

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption of New) NOTICE OF PROPOSED
Rule I pertaining to the adoption of) ADOPTION
the NAIC Valuation Manual)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 3, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), proposes to adopt the above-stated rule.

2. The CSI 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 CSI no later than 5:00 p.m. on September 26, 2016, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3439; TDD/Montana Relay Service (406) 444-3246; or e-mail dsautter@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF THE NAIC VALUATION MANUAL (1) The Commissioner of Securities and Insurance, Office of the State Auditor, adopts and incorporates by reference the Valuation Manual adopted by the National Association of Insurance Commissioners (NAIC) on December 2, 2012, which sets forth and specifies a principle-based method for the valuation of insurance policies and contracts and the establishment of reserves. A copy of the Valuation Manual may be obtained from the NAIC web site at the following link:
http://www.naic.org/documents/committees_a_latf_related_valuation_manual_apf_a_dopted_by_a_cmte.pdf.

AUTH: 33-1-313, 33-2-418, MCA
IMP: 33-2-402, 33-2-403, MCA

4. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance.

The commissioner is a member, a former Vice President, and former President of the National Association of Insurance Commissioners (NAIC). The NAIC is an organization of insurance regulators from the 50 states, the District of Columbia, and

the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate.

In 2015, the legislature granted the commissioner rulemaking authority to adopt the NAIC's uniform valuation manual (valuation manual) pursuant to 33-2-418, MCA. The commissioner has determined that the new rule be proposed in accord with that section.

New Rule I is proposed in order to adopt the valuation manual. Adoption of the valuation manual is reasonably necessary because the valuation manual is an integral component to, and guide for, the implementation of the Standard Valuation Act (Act), 33-2-401, MCA, et seq.

An important component of the Act was to promote uniformity of regulation and reserving methods throughout the insurance industry and to enable establishment of reserves by using a principle-based valuation of insurance policies and contracts as specified in the valuation manual.

Principle-based valuation is a reserve valuation that uses one or more methods, or one or more assumptions determined by the insurer, which meets the conditions for policies or contracts as specified in the valuation manual; and which complies with the provisions of 33-2-404, MCA.

Uniformity in reserving methods used by insurance companies and other states is essential for the commissioner to work effectively as part of the national system of state-based regulation.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Mike Winsor, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail mwinsor@mt.gov, and must be received no later than 5:00 p.m., September 30, 2016.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Mike Winsor at the above address no later than 5:00 p.m., September 30, 2016.

7. 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 35 persons based on 350 people on the CSI list of interested persons.

8. The CSI 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 2 above or may be made by completing a request form at any rules hearing held by the department.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor Tom Berry, House District #40, was contacted by mail through the U.S. Postal Service on August 18, 2016.

11. With regard to the requirements of 2-4-111, MCA, the CSI has complied with and determined that there are no insurers currently writing life insurance policies based in Montana, and the CSI is not aware of any life insurance companies with fewer than 50 employees. Even if a small business was impacted by the adoption of the NAIC valuation manual, the valuation model allows for greater flexibility in reserving funds for policies written, which would help small business insurers. In addition, currently 46 states have adopted the revised model laws, and uniformity of regulation would be a substantial benefit to any small business insurer.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Counsel

Certified to the Secretary of State August 22, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through III pertaining to) PROPOSED ADOPTION
Group Disability Income Opt Out)

TO: All Concerned Persons

1. On October 4, 2016, at 10:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the 2nd floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The CSI 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 CSI no later than 5:00 p.m., September 27, 2016, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

NEW RULE I DEFINITIONS (1) "Commission" means the interstate insurance product regulation commission established under 33-39-101, MCA.

(2) "Opt out" means action taken to decline to adopt or participate in a promulgated uniform standard adopted by the commission under 33-39-101, MCA.

(3) "Uniform standard" means a standard adopted by the commission for a product line under 33-39-101, MCA.

AUTH: 33-39-101, 33-39-103, MCA

IMP: 33-39-101, 33-39-103, MCA

NEW RULE II PURPOSE (1) The purpose of these rules is to formally opt out of certain uniform standards pursuant to the procedure in 33-39-103, MCA.

AUTH: 33-39-101, 33-39-103, MCA

IMP: 33-39-101, 33-39-103, MCA

NEW RULE III GROUP DISABILITY INCOME UNIFORM STANDARDS OPT OUT (1) The insurance commissioner finds and concludes, based upon the preponderance of the evidence and given the conditions in Montana, that the group disability income standards do not provide reasonable protections to the citizens of Montana, and in fact would materially lower the level of protection for and materially diminish the rights of Montana policyholders, with regard to the following:

(a) the subrogation and claim off-set rights of the insurer; and
(b) the enforcement of the law of the policyholder's or group contract holder's resident state, as opposed to the state of the certificate holder.

(2) The insurance commissioner has balanced, has considered, and finds that the conditions in Montana and needs of the citizens of Montana outweigh the following factors:

(a) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for group disability income uniform standards; and

(b) the presumption that group disability income standards adopted by the commission provide reasonable protection to consumers of the group disability income product.

(3) The state of Montana opts out of the group disability income uniform standards.

AUTH: 33-39-101, 33-39-103, MCA

IMP: 33-39-101, 33-39-103, MCA

4. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance.

Senate Bill 28 was passed during the 2013 legislative session in order to allow Montana to join with other states and establish the Interstate Insurance Product Regulation Compact (compact). The compact provides for the development and implementation of uniform standards with respect to the state-by-state approval of insurance products. The Interstate Insurance Product Regulation Commission (commission) established under the compact promulgates, on a rolling basis, new uniform standards for varied insurance product lines.

A state participating in the compact automatically adopts new uniform standards as they are promulgated unless the state specifically declines to adopt them (i.e., "opts out") by legislation or regulation. A state may opt out if a uniform standard does not provide reasonable protections to insurance consumers of that state. These rules are proposed to opt out of the group disability income uniform standards. New Rule I provides definitions, while New Rule II formally opts out of the uniform standards according to the procedure required under the compact.

These rules are reasonably necessary because the group disability income uniform standards do not reasonably protect Montana insurance consumers in multiple respects. First, the uniform standards permit insurers to engage in subrogation and benefit off-setting practices in contravention of Montana's longstanding "made whole" doctrine. This doctrine requires that subrogation claims not be enforced until an injured insured has been fully compensated, or "made whole." See 33-22-1602(4), 33-30-1102(4), MCA; *Oberson v. Federated Mutual Insurance Company*, 2005 MT 329, ¶ 10, 330 Mont. 1, 126 P.3d 459. Second, the uniform standards

allow for application of the law of the state of the group policyholder or contract holder, instead of the state of residence of the certificate holder. Both these aspects of the uniform standards place the individual policyholder at a significant disadvantage, including during claim disputes or litigation. Additionally, the subrogation provisions could effectively deprive consumers of funds to which they are currently entitled under Montana statute, case law, and public policy. These consumer protection deficiencies necessitate that Montana opt out of the group disability income uniform standards.

5. 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 also be submitted to Nick Mazanec, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-5223; or e-mail nmazanec@mt.gov, and must be received no later than 5:00 p.m., October 12, 2016.

6. Nick Mazanec, Attorney, has been designated to preside over and conduct this hearing.

7. The CSI maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and 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 Darla Sautter using the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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

9. Pursuant to 2-4-302, MCA, bill sponsor Senator Fred Thomas was contacted by U.S. Parcel Post on August 18, 2016.

10. The proposed rules do not significantly and directly impact small businesses; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State August 22, 2016.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.6.2215 pertaining to exotic) PROPOSED AMENDMENT
species classification)

TO: All Concerned Persons

1. On September 27, 2016, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

12.6.2215 LIST OF PROHIBITED SPECIES (1) through (3) remain the same.

(4) The following mammals are classified as prohibited species:

(a) through (c) remain the same.

~~(d) Nutria – *Myocastor coypus*;~~

(d) Callitrichidae Family (Marmosets and Tamarins);

(e) through (i) remain the same.

(j) Nutria – *Myocastor coypus*;

(j) through (o) remain the same but are renumbered (k) through (p).

(5) through (7) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

REASON: The commission has authority to adopt rules regarding the importation, possession, and sale of exotic wildlife as recommended by the classification review committee (committee). The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals. If the commission approves the committee's

recommendations, the commission begins administrative rulemaking to incorporate the recommendations into the classification lists.

The commission is proposing adding the Callitrichidae Family which includes Marmosets and Tamarins to the list of prohibited species. Callitrichids generally have a nervous disposition and their behavior can become unpredictable and aggressive after sexual maturity. This can pose a serious health risk as these primates can inflict deep, injurious bites and transmit common bacterial and parasitic pathogens to humans. As with any primates, improper housing, socialization, and environmental enrichment will lead to psychopathologies such as self-inflicted mutilation, coprophagy, and other stereotyped pathologies. These require very specialized handling and housing techniques much beyond those of typical pet store animals.

The change to the species Nutria – *Myocastor coypus* is for the purposes of fixing a clerical error and moving it into the correct alphabetical order.

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: Department of Fish, Wildlife and Parks, Attn: Beth Giddings, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpexotics@mt.gov, and must be received no later than September 30, 2016.

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

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

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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 rule will not significantly and directly impact small businesses.

/s/ William Schenk
William Schenk
Rule Reviewer

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

Certified to the Secretary of State August 22, 2016.

BEFORE THE HUMAN RIGHTS COMMISSION
AND THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.8.201, 24.8.203, 24.8.205,) PROPOSED AMENDMENT AND
24.8.214, 24.9.111, 24.9.119,) ADOPTION
24.9.121, 24.9.123, 24.9.125,)
24.9.603, and 24.9.606 and the)
adoption of New Rules I and II)
pertaining to Human Rights matters)

TO: All Concerned Persons

1. On September 23, 2016, at 9:00 a.m., the Department of Labor and Industry (department) and the Human Rights Commission will hold a public hearing in the auditorium of the Sanders Building (DPHHS building), 111 North Sanders Street, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Annah Howard, Department of Labor & Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-4356; fax (406) 444-2798; or e-mail anhoward@mt.gov.

3. The department proposes to amend the following rules, stricken matter interlined, new matter underlined:

24.8.201 FILING OF COMPLAINTS (1) A complaint may be filed with the Human Rights Bureau by or on behalf of any aggrieved party. Complaints must be filed with the Human Rights Bureau by mail addressed to the Human Rights Bureau, P.O. Box 1728, Helena, MT 59624-1728; personal delivery to ~~1625 Eleventh Avenue (USF&G Building, second floor)~~ 33 South Last Chance Gulch, Suite 2B, Helena, MT 59601; or fax to ~~(406) 444-2798~~ (406) 443-3234.

(2) Pursuant to ~~49-2-501(4)(a), MCA, and subject to 49-2-501(4)(b), MCA,~~ a A complaint must be filed within 180 days after the alleged act of discrimination occurred or was discovered.

(3) A complaint is considered to be filed on the date it is received by the Human Rights Bureau, either by mail, hand-delivery, or facsimile. If the last day of the time limit falls upon a Saturday, Sunday, legal holiday, or the department offices are closed on such day, the time limit will run until the end of the next day when the department offices are open.

(a) In the case of a complaint which is deferred or transmitted to the Human Rights Bureau by any government agency pursuant to any agreement entered into

between the agency and the department, the complaint is deemed filed for the purpose of determining the timeliness of a complaint pursuant to 49-2-501, MCA, as of the date it was filed with the agency which deferred or transmitted the complaint. The time period the Human Rights Bureau has to complete its informal investigation pursuant to 49-2-504, MCA, or for the commission or the department's Office of Administrative Hearings to conduct a hearing pursuant to 49-2-512, MCA, runs from the date the complaint is transferred by the deferring governmental agency to the Human Rights Bureau.

(4) remains the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-210, 49-2-501, 49-2-504, 49-3-315, MCA

REASON: Reasonable necessity exists to modify (1) due to the change in physical location of the Human Rights Bureau and the need for accuracy in the rules. Reasonable necessity exists to modify (3) to clarify timeliness of claims before other governmental agencies and to clarify timeliness of the Human Rights Bureau investigatory or hearings process.

24.8.203 FORM OF COMPLAINTS (1) remains the same.

(2) For the purpose of timely filing, any signed written statement received by mail, hand-delivery, or facsimile may be deemed a complaint if it sufficiently identifies parties and describes the actions being complained of. Such complaint may be verified by amendment after initial filing.

(3) remains the same.

(4) If the charging party does not allege facts sufficient to constitute a short and plain statement of the claim showing that the charging party is entitled to relief under Title 49, chapters 2 and 3, MCA, the Human Rights Bureau will notify the charging party that the department ~~does not have jurisdiction over the complaint~~ will not informally investigate the complaint, and the case will be dismissed unless the charging party amends the complaint to state a valid claim.

(5) and (6) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-205, 49-2-501, 49-2-504, 49-3-315, MCA

REASON: Reasonable necessity exists to modify (2) to clarify that there are multiple ways to transmit signed filings to the Human Rights Bureau, and to avoid confusion in that regard. Reasonable necessity exists to modify (4) to clarify that the Human Rights Bureau does not investigate claims which present insufficient facts to support a claim under the laws enforced by the Human Rights Bureau.

24.8.205 INTAKE PROCEDURE (1) A person ~~claiming~~ seeking to file an unlawful discrimination complaint may contact the Human Rights Bureau by mail or telephone ~~to inquire about filing a complaint of discrimination. Any advice or assistance provided to a potential charging party who contacts the Human Rights Bureau shall be offered objectively and impartially pursuant to 49-2-205, MCA.~~ The

Human Rights Bureau may provide consultation and assistance in filing a complaint through intake. If a person sets forth sufficient information to indicate a viable complaint under the laws enforced by the Human Rights Bureau, the bureau may draft a complaint for the person's consideration. A complaint drafted by the bureau is not deemed filed until it is signed and returned pursuant to ARM 24.8.203.

(2) Any information or assistance provided to a potential charging party who contacts the Human Rights Bureau must be offered objectively and impartially pursuant to 49-2-205, MCA.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-205, 49-3-315, MCA

REASON: Reasonable necessity exists to modify this rule to clarify for the public the assistive services provided by the Human Rights Bureau, and to make clear that, while the Human Rights Bureau may provide a draft complaint for a complainant's review, such draft is not filed until it is signed and returned. This modification should prevent confusion amongst members of the public who might be unclear as to the difference between discussing possible unlawful discrimination and filing a formal complaint with the Human Rights Bureau.

24.8.214 INVESTIGATIVE SUBPOENAS (1) Pursuant to 49-2-203~~(3)~~, MCA, ~~a party~~ the Human Rights Bureau may request that the commissioner issue subpoenas relating to a matter under investigation in order to further the department's informal investigation. ~~Such requests shall be directed to the Commissioner, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728.~~

AUTH: 49-2-204, MCA

IMP: 49-2-203, MCA

REASON: Reasonable necessity exists to amend this rule to correct an incorrect statutory citation, and to clarify that mailed requests to the commissioner are not necessary.

4. The Human Rights Commission proposes to amend the following rules, stricken matter interlined, new matter underlined:

24.9.111 DOCUMENT FORM FORMAT, FILING, AND SERVICE

(1) remains the same.

~~(2) The place of filing is the offices of the Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. The offices are located at 1625 11th Avenue, Helena, Montana. The telephone number is (406) 444-2884; fax (406) 444-2798; TTY (406) 444-0532.~~

~~(3) Filing with the commission is effective upon actual receipt at the offices of the department and not upon mailing.~~

~~(4) Parties shall submit the original (or original copy) and six copies of all submissions for the record, unless otherwise directed by the commission.~~

(5) remains the same, but is renumbered (2).

~~(6) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules only if the facsimile copy is followed within five days by filing of the original or original copy of the document and required copies.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-106, 49-2-204, 49-2-511, 49-3-315, MCA

REASON: Reasonable necessity exists to modify this rule to provide for clarity for parties and to provide for a new rule as to the ways documents can be filed with the commission. Substantively, this rule remains the same as to those topics it continues to discuss.

24.9.119 EX PARTE COMMUNICATIONS (1) No member of the commission may participate in or initiate any ex parte communication as defined in (2) on the merits of a matter with any party ~~or the department~~. A member of the commission may engage in a communication concerning administrative or procedural matters where they are necessary under the circumstances and do not adversely affect the substantial rights of a party.

(2) "Ex parte communication" means the act of a party, any person having an interest in the outcome of a contested case, or any other person not authorized by law, communicating with a member of the commission regarding the merits of any contested case, outside the context of a commission hearing or other publicly noticed meeting. Communications which do not constitute discussions or information regarding an issue of fact or law in a contested case, such as discussions of enlargements of time, scheduling, administrative matters, and/or questions of procedure, do not constitute ex parte communications.

(3) The commission, or a member of the commission, may consult with the department regarding any matter coming before the commission. ~~the interpretation of a point of law.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 2-4-613, 49-2-204, 49-2-511, 49-3-315, MCA

REASON: Reasonable necessity exists to modify this rule to clarify that members of the commission may consult with department staff as necessary regarding matters coming before the body. Previously, the rule could have been interpreted to prevent such communications.

24.9.121 OBJECTIONS TO DISMISSAL OF COMPLAINT (1) A party who is dissatisfied with a department decision to dismiss a complaint may seek commission review of the decision by filing a written objection within 14 days after the issuance of the notice of dismissal. The objection will be considered at the next commission meeting after conclusion of the briefing schedule, issued in accordance with the following:

(a) An objecting party who wishes to file a supporting brief must file and serve the opening brief within twenty-one days after the department decision to dismiss the complaint.

(b) A responding party who wishes to file a response brief must file and serve the response brief within fourteen days of service of the opening brief.

(c) An objecting party who wishes to file a reply brief must file and serve the reply brief within fourteen days of service of the response brief.

~~(2) A party who makes an objection and wishes to file a supporting brief must file and serve an original and six copies of the brief within five days of filing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six copies of the brief within ten days of service of an answer brief. If a party making an objection does not file a supporting brief, any opposing party may file a brief in opposition to the objection. Briefs on objections to the dismissal of a complaint may not exceed ten pages in length and comply with the formatting requirements set forth in ARM 24.9.111. Each party's brief should attach copies of any specific exhibits which the party believes are essential in the commission's consideration of the matter.~~

(2) Briefs subject to this rule may not exceed ten pages in length and must comply with the formatting requirements set forth in ARM 24.9.111. Any specific exhibits which the party believes are essential to the commission's consideration of the matter must be attached to the party's brief. Briefs must be filed in accordance with [New Rule II].

~~(3) Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during at the commission meeting at which the objection will be considered. The commission may request that the parties present oral argument.~~

~~(4) The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested by a party and authorized by the commission. The commission may request that the parties present oral argument. For the purposes of review of objections to a dismissal of a complaint, the written record is comprised solely of the Final Investigative Report of the department, the objection, the briefing of the parties pursuant to this rule, and any attachments to that briefing.~~

~~(5) and (6) remain the same.~~

(7) If the commission affirms the dismissal of a complaint, it will issue a written order to the parties within 90 days of the hearing on the matter notify the parties of its decision in writing within seven days. The charging party has 90 days after receipt of the commission's order affirming the dismissal of a complaint to file the complaint in the appropriate district court.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-204, 49-2-511, 49-3-315, MCA

REASON: Reasonable necessity exists to modify (1) to clarify when objections need to be made. Modifications to that rule additionally prevent a problem which has arisen, which is that parties will wait until the last minute to file objections so as to lengthen the period of time available to brief the matter. By setting a briefing deadline based upon the issuance of the final investigative report, it is hoped that parties will be less likely to miss appeal deadlines, and better able to strategize their appeals. Reasonable necessity exists to modify (2) to provide clarity as to what should be incorporated into briefs regarding objections to final investigative reports, and to align with new filing requirements and guidelines. Reasonable necessity exists to modify (3) to clarify that the commission is entitled to request parties present oral argument, should they so choose. Reasonable necessity exists to modify (4) to clarify the record upon which review will be based. Because there is no presentation of evidence, parties have previously been unclear what would be considered by the commission, and what should be submitted with briefing. Reasonable necessity exists to modify (7) to clarify existing practice, which is to issue commission orders within 90 days of the hearing on a matter.

24.9.123 APPEAL OF HEARING OFFICER DECISIONS (1) remains the same.

(2) A party that wants to appeal shall ~~provide~~ file a notice of appeal to the commission ~~and all parties~~ within 14 days of the issuance of the ~~notice of the hearing officer decision.~~ A party requesting review of the transcript must so state in the party's notice of appeal. ~~All appellants shall submit an original (or original copy) and six copies of all submissions for the record unless otherwise directed by the commission.~~

(3) remains the same.

(4) ~~The commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer decision but may not reject or modify the findings of fact unless the commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.~~

(a) ~~A party asserting that a finding of fact is clearly erroneous must identify the specific finding that is in error and then cite to the portion or portions of the record that support the party's assertion that the finding is erroneous.~~

(b) ~~A party asserting that a damage award is clearly erroneous must point out the findings that are in error and then cite to the portion or portions of the record that support a different calculation of the damages. If a party is asserting an alternative amount for monetary relief, the proposed amount and its method of computation must be set out in the supporting brief and supported by citations to the record. The commission may deny an appeal on the issue of damages if a party fails to specify the amount of damages sought or if a party fails to support that amount with references to the record.~~

(c) ~~The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.~~ The standards of review of appeals of hearing officer decisions are as follows:

(a) The commission reviews conclusions of law and interpretations of statutes and administrative rules for correctness. The commission may reject or modify a conclusion of law if it determines that the hearing officer misapplied fact to law or incorrectly interpreted or applied the law.

(b) The commission reviews findings of fact to determine whether substantial evidence exists to support a particular finding. The review must be based upon review of the complete record. While the hearing officer is entitled to some deference in findings of fact, weighing of evidence, and credibility determinations, the commission may reject or modify a finding of fact if it determines that such finding is clearly erroneous or not based upon competent substantial evidence. The commission may additionally reject or modify findings of fact if it determines that the proceedings on which the findings were based did not comply with essential requirements of law.

(c) The commission reviews damage awards to determine if they are clearly erroneous. A party asserting that a damage award is clearly erroneous shall specifically cite the portions of the record supporting that claim. A party asserting an alternative monetary award shall cite the portions of the record which support such alternative calculation. The commission may deny an appeal on the issue of damages if it fails to comply with this subsection.

(d) The commission may grant all relief permitted by 49-2-506, MCA, including full affirmative relief.

(5) Unless all parties stipulate otherwise, a party filing an appeal requiring commission review of the complete record must file six copies of all contested case prehearing submissions, hearing exhibits, a transcript of the hearing, all posthearing submissions, and the hearing officer decision. A party filing an appeal not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the hearing officer decision, required for the commission's review of the appeal. The complete record for the purposes of this rule is comprised of all documents cited or referred to in briefing before the commission. If a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing.

(a) The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document. If a party fails to attach required documents to its briefing, the commission may deny the appeal.

(b) Documents which may be included in the complete record are those enumerated at 2-4-614, MCA. Failure of a party to submit documents enumerated in that statute constitutes a stipulation by that party that the commission need not review those documents.

(c) Exhibits not admitted at hearing may not be attached to briefs on appeal, unless the failure to admit such exhibit is a reason for appeal. On timely motion by any party, any exhibit improperly attached may be stricken from the appeal.

(6) If an appellant does not intend to file a transcript of the hearing, the appellant must file and serve a supporting brief and the portions of the record required for commission review of the appeal within 20 days of service of the appealing party's notice of appeal. Any opposing party must file and serve an answer brief within ten days of service of the brief supporting the appeal. The appellant must file and serve any reply brief within ten days of service of the answer

brief. The briefing schedule before the commission for appeals of hearing officer decisions must conform substantially with the following:

(a) If review of the transcript has been requested, the appellant shall file an original and an electronic version of the transcript with the commission within 28 days of filing the notice of appeal.

(b) The appellant shall file an original and an electronic version of its opening brief within 21 days of the filing of the transcript or, if no review of the transcript has been requested, within 21 days of the filing of the notice of appeal. Failure to file an opening brief may result in summary denial of the appeal sua sponte or on motion of any party.

(c) The appellee shall file an original and an electronic version of its response brief within 14 days of service of the opening brief.

(d) The appellant shall file an original and electronic version of its reply brief, if any, within 14 days of service of the response brief.

~~(7) If an appellant intends for the commission to review a transcript, and a transcript of the hearing has not been prepared prior to issuance of the hearing officer decision, the appellant must file notice of intent to file a transcript with the notice of appeal stating that commission review of a transcript of the hearing is required.~~

~~(a) After the notice of intent to file an appeal is filed, the appellant must arrange for preparation of a transcript of the hearing at his or her own expense. The appellant must file an original and six copies of the transcript with the commission within 40 days of filing the notice of intent to file an appeal.~~

~~(b) If more than one party gives notice of intent to file an appeal, all parties filing an appeal which require review of a transcript of the hearing must share equally in the cost of the transcript and copies.~~

~~(c) The appellant must file a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within ten days of service of the supporting brief. The appellant must file and serve any reply brief within ten days of service of the answer brief. The following requirements apply to the preparation of the transcript:~~

~~(a) A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.~~

~~(b) Preparation of the transcript is the responsibility of the party requesting review of the transcript. If more than one party requests review of the transcript, all parties requesting the review shall share equally in the cost of the transcript and copies.~~

~~(8) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly~~

~~accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.~~

~~(9) If an appellant fails to file a brief in support of the appeal within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the appeal. If an opposing party fails to file a brief in opposition to appeal within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission or at the request of the commission. Each party is permitted one-half hour of argument before the commission for each appeal. The appellant may reserve a portion of that time for rebuttal. Oral argument may be waived by the parties, except where it is requested by the commission.~~

~~(10) (9) When a party has timely filed an appeal of a hearing officer decision and has timely filed a supporting brief, the commission will fix a date, not later than 120 days from the notice of appeal, to provide the parties an opportunity to present oral argument to the commission. Each party is allowed a total of one-half hour of argument before the commission, including cross-appeals. Oral argument may be waived by the parties, except where it is requested by the commission.~~

~~(11) A member of the commission may consider procedural motions and enter procedural orders as necessary for commission review.~~

~~(12) A member of the commission may conduct a prehearing conference prior to the commission's consideration of the appeal.~~

~~(13) (10) The commission shall render a decision which affirms, rejects, modifies, and/or remands the hearing officer decision within 90 days of the hearing of the appeal. The final decision of the commission is the final agency decision.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, 49-2-505, 49-2-506, 49-2-511, 49-3-315, MCA

REASON: Reasonable necessity exists to modify (2) to clarify requirements for appeals from hearing officer decisions, and to conform with other filing requirements. Reasonable necessity exists to modify (4) to clarify standards of review applicable to appeals of hearing officer decisions, and to clarify what information must be provided by parties to the appeal. Reasonable necessity exists to modify (5) to clarify for the parties the meaning of "complete record" for the purpose of review of hearing officer decisions, and to define for the parties those documents which must be submitted on appeal for proper and thorough review by the commission. Reasonable necessity exists to modify (6) to conform briefing periods in these rules to those in the rules of civil procedure, namely by using a calendar week period for deadlines. Further, this modified rule provides greater clarity as to timelines when transcript review is involved and when such review is not required. Reasonable necessity exists to modify (7) to clarify the responsibility of the parties with regard to preparation of the transcript. Reasonable necessity exists to modify (8) to clarify existing practice that a party may reserve a portion of time for rebuttal. Substantively, the rule has been moved from (10) to (8) for the purpose of clarity. Reasonable necessity exists to modify the old (9) because its substance has been moved to (6) to provide greater

clarity, and to contain provisions relating to briefing in a single section of the rules. Reasonable necessity exists to modify (10), now (9), to remove language which is duplicative of statute, at 49-2-505(5), MCA, and to remove language relating to oral argument, which has been moved to another section. Reasonable necessity exists to eliminate (11) because it is duplicative of language contained in ARM 24.9.103(3). As such, its elimination tends toward a reduction in the rules. Reasonable necessity exists to eliminate (12) to reflect current practice that such conferences do not take place, and to provide clarity to parties not to expect a prehearing conference. Reasonable necessity exists to modify (13) to renumber it as (10) to keep consistent numbering within the rule as a whole.

24.9.125 COMMISSION HEARINGS (1) through (3) remain the same.

(4) Following hearing, the chair of the commission, or any member acting in the chair's stead, shall issue the final order of the commission. At that member's discretion, the final order may be referred to the immediately subsequent hearing of the commission. At that time, the commission's review is limited to whether the proposed order complies with the motions made by the commission previously.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-204, 49-2-511, 49-3-315, MCA

REASON: Reasonable necessity exists to insert (4) to clarify the way in which commission orders are reviewed prior to their issuance. The review of orders is procedural, and therefore occurs by the action of a single member. This new section clarifies existing practice, and does not modify it. The rule additionally provides explicitly that the reviewing commissioner may refer the order back to the commission as a whole for review if the commissioner believes that such review is necessary. Review under those circumstances is limited to a determination of whether the order complies with the previous determination of the commission. It does not provide for a second review of the specifics of the matter.

24.9.603 RETALIATION AND COERCION PROHIBITED (1) remains the same.

(2) Significant adverse acts are those that would dissuade a reasonable person from engaging in a protected activity. This may include the following:

(a) through (3) remain the same.

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-301, 49-3-209, MCA

REASON: Reasonable necessity exists to modify the section to provide a general definition of what constitutes a "significant adverse act" prior to providing examples of the same. This change should clarify for the public what might constitute retaliation or coercion, and should assist in appropriate review of the facts at hand.

24.9.606 FAILURE TO MAKE REASONABLE ACCOMMODATION--
EMPLOYMENT DISCRIMINATION BECAUSE OF A DISABILITY (1) It is an

unlawful discriminatory practice for an employer, agent of an employer, employment agency, or labor organization to:

(a) fail to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee, employment applicant, or union member with a physical or mental disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of the business in question; or

(b) deny equal employment opportunities to a person with a physical or mental disability because of the need to make a reasonable accommodation to the person's disability so that the person can perform the essential functions of an employment position.

(2) A person with a physical or mental disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation for the person's physical or mental disability. If an employer has prepared a written description before advertising or interviewing applicants, the description is evidence of the essential functions of the job.

(3) through (7) remain the same.

~~(8) Independent assessment of the risk of substantial harm is evaluation by the employer of the probability and severity of potential injury in the circumstances, taking into account all relevant information regarding the work and medical history of the person with the disability before taking the adverse employment action in question.~~

AUTH: 49-2-204, 49-3-106, MCA

IMP: 49-2-101(15), 49-3-101(3), 49-3-202, 49-3-210, MCA

REASON: Reasonable necessity exists to modify (1) because the language regarding undue hardship is duplicative of language in (4), and the rule is clearer when it describes discrimination separately from defenses thereto. Reasonable necessity exists to modify (2) to preclude the notion that, by listing a single form of evidence as to essential functions, the public is not misled to believe it is the only such form of evidence. Reasonable necessity exists to strike (8) because New Rule I, which provides significantly further detail, is proposed to be adopted.

5. The Human Rights Commission proposes to adopt the following new rules:

NEW RULE I DIRECT THREAT (1) Direct threat means a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by a reasonable accommodation.

(2) An employer that takes an adverse action against a person with a disability on the grounds that the person with a disability poses a direct threat shall perform an independent assessment of the risk of harm before taking the adverse employment action in question.

(3) A determination that an individual poses a direct threat must be based on an individualized assessment of the individual's present ability safely to perform the essential functions of the job. The assessment must be based on an evaluation of

the employee, taking into account all relevant information regarding work and medical history. Assessment of medical history must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

- (a) the duration of the risk;
- (b) the nature and severity of the potential harm;
- (c) the likelihood that the potential harm will occur; and
- (d) the imminence of the potential harm.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-101, 49-3-101, MCA

REASON: Reasonable necessity exists to create this new rule to provide further guidance as to when a direct threat does or does not exist. While the rule has been embodied in statute and rule for some time, this new rule should provide greater clarity as to factors for consideration of a direct threat.

NEW RULE II FILINGS WITH THE COMMISSION (1) Any document required or permitted to be filed with the commission may be filed in three ways: hard copy, electronically, or telephonic facsimile (fax). In all instances, a hard copy original must be provided as indicated in (4) and (5).

(2) Electronic filing must take the following form:

(a) The electronic mail address for document filing is hrcappeals@mt.gov. Documents to be filed by e-mail must be attached to the e-mail in Portable Document Format (.pdf). Attachments larger than eight megabytes cannot be accepted. Filings may be submitted in multiple attachments if necessary.

(b) Documents may also be filed electronically by storing them on a compact disc and filing that compact disc with the commission, as stated in (5).

(3) For facsimile filing, the number is (406) 443-3234. Documents which are longer than twenty pages, inclusive of attachments and exhibits, may not be filed by fax.

(4) Hard copy filings or filings of compact discs may be mailed to: Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; or delivered by hand to 33 South Last Chance Gulch, Suite 2B, Helena, Montana 59601.

(5) If filing is made by e-mail or fax, a hard copy original of the identical document must be received by the commission not more than five days following the filing. If such original is not received and good cause is not shown, the e-mail or fax filing will be stricken from the record.

(6) A document is filed, no matter how it is transmitted, on the date it is received by the commission, not the date it is mailed. It is the responsibility of the filing party to ensure that documents are timely received by the commission.

(7) Notwithstanding any other rule to the contrary, any party may request to file documents solely in hard copy by filing a motion to that effect with the commission. The commission may grant such request for good cause shown.

AUTH: 49-2-204, 49-3-106, MCA
IMP: 49-2-204, 49-2-505, 49-2-511, MCA

REASON: Reasonable necessity exists to create this new rule to provide modification of previous filing rules and clarification of the current needs of the commission with regard to filing of documents. Specifically, while the commission previously required the filing of multiple hard copies of all documents, such a requirement no longer reflects the electronic review of documents undertaken by the commission. Therefore, while a single hard copy remains required for the purpose of retaining an original signed filing and to ensure a backup of all filings, filings moving forward, absent good cause, should additionally be filed electronically. Electronic filing is a reflection of current practice with respect to the commission.

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: Annah Howard, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-4356; fax (406) 444-2798; or e-mail anhoward@mt.gov, and must be received no later than 5:00 p.m., October 7, 2016.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department and the boards and commissions that are attached for administrative purposes. 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 or areas of law 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 Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

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

11. With regard to the requirements of 2-4-111, MCA, the commission and the department have determined that, because the rules simply clarify existing law and rules relating to the Montana Human Rights Act, there should not be a significant and direct impact on small businesses.

12. The department and the commission each will respond to public comments, and adopt final rules independently at their own discretion.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Dennis Taylor
Dennis Taylor
Chair
Human Rights Commission

/s/ Pam Bucy
Pam Bucy
Commissioner
Department of Labor and Industry

Certified to the Secretary of State August 22, 2016.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.206 pertaining to Board of) PROPOSED AMENDMENT
Personnel Appeals computation of)
time)

TO: All Concerned Persons

1. On September 23, 2016, at 1:30 p.m., the Board of Personnel Appeals (board) will hold a public hearing in the basement auditorium of the Sanders Building (DPHHS building), 111 North Sanders Street, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry 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 Labor and Industry no later than 4:00 p.m. on September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Jordon Dyrdaahl-Roberts, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624; telephone (406) 444-4493; fax (406) 444-1394; Montana TTD (406) 444-5549; or e-mail jordonroberts@mt.gov.

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

24.26.206 COMPUTATION OF TIME (1) remains the same.

(2) Mailed documents are presumed to be mailed on the day they are dated. That presumption may be rebutted by a showing of the postmark. The burden of proof for showing that a document was mailed on a date different than the document's date rests with the person who claims that it was mailed on the different date. A party which alleges that it did not receive notice by mail of a board proceeding has the burden of proof in showing that the party ought to be granted relief. The party must present clear and convincing evidence to rebut the statutory presumption contained in ~~26-1-206~~ 26-1-602, MCA, that a letter duly directed and mailed was received in the regular course of the mail.

(3) and (4) remain the same.

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

REASON: There is reasonable necessity to amend the rule to correct a transposed statutory citation within the rule, which was recently noticed by board staff.

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: Pam McDaniel, Department of Labor and Industry, P.O. Box 8011, Helena, Montana, 59604; telephone (406) 444-6543; fax (406) 444-4140; or e-mail pmcdaniel@mt.gov, and must be received no later than 5:00 p.m., October 7, 2016.

5. David Scrimm, Department of Labor and Industry, 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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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 board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Anne MacIntyre
Anne MacIntyre
Presiding Officer
Board of Personnel Appeals

Certified to the Secretary of State August 22, 2016.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1591 related to utilization) PROPOSED AMENDMENT
and treatment guidelines for workers')
compensation injuries)

TO: All Concerned Persons

1. On September 23, 2016, at 10:30 a.m., the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the DPHHS Building at 111 North Sanders Street, Helena, Montana, 59601, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

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

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) and (1)(a) remain the same.

(b) for medical services provided July 1, 2014 through June 30, 2015: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014"; ~~and~~

(c) for medical services provided on or after July 1, 2015: "Montana Utilization and Treatment Guidelines, 3rd edition, 2015-"; and

(d) for medical services provided on or after January 1, 2017: "Montana Utilization and Treatment Guidelines, 4th edition, 2016."

(2) The Montana Guidelines consist of the following nine chapters and General Guideline Principles which are included at the beginning of each chapter:

- (a) Low Back Pain;
- (b) Shoulder Injury;
- (c) ~~Upper Extremity~~ Thoracic Outlet;
- (d) Lower Extremity;
- (e) Chronic Regional Pain Syndrome;
- (f) Cervical Spine Injury;
- (g) Chronic Pain Disorder;
- (h) Traumatic Brain Injury; ~~and~~
- (i) Eye Injury; and
- (j) Cumulative Trauma.

(3) through (5) remain the same.

AUTH: 39-71-203, 39-71-704, MCA
IMP: 39-71-704, MCA

REASONABLE NECESSITY: There is reasonable necessity to update the Montana Utilization and Treatment Guidelines to incorporate the changes to the thoracic outlet treatment guidelines which have recently been developed by the State of Colorado. The division of the upper extremity guidelines into the thoracic outlet and cumulative trauma chapters is an editorial decision of the department, and allows the Montana guidelines to follow the update cycle of Colorado. The updated guidelines have been reviewed by the department's advisory medical providers group, and their comments have been taken into account by the department.

4. A copy of the proposed 2016 publication, identified as the "Montana Utilization and Treatment Guidelines, 4th edition, 2016," is available and can be accessed at: <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

5. A printed version of the proposed 2016 publication is also available by contacting Maralyn Lytle at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

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: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov, and must be received no later than 5:00 p.m., on October 7, 2016.

7. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all

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

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

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

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State August 22, 2016.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.165.302 definitions,) PROPOSED AMENDMENT
24.165.401 fees, and 24.165.2101)
continuing education)

TO: All Concerned Persons

1. On September 26, 2016, at 1:00 p.m., a public hearing will be held in the Large Conference room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice (board) no later than 5:00 p.m., on September 19, 2016, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdotp@mt.gov (board's e-mail).

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

24.165.302 DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) and (2) remain the same.

(3) "Nonroutine application" means an application for occupational therapist or occupational therapy assistant licensure that is considered nonroutine either by ARM 24.101.402 or these rules. Nonroutine applications require board review and approval prior to issuance of the license if the application shows:

(a) the applicant has a prior felony conviction of any nature or a prior misdemeanor conviction relating to sex, drugs, or violence. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has had two or more alcohol-related convictions over any period of time, or has had one alcohol-related conviction within the past five years;

(c) the applicant's health care professional license was disciplined or was voluntarily surrendered in this state or another state or jurisdiction; or

(d) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

(3) through (5) remain the same but are renumbered (4) through (6).

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-1-101, 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108, MCA

REASON: Per 37-1-101, MCA, department staff can issue and renew routine licenses on behalf of the boards. The board is amending this rule to add the definition of nonroutine application to clarify which applications need full board review and which can be processed by application staff. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.165.401 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

- (a) Applications for licensure
 - (i) registered occupational therapist \$~~140~~ 190
 - (ii) certified occupational therapist assistant ~~140~~ 190
 - ~~(b) Initial license issuance~~
 - ~~(i) registered occupational therapist 80~~
 - ~~(ii) certified occupational therapist assistant 80~~
 - (c) through (f) remain the same but are renumbered (b) through (e).
 - (f) Inactive to active status 60
- (2) and (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, 37-24-310, MCA

IMP: 37-1-134, 37-1-141, 37-24-306, 37-24-310, MCA

REASON: The board determined it is reasonably necessary to combine the initial license fee and application fee to alleviate confusion among applicants and licensing staff regarding the total fee required for license issuance. The board notes that this is not a fee increase, but simply a combination of two existing application fees.

To address questions from staff and licensees, the board is also amending this rule to provide the fee to convert from inactive to active licensure, as per ARM 24.101.403. The board notes that while this is not a new fee, it was not previously set forth in rule. Authority citations are being amended for accuracy and to reflect the full statutory authority of the board to promulgate rules.

24.165.2101 CONTINUING EDUCATION (1) through (4) remain the same.

(5) The board shall accept any continuing education offered or approved by the Montana Occupational Therapy Association, the American Occupational Therapy Association, the American Society of Hand Therapists, the National Board for Certification in Occupational Therapy (NBCOT), or the American Journal of Occupational Therapy.

(6) The board recognizes the maintenance of current NBCOT certification as fulfilling the continuing education requirements of this rule.

(6) remains the same but is renumbered (7).

(8) All Internet courses must meet the same criteria as in-person continuing education courses.

AUTH: 37-1-131, 37-1-319, 37-24-202, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is amending (5) to align with ARM 24.165.509 where the board already accepts NBCOT approved or sponsored courses of instruction in modalities. The board also decided to add new (6) and accept current NBCOT certification as meeting the continuing education requirements after determining that NBCOT certification exceeds the board's continuing education hourly requirements in (1) of this rule. Lastly, the board is adding (8) to address licensee and staff questions by clarifying that online continuing education courses must meet the same standards as in-person courses. The amendments will further clarify requirements and assist the auditing unit during the annual continuing education audit.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., September 30, 2016.

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

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

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.165.302, 24.165.401, and 24.165.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdotp@mt.gov.

9. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
NATE NAPRSTEK, 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 August 22, 2016

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED AMENDMENT
ARM 32.6.712 pertaining to food)
safety and inspection service (meat,) NO PUBLIC HEARING
poultry)) CONTEMPLATED

TO: All Concerned Persons

1. On October 3, 2016, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 26, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

(1) The Department of Livestock incorporates by reference the following as they were effective ~~March 18, 2014~~ August 22, 2016:

- (a) 9 CFR 300.1 through 9 CFR 321.3;
- (b) 9 CFR 325 through 9 CFR 325.21;
- (c) 9 CFR 329.1 through 9 CFR 329.9;
- (d) 9 CFR 352 through 9 CFR 362.5;
- (e) 9 CFR 381.1 through 9 CFR 381.103;
- (f) 9 CFR 381.190;
- (g) 9 CFR 381.194;
- (h) 9 CFR 381.115 through 9 CFR 381.182;
- (i) 9 CFR 381.210 through 9 CFR 381.218;
- (j) 9 CFR 381.300 through 9 CFR 381.524; and
- (k) 9 CFR 416.1 through 9 CFR 500.8.

~~(2) The Department of Livestock incorporates by reference the following as effective September 17, 2015:~~

- ~~(a) 9 CFR 430.4.~~

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

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department proposes to incorporate by reference the CFR sections for the reasons provided after each section.

9 CFR 317.2 (Labels: definition; required features) and 9 CFR 381.117 (Name of product and other labeling)

Would clarify that a product name for a raw meat or poultry product that does not meet a standard of identity must contain a descriptive designation that includes the percentage of added solution and the common name of all individual ingredients listed in descending order of predominance.

Would clarify that a product name for a mechanically tenderized beef must contain a descriptive designation that the product is mechanically tenderized, needle tenderized, or blade tenderized. Further, the labels of raw or partially cooked needle or blade tenderized raw beef products for household consumers, hotels, restaurants, or similar institutions, must bear validated cooking instructions.

9 CFR 320.1 (Records required to be kept)

Would require records of official establishments and retail stores that grind raw beef products for sale in commerce to maintain the following records:

- Establishment numbers of establishments supplying material used to prepare each lot of raw ground beef products
- All supplier lot numbers and production dates
- Names of the supplied materials including beef components and any materials carried over from one production lot to the next
- The date and time each lot of raw ground beef product is produced
- Date and time when grinding equipment and other related food contact surfaces are cleaned and sanitized

9 CFR 320.2 (Place of maintenance of records)

Would require records to be maintained at the place where business is conducted with one exception. The exception is that if business is conducted at multiple locations, the records may be maintained at the headquarters office.

9 CFR 320.3 (Record retention period)

Would specify that records required must be kept for two years following December 31 of the year in which the beef was ground.

9 CFR 381.65 (Operations and procedures, generally)

This section would identify procedures for controlling contamination throughout the poultry slaughter process. In addition, it would require that official poultry establishments develop, implement, and maintain written procedures to prevent contamination of carcasses and parts by enteric pathogens and fecal contamination throughout the entire slaughter and dressing operation. This section further requires larger establishments to collect samples to analyze for microbial organisms at specified rates. In addition, official poultry establishments would be required to maintain daily records to document the implementation and monitoring of the

procedures of controlling contamination. Data may be maintained electronically if the establishment has controls to maintain data integrity. Records would be required to be maintained for at least one year and must be accessible to the Food Safety and Inspection Service (FSIS). Montana currently does not have any poultry establishments of this size.

9 CFR 381.66 (Temperatures and chilling and freezing procedures)

This section would revise the definition for "air chill" to allow an antimicrobial intervention to be applied with water to poultry at the beginning of the chilling process if its use does not result in any net pick-up of water or moisture during the chilling process. The initial antimicrobial intervention would result in some temperature reduction of the product if the majority of temperature removal is accomplished exclusively by chilled air.

9 CFR 430.4 (Control of *Listeria monocytogenes* in post-lethality exposed ready-to-eat products)

This section is stricken as it is already included in (1)(k) and would clarify incorporation by reference of the latest version.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., September 30, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., September 30, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4 establishments, based upon there being approximately 40 businesses relating to animal feeding, slaughter, and disposal.

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

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

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

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

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

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Board of Livestock
Department of Livestock

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

Certified to the Secretary of State August 22, 2016.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to notification of) PROPOSED ADOPTION
application for permit to drill)

To: All Concerned Persons

1. On October 26, 2016, at 2:00 p.m., the Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation will hold a public hearing at 2535 St. Johns Avenue, Billings, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; e-mail jhalvorson@mt.gov.

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

NEW RULE I NOTIFICATION OF APPLICATION FOR PERMIT TO DRILL

(1) For the purposes of this rule, "occupied structure" means any building suitable for human occupancy or for carrying on business, including a residence, school, office, or hospital, but not including outbuildings such as, but not limited to sheds, barns, or garages.

(2) An applicant for a permit to drill a new well under ARM 36.22.601 must provide reasonable notice of the intent to file an application to all owners of record of an occupied structure within 1,320 feet of the proposed well.

(a) The notice must advise each owner that the application is eligible for administrative approval unless a demand for an opportunity to be heard is filed with the board within 14 days of an owner having received the notice.

(b) The applicant must file proof of the notice required by this rule with its application to the board.

(c) The owner may waive, in writing, their opportunity to request a hearing any time within the 14-day period. If waived, the application will be immediately eligible for administrative approval.

(3) The staff of the board shall refer an application for permit to drill to the board for notice and public hearing at the next regularly scheduled hearing if an owner of an occupied structure, as to any application for permit to drill for which the owner received notice, files a demand for an opportunity to be heard concerning the application in the form set forth in (5).

- (4) In those instances where such requests for a permit to drill have been the subject of notice and public hearing, the board shall, after such hearing, either:
- (a) enter its order granting such permit under such conditions as the board shall find proper and necessary; or
 - (b) enter its order denying the application for the permit.
- (5) A demand for opportunity to be heard concerning an application for permit to drill for which notice is required must:
- (a) be in writing; and
 - (b) set forth the name, address, and telephone number of each party making the demand, and demonstrate standing to demand an opportunity to be heard by providing a notarized, written statement declaring ownership of the occupied structure within 1,320 feet from the proposed well, which statement must include the owner's signature, the date of signature, and the declaration "I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct"; and
 - (c) set forth the specific reasons why the party requests a hearing regarding the issuance of the proposed drilling permit; and
 - (d) be received by the board no later than 14 days after the date the notice is received by the owner. Service of such demand may be made on the board personally, by mail, by e-mail, or by FAX transmission; and
 - (e) be simultaneously served upon the applicant for the permit by written copy mailed or FAX transmitted to the address or number set forth in the published notice. A certificate of such service must accompany the demand as filed with the board.

AUTH: 82-11-111, MCA

IMP: 82-11-122, 82-11-127, 82-11-134, 82-11-141, MCA

REASON: The proposed new rule would require reasonable notice of proposed drilling operations to owners of record of occupied structures. The proposed new rule also would provide a process for those owners to demand a board hearing on the application for a permit to drill. Both the notice requirement and the opportunity for a hearing are proposed in response to public inquiries about the board establishing setback requirements for wells. After consideration of public comment during several board meetings, the board proposes this notification rule, not a specific setback rule. This proposed rule would allow the board to consider establishing conditions for issuance of a drilling permit near an occupied structure.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Jim Halvorson, Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102; telephone (406) 656-0040; fax (406) 655-6015; or e-mail jhalvorson@mt.gov, and must be received no later than 5:00 p.m. on October 26, 2016.

5. Jim Halvorson, Board of Oil and Gas Conservation, has been designated to preside over and conduct the public hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to KarenDe Herman, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-5258; e-mail KDHerman@mt.gov; 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 department's web site at <http://www.dnrc.mt.gov>. 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.

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/ Linda Nelson
LINDA NELSON
Chair, Board of Oil and Gas Conservation

/s/ Rob Stutz
ROB STUTZ
Rule Reviewer

Certified to the Secretary of State August 22, 2016.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.87.809 pertaining to targeted) PROPOSED AMENDMENT
case management services for youth)
with serious emotional disturbance,)
reimbursement)

TO: All Concerned Persons

1. On September 22, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 14, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.809 TARGETED CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) Targeted case management (TCM) services for youth with SED will be reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is ~~a period of 15 minutes~~ based on a 15-minute unit increment.

~~(a)~~ A unit of service is a period of 15 minutes as follows:

~~(i)~~ (a) one unit of service is ~~greater than or equal to 8 minutes and but less than or equal to 23 minutes;~~

~~(ii)~~ (b) two units of service are greater than or equal to ~~24~~ 23 minutes ~~and but less than or equal to 38 minutes;~~

~~(iii)~~ (c) three units of service are greater than or equal to ~~39~~ 38 minutes ~~and but less than or equal to 53 minutes;~~

~~(iv)~~ (d) four units of service are greater than or equal to ~~54~~ 53 minutes ~~and but less than or equal to 68 minutes;~~

~~(v)~~ (e) five units of service are greater than or equal to ~~69~~ 68 minutes ~~and but less than or equal to 83 minutes;~~

~~(vi)~~ (f) six units of service are greater than or equal to 84 83 minutes and but less than ~~or equal to~~ 98 minutes;

~~(vii)~~ (g) seven units of service are greater than or equal to 99 98 minutes and but less than ~~or equal to~~ 113 minutes; and

~~(viii)~~ (h) eight units of service are greater than or equal to 114 113 minutes and but less than ~~or equal to~~ 128 minutes.

(2) The department will pay providers of targeted case management services for youth with SED the lesser of:

(a) and (b) remain the same.

~~(3) TCM services may be billed to the department's fiscal agent using a Center for Medicare and Medicaid Systems (CMS) 1500 claim form. The provider must include the youth's DSM-IV diagnosis code on the claim form.~~

(4) and (5) remain the same, but are renumbered (3) and (4).

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.87.809. This administrative rule defines the timed units of service for Targeted Case Management Services for Youth with Serious Emotional Disturbance. Specifically the department proposes the following:

37.87.809

Amending this rule is necessary in order to align the definition of the timed unit with the November 24, 2010 Montana Health Care Programs Notice and with the Centers for Medicare and Medicaid (CMS).

Fiscal Impact

There is no anticipated fiscal impact due to this rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 30, 2016.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

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

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State August 22, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|--------------------------|
| In the matter of the amendment of |) | AMENDED NOTICE OF PUBLIC |
| ARM 42.20.173, 42.20.504, |) | HEARING ON PROPOSED |
| 42.20.505, 42.20.601, 42.20.604, |) | AMENDMENT AND REPEAL |
| 42.20.683, and 42.20.745 and the |) | |
| repeal of ARM 42.20.502, 42.20.503, |) | |
| and 42.20.516 pertaining to property |) | |
| reappraisal cycles, assessment |) | |
| review deadlines, electronic |) | |
| classification and appraisal notices, |) | |
| agricultural land regions, and bona |) | |
| fide agricultural operation |) | |
| determinations (Montana Tax Appeal |) | |
| Board ruling) |) | |

TO: All Concerned Persons

1. On August 19, 2016, the Department of Revenue published MAR Notice No. 42-2-956 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1416 of the 2016 Montana Administrative Register, Issue Number 16. The original hearing date of September 13, 2016, at 9 a.m., remains the same.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 7, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The department is amending the original notice to include an additional amendment to ARM 42.20.745 to correct an error in the "year two" phase-in factor in (2)(c) as follows, new matter underlined, deleted matter interlined:

42.20.745 FOREST LAND (1) through (2)(b) remain as proposed.
 (c) Phase-in value (year 2) = value before reappraisal + (change in value x
~~.3342~~ .3332);
 (d) through (5) remain as proposed.

4. The statements of reasonable necessity for the proposed repeal of the following rules are also being amended because the original statements erroneously referenced a legislative change in the reappraisal cycle from six years to two years. While the legislative change occurred for some classes of property, it did not impact class 10 forest land property as indicated in the original statements. The change to

the reason statements are as follows, new matter underlined, deleted matter interlined:

42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS TEN PROPERTY

REASON: The department proposes repealing ARM 42.20.503 ~~due to the enactment of Senate Bill 157, L. 2015, which changed the reappraisal cycle for class ten property from every six years to every two years. This change eliminated the need for the phase-in calculation~~ because it is redundant with ARM 42.20.745, as amended, and therefore ~~this rule is no longer necessary.~~

42.20.516 APPLICATION OF PHASE-IN PROVISIONS FOR CLASS TEN PROPERTIES THAT DECREASE IN VALUE DUE TO REAPPRAISAL

REASON: The department proposes repealing ARM 42.20.516 ~~due to the enactment of Senate Bill 157, L. 2015, which changed the reappraisal cycle for class ten property from every six years to every two years. This change eliminated the need for the phase-in calculation~~ because it is redundant with ARM 42.20.745 and therefore ~~this rule is no longer necessary.~~

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 27, 2016.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn acting for
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 22, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 42.23.108, 42.23.109, |) | PROPOSED AMENDMENT AND |
| 42.23.112, 42.23.113, 42.23.116, |) | REPEAL |
| 42.23.212, 42.23.303, 42.23.312, |) | |
| 42.23.313, 42.23.403, 42.23.421, |) | |
| 42.23.424, 42.23.601, 42.23.702, |) | |
| 42.23.802, 42.23.803, 42.23.804, |) | |
| 42.23.805, 42.26.101, 42.26.202, |) | |
| 42.26.301, 42.26.302, 42.26.311, |) | |
| 42.26.313, and 42.26.505 and the |) | |
| repeal of ARM 42.23.117 pertaining |) | |
| to corporate income tax |) | |

TO: All Concerned Persons

1. On September 29, 2016, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 12, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.23.108 CONDITIONS FOR EXEMPTION FOR DIVIDENDS (1) through (1)(b) remain the same.

(c) It is substantiated that the taxpayer has invested in the small business investment company and that the small business investment company has invested in companies located within Montana. The small business investment company must provide a report as part of the annual filing of the Montana ~~corporation~~ license-corporate income tax return.

AUTH: 15-33-105, MCA
IMP: 15-33-102, 15-33-106, MCA

REASON: The department proposes amending ARM 42.23.108(1)(c) as a

matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature.

42.23.109 REPORTING REQUIREMENTS (1) The small business investment company shall report as part of the ~~corporation license~~ corporate income tax return the following information on a form provided for that purpose:

(a) through (2) remain the same.

AUTH: 15-33-105, MCA

IMP: 15-33-104, MCA

REASON: The department proposes amending ARM 42.23.109(1) as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" in (1) to correspond with this name change enacted by the 2013 Legislature.

42.23.112 RESEARCH AND DEVELOPMENT - APPLICATION AND ELIGIBILITY (1) through (3) remain the same.

(4) To obtain the corporate ~~license~~ income tax exemption, the firm must file an annual application with the department before the end of the first calendar quarter during which the firm does business in Montana. The initial application must be filed before the end of the first complete calendar quarter during which the corporation is engaged in business in Montana. For example, if a corporation began operating in Montana on September 15, that corporation would have until December 31 of that year to file for the exemption.

(5) remains the same.

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

IMP: 15-6-135, 15-31-103, MCA

REASON: The department proposes amending ARM 42.23.112(4) as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature.

42.23.113 RESEARCH AND DEVELOPMENT FIRM - EXEMPTION PERIOD

(1) An entity that qualifies as a research and development firm as defined in 15-1-101, MCA, and is incorporated or qualified to do business in Montana on or after July 1, 1987, is exempt from the ~~corporation license~~ corporate income tax on the net income earned from research and development activities for its first five tax periods.

~~(2) A corporation which qualifies as a research and development firm under 15-1-101, MCA, and began operating in Montana prior to July 1, 1987, will be allowed an exemption from the Montana corporation license tax on research and development net income earned on or after July 1, 1987, for the balance of its first five tax periods of activity in Montana.~~

AUTH: 15-31-501, MCA

IMP: 15-31-103, MCA

REASON: The department proposes amending ARM 42.23.113 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature.

The department also proposes removing outdated language in (2) applying to tax periods prior to July 1987.

42.23.116 UNRELATED INCOME (1) Income earned by a research and development firm which is unrelated to research and development activities is not eligible for the five-year exemption from the Montana ~~corporation license~~ corporate income tax. In making the determination of whether income earned is related to research and development activities, the department will review the facts presented in each case. However, the following examples demonstrate how the department would decide under certain situations.

(a) through (d) remain the same.

AUTH: 15-31-501, MCA

IMP: 15-31-103, MCA

REASON: The department proposes amending ARM 42.23.116 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature.

42.23.212 BASIS FOR DISPOSITION OF PROPERTY (1) The basis for determining gain or loss from the sale or other disposition of property shall be the basis prescribed by the IRC and regulations in effect during the reporting period, except such provisions therein as are inconsistent with the express provisions of these regulations or the ~~Corporate License Tax Act~~ 15-31-113, MCA.

~~(2) In applying the federal rules pertaining to basis, the effective date of this act shall be substituted for the effective date of the Federal Income Tax Act.~~

AUTH: 15-31-313, 15-31-501, MCA

IMP: ~~Title 15, chapter 31, part 3~~ 15-31-113, MCA

REASON: The department proposes amending ARM 42.23.212 to delete the reference to the Corporate License Tax Act in (1) and specifically reference 15-31-113, MCA, instead.

The department also proposes removing all of (2). This language was included in the rule when it was adopted in 1972 and the department has determined it is no longer necessary.

The department further proposes inserting the applicable statute in place of the larger chapter reference in the implementing section of the rule in keeping with the Secretary of State's current ARM formatting standards.

42.23.303 CHANGE IN FEDERAL TAX OR RETURN (1) Taxpayers are required to report to the department adjustments or corrections to their taxable

income made by the IRS or other competent authority by filing an amended Montana corporate income tax return within 90 days after receiving official notice of such change or correction. If the adjustments or corrections result in an overpayment of tax, the refund claim must be made within the statute of limitation set forth in 15-31-509, MCA.

~~(a) If the taxpayer fails to report these adjustments or corrections within files an amended Montana corporate income tax return more than 90 days thereafter: after receiving official notice and has not by written agreement suspended the federal statute of limitations,~~

~~(a) for tax periods beginning before March 13, 1997, the period within which a deficiency in tax may be assessed extends for three years from the date the changes or corrections in the taxpayer's federal taxable income become final and are filed with the department.~~

~~(b) for tax periods beginning after March 13, 1997, the period within which a deficiency in tax may be assessed extends for three years from the date the changes or corrections in the taxpayer's federal taxable income become final and are filed with the department.~~

(b) If the taxpayer fails to file an amended Montana corporate income tax return after receiving official notice, the department may at any time assess tax or begin a proceeding in court for the collection of the tax without assessment pursuant to 15-31-544, MCA.

(2) If a taxpayer files an amended federal income tax return for any year changing or correcting his its taxable income, and if the taxpayer fails is required to file a corresponding amended Montana corporation license corporate income tax return with the department within 90 days thereafter: after filing the amended federal return. If the adjustments or corrections result in an overpayment of tax, the refund claim must be made within the statute of limitations set forth in 15-31-509, MCA.

~~(a) for tax periods beginning after March 13, 1997~~

~~(a) If the taxpayer files an amended Montana corporate income tax return more than 90 days after filing the amended federal return and has not by written agreement suspended the federal statute of limitations, the period within which a deficiency in tax may be assessed extends for three years from the date the corresponding amended Montana corporation license tax return is filed; and~~

~~(b) for tax periods beginning before March 13, 1997, the period within which a deficiency in tax may be assessed extends for five years from the date the corresponding amended Montana corporation license tax return is filed.~~

(b) If the taxpayer fails to file an amended Montana corporate income tax return, the department may at any time assess tax or begin a proceeding in court for the collection of the tax without assessment pursuant to 15-31-544, MCA.

(3) Changes or corrections by a taxpayer to federal taxable income, including changes that increase or decrease a net operating loss must be reported to the department through the filing of an amended Montana corporate income tax return within the time prescribed in 15-31-509, MCA, regardless of whether or not an amended federal income tax return was filed.

(4) No de minimis standard applies to the requirements for reporting changes or corrections to federal taxable income. Taxpayers are required to report all such changes and corrections to the department.

AUTH: 15-31-501, MCA

IMP: 15-31-506, 15-31-509, 15-31-544, MCA

REASON: The department proposes amending ARM 42.23.303 to include more detail in the rule for better guidance to taxpayers regarding their reporting requirements when they have a change in federal taxable income, and what actions the department may take when such changes are not reported. The additional detail proposed to be added into the rule is intended to be informational and is not a change in the department's long-standing practice. The department also proposes removing outdated language applying to tax periods beginning before March 13, 1997.

The department further proposes adding 15-31-544, MCA, as an implementing statute for the rule in support of the department's authority to assess tax and/or begin a proceeding in court for the collection of tax.

42.23.312 FILING REQUIREMENTS FOR INACTIVE CORPORATIONS

(1) ~~Foreign~~ Both foreign and domestic corporations which have either qualified to do business in Montana and all domestic corporations or are registered to do business in Montana and not engaged in business in Montana during the reporting period are required to file either an annual return returns even though not engaged in business in Montana during the reporting period or an annual affidavit provided by the department for such purposes. No tax is assessable against a corporation which was not engaged in business during the reporting period. In such cases

(a) If a return is filed, the return must bear the name and address of the corporation, the signature of an officer, contact information, and a statement on the face of the return or attached to the return to the effect that the corporation was not engaged in business in Montana during the reporting period. No tax is assessable against a corporation which was not engaged in business during the reporting period.

(b) If an affidavit is filed, the corporation must use the affidavit provided by the department. It must be completed and signed by an officer of the corporation.

~~(2) A dormant corporation can obtain relief from the filing requirement by executing and filing an affidavit provided by the department for the purpose.~~

AUTH: 15-31-501, MCA

IMP: 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.23.312 to provide more detail in the rule for better guidance to taxpayers regarding the filing requirements for inactive corporations. The additional detail proposed to be added into the rule is intended to be informational and is not a change in the department's long-standing practice. The language being removed from (2) was incorporated into (1).

42.23.313 FILING REQUIREMENTS UPON DISSOLUTION, WITHDRAWAL, OR CESSATION OF BUSINESS (1) When a domestic corporation seeks to dissolve, or when a foreign corporation seeks to withdraw or ceases business in Montana, the following requirements must be met for the purpose of ~~corporation license tax clearance~~ obtaining a Dissolution/Withdrawal Certificate:

~~(a) A return clearly marked "Final Return" must be filed for the short period commencing with the closing date of the last period for which a return was filed and extending to the date of dissolution, withdrawal, or cessation of business in this state.~~

~~(b) A schedule must be attached to the final return showing the disposition made of the corporate assets. If the corporation sold its assets, any gain or loss from the disposition thereof must be included in the determination of net income, unless:~~

~~(i) the liquidation of the corporation comes within the purview of section 337, IRC (1954); and~~

~~(ii) the corporation is not required to report gain pursuant to 15-31-113, MCA.~~

~~(c) Payment of the tax must be made for the final period and all other corporation license tax for which the corporation may then be liable.~~

(a) a completed and signed Application for Tax Certificate (Form CR-T) must be submitted to the department;

(b) all required tax returns must be filed;

(c) all taxes, interest, and penalties must be paid; and

(d) an assumption of Montana tax liabilities must be filed with the department on a Form ATL if the corporation is:

(i) party to a merger or consolidation; or

(ii) included in the combined filing of another corporation subject to tax under 15-31-101, MCA, and a final return is not filed.

(2) When a domestic corporation has completed its dissolution or when a foreign corporation has completed its withdrawal and seeks a Tax Clearance Certificate, the following requirements must be met:

(a) a completed and signed Form CR-T must be submitted to the department;

(b) a return clearly marked "Final Return" must be filed for the short period commencing with the closing date of the last period for which a return was filed and extending to the date of dissolution, withdrawal, or cessation of business in this state;

(c) a schedule must be attached to the final return showing the disposition made of the corporate assets. If the corporation sold its assets, any gain or loss from the disposition thereof must be included in the determination of net income, unless the corporation is not required to report gain pursuant to 15-31-113, MCA; and

(d) all taxes, interest, and penalties must be paid.

(3) If a corporation subject to (2) is party to a merger or consolidation, or is included in the combined filing of another corporation subject to tax under 15-31-101, MCA, and a final return is not filed, a Tax Clearance Certificate will not be issued.

(4) Corporations not engaged in business in Montana during the reporting period may file an annual affidavit in lieu of returns as provided for in ARM 42.23.312.

AUTH: 15-31-501, MCA
IMP: 15-31-143, MCA

REASON: The department proposes amending ARM 42.23.313 to provide more detail in the rule for better guidance to taxpayers regarding the requirements for obtaining a Dissolution/Withdrawal Certificate or a Tax Clearance Certificate from the department. The additional detail is intended to be informational and to provide guidance to taxpayers regarding their request of the proper certificate for their needs.

42.23.403 TREATMENT OF OTHER TAXES PAID (1) Taxes paid within the year, with the exception of the following taxes specifically excluded as deductions by statute are:

- (a) Montana ~~corporation license~~ corporate income tax;
 - (b) remains the same.
 - (c) taxes on or according to or measured by net income or profits, imposed by authority of the government of the United States; or
 - (d) remains the same.
- (2) With the exception of the contractor's gross receipts tax, taxes may be claimed only as deductions in determining net income and cannot be converted into a credit against the ~~corporation license~~ corporate income tax. See ARM ~~42.23.504~~ ARM 42.4.3103 for details concerning the credit allowed with respect to the contractor's gross receipts tax.

AUTH: 15-31-313, 15-31-501, MCA
IMP: 15-31-114, MCA

REASON: The department proposes amending ARM 42.23.403 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with a change to the name enacted by law in 2013.

In a recent biennial review of its rules, the department identified areas in this rule in need of housekeeping measures and therefore proposes adding a missing word in (1)(c) to properly format the outline in that subsection and updating a rule number reference in (2) to reflect the current number of that rule as transferred after this rule was adopted.

42.23.421 DEDUCTION FOR INVESTMENT FOR ENERGY CONSERVATION (1) remains the same.

(2) This deduction must be claimed on the form provided by the department. The complete form must be attached to the taxpayer's ~~corporation license~~ corporate income tax return for the year in which the deduction is claimed.

AUTH: 15-31-501, MCA

IMP: 15-32-103, MCA

REASON: The department proposes amending ARM 42.23.421(2) as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with a change to the name enacted by the 2013 Legislature.

42.23.424 SALE OF LAND TO A BEGINNING FARMER - CORPORATION LICENSE CORPORATE INCOME TAX DEDUCTION (1) through (4) remain the same.

AUTH: 15-1-201, MCA

IMP: 80-12-211, MCA

REASON: The department proposes amending the title of ARM 42.23.424 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with a change to the name enacted by the 2013 Legislature.

42.23.601 REFUNDS AND CREDITS (1) remains the same.

~~(2) For tax periods beginning before March 13, 1997, no refund or credit may be allowed or paid with respect to the year for which a return is filed, unless, within five years from the last day prescribed for filing the return or after one year from the date of the overpayment (whichever period expires later), the taxpayer files a claim for refund thereof or the department has determined the existence of the overpayment and has approved refunding or crediting thereof. The five-year period is determined without regard to any extension which may have been granted.~~

(2) A refund claim made after the expiration of the limitation period set forth in (1) and in 15-31-509, MCA, is limited to payments received after that date.

AUTH: 15-31-501, MCA

IMP: 15-31-509, MCA

REASON: The department proposes amending ARM 42.23.601 to provide more detail in the rule for better guidance to taxpayers regarding the limitation of a refund claim made after the expiration of the statute of limitations occurs. The additional detail proposed to be added into the rule is intended to be informational and is not a change in the department's long-standing practice.

The department also proposes removing outdated language in (2) applying to tax periods beginning before March 13, 1997.

42.23.702 TAXATION OF A LIMITED LIABILITY COMPANY (1) The taxation of a limited liability company in Montana depends upon its federal classification as a corporation or a partnership as determined by the IRS, regardless of whether an entity is recognized as a limited liability company under the Montana Limited Liability Company Act. For example, a limited liability company may be formed in Montana with one member; however, in order to be taxed as a partnership

for federal purposes, and consequently for Montana purposes, the limited liability company must have at least two members. If the limited liability company is taxed as a "C" or "S" corporation for federal tax purposes, then it must file the corresponding Montana ~~corporation license~~ corporate income tax return with the department as provided for under Title 15, chapter 31, MCA. If a limited liability company is treated as a partnership for federal tax purposes, then it must file a partnership return reflecting each member's share of the income/loss, and also, the members must file Montana individual income tax returns reflecting their share of the income/loss of the limited liability company. These returns are to be filed with the department as provided for under Title 15, chapter 30, MCA.

(2) remains the same.

AUTH: 15-1-201, MCA

IMP: ~~Title 35, chapter 8~~ 15-31-101, MCA

REASON: The department proposes amending ARM 42.23.702 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" in (1) to correspond with this name change enacted by the 2013 Legislature.

The department further proposes inserting the applicable statute in place of the larger chapter reference in the implementing section of the rule in keeping with the Secretary of State's current ARM formatting standards.

42.23.802 CARRYOVERS OF NET OPERATING LOSSES (1) through (3) remain the same.

(4) For taxable periods beginning after December 31, 1988, a taxpayer may elect to ~~forego~~ forgo the entire carryback period. Montana ~~corporation license~~ corporate income tax ~~form CLT-4~~ Form CIT provides an area to perfect this election. When ~~form CLT-4~~ Form CIT is filed with the department, the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on ~~form CLT-4~~ Form CIT, the net operating loss will be carried back and applied as provided in (1). For state purposes, an election to ~~forego~~ forgo a federal net operating loss carryback provision will not be accepted as a valid election.

AUTH: 15-31-501, MCA

IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.802 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature, to correct the name of a form, and to change the spelling of a word.

42.23.803 FILINGS IN CONNECTION WITH NET OPERATING LOSSES (1) through (2)(a) remain the same.

(b) For purposes of calculating the net operating loss deduction, each member of a unitary group engaged in business in this state must calculate its individual share of the unitary group's net income by applying its individual apportionment factor to the net income of the unitary group, then applying its

individual net operating loss available as calculated in (2)(a).

(3) and (3)(a) remain the same.

~~(b) For tax periods beginning before March 13, 1997, claims for refund of tax resulting from a net operating loss carryback must be filed within five years from the due date of the return for the year to which the loss is carried or within one year from the date of the overpayment, whichever period expires later.~~

(4) remains the same.

AUTH: 15-31-501, MCA

IMP: 15-31-119, 15-31-509, MCA

REASON: The department proposes amending ARM 42.23.803 as a matter of housekeeping to correct a format error in (2)(b) and to remove an outdated subsection of language applying to tax periods beginning before March 13, 1997 in (3).

42.23.804 TREATMENT OF MERGERS, AND CONSOLIDATIONS, AND REORGANIZATIONS (1) and (2) remain the same.

(3) In the case of a corporate entity that has converted to a disregarded entity, no net operating loss deduction may be claimed for net operating losses incurred by the corporate entity prior to the date of conversion.

AUTH: 15-31-501, MCA

IMP: 15-31-114, MCA

REASON: The department proposes amending ARM 42.23.804 to provide guidance to taxpayers regarding the treatment of net operating losses when a corporate entity converts to a disregarded entity. The language proposed to be added to the rule is intended to be informational and is not a change in the department's long-standing practice.

The department also proposes a change to the rule title to encompass the inclusion of the proposed language in (3).

42.23.805 TREATMENT OF NET OPERATING LOSSES SPANNING A CHANGE IN REPORTING METHODS (1) and (2) remain the same.

(3) Except as provided in (2), if a corporation incurs a net operating loss and files a return for the year to which the loss is carried carries that loss to a year that was filed under a different filing method, the net operating loss deduction may be limited. Both the tax period in which the net operating loss is being deducted and the net operating loss must be recalculated to the using the correct filing method of the year in which the loss is being deducted before the deduction is allowed. For example;

(a) if a corporation incurs a net operating loss in a prior separate company year, and wishes to carry that loss forward or back to a future combined year and a combined return is the taxpayer's proper filing method for each period, the loss must be recalculated as if it were filed on a combined, unitary basis before being carried to the combined year; or

(b) if a corporation incurs a net operating loss in a combined year filed correctly on a unitary basis, and wishes to carry back that loss to a prior, incorrectly filed, separate company year (or other incorrect filing method), the separate company year must be recalculated as if it were filed on a combined, unitary basis before the deduction is allowed.

(4) For purposes of applying a net operating loss deduction, a taxpayer or the department may undertake the necessary corrections described in (3) even if the affected tax year has already closed via the expiration of the statute of limitations. By correcting the filing method (or net operating loss), neither the taxpayer nor the department is reopening a closed year, but rather is deriving the correct figure to use for an open-year claim.

AUTH: 15-31-313, 15-31-501, MCA

IMP: 15-31-119, MCA

REASON: The department proposes amending ARM 42.23.805 to provide more detail in the rule for better guidance to taxpayers regarding the calculation and application of net operating losses when they have a change in filing method. The additional detail proposed to be added into the rule is intended to be informational and to include examples and is not a change in the department's long-standing practice for treating net operating losses that are affected by a change in filing method.

The department proposes the additional language in (4) to include more detail in the rule for better guidance to taxpayers when they are making the necessary corrections provided in (3). The additional detail proposed to be added into the rule is intended to be informational and is not a change in the department's long-standing practice in calculating the allowable net operating loss deduction when a claim is made for an open year and the deduction is determined, in whole or in part, from tax periods that are closed for assessment or refund of tax.

42.26.101 ALTERNATIVE TAX (1) remains the same.

(2) The election to pay the alternative tax is made by filing a return on Form CLT-4 CIT, reporting the dollar amount of Montana gross sales, and paying a tax determined on the basis of 1/2 percent of the amount of such sales. The \$50 minimum tax does not apply to the alternative tax. The gross receipts from sales made in Montana must be determined according to the provisions of ARM 42.26.255 and 42.26.257. A statement must be attached to the return to the effect that the corporation's only activities in Montana consist of making sales and do not include owning or renting real property or tangible personal property.

AUTH: 15-31-501, MCA

IMP: 15-31-101, 15-31-131, 15-31-122, MCA

REASON: The department proposes amending ARM 42.26.101 as a matter of housekeeping to correct the name of a form referenced in the rule.

42.26.202 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Allocation" ~~refers to~~ means the assignment of nonbusiness income to a particular state.

(2) "Annual rent" ~~is~~ means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property.

(a) and (b) remain the same.

(3) "Annual rental rate" ~~is~~ means the amount paid as rental for the property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(4) "Apportionment" ~~refers to~~ means the division of business income between states by the use of a formula containing apportionment factors.

(5) "Average value" of property" means the amount determined by averaging the values at the beginning and ending of the income tax year, but the department may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the property. (See ARM 42.26.237.)

(6) ~~The term "base~~ "Base of operations" ~~is~~ means the place of more or less permanent nature from which ~~the an~~ an employee starts ~~his their~~ his their work and to which ~~he they~~ they customarily ~~returns return~~ return in order to receive instructions from the taxpayer or communications from ~~his their~~ their customers or other persons, to replenish stock or other materials, repair equipment, or to perform any other function necessary to exercise ~~his their~~ their trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(7) remains the same.

(8) "Business activity" ~~refers to~~ means the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

(9) ~~The term "compensation~~ "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services; provided, that such amounts constitute income to the recipient under the federal IRC. In the case of employees not subject to the federal IRC, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute

income to the employees shall be made as though such employees were subject to the federal IRC.

(10) "Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer to perform the income-producing activity which gives rise to the particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property which give rise to the particular item of income.

~~(10)~~(11) The term ~~"employee"~~ "Employee" means any officer of the corporation; or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(11) remains the same, but is renumbered (12).

(13) "Income-producing activity" applies to each separate item of income and means the transactions and activity engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of producing that item of income. Such activity includes transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Income-producing activity includes, but is not limited to:

(a) the rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the utilization of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service;

(b) the sale, rental, leasing, licensing, or other use of real property;

(c) the rental, leasing, licensing, or other use of tangible personal property; or

(d) the sale, licensing, or other use of intangible personal property.

(12) remains the same, but is renumbered (14).

~~(13)~~(15) A ~~"mobile"~~ "Mobile property mile" is means the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(14) and (15) remain the same, but are renumbered (16) and (17).

~~(16)~~(18) "Original cost" ~~is deemed to be~~ means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for interstate commerce commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factory at its fair market value as of the date of acquisition by the taxpayer. (See ARM 42.26.235.)

(17) remains the same, but is renumbered (19).

~~(18)~~(20) The term ~~"real"~~ "Real and tangible personal property" includes land,

buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency.

(19) remains the same, but is renumbered (21).

(20) and (21) remain the same, but are renumbered (23) and (24).

~~(22)~~(25) The ~~"value"~~Value of owned real and tangible personal property ~~shall mean~~ means its original cost. (See ARM 42.26.235.)

~~(23)~~(26) The ~~"value of rented"~~Value of rented real and tangible personal property ~~means~~ the product of eight times the net annual rental rate. (See ARM 42.26.236.)

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

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, MCA

REASON: The department proposes amending ARM 42.26.202 to define the terms "costs of performance" and "income producing activity," as used in this subchapter, to provide additional guidance for corporate taxpayers who are reporting sales other than sales of tangible personal property in the sales apportionment factor. The department seeks to provide reasonable consistency with other states by implementing these definitions that have been adopted by the Multistate Tax Commission.

As a matter of housekeeping, the department also proposes updating the lead-in sentence of the rule to make it consistent with the lead-in statements found in other definition rules in ARM Title 42. The department further proposes adding the word "means" directly following each term reference where it is missing and appropriate to include for consistency with this format in other definition rules. The proposed reformatting and renumbering of the rule is intended to eliminate unnecessary words and correct the alphabetical order of the rule to make the terms easier to locate.

42.26.301 WATER'S-EDGE ELECTION (1) Only multinational corporations subject to the Montana ~~corporate license~~ corporate income tax may apportion income under a water's-edge, unitary combination method as set forth in 15-31-322, MCA.

AUTH: 15-31-501, MCA

IMP: 15-31-322, MCA

REASON: The department proposes amending ARM 42.26.301 as a matter of housekeeping to update the name "corporation license tax" to "corporate income tax" to correspond with this name change enacted by the 2013 Legislature.

42.26.302 PROCEDURE (1) To perfect a water's-edge election, a taxpayer must complete Form WE – ELECT and file the form with the department within the first 90 days of the first tax year of the three-year period for which the election is to

become effective. If the first tax period for which the election is to become effective is less than 90 days, the taxpayer will have until the end of the tax period to file the election. ~~The election must disclose the taxpayer's identity and a complete listing of all affiliates owned in excess of 50 percent.~~

(a) A taxpayer cannot make a water's-edge election for prior tax periods.

(b) If a taxpayer files a water's-edge election after the 90-day deadline, the taxpayer must establish reasonable cause for failing to satisfy the 90-day deadline.

(i) Reasonable cause is defined in ARM 42.2.304. Examples of what ordinarily does or does not constitute reasonable cause are provided in ARM 42.3.105.

(ii) Failure to timely file a water's-edge election on the belief that an election was unnecessary because the taxpayer incorrectly asserted a nonunitary relationship with the foreign corporation(s) does not constitute reasonable cause.

(2) and (3) remain the same.

(4) As stated in (3), the water's-edge election is binding for a three-year renewable period. If a taxpayer wishes to continue to file on a water's-edge basis, a Form WE – ELECT must again be filed with the department within the first 90 days of the first tax year of the three-year period for which the election is to become effective.

AUTH: 15-31-501, MCA

IMP: 15-31-324, MCA

REASON: The department proposes amending ARM 42.26.302 to include additional detail highlighting the department's long-standing practice (as found in Form WE – ELECT) concerning the disallowance of "retroactive" water's-edge elections.

The department also proposes a housekeeping amendment in (1) to strike excess language from the rule. The requirement to file Form WE – ELECT sufficiently covers the taxpayer's requirement to disclose all affiliates owned in excess of 50 percent, which therefore renders the inclusion of this detail in the rule unnecessary.

In regards to a water's-edge election, the department proposes amending the rule to include helpful language in new (1)(b) that will direct the public to the reasonable cause guidelines defined in ARM 42.2.304, and the examples provided in ARM 42.3.105.

42.26.311 CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) through (3) remain the same.

(4) ~~A if a corporation incorporated outside the United States, if is "engaged in business" or "doing business" pursuant to 15-31-101, MCA, in this state, it is included in a water's-edge return.~~

(5) remains the same.

AUTH: 15-31-501, MCA

IMP: 15-31-322, MCA

REASON: The department proposes amending ARM 42.26.311 to provide better guidance to taxpayers regarding the inclusion in a water's-edge combined group of all corporations engaged or doing business in Montana. The proposed amendment is intended to be informational and is not a change in the department's long-standing practice.

42.26.313 REORGANIZATIONS OF WATER'S-EDGE TAXPAYERS

(1) through (5) remain the same.

(6) If a nonwater's-edge taxpayer is purchased or otherwise acquired by an entity not subject to tax under 15-31-101, MCA, and whose parent and affiliates are not subject to tax under 15-31-101, MCA, the taxpayer may make a valid water's-edge election as provided for in ARM 42.26.302. The taxpayer must complete Form WE – ELECT and file the form with the department within the first 90 days after the purchase or acquisition date.

(7) If a nonwater's-edge taxpayer who did not previously own greater than 50 percent of an entity incorporated outside the United States purchases or otherwise acquires an entity incorporated outside the United States, the taxpayer may make a valid water's-edge election as provided for in ARM 42.26.302. The taxpayer must complete Form WE – ELECT and file the form with the department within the first 90 days after the acquisition date.

AUTH: 15-31-501, MCA

IMP: 15-31-324, MCA

REASON: The department proposes amending ARM 42.26.313 to include more detail in the rule for added guidance to taxpayers regarding the procedures necessary for making a valid water's-edge election in certain situations. The additional language proposed to be added into the rule is intended to be informational and is not a change in the department's long-standing practice regarding a water's-edge election and the acquisition of a nonwater's-edge taxpayer by an entity not subject to tax in Montana, and the acquisition of a foreign entity by a Montana taxpayer that has not previously owned foreign entities.

42.26.505 SPECIFIC LISTING OF UNPROTECTED AND PROTECTED ACTIVITIES (1) through (2)(o) remain the same.

(p) owning, leasing, using, or maintaining any of the following facilities or properties in-state:

(i) and (ii) remain the same.

(iii) any kind of office other than an in-home office as described and permitted under ~~(2)(r)~~ and (3)(b);

(iv) through ~~(2)(r)~~ remain the same.

(s) entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or

~~(t) shipping or delivering goods into Montana by means of:~~

~~(i) private vehicle;~~

~~(ii) rail;~~
~~(iii) air; or~~
~~(iv) other carrier, irrespective of whether a shipment or delivery fee or other charge is imposed, directly or indirectly, upon the purchaser; or~~
~~(u)(t) conducting any activity not listed in (3) which is not entirely connected to requests for orders, even if such activity helps to increase purchases.~~
(3) remains the same.

AUTH: 15-1-201, 15-31-313, MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASON: The department proposes amending ARM 42.26.505(2) to make a format correction in (p), and to strike the language in (t) to remove from the list of unprotected activities the shipment or delivery of goods into Montana by various methods, because these are no longer considered activities that, in and of themselves, would create a taxable nexus with Montana. This change is being proposed to make the language in this rule consistent with that used by the Multistate Tax Commission in its uniformity guidelines.

4. The department proposes to repeal the following rule:

42.23.117 SURTAX

AUTH: 15-31-501, MCA

IMP: 15-31-121, MCA

REASON: In a recent biennial review of its rules, the department determined that ARM 42.23.117 is no longer necessary and can be repealed, because the language in 15-31-121, MCA, regarding surtaxes, was repealed by the 1999 Legislature.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 13, 2016.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is

noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules may significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 22, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.17.101, 42.17.105,) PROPOSED AMENDMENT
42.17.114, 42.17.122, 42.17.131, and)
42.17.218 pertaining to the)
computation of wage withholding for)
state income taxes)

TO: All Concerned Persons

1. On September 29, 2016, at 1 p.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 12, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) through (6) remain the same.

(7) "Net taxable earnings" means an employee's gross earnings minus the product of the number of the employee's claimed withholding allowances multiplied by the withholding exemption.

(7) through (10) remain the same, but are renumbered (8) through (11).

~~(11)~~(12) "Reporting forms" includes, but is not limited to:

(a) Form MW-1, the Montana Withholding Tax Payment ~~form~~ Voucher;

(b) Form MW-3, the Montana Annual ~~Wage~~ W-2 1099 Withholding Tax Reconciliation form;

(c) remains the same.

(d) Form RW-1, the Mineral Royalty Withholding Tax Payment Voucher form; ~~and~~

(e) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax Reconciliation form;

(f) Form W-4, the federal Employee's Withholding Tax Allowance Certificate;
and

(g) Form 1099, the federal Information Return.

(12) and (13) remain the same, but are renumbered (13) and (14).

(15) "Withholding exemption" is the amount used in the computation of net taxable earnings. The withholding exemption for the 2017 annual table and computations is \$2,110. For other tables, the withholding exemption is divided by the divisor in ARM 42.17.105 corresponding to the payroll period.

AUTH: 15-30-2547, 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2538, MCA

REASON: The department proposes amending ARM 42.17.101 to add definitions for the terms "net taxable earnings" and "withholding exemption" as they apply to the withholding tax formula used by computerized payroll systems and because the terms are proposed to be added into ARM 42.17.105 in this same rulemaking notice. The department's intent in defining the terms in this definitional rule and adding the process details to ARM 42.17.105 is to make the withholding of Montana tax from wages a more predictable process for the taxpayer.

Defining "net taxable earnings" and "withholding exemption" is intended to provide for indexing of the exemption amount used in the withholding tax formula to better reflect changes resulting from inflation. The withholding exemption amount of \$2,110 is intended to approximate personal exemption in the calculation net taxable earnings.

The department further proposes amending the list of withholding forms provided in newly numbered (12) to add a missing "W" to the Form MW-1, to correct the title of the Form MW-3, and to add Form W-4 and Form 1099.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold according to the "Montana Wage Withholding Tax Tables," provided by the department-

~~(2) The referenced tax tables in (1) may be obtained by and available:~~

(a) online at revenue.mt.gov; or

~~(a)(b) telephoning: by calling~~

Department of Revenue

Customer Service Center

~~(406) 444-6900 in (Helena),~~

(866) 859-2254 (toll free); outside of Helena; or

~~(b)(c) by writing to:~~

Montana Department of Revenue

P.O. Box 5835

~~Helena, Montana 59604-5835; or~~

~~(c) accessing:~~

~~the department's web site: revenue.mt.gov.~~

(2) Montana wage withholding tables are based on the following annual withholding formulas as adjusted annually for inflation. Wage withholding is equal to:

(a) 1.80% of the first \$7,105 of taxable earnings; plus

(b) 4.40% of the next \$8,120 of taxable earnings; plus

(c) 6.00% of the next \$106,575 of taxable earnings; plus

(d) 6.60% of taxable earnings over \$121,800.

(3) Withholding formulas for nonannual payroll periods are calculated by dividing the dollar amounts for annual payroll in (2) by the ratio of the number of working days in a year to the number of working days in the payroll period. The following table shows payroll periods and the corresponding divisors:

| <u>Payroll Period</u> | <u>Divisor</u> |
|-----------------------|----------------|
| <u>Monthly</u> | <u>12</u> |
| <u>Semi-Monthly</u> | <u>24</u> |
| <u>Biweekly</u> | <u>26</u> |
| <u>Weekly</u> | <u>52</u> |
| <u>Daily</u> | <u>260</u> |

(4) The department publishes the tables based on the formulas in (2) and (3) at revenue.mt.gov, showing the amount to withhold each pay period for taxable incomes within ranges of taxable earnings.

(5) By October 1 of each year, the department shall adjust the withholding formulas for inflation by multiplying the dollar amounts in (2) and the withholding exemption amount in ARM 42.17.101 by the inflation factor, as defined in 15-30-2101, MCA.

(6) If the department determines that the inflation adjustment is immaterial, it may keep existing withholding tables in effect for another year.

AUTH: 15-30-2620, MCA

IMP: 15-30-2103, 15-30-2502, MCA

REASON: The department proposes amending ARM 42.17.105 to provide the wage withholding formula and calculation process the department uses within the rule to make the withholding of Montana tax from wages transparent, readily available, and a more predictable process for taxpayers as set forth in new (2) through (6).

An employer calculates wage withholding based on the employee's "Employee's Withholding Allowance Certificate" (Form W-4) as submitted to the employer upon hire. Many employees rarely, if ever, change their originally submitted Form W-4 information. This can result in continually increasing wage withholding amounts without a corresponding increase in tax liability.

An example is a taxpayer who submitted a Form W-4 claiming single status with zero exemptions in 2005. Based on an annual salary of \$10,000, Montana withholding for the year would amount to \$557. Moving forward to 2016, and assuming the employee received wages at the Federal Reserve's two percent inflation factor target, the employee's annual salary would have increased to approximately \$12,433. Using the same Form W-4 status, wage withholding on this amount would be \$726, or an increase of \$169, for the year. Because Montana income tax tables are adjusted annually for inflation, the income tax due by the individual for 2006 would remain similar to the amount due in 2005.

Leaving the withholding formulas unchanged for inflation creates an

increasing difference between the amount withheld intended as an estimate of the employee's Montana tax and the actual tax owed on those wages. Adjusting the formulas means individuals will have less difficulty determining whether their withholding allowances and amount are appropriate for their tax situation. It will also be more efficient for the department to provide guidance regarding wage withholding amounts.

The department further proposes combining the original (1) and (2) together to eliminate unnecessary language from the rule.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS (1) On or before February 28 of each year, every employer must file with the department a ~~form~~ Form MW-3, Montana Annual Wage W-2 1099 Withholding Tax Reconciliation. Form MW-3 must be accompanied by the original copies of each employee's earnings statements on federal ~~form~~ Form W-2.

(a) Employee's earning statements and the federal ~~form~~ Form W-2, must be prepared for each employee, regardless of whether or not withholding taxes were actually withheld from the employee's wages. The state wages and state income tax withheld must be shown in the boxes labeled for state information.

(b) An original copy of the federal ~~form~~ Form W-2 must be filed with the ~~form~~ Form MW-3, and two copies must be furnished to the employee not later than January 31 of each year.

(c) Montana does not provide substitute earning statement forms or allow earning statements which do not conform to federal ~~form~~ Form W-2 requirements.

(2) remains the same.

(3) Computer-generated federal ~~form~~ Form W-2 equivalents in printout form may be allowed by the department in lieu of W-2s or electronic media.

(4) remains the same.

(5) The federal ~~form~~ Form 1099R that has Montana state income tax withholding must be filed with the department in paper or electronic form by February 28 following the year that the tax was withheld.

AUTH: 15-30-2620, MCA

IMP: 15-30-2506, 15-30-2507, MCA

REASON: The department proposes amending ARM 42.17.114 as a matter of housekeeping to capitalize the word "form" throughout the rule because it is part of a proper name, and to update the reference to Form MW-3 in (1) to reflect a change that occurred when the word "wage" was replaced with "W-2 1099" in the form's title beginning in tax year 2015.

42.17.122 RETURNS OF INFORMATION AGENTS (1)

Federal ~~form~~ Form 1099s, U.S. Information Returns, are required to be filed for certain dividends, interest in excess of \$10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions as specified in 15-30-2616, MCA. Federal ~~form~~ Form 1099s may be filed on paper documents or electronically. The dates for filing the information returns with the department are the same as the due dates for filing the

corresponding federal return. The returns are to be filed with:

Montana Department of Revenue
P.O. Box 5835
Helena, Montana 59604-5835.

(2) Paper documents are to be prepared on the appropriate federal information return and a copy filed with the department. Returns filed on paper forms are to be accompanied by a copy of federal ~~form~~ Form 1096, Annual Summary, summarizing the information being reported to the department.

(3) Federal ~~form~~ Form 1099s filed electronically are to conform to the specifications outlined in Federal Publication 1220 for the applicable year.

AUTH: 15-30-2620, MCA
IMP: 15-30-2616, MCA

REASON: The department proposes amending ARM 42.17.122 as a matter of housekeeping to capitalize the word "form" throughout the rule, because it is part of a proper name.

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, the amount claimed for Montana may be different than the amount claimed on the federal ~~Form W-4~~ Employee's Withholding Allowance Certificate (Form W-4), reported on the line stating "total number of allowances you are claiming," furnished by the employee to the employer for federal withholding tax purposes. The department may determine whether the amount claimed on the federal Form W-4 should be adjusted for state withholding purposes. The department does not provide ~~forms~~ a separate form for this purpose. The department has determined that the federal child tax credit that allows extra allowances for federal withholding is not allowed for Montana purposes when determining the number of allowances for Montana withholding.

(2) and (3) remain the same.

(4) Any change to the "total number of allowances you are claiming," on federal Form W-4 for federal purposes, including federal ~~re-~~ redeterminations of allowances, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a ~~fixed~~ maximum number by the department under (5). If a ~~re-~~ redetermination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) For any federal Form W-4 on which an employee has claimed more than ten withholding allowances, the following apply:

(a) An ~~The employer is required to~~ ~~must~~ provide ~~the department with~~ a copy of ~~any the~~ federal Form W-4 on which an employee has claimed more than ten withholding allowances ~~to~~ no later than the last day of the payroll period during which the employer received the form to the following address:

Department of Revenue

P.O. Box 5835 7149
Helena, Montana 59604-5835 7149.

(b) The department may revise the number of withholding allowances claimed to a maximum allowed for state tax purposes.

(c) The employer shall continue to withhold based on the most recently filed federal Form W-4 with fewer than 11 allowances claimed. If no Form W-4 with fewer than 11 allowances has been filed, the employer shall withhold for Montana purposes on the basis of zero withholding allowances.

~~(a)~~(d) If, upon review of any such certificates, the department determines that the certificate federal Form W-4 provided is defective, it the department may require ~~in writing~~ that the employer disregard the allowances claimed and advise the employer in writing of a the maximum number of withholding allowances permitted the employee for state tax withholding purposes.

~~(b)~~(e) The filing of a new ~~certificate~~ federal Form W-4 by an employee whose withholding allowances have been set at a fixed maximum number by the department shall be disregarded by the employer unless a number equal to or ~~less~~ fewer than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

(6) remains the same.

~~(7) If an employee fails to provide the department with~~ the department does not have sufficient information to ~~make the determination in (6)~~ determine the maximum number of permitted allowances in (5), the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

(8) Employers shall provide a copy of an employee's federal Form W-4 upon request by the department, at any time, for the purposes of state tax administration.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASON: The department proposes amending ARM 42.17.131 to prepare the abbreviation "Form W-4" for future use throughout the remainder of the rule and to make a portion of the language in (1) clearer.

The department proposes restructuring (5) for added clarity as to the time frame within which employers must provide documentation (by the last day of the pay period) upon receipt of an employee's federal Form W-4 claiming more than ten allowances. The proposed changes also lay out the employers' withholding obligations while waiting for the department's determination. The department also proposes updating a mailing address in the rule.

The department proposes removing the language referring to obligations of employees in (7) because it does not relate to the direct requirement from claimants. This condition in the rule had the potential to create overlapping responsibilities, which was not the original intent of the department. This language is proposed to be replaced instead by language that places the obligation on the department to use its best estimate when determining a maximum number of allowances. This means that the department must use all the available information, including those provided

by employees through means other than the federal Form W-4. The department also proposes correcting an internal reference from (6) to (5) in this same section.

The department further proposes adding new (8) to include a requirement that employers must submit copies of federal Form W-4 certificates upon the department's request. Although this obligation is inferred by the power of the department to revise returns and examine records, this proposed addition of the language consolidates this obligation to provide information on allowance certificates in one single rule.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold Montana income tax must register for a Montana tax identification number on ~~form~~ Form GenReg, Registration/Application for Permit, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for a Montana tax identification number shall be sent to:

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805.

(2) and (3) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2509, MCA

REASON: The department proposes amending ARM 42.17.218(1) as a matter of housekeeping to capitalize the word "form" because it is part of a proper name.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 13, 2016.

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

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, 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. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 22, 2016

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the rotation of) PROPOSED ADOPTION
executive branch agencies on the)
State Records Committee)

TO: All Concerned Persons

1. On September 22, 2016, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 15, 2016, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

NEW RULE I STATE RECORDS COMMITTEE MEMBERSHIP ROTATION

(1) Per 2-6-1107, MCA, the following membership rotation is established for those executive branch agencies (including those that are administratively attached/allocated) that are not designated as permanent representatives of the state records committee:

- (a) First rotation (October 1, 2017, through September 30, 2019):
 - (i) Department of Commerce;
 - (ii) State Board of Education;
 - (iii) Department of Corrections;
 - (iv) Department of Environmental Quality; and
 - (v) Department of Labor and Industry.
- (b) Second rotation (October 1, 2019, through September 30, 2021):
 - (i) Department of Natural Resources and Conservation;
 - (ii) Department of Public Health and Human Services;
 - (iii) Department of Military Affairs;
 - (iv) Department of Fish, Wildlife and Parks; and
 - (v) Department of Livestock.
- (c) Third rotation (October 1, 2021, through September 30, 2023):
 - (i) Department of Transportation;
 - (ii) Department of Revenue;
 - (iii) Office of Public Instruction;

- (iv) Department of Public Service Regulation; and
- (v) State Auditor.
- (d) Fourth rotation (October 1, 2023, through September 30, 2025):
 - (i) Department of Agriculture;
 - (ii) Department of Commerce;
 - (iii) State Board of Education;
 - (iv) Department of Corrections; and
 - (v) Department of Environmental Quality.

(2) The fifth rotation will begin with the Department of Labor and Industry, and, as with all future rotations of the executive branch agencies not designated as permanent members of the state records committee, will follow the order set out above in the first, second, third, and fourth rotations and be for a two-year period beginning on October 1 and ending September 30 two years later.

AUTH: 2-6-1101, MCA
IMP: 2-6-1107, MCA

REASON: House Bill 123 passed by the 2016 Montana Legislature enacted 2-6-1107, MCA, which sets out the composition of the State Records Committee, including providing for a rotation of five executive branch agencies to serve two-year terms on the committee. This rule is proposed to comply with the requirement that the rotation of executive branch agencies be set forth in administrative rule.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., September 30, 2016.

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

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

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on August 2, 2016.

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 22nd day of August, 2016.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a) NOTICE OF ADOPTION OF A
temporary emergency rule closing a) TEMPORARY EMERGENCY RULE
portion of the Yellowstone River and)
all associated tributaries)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department), after approval by Fish and Wildlife Commissioners, Dan Vermillion, Richard Stuker, Matthew Tourtlotte, and Gary Wolfe, has determined the following reasons justify the adoption of a temporary emergency rule:

(a) There is significant whitefish die-off due to a microscopic parasite, *Tetracapsula bryosalmonae*, causing Proliferative Kidney Disease on the Yellowstone River and its tributaries from the northern boundary of Yellowstone National Park in Gardiner, Montana to the Highway 212 Bridge in Laurel, Montana.

(b) The disease is one of the most serious diseases to impact whitefish and trout and can be spread to different species as well as different water bodies if diseased fish are moved from one water body to another.

(c) High water temperatures, low stream flow, and all other stressors increase the mortality of this infection. The less stress the fish face from boaters, anglers, and recreationists, the more likely the survival rate will increase and the threat of spread of disease will decrease.

(d) Therefore, as this situation constitutes an imminent peril to public welfare, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2016 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The temporary emergency rule is effective August 19, 2016 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I YELLOWSTONE RIVER AND ASSOCIATED TRIBUTARIES
TEMPORARY EMERGENCY CLOSURE TO ALL PUBLIC OCCUPATION (1) The Yellowstone River and all of its associated tributaries are closed:

(a) from the northern boundary of Yellowstone National Park in Gardiner, Montana to the Highway 212 Bridge in Laurel, Montana; and

(b) to all public occupation and recreation including, but not limited to, floating, swimming, wading, fishing, and boating.

(2) This rule is effective until environmental conditions improve and fish mortality ceases. This rule will expire as soon as the department determines these conditions have been met but not for a period longer than 120 days. Signs restricting use of the Yellowstone River and its tributaries will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to, Department of Fish, Wildlife and Parks Region 3, 1400 South 19th Ave., Bozeman, MT 59718-5498; or e-mail thorton@mt.gov. Any comments must be received no later than September 30, 2016.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener

M. Jeff Hagener

Secretary

Fish and Wildlife Commission

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

Certified to the Secretary of State August 19, 2016.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.404 pertaining to)
department of livestock brands)
enforcement division fees)

TO: All Concerned Persons

1. On July 22, 2016, the Department of Livestock published MAR Notice No. 32-15-264 pertaining to the proposed amendment of the above-stated rule at page 1231 of the 2016 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

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

Certified to the Secretary of State August 22, 2016.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.22.1242 regarding the oil)
and gas privilege and license tax)

To: All Concerned Persons

1. On May 20, 2016, the Board of Oil and Gas Conservation (board) and the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-192 regarding the proposed amendment of the above-stated rule at page 866 of the 2016 Montana Administrative Register, Issue Number 10.

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

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

COMMENT 1: Commenter questioned what product price was used as the basis for taxation.

RESPONSE: The board thanks the commenter for the comment. According to ARM 36.22.1242(2), the amendment is based on the market value of each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported.

COMMENT 2: One commenter expressed concern that the tax rate for operators would be tripled.

RESPONSE: The board thanks the commenter for the comment. The amendment of ARM 36.22.1242 affects the portion of the tax directed toward support of board activities. The current tax rate paid by operators and royalty owners is 0.26%, with the difference between the board's rate – currently 0.09% – and the current tax rate 0.26% being distributed to cities, towns, and counties, as required by statute. An increase in the board's rate from 0.09% to 0.3% will result in an increase of the tax rate paid by operators and royalty owners of 0.04%, which is the difference between the current tax rate paid of 0.26% and the amended tax rate paid of 0.3%. The increase in the tax rate paid by operators and royalty owners amounts to a 15.4% increase, not a 300% increase as stated by the commenter.

COMMENT 3: Commenters expressed concern that the rule amendment will have a significant impact on operators.

RESPONSE: The board thanks the commenters for the comments. Adequate funding through the privilege and license tax rate is required to perform the statutory responsibilities of the board and the department. The board recognizes the rule amendment will impact operators and royalty owners, as well as cities, towns, and counties.

COMMENT 4: Commenters stated that with reduced drilling activity in the state the board should reduce expenses as energy companies have.

RESPONSE: The board thanks the commenters for the comments. Along with the increased privilege and license tax the board has chosen to leave one position directly related to permitting activities vacant, will not fill one additional position, has delayed or canceled equipment purchases, and has reduced other optional expenditures. These reductions are equivalent to a 15% to 20% reduction from the budget approved by the legislature. Other fixed costs and transfers from the board's special revenue account by the legislature are not under the board's control.

COMMENT 5: One commenter stated that the funds taken in the last legislative session should not affect the proposed amendment.

RESPONSE: The board thanks the commenter for the comment. Over \$3 million have been transferred from the board's special revenue account during the past and current biennium to fund non-board-related activities. This reduction in reserve funds is the primary reason that ARM 36.22.1242 must be amended at this time.

COMMENT 6: One commenter questioned whether the proposed amendment is necessary.

RESPONSE: The board thanks the commenter for the comment. Reduced distributions from the privilege and license tax due to low oil and gas prices, along with legislative transfers from the board's special revenue account during the remainder of the biennium, require immediate action to avoid a negative balance in the board's special revenue account. The length of time required for the rulemaking process and the delay between the effective date of the tax increase and the receipt of revenue limit the board's flexibility in setting an appropriate tax rate under unstable market conditions. It is expected that rulemaking to reduce the license and privilege tax will be undertaken if product prices stabilize at a higher level and an adequate balance in the board's special revenue account is achieved.

COMMENT 7: One commenter expressed concern that the rule doesn't take into account the impact to reducing the share of taxes to impacted counties, cities, and towns.

RESPONSE: The board thanks the commenter for the comment. The board has considered the impact of this rule amendment on cities, towns, and counties and recognizes that an increase in the privilege and license tax will have a greater overall impact on these groups than it will on operators and royalty owners.

COMMENT 8: One commenter expressed concerns about barriers the amendment will create to development in the state.

RESPONSE: The board thanks the commenter for the comment. The board anticipates lowering the privilege and license tax rate if product prices stabilize at a higher level and an adequate balance in the board's special revenue account is achieved.

COMMENT 9: One commenter supported an increase of the privilege and license tax rate.

RESPONSE: The board thanks the commenter for the comment and support.

/s/ Linda Nelson
LINDA NELSON
Chair, Board of Oil and Gas Conservation

/s/ Rob Stutz
ROB STUTZ
Rule Reviewer

Certified to the Secretary of State August 22, 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 37.71.401, 37.71.601, and)
37.71.602 pertaining to Low Income)
Weatherization Assistance Program)
(LIWAP) for the 2014-2015 heating)
season and the 2015-2016 heating)
season)

TO: All Concerned Persons

1. On July 8, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-749 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1142 of the 2016 Montana Administrative Register, Issue Number 13.

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

3. No comments or testimony were received.

4. With the exception of the proposed changes to ARM 37.71.401 and ARM 37.71.601(5), (5)(a), and (6), the department intends to apply the amendments to these rules retroactively to July 1, 2016. A retroactive application of the proposed amendments will not have a negative impact on any affected party, except the amendments to ARM 37.71.401 and ARM 37.71.601(5), (5)(a), and (6). The amendments to those rules provide that priority for weatherization services will be based on a household's energy usage instead of its energy burden. This new method of determining priority will cause some households to have a lower priority and other households to have a higher priority than under the current rules. ARM 37.71.401 and ARM 37.71.601(5), (5)(a), and (6) will be effective the day after publication of the final adoption notice.

/s/ Barbara Banchemo
Barbara Banchemo
Rule Reviewer

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

Certified to the Secretary of State August 22, 2016.

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through IX pertaining to)
creating the Montana achieving a)
better life experience (ABLE) program)

TO: All Concerned Persons

1. On May 20, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-753 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 869 of the 2016 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rule I (37.2.520), II (37.2.521), III (37.2.522), IV (37.2.525), V (37.2.526), VI (37.2.527), VII (37.2.530), VIII (37.2.531), and IX (37.2.532) as proposed.

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

COMMENT #1: One commenter is seeking clarification as to whether the \$3,000 state tax deduction for contributions to an ABLE account applies whether a Montana resident commits the funds to an in-state or out-of-state ABLE account or just to an in-state ABLE account.

RESPONSE #1: Montana residents can commit the funds to an out-of-state ABLE account. Even though the owner of the ABLE account must be a Montana resident at the moment of the contribution to qualify for the deduction, the maintenance of the ABLE account out-of-state is permitted by the statute.

Section 11 of Senate Bill (SB) 399 must be read in conjunction with Section 16 of the bill, 15-30-2110(12), MCA, shown below for your information. This section of the Montana tax code specifically provides that the ABLE account may be maintained by another state as long as it remains in conformity with section 529A(e)(7) of the Internal Revenue Code.

"15-30-2110(12)(a), MCA An individual who contributes to one or more accounts established under the Montana achieving a better life experience program or to a qualified program established and maintained by another state as provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a

reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in 53-25-118."

COMMENT #2: A commenter stated Montana needs to have a nationally competitive ABLE program. The commenter went on to recommend Montana investigate joining a consortium of other states with ABLE accounts, thereby allowing us to pool resources and share expertise.

RESPONSE #2: The comment will be shared with the ABLE Program Oversight Committee. According to statute, the advisory committee will recommend financial institutions for approval by the department to act as managers of the accounts.

COMMENT #3: One commenter stated that no one with a disability is involved with the creation or management of this program.

RESPONSE #3: According to the statute, the ABLE program oversight committee must consist of five members as follows: (a) the director of the Department of Public Health And Human Services or the director's designee; (b) the director of the Department of Administration or the director's designee; and (c) three members of the general public, one of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary and two of who have experience working on behavior of disabled individuals. The statute further states the governor will appoint the public members of the committee.

Current committee members include:

Sheila Hogan, Director, Montana Department of Administration;

Novelene Martin, Bureau Chief, Developmental Disabilities Program (designee for the Director of the Department of Public Health and Human Services), and parent of a child with a disability;

Jon Benion, parent of a child with a disability;

Kat Patterson, parent of a child with a disability and experience working in the financial industry; and

Teri Calton, experience working in the financial industry.

4. The department intends to apply these rules retroactively to January 1, 2016. A retroactive application of the rules does not result in a negative impact to any affected party.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State August 22, 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 March 31, 2016. This table includes those rules adopted during the period April 1, 2016, through June 30, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2016, 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 2016 Montana Administrative Register.

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