 a.m. the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

3. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on April 29, 2016 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

4. The Superintendent of Public Instruction has determined it is reasonable and necessary to amend the original notice of public hearing on proposed amendment and repeal to establish a deadline for changes to the October enrollment count for purposes of calculating guarantee tax base aid ratios.

5. The rules to be amended from the original notice are as follows:

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (3) remain as proposed.

(4) The official count of enrolled students, as defined in ARM 10.15.101, is taken on the first Monday in October and the first Monday in February, or the next school day if those dates do not fall on a school day. Changes to the October

enrollment count will not be accepted after December 31 except in cases of significant reporting error, as determined by the Superintendent of Public Instruction.

(a) through (17) remain as proposed.

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB CALCULATION (1) through (4)(b) remain as proposed.

(c) If the ANB recalculated in (a) based on the actual October enrollment is less than the ANB calculated in (3)(d), ~~ANB is recalculated in accordance with ARM 10.20.102(16)(a)(i), using actual enrollment as of the first Monday in February in place of the anticipated enrollment.~~

(d) ~~If the ANB recalculated in (c) based on the actual February enrollment equals or exceeds the ANB calculated in (3)(d), the anticipated unusual enrollment increase materialized and the district is entitled to the increased BASE funding and entitlements approved by the Superintendent of Public Instruction in (2)(e).~~

(e) ~~If the ANB recalculated in (c) based on the actual February enrollment is less than the ANB calculated in (3)(d), the anticipated unusual enrollment increase did not materialize and the Superintendent of Public Instruction makes the following adjustments:~~

(i) and (ii) remain as proposed.

6. All other rules as amended and repealed in the original notice of public hearing remain as proposed.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail beanmarlow@mt.gov, and must be received no later than 5:00 p.m., May 6, 2016.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State March 28, 2016.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II pertaining to distribution) PROPOSED ADOPTION
of oil and gas production taxes)

TO: All Concerned Persons

1. On April 29, 2016, at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on April 22, 2016, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to this chapter.

(1) "Directly impacted by oil and gas development" means school districts in counties that had oil or natural gas production in FY 2015 or that are surrounded on their Montana borders by counties that had oil and natural gas production in FY 2015.

(2) "Excess oil and natural gas production taxes" means oil and natural gas production taxes that the Department of Revenue deposits into the state school oil and natural gas distribution account provided for in 20-9-520, MCA.

(3) "Quality educator" has the same meaning as the term is defined in 20-9-327(3), MCA.

(4) "School unit" means:

(a) 800 ANB for a high school district;

(b) 250 ANB for the K-6 ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school;

(c) 250 ANB for the K-8 ANB of an elementary district without an approved junior high school, 7th and 8th grade program, or middle school; and

(d) 450 for the 7th and 8th grade ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school.

(5) "Zone 1 School Districts" means all school districts in Carter, Dawson, Fallon, Richland, Roosevelt, Sheridan, and Wibaux counties.

(6) "Zone 2 School Districts" means all school districts in Custer, Daniels, Garfield, McCone, Powder River, Prairie, Rosebud, and Valley counties.

(7) "Zone 3 School Districts" means all school districts in Big Horn, Blaine, Carbon, Chouteau, Fergus, Glacier, Golden Valley, Hill, Liberty, Musselshell, Petroleum, Phillips, Pondera, Stillwater, Sweet Grass, Teton, Toole, Treasure, and Yellowstone counties.

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

NEW RULE II DISTRIBUTION OF EXCESS OIL AND NATURAL GAS PRODUCTION TAXES (1) In accordance with the quarterly distribution schedule established in 20-9-310(4)(a), MCA, the Office of Public Instruction shall allocate the excess oil and natural gas production taxes to school districts directly impacted by oil and natural gas production in the following manner:

- (a) 50% to school districts in Zone 1;
- (b) 37.5% to school districts in Zone 2; and
- (c) 12.5% to school districts in Zone 3.

(2) The Office of Public Instruction will distribute the revenues allocated to operating school districts in Zone 1 as follows:

- (a) 5% for efforts to recruit and retain qualified educators and staff;
- (b) 60% for the daily operations of school districts that have not yet reached the limit on the amount of oil and natural gas production taxes that a district may retain under 20-9-310, MCA; and
- (c) 35% for infrastructure projects in school districts that have applied for and been granted funds under this program.

(3) The funding in (2)(a) will be distributed quarterly to individual school districts based on the number of quality educators in the district compared to the total number of quality educators in the school districts in Zone 1.

(a) The district may expend funds received under (2)(a) for recruitment efforts, moving expenses, hiring bonuses, travel, student loan repayment, housing, or other initiatives to recruit and retain qualified staff.

(b) All school districts in Zone 1 will receive a distribution under (2)(a) regardless of whether the district has reached the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(c) The number of quality educators for a district will be the same number that is used for the distribution of the quality educator payment for the current school year.

(4) The funding for daily operations in (2)(b) will be distributed quarterly to individual school districts based on the number of quality educators in the district compared to the number of quality educators in the school districts in Zone 1.

(a) A district is eligible for funding for daily operations under (2)(b) until the district reaches the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(b) Once a district receives the maximum amount of oil and natural gas production taxes it may retain under 20-9-310, MCA, additional allocations during the school year will be distributed among the remaining districts that have not reached their maximum amount.

(c) The number of quality educators for a district will be the same number that is used for the distribution of the quality educator payment for the current school year.

(5) The funding for infrastructure in (2)(c) will be distributed through an annual grant process.

(a) All school districts in Zone 1 are eligible to apply individually or in conjunction with other school districts in Zone 1.

(b) Priority will be given to school districts with urgent and serious public health and safety issues, deferred maintenance, and proposals to enhance educational opportunities. The applicant will describe:

(i) the challenges facing the district in terms of student demographics, school environment, student achievement, human resources and instruction, facilities and resources and/or economic resources as a result of oil and natural gas production; and

(ii) how the proposal addresses the challenges faced by the district.

(c) A school district must deposit the infrastructure grant monies into the miscellaneous program fund.

(d) Grant funds awarded to a school district under this section do not count against the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(6) A nine-member committee composed of one representative from each of the seven counties in Zone 1, a representative from the Office of Public Instruction, and a representative from the Office of Budget and Program Planning (OBPP) will determine which projects are funded.

(a) Committee members will be appointed by April 1 of each year.

(b) The president of the northeast region of the Montana Association of School Superintendents will appoint the committee members from Richland, Roosevelt, Sheridan, and Wibaux counties and report the names of committee members to the Office of Public Instruction.

(c) The president of the southeast region of the Montana Association of School Superintendents will appoint the committee members from Carter, Dawson, and Fallon counties and report the names of committee members to the Office of Public Instruction.

(d) The Superintendent of Public Instruction will appoint the committee member from the Office of Public Instruction.

(e) The director of the OBPP will appoint the representative from OBPP.

(f) The committee will elect a chairperson at its first meeting.

(g) The committee will develop by-laws and a process and timeline for evaluating grant applications.

(7) Grant applications will be submitted to the Office of Public Instruction on an annual basis.

(a) The OPI will make the application format available no later than January 15. The application window will be at least 90 days.

(b) The Office of Public Instruction will distribute the submitted applications to committee members and convene the first meeting of the committee. The chairperson of the committee will convene subsequent meetings.

(c) The committee will award the grants by June 1. The OPI will distribute

the funding for the current school year to the grantees by June 30.

(8) The Office of Public Instruction will distribute quarterly the revenues allocated to school districts in Zone 2 and Zone 3 in the following manner:

(a) There is a school unit payment to each school district based upon the calculated number of school units within the school district.

(b) Each operating school district must receive a payment for at least one school unit.

(c) A district with current year ANB greater than the applicable number described in [New Rule I(4)] must receive an additional unit or units, which is calculated by dividing the current year ANB by the appropriate number of ANB in [New Rule I(4)] and rounding that number up to the nearest tenth.

(d) The Office of Public Instruction will determine the amount of excess oil and natural gas production taxes allocated to each operating district in Zones 2 and 3 as follows:

(i) determine the school unit payment by dividing the amount of revenue available for distribution in the zone by the number of school units for the operating school districts in the zone; and

(ii) multiply the number of school units for an operating district by the school unit payment to determine the amount to be distributed to the district.

(9) Except as provided in (5)(d), a school district must deposit any excess oil and natural gas production taxes received by the district in a budgeted fund of the district and record the revenue as oil and natural gas production taxes. The monies may be used in accordance with the purpose of the fund into which the monies are deposited.

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

4. These rules are proposed to be effective on July 1, 2016 and terminate on June 30, 2019.

5. Statement of reasonable necessity. The Superintendent of Public Instruction has determined that these rules are necessary to implement the provisions of Senate Bill 260, which directed the Office of Public Instruction to establish two independent negotiated rulemaking committees to develop a process, mechanism, and criteria for the distribution of monies in the state school oil and natural gas distribution account effective July 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: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., May 6, 2016.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply. Senator Eric Moore, primary sponsor of SB 260 (2015 Legislative Session), has been aware of the negotiated rule making process by OPI staff and will receive a copy of this notice after publication.

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

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State March 28, 2016.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.610, 17.8.612, 17.8.613, 17.8.614,)
17.8.615, 17.8.749, and 17.8.1210)
pertaining to major open burning source)
restrictions, conditional air quality open)
burning permits, Christmas tree waste)
open burning permits, commercial film)
production open burning permits,)
firefighter training, conditions for)
issuance or denial of permit, and general)
requirements for air quality operating)
permit content)

NOTICE OF PROPOSED
AMENDMENT

(AIR QUALITY)

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On June 3, 2016, the Board of Environmental Review proposes to amend the above-stated rules.

2. The 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 Denise Hartman, no later than 5:00 p.m., April 18, 2016, to advise us of the nature of the accommodation that you need. Denise may be contacted at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS (1) through (2) remain the same.

(3) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(4) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is ~~jointly or severally~~ directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. ~~The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

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

~~(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

~~(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally directly and adversely affected by the department's decision may request a hearing before the board in the manner provided in 75-2-211, MCA. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision.~~

~~The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:~~

~~(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or~~

~~(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.~~

~~(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.~~

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT

(1) through (6) remain the same.

(7) If the department denies an application for a Montana air quality permit it shall notify the applicant in writing of the reasons for the permit denial and advise the applicant of the right to appeal the department's decision to the board as provided in 75-2-211 or 75-2-213, MCA, as applicable.

(8) remains the same.

AUTH: 75-2-111, 75-2-204, MCA

IMP: 75-2-211, 75-2-213, MCA

17.8.1210 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) through (1)(e) remain the same.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) through (i) remain the same.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the board issues a final decision.~~ However, the board may order a stay as provided in 75-2-218, MCA. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) through (5)(c) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: Sections 75-2-211, 75-2-213, and 75-2-218, MCA, contain the procedures for appeals of permits for construction, installation, alteration, use, and operation of facilities under the Clean Air Act of Montana. As currently written, those statutes provide:

(1) that a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing;

(2) that a request for hearing does not stay the department's decision on an application unless the board orders a stay;

(3) that depending on the applicable statute, an appellant must file an affidavit supporting the request for hearing either with the request or within 30 days after the issuance or denial of the permit; and

(4) that a separate process is available for challenges to energy development projects in 75-2-213, MCA.

The proposed amendments would modify the rules to incorporate these provisions and remove provisions implementing previous statutory procedures.

In addition, the proposed amendments would strike paragraphs of rule text that were lifted verbatim from 75-2-211, MCA. The Montana Administrative Procedure Act at 2-4-305(2), MCA, states that rules should not unnecessarily repeat statutory language. Doing so creates situations where rules must be amended whenever even the smallest changes are made to statute. The proposed amendments instead refer to the appeal process provided in 75-2-211, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than May 6, 2016.

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

determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. 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, email, 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 Denise Hartman, Administrative Rules Coordinator, 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 dhartman2@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, apply and have been fulfilled by sending a letter by U.S. Mail to the bill sponsor on January 8, 2016.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the proposed amendment of the above-stated 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

Certified to the Secretary of State, March 28, 2016.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I concerning temporary gambling authority and the amendment of ARM 23.16.119, 23.16.502, 23.16.1702, 23.16.1703 and 23.16.1907 concerning participation in gambling operations, sports pool design and operation, and software specifications for video poker machines)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT
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TO: All Concerned Persons

1. On May 3, 2016, at 11:00 a.m., the Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on April 26, 2016, to advise it of the nature of the accommodation that you need. Please contact Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I TEMPORARY GAMBLING AUTHORITY (1) The department may grant an applicant for a gambling operator license the temporary authority to operate gambling when:

- (a) the application and supporting documents, except Form FD-258 fingerprint cards, have been electronically submitted to the department through the department's licensing portal;
- (b) the department has concluded the application is complete;
- (c) within the 12-month period prior to submission of the application, the premises to be licensed had been licensed and operated as a gambling establishment, or licensed for the on-premises consumption of alcoholic beverages, and the premises were not altered from the last approved floor plan;
- (d) the department has no adverse information about the applicant's owners, officers, and managers prior to granting temporary authority; and

(e) except for those grandfathered locations provided for under ARM 23.16.130, the Department of Revenue has issued temporary authority to purvey alcoholic beverages.

(2) Temporary gambling authority is neither a conditional approval, temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee or imply any assurance that the department will approve the application.

(3) Temporary gambling authority is valid for 45 days, except when terminated sooner. Prior to the expiration of temporary gambling authority, and upon written request of the applicant, the department may extend temporary gambling authority for additional periods of time up to 45 days, if the department determines that the cause of the delay was beyond the control of the applicant. The department shall notify the applicant if it requires additional information to make this determination and the applicant shall have seven days to submit written documentation to establish to the department's satisfaction that the delay was beyond the applicant's control. The department shall notify the applicant whether temporary gambling authority is extended, and the length of the period of extension of temporary gambling authority.

(4) Temporary gambling authority terminates whenever:

(a) the department, pursuant to ARM 23.16.203(1), has notified the applicant of the department's intent to deny the operator license; or

(b) the Department of Revenue has revoked a license or withdrawn temporary authority to purvey alcoholic beverages.

(5) All gambling activities on applicant's premises which require a gambling operator's license must immediately cease upon termination of temporary gambling authority.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-176, MCA

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

23.16.119 PARTICIPATION IN OPERATIONS (1) A Except as provided in [NEW RULE I], a person who proposes to acquire an ownership interest in a licensed gambling operation may not control or participate in any capacity reflecting ownership in that operation until the applicant's license has been approved by the department as provided for in ARM 23.16.116 or 23.16.117.

(2) remains the same.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: The 2015 Legislature passed HB38, which in part authorizes the Department of Justice to provide for the issuance of temporary operating authority. This new rule and the amendment to ARM 23.16.119 are therefore reasonable and necessary to effectuate and implement the

Legislature's determination that applicants for gambling operator licenses may be granted temporary authority to offer gambling activities to the public prior to, and pending final approval of the gambling license application.

To craft the procedures and conditions under which temporary gambling authority may be issued, the department looked to the rules and practices of the Department of Revenue, which has a long history of authorizing liquor license applicants the temporary authority to purvey alcoholic beverages pending final license approval. The proposed rule and amendment also address department concerns that temporary gambling authority not be an avenue for prohibited or unsuitable persons or entities to operate gambling activities, and that the application process is not unfairly delayed by applicants operating under temporary gambling authority.

To qualify for temporary gambling authority, the rule requires that gambling operator license applications be electronically submitted to the department through its online portal. This requirement serves to encourage applicants to file applications electronically through the state's portal, utilize efficiencies inherent in electronically formatted documents, and ensure the complete, timely and accurate submission of supporting documents.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on Forms ~~30~~ 5, 10, and FD-258, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site www.dojmt.gov/gaming:

(a) through (2) remain the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to correct a misidentification of the forms which must be used by gambling operator license applicants. This amendment is made for clarification and informational purposes only.

23.16.1702 SPORTS POOL CARD (1) and (1)(a) remain the same.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after the person conducting the pool closes the pool to additional sale of spaces but prior to the beginning of the sports event or the first event in a series of sport events. ~~Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.~~

(c) Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.

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

~~(d)~~(e) Each competitor in the sports event must be assigned to either the horizontal or vertical axis of the master square before the beginning of each sports

event, except when the operator of the sports pool publicly declares by rules in advance of any sales to award equal prizes based upon both winning number combinations (e.g., when the score is 37–29, the winners are those holding spaces corresponding to vertical 7 and horizontal 9, and vertical 9 and horizontal 7).

(2) through (4) remain the same.

~~(a) rules for conducting the sports pool;~~

(b) remains the same, but is renumbered (a).

~~(c)(b) name of the competitors (or home vs. away/visitor) in the sports event or series of events, if known;~~

(d) through (g) remain the same, but are renumbered (c) through (f).

~~(h)(g) predetermined intervals, as provided in ARM 23.16.1705(3), for which a prize will be awarded, if any; and~~

~~(i)(h) name of the person conducting the sports pool;~~

~~(j) name or initials of participants who have purchased chances in the pool;~~

~~(k) amount or value of each individual prize and the total value of all prizes;~~

and

~~(l) name of the competitors and the date of a sports event that will be substituted for the original sports event if it is cancelled.~~

(5) After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card. The name or initials of each participant who purchases a chance in the sports pool must be clearly displayed on the board as each chance is sold.

(6) A sports pool card must be retained by the person conducting the sports pool for at least 90 days from the date of the sports event, or last event in a series of sports events, whichever occurs first, upon which the sports pool was based. After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.

(7) If the sports event is cancelled, the person conducting the sports pool must refund the full amount of the purchase price to each participant.

(8) If the sports event is rescheduled, the person conducting the sport pool board may:

(a) cancel the board and refund all monies to the participants; or

(b) change the sports pool board only so as to reflect the new date of the sports event.

(9) A sports pool card must be retained by the person conducting the sports pool for at least 90 days from the date of the sports event, or last event in a series of sports events, upon which the sports pool was based, whichever occurs first.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

23.16.1703 SALE OF SPORTS POOL CHANCES (1) through (3) remain the same.

(a) may not cancel the sports pool or alter it in any manner, except as provided in ARM 23.16.1702; and

(b) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: The Gambling Investigations Bureau, which enforces gambling laws and administrative rules and fields questions from gambling operators related to the operation of sports pools, recommended this rule amendment. The proposed amendment is reasonable and necessary to implement identified practical changes in the rule resulting from an error within the rule, as well as alternative ways to legitimately operate traditional sports pool boards.

The Gambling Investigations Bureau found that some operators structured their traditional sports pool boards so as to pay winners as though the winning and losing teams both held the vertical and horizontal axes, which was termed "paying both ways." Under this practice, it did not matter which team won the event. If the score at the final or predetermined interval was, for example, 37 to 29, the pertinent digits are 7 and 9. By paying both ways, potentially two squares would correspond to those digits, and the holders of each of those squares would be awarded an equal prize. Consequently, in that manner it does not matter which team is assigned to each axis. The department believes this is a valid way to play the game, so long as it is so described in advance of any sale of chances. Therefore, when the game is designed to "pay both ways," it is unnecessary to assign a team to a particular axis on the master square, which this amendment is intended to reflect.

Similarly, in some traditional sports pools that are not structured to "pay both ways," the Gambling Investigations Bureau found that, instead of assigning the team names to each axis, persons conducting the sports pool could assign the "home" team to one axis, and the "away" or "visitor" team to the other axis. Another method was to assign each axis with "winner" or "loser." The department believes these are valid ways to operate traditional sports pools, and therefore these rule amendments are reasonable and necessary to inform sports pool operators of these alternatives.

The amendment also deletes the erroneous requirement that the names or initials of the pool participants be indicated on the sports pool board "in advance of any sales." Since pool participants can only be identified as each chance is sold, the amendment reflects the requirement that the names or initials of the pool participants must be placed on the board as each chance is sold. Similarly, the Gambling Investigations Bureau suggested omitting as duplicative the requirement that the board "list the amount or value of each individual prize and the total value of all prizes," since the rule elsewhere requires that the board show the total number of chances available in the pool, the cost to the participant for each chance, and the total amount to be paid to each winner.

The Gambling Investigations Bureau further recommended omitting the requirement that sports pools identify a substitute sports event when the original sports event is cancelled. This requirement has rarely been satisfied by sports pool operators, but sports events are rarely cancelled. On the rare occasion that a sports event is cancelled, the amendment requires the person conducting the sports pool to fully refund the purchase price to each participant. If the sports event is not cancelled but only rescheduled, the person conducting the sports pool may cancel the sports pool and refund the purchase price to each participant, or the person conducting the sports pool may alter the board solely to change the date of the same

sports event. The amendment to ARM 23.16.1703 is necessary to reflect this single exception to the prohibition against cancelling sports boards after the sale of chances on the board has begun.

Other minor changes in style are made for clarification and ease of reading.

23.16.1907 SOFTWARE SPECIFICATIONS FOR VIDEO POKER MACHINES (1) through (1)(d) remain the same.

(e) display the winning ~~hands~~ hand and the number of credits awarded for that hand.

AUTH: 23-5-621, MCA

IMP: 23-5-602, 23-5-607, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to correct a minor typographical error, where the plural of the word "hand" conflicts with the law, and is internally inconsistent with the singular "hand" used in the same sentence. This amendment is made for clarification only; no substantive change is intended.

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 Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than 5:00 p.m., May 6, 2016.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons may add their names to the interested persons list by submitting their contact information through the department's web site at <https://dojmt.gov/gaming/gcd-email-sign/> to receive notices of rulemaking actions by this agency. Notices will be sent by e-mail. Such request may also 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.

7. Cregg W. Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

8. An electronic copy of this proposal notice is available through the department's web site at <https://dojmt.gov/agooffice/administrative-rules>, or through the Gambling Control Division's web site at <https://dojmt.gov/gaming/gambling-laws-administrative-rules/>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned

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

9. The bill sponsor contact requirement of 2-4-302, MCA, does apply and has been fulfilled. The primary bill sponsor of HB 38 was contacted by e-mail on July 15, 2015.

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

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

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

Certified to the Secretary of State March 28, 2016.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.177.2105 continuing) PROPOSED AMENDMENT AND
education and the adoption of NEW) ADOPTION
RULE I dry needling)

TO: All Concerned Persons

1. On May 5, 2016, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Physical Therapy Examiners (board) no later than 5:00 p.m., on April 29, 2016, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdp@mt.gov (board's e-mail).

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

24.177.2105 CONTINUING EDUCATION (1) through(4)(b)(viii) remain the same.
(xiv) remains the same, but is renumbered (ix).
(5) and (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-11-201, MCA
IMP: 37-1-131, 37-1-306, MCA

REASON: After a member of the public brought a numbering error to the board's attention, the board determined it is reasonably necessary to amend this rule to correct the error.

4. The proposed new rule provides as follows:

NEW RULE I DRY NEEDLING (1) Dry needling is a skilled manual therapy technique performed by a physical therapist using a mechanical device, filiform needles, to penetrate the skin and/or underlying tissues to affect change in body

structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, and disability.

(2) Dry needling requires a physical therapy examination and diagnosis.

(3) Licensed physical therapists who perform dry needling must be able to demonstrate they have completed training in dry needling that must meet the American Physical Therapy Association (APTA) GUIDELINES: STANDARDS OF QUALITY FOR CONTINUING EDUCATION OFFERINGS BOD G11-03-22-69 and/or the Federation of State Boards of Physical Therapists (FSBPT) STANDARDS FOR CONTINUING COMPETENCE ACTIVITIES.

(a) Dry needling courses must include, but not be limited to, training in indications, contraindications, potential risks, proper hygiene, proper use and disposal of needles, and appropriate selection of clients.

(b) Initial training in dry needling must include hands-on training, written, and practical examination as required by this rule.

(4) A licensed physical therapist must perform dry needling in a manner consistent with generally accepted standards of practice, including relevant standards of the Center for Disease Control and Prevention, and Occupational Safety and Health Administration blood borne pathogen standards as per 29 CFR 1910.1030 et seq.

(5) Dry needling shall only be performed by a licensed physical therapist and may not be delegated.

(6) The physical therapist performing dry needling must be able to provide written documentation, upon request by the board, which substantiates appropriate training as required by this rule. Failure to provide written documentation may result in disciplinary action.

AUTH: 37-1-131, 37-11-201, MCA

IMP: 37-1-131, 37-11-101, 37-11-104, MCA

REASON: The scope of practice for physical therapists is broad. Dry needling is an emerging trend within it that includes using filiform needles as a mechanical device to treat physical disability, bodily malfunction, pain, and injury. The Federation of State Boards of Physical Therapy (FSBPT) reports that research supports the use of dry needling to improve pain, reduce muscle tension, and facilitate speedier rehabilitation. The board is proposing to adopt this new rule now to provide guidance on the safe practice of dry needling in Montana.

For over twenty years, dry needling has been an accepted part of physical therapy practice internationally. Australia, Belgium, and Canada; Chile, Denmark, and Ireland; the Netherlands, New Zealand, and Norway; South Africa, Spain, and the United Kingdom, all allow a physical therapist to perform dry needling. Likewise, in the United States, dry needling has been determined to be within the scope of practice for physical therapists in: Alabama, Arizona, Arkansas, Colorado, Delaware, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia. Oregon and Vermont do not preclude a physical therapist from performing dry needling.

Although dry needling is being progressively incorporated into entry level physical therapy curricula worldwide, the Human Resources Research Organization (HUMRRO) recently reported the baseline education most physical therapists receive provides 86 percent of the education necessary to perform it, which implies the remaining 14 percent must come from continuing education.

In mid-2015, the board received numerous public comments to both support and oppose the adoption of the previously proposed dry needling rule in MAR Notice No. 24-177-32. At the request of the 2015-2016 Economic Affairs Interim Committee, the board met with members of the professional acupuncturist association in an attempt to reach a consensus. Although no consensus exists, the feedback makes clear that to protect public safety, the quality of training is more important than quantity.

However, as just one emerging treatment option available to physical therapists, no separate credentialing process exists for dry needling. Therefore, the board determined physical therapists in Montana must otherwise be able to demonstrate they are competent to perform dry needling. Recognizing the most efficient way for licensees to demonstrate competence is to provide proof of passing a test provided by a course that meets the requirements of APTA guidelines or FSBPT standards, rather than simply documenting hours of practice. Specifically, the board amended the previous draft rule to require the clinical component comply with APTA guidelines or FSBPT standards.

As medical technology evolves, scopes of practice and training for many health professionals, including physicians, physical therapists, and acupuncturists who all use needles, naturally shift and sometimes overlap. Public safety is the board's foremost concern. The board is proposing this new rule now because physical therapists in Montana are increasingly incorporating dry needling into their practices. This new rule establishes criteria to ensure that physical therapists who perform dry needling meet demonstrable educational training and safety standards, and sets consequences for failing to meet those standards.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdtpt@mt.gov, and must be received no later than 5:00 p.m., May 12, 2016.

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

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.177.2105 will not significantly and directly impact small businesses.

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

Documentation of the board's above-stated determinations are available upon request to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdp@mt.gov.

10. Mark Jette, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
BRIAN MILLER, PRESIDING OFFICER

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

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

Certified to the Secretary of State March 28, 2016

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 38.2.4801, 38.2.4802,) PROPOSED AMENDMENT
38.2.4803, 38.2.4804, 38.2.4805, and)
38.2.4806 pertaining to procedural)
rules)

TO: All Concerned Persons

1. On May 10, 2016, at 1:30 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 5:00 p.m. on May 6, 2016, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail asolem@mt.gov.

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

38.2.4801 COMMISSION DECISIONS AND ORDERS (1) An order or decision in writing by the commission will issue in every proceeding. The order or decision shall contain separately stated findings of fact and conclusions of law. One copy of the order shall be served on each party. ~~Additional copies may be requested, and will be provided at a charge to be fixed by the commission.~~

~~(2) The commission may adopt a presiding officer's (or examiner's) proposed decision. If a proposed decision is adopted in its entirety, the commission decision shall so state on the signature page in the order. Where the only changes between the commission decisions and the presiding officer's or examiner's decision are those to correct grammar or typographical errors, the commission order or decision shall so state on the signature page in the order.~~

~~(3) The commission may issue a decision which makes reference to the proposed decision and indicates disagreements with the presiding officer or examiner, and the commission may make further or modified findings and conclusions based on the record.~~

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4801 is necessary to allow the department to clarify its current practice regarding commission decisions and orders. The amendment was also necessary to move language about proposed decisions into ARM 38.2.4802.

38.2.4802 ISSUANCE OF PRESIDING OFFICER OR EXAMINER

PROPOSED DECISION (1) A presiding officer or hearing examiner may issue a proposed decision. The decision shall be served on all parties to the proceeding. The proposed order shall contain separately stated findings of fact and conclusions of law. ~~If a transcript of a hearing is prepared, a proposed order need not be issued.~~

(2) The commission may adopt a presiding officer's or examiner's proposed decision. If a proposed decision is adopted in its entirety, the commission decision shall so state in the order. Where the only changes between the commission decision and the presiding officer's or examiner's decision are those to correct grammar or typographical errors, the commission order or decision shall so state in the order.

(3) The commission may issue a decision which makes reference to the proposed decision and indicates disagreements with the presiding officer or examiner, and the commission may make further or modified findings and conclusions based on the record.

~~(2)~~ (4) If all parties stipulate and the commission does not disapprove of said stipulation, then a prepared order or decision may be considered a final order or decision of the commission.

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4802 is necessary to allow the department to clarify its current practice regarding commission proposed decisions.

38.2.4803 EXCEPTIONS TO PROPOSED ORDERS (1) ~~Briefs.~~ Briefs on exceptions may be filed by any party within 20 days after the proposed order is filed. Response B~~riefs~~ opposing exceptions may be filed within ten days thereafter. Enlargement of time may be granted for good cause shown with leave of a presiding officer or ~~commissioner~~ hearing examiner.

(2) ~~Contents.~~ Briefs on exceptions and ~~replies~~ response briefs must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities on which the party relies, and specific citations to the transcript, if prepared. ~~Parties are cautioned that vague assertions as to what the record shows or doesn't show, without citation to the precise portion of the record, may be accorded little attention.~~

(3) ~~Copies.~~ An original and ~~six copies~~ of each brief on exceptions and ~~reply~~ response briefs shall be filed with the commission, and be accompanied by a certificate of service showing proof of service ~~of copies of same~~ on each ~~attorney or party's~~ or parties representative.

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA

IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4803 is necessary to allow the department to clarify its current practice regarding exceptions to proposed decisions.

38.2.4804 ORAL ARGUMENT TO COMMISSION AFTER PROPOSED DECISION (1) Any party may petition the commission for oral argument after the issuance of a proposed decision. Such request may be included in a brief on exceptions or ~~reply~~ response, but must be filed no later than the last day to file ~~replies~~ responses.

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4804 is necessary to allow the department to clarify the language of the oral argument rule.

38.2.4805 REHEARINGS (1) ~~Application to rehear.~~ Before issuance of a commission decision, or after the issuance of a proposed decision, a party to a proceeding may file with the commission an application to set aside submission and reopen the proceeding for the taking of additional evidence.

(2) ~~Allegations.~~ Such application shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously adduced.

(3) ~~Suggestions in opposition.~~ Within ten days following the service of any petition to reopen, any other party may file ~~suggestions~~ a brief in opposition; if no brief is filed, a party's objection shall be deemed waived thereto and in default thereof shall be deemed to have waived any objection thereto.

(4) ~~When the commission may rehear.~~ The commission on its own motion may reopen any proceeding after final submission when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires the reopening of such proceeding. The commission may limit the reopened hearing to matters alleged in the petition and proof thereof.

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4805 is necessary to allow the department to clarify the language of the rehearings rule.

38.2.4806 RECONSIDERATION (1) ~~Motion for reconsideration.~~ Within ten days after an order or decision has been made by the commission, any party may apply for a reconsideration in respect to any matter determined therein. Such motion shall set forth specifically the ground or grounds on which the movant considers said order or decision to be unlawful, unjust, or unreasonable.

(2) ~~Effect of filing.~~ Motion for such a reconsideration shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct as provided by law.

(3) ~~Modification of original order.~~ If, after such motion for reconsideration is filed, the commission is of the opinion that the original order or decision is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the same.

(4) ~~Brief required.~~ A motion for reconsideration shall not be well taken unless accompanied by a supporting brief.

(5) ~~Denial.~~ A motion for reconsideration shall be deemed denied when it has not been acted upon within ~~ten~~ 20 days of its filing.

(6) ~~When order final for purpose of appeal.~~ A commission order is final for purpose of appeal upon the entry of a ruling on a motion for reconsideration, or upon the passage of ~~ten~~ 20 days following the filing of such a motion, whichever event occurs first. ~~If no motion to reconsider is filed, the order is final and appealable within 30 days of its service.~~

(7) Reconsideration is not available in regard to the granting of a motion for protective order.

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: Amendment of ARM 38.2.4806 is necessary to allow the department to administer its current practice regarding commission decisions and orders. In addition, allowing 20 days to pass prior to a motion for reconsideration to be denied in the event of no action allows the commission more time to decide whether to schedule a work session to discuss the motion.

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: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., May 13, 2016.

5. The commission, a commissioner, or a duly appointed presiding officer may 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 for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

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

Certified to the Secretary of State March 28, 2016.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 12.7.201, 12.7.202, 12.7.203,) REPEAL
12.7.204 and the repeal of ARM)
12.7.205 and 12.7.206 pertaining to)
commercial bait seining)

TO: All Concerned Persons

1. On February 19, 2016, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-459 pertaining to the proposed amendment and repeal of the above-stated rules at page 259 of the 2016 Montana Administrative Register, Issue Number 4.

2. The department has amended ARM 12.7.202, 12.7.203, and 12.7.204, and repealed ARM 12.7.205 and 12.7.206 as proposed.

3. The department has amended ARM 12.7.201 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.7.201 APPLICATION (1) A commercial bait fish seining license is required for:

(a) the collection of any nongame bait fish, as identified in the current fishing regulations, for the purpose of selling or commercial transportation and distribution; or

(b) the possession of 24 dozen (288) or more nongame bait fish, as identified in the current fishing regulations, unless the person is under 15 years of age.

(2) and (3) remain as proposed.

AUTH: 87-4-609, MCA

IMP: 87-4-601, 87-4-609, MCA

4. No comments or testimony were received. The department adopted ARM 12.7.201 with changes to clarify the nongame bait fish are identified in the fishing regulations.

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

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

Certified to the Secretary of State March 28, 2016.

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

In the matter of the adoption of NEW) CORRECTED NOTICE OF
RULES I through IX, related to the) ADOPTION
reopening of medical benefits)
automatically closed in certain)
workers' compensation claims)

TO: All Concerned Persons

1. On November 25, 2015, the Department of Labor and Industry published MAR Notice No. 24-29-312 regarding a public hearing on the proposed adoption of the above-stated rules on page 2073 of the 2015 Montana Administrative Register, Issue No. 22. On February 5, 2016, the department published the notice of adoption at page 204 of the 2016 Montana Administrative Register, Issue Number 3.

2. The department inadvertently failed to delete certain language from ARM 24.29.3124 (NEW RULE VIII) in the notice of adoption. In response to public comments, the department removed references to the nature and type of medical benefits being reopened, and to references to any specific number or duration of treatments allowed pursuant to the reopening. The corrections make the rule consistent with the changes to ARM 24.29.3117 and 24.29.3124 that were made in the notice of adoption.

3. The rule as adopted in the corrected form, reads as follows, new matter underlined, deleted matter interlined:

NEW RULE VIII (24.29.3124) REVIEW BY MEDICAL REVIEW PANEL -
REPORT AND RECOMMENDATIONS (1) Unless both the worker and the insurer agree to have a petition for reopening reviewed solely by the department's medical director, the petition will be reviewed by a three-member panel of physicians.

(2) The medical review panel may recommend that medical benefits be reopened only if:

(a) the worker's medical condition is a direct result of the compensable injury or occupational disease; and

(b) the worker needs additional medical benefits in order to:

(i) continue to work; or

(ii) return to work.

(3) Each member of the medical review panel shall prepare a report as to the panel member's evaluation of the medical records submitted for review and any additional information that has been submitted. The panel member must determine whether the evidence submitted demonstrates that further medical benefits meet the criteria of (2). The panel member's report must state the reason(s) and rationale for the recommendation.

(4) If a panel member concludes that additional medical benefits are necessary, the panel member shall identify the ~~nature and~~ extent of the medical

benefits that should be provided. The analysis must include the reasons and rationale that explain:

- (a) ~~the nature or type of medical benefits recommended to be furnished, whether identified by specific procedure or by general description;~~
 - (b) the extent of the duration (whether by time or number of treatments) of the benefits expected to be needed; and
 - (c) ~~(b)~~ whether and how the recommendations are consistent with the department's current utilization and treatment guidelines.
- (5) Following the medical review panel members' individual reviews, the medical director shall issue a report and make recommendations on behalf of the panel with respect to the reopening of medical benefits that reflect the views of the majority of the panel members.
- (6) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA
IMP: 39-71-717, MCA

/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 March 28, 2016.

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I and II pertaining to penalties)

TO: All Concerned Persons

1. On February 19, 2016, the Board of Milk Control (board) and the Department of Livestock (department) published MAR Notice No. 32-16-272 regarding the proposed adoption of the above-stated rules at page 293 of the 2016 Montana Administrative Register, Issue Number 4.

2. The board has adopted NEW RULE I (32.23.401) and NEW RULE II (32.24.401) as proposed.

3. The board received no comments or testimony.

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

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

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

Certified to the Secretary of State March 28, 2016.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
36.11.432 and 36.11.470 regarding)
grizzly bear conservation measures on)
the Stillwater and Coal Creek State)
Forests)

NOTICE OF AMENDMENT

To: All Concerned Persons

1. On January 8, 2016, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-191 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 8 of the 2016 Montana Administrative Register, Issue Number 1.
2. The department has amended ARM 36.11.432 and 36.11.470 as proposed.
3. No written comments or oral testimony were received.

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

/s/ Mark Phares
MARK PHARES
Rule Reviewer

Certified to the Secretary of State on March 28, 2016.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.80.101, 37.80.201,)
37.80.202, 37.80.203, and 37.80.502)
pertaining to child care assistance)
and the implementation of required)
policy changes under the Child Care)
and Development Block Grant of)
2014)

TO: All Concerned Persons

1. On October 15, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-722 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1652 of the 2015 Montana Administrative Register, Issue Number 19.

2. The department has amended ARM 37.80.201, 37.80.202, and 37.80.203, as proposed.

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:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain as proposed.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) remains as proposed.

(b) The Montana Child Care Manual, dated ~~December 16, 2015~~ April 9, 2016, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.502 CHILD CARE OVERPAYMENT (1) remains as proposed.

(2) If an audit of the case shows monies received fall under ARM 37.80.506(1)(a), (b), (c), and (d), the department may recover the amount of any child care payment made to a child care provider or to a parent which is in excess of the amount to which the provider or parent was entitled.

(a) If an overpayment is due to ~~any error, act, or omission of the parent, whether intentional or otherwise~~ an intentional program violation of the parent, the parent must repay the overpayment to the department.

(b) remains as proposed.

~~(c) If an overpayment is due to any error, act, or omission of the department, the department may recover the overpayment from either the provider, the parent, or from both, but the total amount recovered from the provider and the parent may not exceed the amount of the overpayment.~~

(3) through (5) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

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

Comment 1: The department received a comment regarding the proposed amendment to 37-80-101(3), which adopts and incorporates by reference changes to the current Early Childhood Services Manual dated March 1, 2014. The commenter had nine suggested changes as listed below.

Comment 1-a: The reimbursement rates listed in Policy Section 1-4 are not the current rates that have been paid since July 1, 2014.

Response 1-a: The department agrees. Policy Section 1-4 pages 2-6, dated March 1, 2014, is a statement of rates as of August 1, 2013. This section will be revised to remove reimbursement rates from the policy manual. A link in the section will direct the public to the current reimbursement rates on the department's web site.

The department establishes rates in accordance with market rate requirements and available funding.

COMMENT 1-b: The term "Early Childhood Services Bureau Special Needs Coordinator" is not used consistently in Policy Section 1-4a.

RESPONSE 1-b: The department agrees. Policy Section 1-4a will be revised to replace the term "Resource and Referral Statewide Inclusion Coordinator" with "Early Childhood Services Bureau Special Needs Coordinator" throughout the section.

COMMENT 1-c: The recertification period for reviewing the individual child care plan for a child with special needs was changed from six to three months. The commenter supports a six-month certification period.

RESPONSE 1-c: The department does not agree. Its position is that more frequent review is better for the child and is cost effective. The department will proceed with the change to Policy Section 1-4a but will continue to review the issue.

COMMENT 1-d: The statement in the Policy Manual 2-2 under Homelessness that "two [2] collateral contacts from individuals can be used to verify the family's living location" should be clarified to identify which individuals may be used for collateral contacts.

RESPONSE 1-d: The department does not agree that additional clarification is necessary. Any two individuals may verify homelessness.

COMMENT 1-e: Policy Section 2-2a incorrectly states that a Resource and Referral employee has authority to determine whether good cause exists for failing to cooperate with the department's Child Support Enforcement Division.

RESPONSE 1-e: The department agrees. Policy Section 2-2a will be revised to correctly state that any determination that good cause exists for failure to cooperate with Child Support Enforcement Division must be made by the Early Childhood Services Bureau.

COMMENT 1-f: There is a conflict between the current practice and the proposed change to Policy Section 2-3, pages 3 through 5 and Policy section 6-3, pages 5 and 6

RESPONSE 1-f: The department agrees. Sections 2-3 and 6-3 will be revised to state current practice for parents attending school full-time or part-time. Language about in-home study time will be removed from the Distance Learning or Online Coursework section. Policy Section 6-3, Study Time will be revised to be consistent with Policy Section 2-3.

COMMENT 1-g: A table at Policy Manual 3-1, Page 6 is not current.

RESPONSE 1-g: The department agrees and will remove the table.

COMMENT 1-h: Section 6-5, Change Reporting, does not accurately state the current reporting requirements.

RESPONSE 1-h: The department agrees. Changes to Section 6-5 will be made during the next amendment of ARM 37.80.101 to allow the public the opportunity to comment on current change-reporting requirements.

COMMENT 1-i: Policy Section 6-6, page 6, Absent Days and Continuity of Care, Maternity Leave, does not state current policy.

RESPONSE 1-i: The department agrees. Changes will be made during the next policy revision to allow the public the opportunity to comment on current policy.

COMMENT #2: The Montana Legislative Services Division commented that additional amendments to ARM 37.80.502 are necessary to make that rule consistent with the department's amendments to ARM 37.80.202. The department amended ARM 37.80.202 to limit repayment of a childcare subsidy by a parent or guardian to circumstances when the overpayment is the result of intentional program violation by the parent or guardian.

RESPONSE #2: The department agrees with this comment and has amended ARM 37.80.502 accordingly.

/s/ Geralyn Driscoll
Geraldyn Driscoll, Attorney
Rule Reviewer

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

Certified to the Secretary of State March 28, 2016

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.2.301, 44.2.302, and)
44.5.114 through 44.5.121 pertaining)
to Business Services Division filings)
and fees)

TO: All Concerned Persons

1. On February 19, 2016, the Secretary of State published MAR Notice No. 44-2-215 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 304 of the 2016 Montana Administrative Register, Issue Number 4.

2. The Secretary of State has amended ARM 44.2.301, 44.2.302, and 44.5.114 through 44.5.120 as proposed.

3. ARM 44.5.121 is amended as proposed, but is renumbered due to an earlier amendment under MAR Notice No. 44-2-214 effective March 19, 2016. The rule in its final form will read as follows:

44.5.121 MISCELLANEOUS FEES

- | | |
|---|------------------|
| (1) Certificate of fact | \$ 15.00 |
| (a) on-line certificate of fact | 15.00 |
| (2) Copy per name for any business entity related document with or without certification | 10.00 |
| (3) Documents or copies returned by fax | 5.00 |
| (a) 24-hour priority handling per document or request | 20.00 |
| (b) one-hour expedited filing for all documents | 100.00 |
| (c) furnishing any certificate not otherwise provided for | 15.00 |
| (d) resignation of registered agent | no charge |
| (e) registering a commercial registered agent | 150.00 |
| (f) registering a nonqualified foreign entity | 70.00 |
| (4) Copy of all filed trademarks per month | 100.00 |
| (5) Miscellaneous business entity reports | 80.00 |
| (6) Bulk data for corporation records vary according to data type and number of documents. Please see the Secretary of State's web site. | |
| (7) Designation of registered agent for pesticide license | 5.00 |
| (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 |
| (11) Business alert (watch list)—online user will be notified when a document or notice is recorded against a business they want to track | \$50.00 per year |

(12) If a paper-filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.

(13) Electronically filed documents rejected because of deficiencies in the filing will not be assessed a reprocessing fee.

(14) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.

4. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 28th day of March, 2016.

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 September 30, 2015. This table includes those rules adopted during the period October 1, 2015, through December 31, 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 September 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 2015/2016 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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