

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

STATE AUDITOR, Office of, Title 6

6-229 (Commissioner of Securities and Insurance) Notice of Proposed Repeal - Comprehensive Health Care Association and Plan. No Public Hearing Contemplated. 2026-2028

ENVIRONMENTAL QUALITY, Department of, Title 17

17-387 (Underground Storage Tanks) Notice of Public Hearing on Proposed Amendment - Reporting of Confirmed Releases - Adoption by Reference - Release Categorization. 2029-2034

LABOR AND INDUSTRY, Department of, Title 24

24-17-320 Notice of Public Hearing on Proposed Amendment - Prevailing Wage Rates for Public Works Projects. 2035-2039

24-129-17 (Board of Clinical Laboratory Science Practitioners) Notice of Public Hearing on Proposed Amendment and Adoption - Fees - Supervision - Minimum Standards for Licensure - Military Training or Experience - Temporary Practice Permits - Unprofessional Conduct - Nonroutine Applications. 2040-2046

LIVESTOCK, Department of, Title 32

32-16-276 Notice of Proposed Amendment - Permits - Special Requirements for Sheep - Brands and Earmarks. No Public Hearing Contemplated. 2047-2050

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-780 Notice of Public Hearing on Proposed Amendment - Medicaid Cost Share. 2051-2054

SECRETARY OF STATE, Office of, Title 44

44-2-221 Notice of Public Hearing on Proposed Amendment - Access to Documents and Fees for Copies. 2055-2056

RULE ADOPTION SECTION

STATE AUDITOR, Office of, Title 6

6-227 (Commissioner of Securities and Insurance) Notice of Adoption - Group Disability Income Opt Out. 2057

LABOR AND INDUSTRY, Department of, Title 24

24-11-319 Notice of Amendment and Adoption - Unemployment Insurance Program. 2058-2061

LIVESTOCK, Department of, Title 32

32-16-278 Notice of Amendment - Department of Livestock Animal Health Division Fees - Exportation of Alternative Livestock. 2062

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-767 Notice of Amendment - Targeted Case Management Services for Youth With Serious Emotional Disturbance, Reimbursement. 2063

37-770 Notice of Amendment - Medicaid Eyeglass Reimbursement. 2064

REVENUE, Department of, Title 42

42-2-956 Notice of Amendment and Repeal - Property Reappraisal Cycles - Assessment Review Deadlines - Electronic Classification and Appraisal Notices - Agricultural Land Regions - Bona Fide Agricultural Operation Determinations (Montana Tax Appeal Board Ruling). 2065-2071

42-2-962 Notice of Amendment - Pass-Through Entity Audit Adjustments - Computation of Composite Tax - Pension and Annuity Income Exclusions - Small Business Liability Funds. 2072

42-2-963 Notice of Adoption, Amendment, Transfer and Amendment, and Repeal - Application of Penalties and Interest - Reasonable Cause - Timeframe for Appealing Notices of Assessment. 2073-2074

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2075-2076

How to Use ARM and MAR. 2077

Accumulative Table. 2078-2088

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
6.6.1906, 6.6.1907, 6.6.1908,)	
6.6.1910, 6.6.1911, 6.6.1913, and	)	NO PUBLIC HEARING
6.6.1914 pertaining to	)	CONTEMPLATED
Comprehensive Health Care)	
Association and Plan)	

TO: All Concerned Persons

1. On December 12, 2016, the Commissioner of Securities of Insurance, Montana State Auditor (CSI), proposes to repeal 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. on December 5, 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 department proposes to repeal the following rules:

6.6.1906 OPERATING RULES FOR THE ASSOCIATION on page 6-211 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA
IMP: 33-22-1502, 33-22-1503, MCA

6.6.1907 ESTABLISHING THE MONTANA AFFORDABLE CARE PLAN on page 6-212 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA
IMP: 33-22-1502, 33-22-1503, MCA

6.6.1908 ELIGIBILITY REQUIREMENTS FOR THE MACP HIGH RISK POOL PLAN on page 6-212 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA
IMP: 33-22-1502, 33-22-1503, MCA

6.6.1910 ENROLLMENT CAPS AND OTHER FUNDING LIMITATIONS on page 6-213 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA

IMP: 33-22-1502, 33-22-1503, MCA

6.6.1911 MACP BENEFIT PLAN AND RATES on page 6-214 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA

IMP: 33-22-1502, 33-22-1503, MCA

6.6.1913 LEAD CARRIER CONTRACT on page 6-214 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA

IMP: 33-22-1502, 33-22-1503, MCA

6.6.1914 FRAUD, DUMPING AND RECISSION on page 6-214 of the Administrative Rules of Montana.

AUTH: 33-22-1502, MCA

IMP: 33-22-1502, 33-22-1503, 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 repeal of ARM 6.6.1906, 6.6.1907, 6.6.1908, 6.6.1910, 6.6.1911, 6.6.1913, and 6.6.1914 is reasonably necessary because the statutes authorizing the existence of and purpose for the Montana Comprehensive Health Association and plans were repealed effective January 1, 2016. Also, the MCHA ceased to offer any plans effective January 1, 2014. Therefore, these rules are no longer needed and the authority to enact and enforce these rules no longer exists.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Christina L. Goe, General Counsel, Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-1942; fax (406) 444-3499; or e-mail cgoe@mt.gov, and must be received no later than 5:00 p.m., December 8, 2016.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Darla Sautter at the above address no later than 5:00 p.m., December 8, 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 list.

8. 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 may sign up by clicking on the blue button on the CSI's web site at: <http://csimt.gov/laws-rules/> to specify 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. Requests may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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 repeal of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ Christina L. Goe
Christina L. Goe
General Counsel

Certified to the Secretary of State October 31, 2016.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.56.506, 17.56.507, 17.56.607, and)	ON PROPOSED AMENDMENT
17.56.608 pertaining to reporting of)	
confirmed releases, adoption by)	(UNDERGROUND STORAGE
reference, and release categorization)	TANKS)

TO: All Concerned Persons

1. On December 12, 2016, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., December 6, 2016, to advise us of the nature of the accommodation that you need. Please contact Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

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

17.56.506 REPORTING OF CONFIRMED RELEASES (1) Upon confirmation of a release in accordance with ARM 17.56.504, or after a release from the PST or UST system is identified in any other manner, owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report releases to the department within the specified timeframes and in the following manner:

(a) remains the same.

(b) When a release is confirmed from laboratory analysis of samples collected from a site, the release must be reported to the department by a method that ensures the department receives the information within seven days of release confirmation. The date of release confirmation, for purposes of this rule, is the date the owner, operator, installer, remover, or person who performs subsurface investigations for the presence of regulated substances received notification of the sample results from the laboratory. Laboratory analytical results that exceed the following values confirm that a release has occurred:

(i) risk-based screening levels (RBSLs) established for petroleum contaminants in surface soil at UST sites, published in the first numeric column of

the Tier 1 Surface Soil RBSL Table (Table 1) of Montana ~~Tier 4~~ Risk-based Corrective Action Guidance for Petroleum Releases (RBCA) for petroleum compounds and mixtures in surface and subsurface soil;

(ii) and (iii) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to strike "Tier 1" in ARM 17.56.506 to make this cross reference consistent with the revised title of the updated Montana Risk-Based Correction Action Guidance for Petroleum Releases (RBCA) that was published in September of 2016 and that is proposed for adoption below by reference in ARM 17.56.507(1)(b).

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana ~~Tier 4~~ Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September ~~2009~~ 2016);

(c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Table (May ~~2009~~ 2016); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to adopt by reference the most current version of the Montana Risk-Based Correction Action Guidance for Petroleum Releases (RBCA) so that it can be used by the underground storage tank program. The department conducts periodic reviews of the RBCA to determine if changes to methods and toxicity information warrant updating the guidance. The most current version of RBCA was published in September 2016. Additionally, in May 2016, the United States Environmental Protection Agency's (EPA) updated its regional screening levels.

The primary reasons for the update to the RBCA were the release of updated EPA inhalation Provisional Peer Reviewed Toxicity Values (PPRTVs, September 2009) and February 2014 Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors. In addition, the department updated leaching to groundwater parameters to match those currently used in the May 2016 EPA Regional Screening Levels tables. RBSLs for 1-methylnaphthalene and 2-methylnaphthalene were also added since these polycyclic aromatic hydrocarbons (PAHs) are often found along with other PAHs.

The department also expanded the RBCA Guidance with a description of a RBCA Tier 2 process involving adjustment of RBSLs based upon site-specific conditions. The guidance now includes information regarding the Air-Phase Hydrocarbon Calculator and the department updated the Calculator to account for concentrations of compounds found in the department's August 2012 Typical Indoor

Air Concentrations of Volatile Organic Compounds in Non-Smoking Montana Residences Not Impacted by Vapor Intrusion that are higher than their screening levels.

In general, the RBCA text has also been updated and clarified. The RBSLs are still based upon the same fractions originally included in Massachusetts guidance so the department added text regarding conversion of old total petroleum hydrocarbon, diesel range organics, and gasoline range organics data to estimated petroleum fraction data.

The RBCA Guidance proposed for adoption includes language regarding conceptual site models that will assist with site characterization and evaluation. The department evaluated and clarified language regarding metals analyses and proper analytical methods. In addition, the department changed the number of significant figures of each RBSL from one to two based upon EPA risk assessment guidance.

The result of all the changes is that some of the RBSLs are higher than those in the 2009 RBCA Guidance and some are lower. Whether an RBSL went up or down was dependent upon whether it is based upon leaching or direct contact. The fractions with inhalation toxicity changed substantially due to the change in toxicity criteria. Some more minor changes resulted from the changes in exposure factors. Minor RBSL concentration changes may be the result of different rounding.

Additionally, it is necessary to update the regional screening level reference to ensure the most recent version of the document is used by the department. The regional screening levels are being used by various states and EPA and provide screening values that provide the same levels of protection for non-petroleum compounds as are provided by the risk-based guidance for petroleum previously adopted by the department. The regional screening levels are based on ingestion, inhalation, and dermal contact and include residential and industrial exposure and are used to screen potential risk at a wide variety of sites. These regional screening levels also provide soil screening levels that address migration to ground water. The department is incorporating the most recent version of the regional screening levels to ensure updates, based on new toxicity data or other factors, are adequately considered. The primary updates are summarized below.

EPA generated new tables to reflect changes in the toxicity and chemical-specific parameters per the screening level hierarchies. Screening levels were revised for seven chemicals due to toxicity value changes. The chemical name associated with CAS 114-26-1 was changed. The programming of the soil to ground water scenario was changed to allow the calculation of the soil screening level when the dimensionless Henry's Law Constant (H') is missing. EPA revised the programming of the diffusivity in air equation to use the dioxin-specific equation for furans and dioxin-like PCBs. The hierarchy of the organic carbon absorption coefficient was modified to use the soil screening level first for the non ionizable organics identified. Various parameters were changed for chlordane, hydrogen cyanide, cyanide (CN-) and white phosphorus. Freezing point values from Yaws were added to the sixth position of the hierarchy. Finally, there were updates to five sections of the user's guide and to six FAQs. In addition, an FAQ was added concerning white phosphorus.

The September 2016 version of the RBCA can be found at http://deq.mt.gov/Land/statesuperfund/rbca_guide, or by contacting the department's

Waste Management and Remediation Division at (406) 444-6444. EPA's RSL tables can be found at <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables-may-2016>, or by contacting the department's Waste Management and Remediation Division at (406) 444-6444.

17.56.607 RELEASE CATEGORIZATION (1) through (3) remain the same.

(4) The department may categorize a release as resolved if the department has determined that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment. The following requirements must also be met before a release may be categorized as resolved:

(a) remains the same.

(b) risks to human health, safety and the environment from residual contamination at the site have been evaluated using methods listed in (4)(b)(i) or (ii) and the evaluation indicates that unacceptable risks do not exist and are not expected to exist in the future. The department considers a total hazard index that does not exceed 1.0 for noncarcinogenic risks, and a total cancer risk that does not exceed 1×10^{-5} , to be an acceptable risk level. Owners or operators, or other persons may, with department approval, use either of the following methods to evaluate risks from a release:

(i) Tier 1 evaluation using Montana Tier 1 Risk-based Correction Action Guidance for Petroleum Releases (RBCA) for evaluation of risks to human health, safety and the environment associated with surface and subsurface soil and ground water contamination; or

(ii) through (12) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: The department is proposing to strike "Tier 1" in ARM 17.56.607(4)(b)(i) based on the same rationale provided in ARM 17.56.506.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) and (b) remain the same.

(c) Montana Tier 1 Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (September 2009 2016); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: Please refer to the statement of reasonable necessity that follows ARM 17.56.506 for a full explanation of the reasons for the changes to ARM 17.56.608(1)(c).

The September 2016 version of the RBCA can be found at http://deq.mt.gov/Land/statesuperfund/rbca_guide, or by contacting the department's

Waste Management and Remediation Division at (406) 444-6444. EPA's RSL tables can be found at <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables-may-2016>, or by contacting the department's Waste Management and Remediation Division at (406) 444-6444.

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 Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to dhartman2@mt.gov, no later than 5:00 p.m., December 15, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Denise Hartman at dhartman2@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

6. Paul Nicol, attorney for the department, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS

Director

Certified to the Secretary of State, October 31, 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 24.17.127 and 24.17.501,) PROPOSED AMENDMENT
pertaining to prevailing wage rates for)
public works projects)

TO: All Concerned Persons

1. On December 2, 2016, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 29, 2016, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MSmith3@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2016~~ 2017 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2016~~ 2017 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2016~~ 2017 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2016~~ 2017 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

24.17.501 PUBLIC WORKS CONTRACTS FOR CONSTRUCTION SERVICES SUBJECT TO PREVAILING RATES (1) remains the same.

(2) Building construction projects generally are the constructions of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. It includes all construction of such structures, incidental installation of utilities and equipment, both above and below grade level, as well as incidental grading, utilities and paving.

(a) Work performed in new or reopened pits that produce aggregate, asphalt, concrete or backfill when the pit does not normally sell to the general public that is incidental to the project is considered part of the construction phase.

(a) and (b) remain the same but are renumbered (b) and (c).

(3) Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.

(a) Work performed in new or reopened pits that produce aggregate, asphalt, concrete or backfill when the pit does not normally sell to the general public that is incidental to the project is considered part of the construction phase.

(a)(b) Highway construction projects include, but are not limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway), grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking areas, lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails, and utility rights-of-way, along with the staging yards located on or off the right-of-way.

(4) Heavy construction projects include, but are not limited to, those projects that are not properly classified as either "building construction", or "highway construction."

(a) Work performed in new or reopened pits that produce aggregate, asphalt, concrete or backfill when the pit does not normally sell to the general public that is incidental to the project is considered part of the construction phase.

(a)(b) Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control

projects, industrial structures (other than buildings), industrial incinerators (other than buildings), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), ~~pipe lines~~ pipelines, ponds, power plants and powerhouses (other than buildings), pumping stations (prefabricated drop-in units—not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings), and wells.

AUTH: 18-2-431, MCA

IMP: 18-2-401, ~~18-2-402~~, ~~18-2-403~~, 18-2-413, 18-2-414, MCA

REASON: There is reasonable necessity to amend ARM 24.17.501 to clarify when work in pits is considered to be part of a construction project, in order to address recent questions on the issue. In addition, there is reasonable necessity to update the list of examples to provide additional guidance to contracting agencies and to vendors. There also is reasonable necessity to update the implementing citations to reflect the 2013 statutory revisions that moved the certain provisions regarding construction services to new sections of the MCA, while the rule was otherwise being amended.

4. Copies of the proposed 2017 publications, identified as "preliminary building construction rates," "preliminary highway construction rates," "preliminary heavy construction rates," and "preliminary nonconstruction rates" are available and can be accessed online at: <http://erd.dli.mt.gov/labor-standards>.

5. A printed version of the proposed 2017 publications is also available by contacting Mike Smith at the address and e-mail listed in paragraph 2 of this notice.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1503, Helena, MT 59620-1503; fax (406) 444-7071; or e-mailed to MSmith3@mt.gov, and must be received no later than 5:00 p.m., December 9, 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 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 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 bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all, small businesses (those with less than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but only affect those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and

information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/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 October 31, 2016.

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

In the matter of the amendment of)
ARM 24.129.401 fees, 24.129.402)
supervision, 24.129.603 minimum)
standards for licensure, 24.129.605)
military training or experience,)
24.129.612 temporary practice)
permits, and 24.129.2301)
unprofessional conduct and the)
adoption of NEW RULE I nonroutine)
applications)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On December 2, 2016, at 10:00 a.m., a public hearing will be held in the small conference room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on November 25, 2016, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcsls@mt.gov (board's e-mail).

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

24.129.401 FEES (1) through (2)(b) remain the same.

(c) active renewal fee

~~60~~ 100

(d) inactive renewal fee

~~25~~ 50

(e) through (g) remain the same.

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA

IMP: 37-1-134, 37-1-141, ~~37-34-201~~, 37-34-305, MCA

REASON: The board determined it is reasonably necessary to increase renewal fees to comply with 37-1-134, MCA, and ensure that board fees provide the amount of money usually needed for the operation of the board in providing similar regulatory services. Over the last several years, the board has experienced a

decrease in the number of licensees and an increase in expenses in excess of revenue generated through license fees. In providing administrative services to the board, the department has advised that it is necessary to increase fees as proposed to ensure the board can cover operating expenses. The board estimates that the proposed fee increases will affect approximately 829 active licensees and 47 inactive licensees and result in \$34,335 in additional annual revenue. In addition to the fee increases, the department and the board will continue to seek and implement ways to reduce costs associated with board functions.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

(b) the training and capability of the technician to whom the laboratory test is delegated; and

(c) the demonstrated competence of the technician in the procedure being performed; and .

~~(d) (2) the~~ The supervisor shall make written documentation after an evaluation has occurred and a copy of the evaluation shall be made available to the technician ~~and the board's representative upon request.~~

(3) The supervisor must keep written documentation of the evaluation in accessible written or electronic format.

~~(2) (4)~~ (4) Depending on the evaluation made pursuant to (1), the supervisor shall make a determination of how critical it is for the supervisor to be immediately available to provide guidance and supervision to the technician. The supervisor shall make a determination based on all relevant factors whether to be accessible via onsite, telephonic, or electronic consultation and shall identify the level of supervision, or different levels of supervision for different tests, on the written evaluation of the technician.

(a) Onsite supervision means that the supervisor is physically present on the premises and immediately available for direction and supervision of the technician at all times.

(5) The supervisor shall promptly provide copies of the evaluations of technicians to the board or board's representative upon request.

AUTH: 37-34-201, MCA

IMP: 37-34-103, 37-34-201, MCA

REASON: The board is amending this rule to clarify that supervisors must maintain records of evaluations of clinical laboratory technicians. The board has received inquiries from clinical laboratory scientists who are laboratory supervisors regarding their responsibility to evaluate clinical laboratory technicians and to maintain evaluation records. The board is also concerned that there appears to be a shortage of qualified clinical laboratory practitioners available to conduct testing and to supervise the testing. Accordingly, the board determined it is reasonably necessary to amend this rule to specify that evaluations must identify the level(s) of supervision as determined by the supervisor, that different levels of supervision for

different tests performed by the technician are possible, and that evaluations must be maintained by the supervisor until superseded by subsequent evaluations.

The board is also amending the rule to clarify that onsite supervision requires that the supervisor be immediately available. The board concluded that a supervisor present somewhere else in a large medical facility is not able to provide onsite supervision of clinical laboratory technicians. The board is relocating the requirement that supervisors provide evaluation copies to the board's representative upon request to (5).

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

(3) Applicants holding valid licensure to practice in another state or jurisdiction shall submit verifications from all states where the applicant has held or holds a license.

(4) Foreign-trained applicants shall be required to use an evaluation of educational background performed by the World Education Services (WES) or another evaluating entity approved by the board.

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

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

REASON: The board determined it is reasonably necessary to amend this rule to clearly delineate current license application processes. Department licensing staff utilizes standardized procedures to process applications for all boards, which increase efficiencies and reduce costs. These amendments are not changes in process or new requirements, but will provide clarification and address questions from both department staff and applicants. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.129.605 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a clinical laboratory scientist, clinical laboratory specialist, or clinical laboratory technician. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Following adoption of this rule, it came to the board's attention that certain military personnel (i.e., reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. The board is amending this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form.

24.129.612 TEMPORARY PRACTICE PERMITS (1) through (1)(b) remain the same.

(c) pay the appropriate fee; and

(d) be approved to take the first available examination; and

(e) identify the licensed individual(s) who shall be responsible for providing direct, onsite supervision.

~~(2) A temporary practice permit will not be issued for more than 45 days after the applicant has taken the examination. Only one temporary permit will be issued to an individual.~~

~~(3) If the applicant does not register for the first available examination, for any reason, or fails the examination, the temporary practice permit will be void and must be returned to the board office immediately.~~

(2) A temporary practice permit expires after 120 days from the day of issuance.

(3) Only one temporary practice permit will be issued per applicant.

(4) An applicant who fails the exam must notify the board office immediately.

Failure of the examination automatically voids the temporary practice permit.

(5) The applicant may retake the examination, but another temporary practice permit will not be issued.

AUTH: ~~37-1-305, 37-1-319~~, MCA

IMP: 37-1-305, 37-1-319, ~~37-34-201~~, MCA

REASON: The board is amending this rule to ensure consistency with 37-1-305, MCA, the statute on temporary practice permits. The board is establishing a 120-day limit after determining that it is a sufficient amount of time for applicants to schedule their examinations. The board is also amending this rule to limit the permits to one per applicant and no longer extend temporary practice permits after concluding that such applicants are not able to meet the minimum qualifications to practice with the skill and safety necessary to protect the public.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.129.2301 UNPROFESSIONAL CONDUCT (1) through (1)(d) remain the same.

(e) inaccurately recording, falsifying, or otherwise altering any laboratory test;

(f) failure to provide proof of current licensure upon inspection of clinical laboratory science licenses by the board or its designated or contracted representative; or

(g) failure to comply with other state or federal statutes or rules regulating the practice of clinical laboratory science; ;

- (h) failure to adequately supervise or evaluate a clinical laboratory technician in accordance with Title 37, chapter 34, MCA, or board administrative rules; or
- (i) performing functions not related to a clinical laboratory specialist's particular specialty.

AUTH: 37-1-131, 37-1-319, ~~37-34-201~~, MCA

IMP: 37-1-307, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions the board considers unprofessional conduct. The board has received inquiries and complaints regarding technician supervision, specifically regarding clinical laboratory specialists performing laboratory tests outside of a specialty, or supervising clinical laboratory technicians who are working outside of their specialty. The board determined it reasonably necessary to amend this rule to enable the board to address the complaints and further protect public health and welfare.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has a prior felony conviction within the previous ten years. 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 pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for a license was denied in this state, another state, or jurisdiction;
- (d) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;
- (e) the applicant has been a respondent in a complaint for unlicensed practice of clinical laboratory science in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action; or
- (f) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

IMP: 37-1-101, 37-1-131, 37-34-303, 37-34-305, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the licensing boards. This new rule identifies criteria determined by the board to characterize nonroutine applications, thus requiring board consideration for processing. Currently, the board reviews applications upon request of department licensing staff based on staff's determination that board review is warranted. NEW RULE I will provide notice to applicants and guidance to department staff regarding which applications specifically require board review.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcsls@mt.gov, and must be received no later than 5:00 p.m., December 9, 2016.

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.129.401, 24.129.402, 24.129.603, 24.129.605, 24.129.612, and 24.129.2301 will not significantly and directly impact small businesses.

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

Documentation of the board's above-stated determinations is available upon request to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdcsls@mt.gov (board's e-mail).

10. Jennifer Massman, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
VICKI RICE, PRESIDING OFFICER

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

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

Certified to the Secretary of State October 31, 2016

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED AMENDMENT
ARM 32.3.207 permits, 32.3.218,)	
special requirements for sheep,)	
and 32.3.2001 brands and	)	NO PUBLIC HEARING CONTEMPLATED
earmarks)	

TO: All Concerned Persons

1. On December 10, 2016, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m., December 2, 2016, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

32.3.207 PERMITS (1) remains the same.

(2) Permits are valid for no longer than ten days from the date of issuance unless otherwise specified as follows:

- (a) blanket:
 - (i) permanent market, until rescinded;
 - (ii) temporary market, up to 30 days;
- (b) cross border grazer, nine months;
- (c) entry extended, 30 days;
- (d) equine annual, yearly;
- (e) NPIP poultry, yearly;
- (f) re-entry, up to 30 days;
- (g) semen:
 - (i) equine, annual;
 - (ii) bovine, domestic, annual;
 - (iii) bovine, international, annual; ~~and~~
 - (h) six-month horse passport, six months;
 - (i) biologics, conditional, up to 2 years; and
 - (i) biologics, permanent, 5 years.
- (3) through (5) remain the same.

AUTH: 81-2-102, ~~81-2-703~~, 81-2-103, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-703, 81-20-101, MCA

REASON: The department is proposing to add biologics, conditional, up to 2 years; and biologics, permanent, 5 years to the exceptions list in (2) pursuant to ARM 32.3.2301, which authorizes the department to issue long-term biologics permits upon request.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.218 SPECIAL REQUIREMENTS FOR SHEEP (1) remains the same.
(2) All breeding rams eight months of age and older must have a negative ELISA, or other recognized test, for *Brucella ovis* within 30 days prior to entry into Montana or originate directly from an officially recognized *Brucella ovis* free flock. Animals must be individually identified with an approved method of official ~~† individual identification in conformity with ARM 32.3.1308. by eartag or tattoo is required along with~~ The date of the last *Brucella ovis* herd test, if applicable, must be cited on the movement document. All rams must be free of any gross lesions of ram epididymitis upon examination by the certifying accredited veterinarian.

(3) and (4) remain the same:

AUTH: 81-2-102, 81-2-103, ~~81-20-101~~, MCA
IMP: 81-2-102, ~~81-20-101~~, 81-2-103, 81-2-703, MCA

REASON: The department is proposing the age of breeding rams be specified in (2) to provide consistency between the regulations of our state *B. ovis* program and our import requirements for *B. ovis* testing. Additional language regarding animal identification and placement of the documentation of the last *Brucella ovis* herd test is added to conform to ARM 32.3.1308.

Authorizing and implementing citations are being updated to accurately reflect sources of rulemaking authority.

32.3.2001 BRANDS AND EARMARKS (1) through (3)(a)(viii) remain the same.

(ix) "V" on the right tailhead to designate trichomoniasis positive bovines.

(b) and (c) remain the same.

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

REASON: The department is proposing the addition of the "V" brand for trichomoniasis positive bovines to produce an inclusive list of animal health brands.

Implementation citations are being added to accurately reflect all statutes implemented through the rule and to provide the complete sources of rulemaking authority.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., December 8, 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. December 8, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 8 based upon approximately 40 differing pharmaceutical companies who apply for permits, 30 sheep producers, and 6 Trich-approved feedlots in the state of Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 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 rules will not significantly and directly impact small businesses.

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, October 31, 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 37.85.204 pertaining to) PROPOSED AMENDMENT
Medicaid cost share)

TO: All Concerned Persons

1. On November 30, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 November 23, 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:

37.85.204 MEMBER REQUIREMENTS, COST SHARING (1) remains the same.

(2) The cost share applied to a service or item is not to exceed the ~~cost of service~~ Medicaid allowed amount.

(3) A member with income at or below 100% of the federal poverty level (FPL) is responsible for the following copayments:

(a) and (b) remain the same.

(c) pharmacy-nonpreferred brand drugs, ~~including specialty drugs~~ - \$8 per prescription;

(d) through (w) remain the same.

~~(x) home dialysis attendant services - \$4 per visit;~~

~~(y) personal assistance services - \$4 per visit;~~

~~(z)~~ (x) mental health clinic services - \$4 per visit; and

~~(aa)~~ (y) chemical dependency services - \$4 per visit; and

~~(ab) targeted case management services - \$4 per visit.~~

(4) A member with income above 100 percent of the FPL, except as noted in (a) and (b) is responsible for cost share of 10% of the provider reimbursed amount.

A member is responsible for cost share for outpatient pharmacy services as follows:

(a) remains the same.

- (b) nonpreferred brand drugs, ~~including specialty drugs~~ - \$8 per prescription.
- (5) through (9) remain the same.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.204, regarding Medicaid cost sharing requirements. These changes implement the Alternative Benefits Plan for the health care services delivered by the Montana Medicaid program.

The department proposes to amend various copayment and cost-sharing requirements for consumers eligible for the state-administered Medicaid program. The department also proposes to amend the services exempt from the cost sharing requirements.

The department is proposing these rule changes to align the rule with existing practice. Medicaid members currently are not charged cost-sharing charges for home dialysis attendant services, personal assistance services, or targeted case management services. These services are preventative services, and the department has deemed it appropriate to exclude them from cost-sharing. Additionally, the department proposes to update terminology from "cost-of-service" to "Medicaid allowed amount."

Fiscal Impact

Medicaid providers will not be adversely impacted by the proposed amendment because the department will continue to make up any difference in payment to the Medicaid providers.

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

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 8, 2016.

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

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

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by e-mail on October 28, 2016.

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

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

The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA.

The following matrix presents the departments intended performance monitoring schematic.

Principal Reason for the Proposed Amendment	Measurement	Data Collection Methods/Metrics	Period of Measurement
Provide coverage of health care services for low-income Montanans	HELP ACT enrollment	Track enrollment via eligibility determination system (CHIMES)	Quarterly
Provide greater value for the tax dollars spent on the Montana Medicaid program	Ratio of state and federal funds expended	Track expenditure by funding source via the state accounting system	Annually
Provide incentives that encourage Montanans to take greater responsibility for their personal health	Health Behavior Activities	Track the level of participant engagement in health behavior activities via the department's data systems	Quarterly

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

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

Certified to the Secretary of State October 31, 2016.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.204 pertaining to access to) PROPOSED AMENDMENT
documents and fees for copies)

TO: All Concerned Persons

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

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 23, 2016, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.2.204 ACCESS TO DOCUMENTS AND FEES FOR COPIES

(1) Pursuant to Article II, section 9, of the Montana Constitution, and ~~2-6-102~~ 2-6-1003, MCA, government documents may be examined and copies provided to the public, with a few exceptions where privacy concerns outweigh the public's right to know.

(a) through (8) remain the same.

(9) Fees charged for electronic information and nonprint records will be determined on a case-by-case basis pursuant to ~~2-6-110~~ 2-6-1006, MCA.

AUTH: 2-15-405, MCA

IMP: Article II, section 9, Montana Constitution, ~~2-6-102, 2-6-103, 2-6-104, 2-6-110~~ 2-6-1003, 2-6-1006, MCA

REASON: In 2015, the Montana Legislature completely revised the public records statutes contained in Title 2, chapter 6, MCA. These amendments are necessary to update the statutory references contained within the rule and within the implementation statutes.

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., December 9, 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, e-mail, 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 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 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 October 25, 2016.

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 31st day of October, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

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

TO: All Concerned Persons

1. On September 2, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-227 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1497 of the 2016 Montana Administrative Register, Issue Number 17.

2. The department has adopted the above-stated rules as proposed: New Rules I (6.6.4701), II (6.6.4702), III (6.6.4703).

3. No comments or testimony were received.

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

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State October 31, 2016.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.11.204, 24.11.207,) ADOPTION
24.11.441, 24.11.443, 24.11.450A,)
24.11.452A, 24.11.453A, 24.11.454A,)
24.11.459, 24.11.463, 24.11.469,)
24.11.471, 24.11.475, 24.11.476,)
24.11.2204, and 24.11.2511 and the)
adoption of New Rule I pertaining to)
the unemployment insurance)
program)

TO: All Concerned Persons

1. On September 23, 2016, the Department of Labor and Industry (department) published MAR Notice No. 24-11-319 regarding a public hearing on the proposed amendment of the above-stated rules at page 1630 of the 2016 Montana Administrative Register, Issue No. 18.

2. On October 14, 2016, the department held a public hearing. One member of the public commented on the proposed amendments and adoption. Written comments were also received by the department by the end of the comment period.

3. The comments and the department's responses are as follows:

Comment 1: A commenter expressed concern that under ARM 24.11.207, school employers would lose their interested party status if they fail to return the "School Fact Finding Employment Forms." In certain circumstances, described by the commenter as relating to issues of reasonable assurances of continuing employment for certain educational employees, the employer is receiving those forms from the department, and the forms have not been completed by the claimant. The commenter stated that makes it difficult for the employer to respond to the blank form.

Response 1: The employer responsibility and waiver of interested party status found in 39-51-605, MCA, would not be imposed under the circumstances described. ARM 24.11.207(3) specifically indicates that the interested party status pertains to the claimant's separation from employment. The question raised is one of reasonable assurance of employment which is not considered a separation from employment and is processed under different guidelines and sections of regulation.

Comment 2: A commenter stated that requiring reporting of hours and wages only for insured work in ARM 24.11.443(5) is not consistent with federal law (Section 304(a)(4), of the Social Security Act).

Response 2: The department agrees, and has amended the rule accordingly.

Comment 3: A commenter noted that establishing the date when a "payment was issued," as that phrase is used in ARM 24.11.443(5), is subject to multiple interpretations. The commenter stated that a claimant, for reasons beyond the control of the claimant, may not necessarily be aware of the date the employer issued (or will issue) a payment. The commenter recommended that some leeway in reporting be allowed.

Response 3: The department agrees, and has amended the rule accordingly.

Comment 4: A commenter stated that excluding inquiries about work at a temporary employment agency in ARM 24.11.453A is not consistent with federal law (Section 303(a)(12), of the Social Security Act).

Response 4: The department agrees, and has amended the rule accordingly.

Comment 5: A commenter asked whether ARM 24.11.454A only applies to a reimbursable employer or if the rule is applicable to an experience rated employer.

Response 5: ARM 24.11.454A is applicable to all employers, both experience rated employers and reimbursable employers. The intent of this section is to recognize that the limited duration of benefits are for periods of unemployment that are not due to the worker's fault.

Comment 6: A commenter asked if New Rule I would affect the offset credit received by the employer. The employer currently receives immediate credit to their account upon the discovery of an overpayment of benefits to a claimant.

Response 6: No, it will not. New Rule I does not modify the employer account credit upon discovery of the overpayment. New Rule I is a tool for the collection of overpaid amounts.

Comment 7: A commenter questioned whether New Rule I would only apply to "non-fraud" overpayments.

Response 7: Yes. However, for the purpose of avoiding confusion, the department has amended New Rule I to expressly specify that it applies only for overpayments arising under the provisions of 39-51-3206, MCA.

Comment 8: A commenter questioned whether the department's decision not to accept an offer in compromise is appealable.

Response 8: No. New Rule I(2) expressly provides that the decision is final and cannot be appealed.

Comment 9: A commenter questioned whether the department would consider the claimant's current and future resources when considering whether to accept an offer under New Rule I.

Response 9: Yes. The department considers those factors are addressed in New Rule I(1), and notes that such considerations are part of the department's decision-making process.

4. After thorough consideration of the comments received, the following rules are amended as proposed:

24.11.204 DEFINITIONS
24.11.207 INTERESTED PARTY
24.11.441 CLAIMS FOR BENEFITS
24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS
24.11.452A ELIGIBILITY FOR BENEFITS
24.11.454A LEAVING OR DISCHARGE FROM WORK
24.11.459 ADMINISTRATIVE PENALTY
24.11.463 LIE DETECTOR TESTS--DRUG AND ALCOHOL TESTING
24.11.469 DOMESTIC VIOLENCE INELIGIBILITY -- REQUALIFICATION
24.11.471 REEMPLOYMENT ELIGIBILITY PROGRAMS
24.11.475 APPROVAL OF TRAINING BY THE DEPARTMENT
24.11.476 ADDITIONAL TRAINING BENEFITS
24.11.2204 RATES FOR NEW EMPLOYERS
24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

5. After thorough consideration of the comments received, the department has amended the following rules as proposed, but with new matter underlined and deleted matter interlined:

24.11.443 WEEKLY PAYMENT REQUESTS (1) through (4) remain as proposed.

(5) A claimant must report all hours worked or for which the claimant was paid and gross wages earned for each week for which payment is requested. ~~For the purposes of this section, hours and gross wage reporting only applies to insured work.~~ (a) and (b) remain as proposed.

(c) The date payment was issued shall be established by the date printed on a physical check, the date of release of electronic funds transfer, or the date cash was tendered. The department may allow up to 14 calendar days for reporting discrepancies.

(6) through (8) remain as proposed.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-201, Title 39, ch. 51, parts 21 through 23, MCA

24.11.453A WORK SEARCH CONTACTS (1) remains as proposed.

(2) A valid work search contact:

(a) requires a claimant to:

(a) through (d) remain the same, but are renumbered (i) through (iv).

~~(e)(v)~~ make a work search contact with a different employer, or if for the same employer, for a different position, for each consecutive week; or

(b) requires a claimant to register for work at a temporary employment agency.

(3) A valid work search does not include:

(a) seeking self-employment;

(b) working as an independent contractor; or

~~(c) inquiring about work at a temporary agency; or~~

~~(d) reporting part-time work.~~

(4) through (7) remain as proposed.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

6. After thorough consideration of the comments received, the department has adopted New Rule I as proposed, but with new matter underlined and deleted matter interlined:

NEW RULE I (24.11.1213) OFFER IN COMPROMISE (1) When a claimant offers to compromise an overpayment debt pursuant to 39-51-3206, MCA, by making a lump-sum payment of over 50% of the amount due, the department will accept or reject the offer based on the circumstances or reason for the overpayment, the overpayment balance, and how long it would take to recover the debt with just monthly payments.

(2) through (4) remain as proposed.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-3206, MCA

7. The amendments and new rule are effective November 11, 2016.

/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 October 31, 2016

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.401 department of)
livestock animal health division fees)
and 32.4.602 exportation of)
alternative livestock)

TO: All Concerned Persons

1. On September 23, 2016, the Department of Livestock published MAR Notice No. 32-16-278 regarding the proposed amendment of the above-stated rules at page 1646 of the 2016 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

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 October 31, 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 37.87.809 pertaining to targeted)
case management services for youth)
with serious emotional disturbance,)
reimbursement)

TO: All Concerned Persons

1. On September 2, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-767 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1534 of the 2016 Montana Administrative Register, Issue Number 17.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State October 31, 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 37.86.2102 and 37.86.2105)
pertaining to Medicaid eyeglass)
reimbursement)

TO: All Concerned Persons

1. On September 23, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-770 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1656 of the 2016 Montana Administrative Register, Issue Number 18.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. These rule amendments are effective December 1, 2016.

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

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

Certified to the Secretary of State October 31, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.20.173, 42.20.504,	)	REPEAL
42.20.505, 42.20.601, 42.20.604,)	
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. On September 2, 2016, the department published an amended notice of public hearing on the proposed amendment and repeal at page 1537 of the 2016 Montana Administrative Register, Issue Number 17.

2. On September 13, 2016, a public hearing was held to consider the proposed amendment and repeal. Jaret Coles, Montana Legislative Services Division, and Robert Story, Montana Taxpayers Association, appeared and testified at the hearing. The department also received written comments from Alice Ammen, Missoula; Michael Christianson, Montana Forest Owners Association; Paul R. McKenzie, F. H. Stoltze Land & Lumber Company; Larry Robertson, Montana Grape and Winery Association Ex Officio member; and William Woessner and Jean Woessner, Montana Grape and Winery Association members.

3. The department amends ARM 42.20.504, 42.20.505, and 42.20.604 as proposed.

4. The department amends ARM 42.20.601 and 42.20.745 and repeals ARM 42.20.502, 42.20.503, and 42.20.516 as proposed, effective January 1, 2017.

5. Based upon the comments received and to include an additional amendment presented by the department at the hearing eliminating the colony count requirement on apiaries for classification as agricultural land, the department amends ARM 42.20.173 and 42.20.683 as proposed, effective January 1, 2017, but with the following changes, new matter underlined, deleted matter interlined:

42.20.173 STATUTORY DEADLINE FOR CLASSIFICATION AND APPRAISAL REVIEWS (1) through (6) remain as proposed.

(7) The department will deny a property owner's Form AB-26 request if no response to the department's final written request to either schedule an appointment or provide additional documentation is received within 44 15 working days from the date on the request. The final written request will only occur after the department has attempted to contact the property owner several times either by telephone, by e-mail, or with a property site visit. The letter denying the taxpayer's Form AB-26 request will inform the property owner that they may appeal the department's decision to the county tax appeal board and that if they fail to respond to the department's denial they may lose their right to appeal.

42.20.683 SPECIALTY AND UNIQUE CROPS (1) and (2) remain as proposed.

(3) The sale of honey and other products from bees will be considered agricultural income. For valuation as agricultural land, the owner of the land must provide proof that:

~~(a) the landowner is registered with the Montana Department of Agriculture as an apiary; and~~

~~(b) the apiary must have at least 25 bee colonies annually sited on the land continually from May 1 through August 31.~~

(4) through (15) remain as proposed.

6. 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: Jaret Coles, staff attorney for the Montana Legislative Services Division, appeared at the hearing and testified on behalf of the Revenue and Transportation Interim Committee (RTIC), and also provided written comments. Mr. Coles explained that pursuant to 2-4-402, MCA, legislative administrative rule committees are required to review all proposed rules filed with the Secretary of State. Mr. Coles further explained that the RTIC is specifically charged by 5-5-227, MCA, to review proposals from the Department of Revenue and has statutory powers to submit written recommendations regarding the amendment of a proposed rule at a rulemaking hearing.

Mr. Coles stated that the RTIC reviewed MAR 42-2-956 and expressed concern with the proposed amendment to ARM 42.20.173(7), which states the department will deny a property owner's Form AB-26 if no response to the department's final written request to either schedule an appointment or provide additional documentation is received within 14 days of the date of the request.

He further stated that after considerable debate, including a series of questions and answers from Department of Revenue Director Mike Kadas, and Property Assessment Division Administrator Cynthia Moore, the RTIC passed a motion to submit comments to the department regarding the proposed amendments to ARM 42.20.173(7). Mr. Coles summarized the RTIC meeting and eventual motion as follows:

The RTIC requests that the department amend ARM 42.20.173 in a manner that ensures a taxpayer will know when a written notice asking for an appointment or for additional information is the taxpayer's "final written notice," and that the failure to respond to the notice will result in issuance of a denial letter that can be appealed to the county tax appeal board. Additionally, the committee expressed a concern that the first written notice a taxpayer receives should not be the "final written notice." The language of the final notice should be clear that it is indeed a final notice and that the appeal rights will terminate.

Mr. Coles also commented that in the discussions by the committee and also with the department that some counties do provide written notice to taxpayers informing them that this is their last notice, and if they do not respond, they will lose their appeal rights. However, some counties do not do this. Some of the committee members testified that the department should work to make sure all taxpayers know that if they do not respond to the notice, they could potentially lose those rights.

RESPONSE 1: The department appreciates Mr. Coles' and the Revenue and Transportation Interim Committee's comments. The department has further amended ARM 42.20.173(7) to clarify that the final written request will only occur after the department has made attempts to contact the property owner. The department has also added language in (7) that the denial letter will contain language that clearly informs the property owner that they have the right to appeal the department's decision denying their informal review and that if they fail to respond to the department's denial, they may lose their right to appeal.

COMMENT 2: Regarding the proposed amendment of ARM 42.20.173, Robert Story, Executive Director, Montana Taxpayers Association, commented that they are concerned that the allowance of 14 working days may be an inadequate amount of time for some taxpayers to respond. The timeframe between the receipt of the appraisal notice and the final notice could be difficult for some taxpayers to comply with if they are not regularly receiving mail due to work or travel. They may need to be informed more about the process and be aware that they can respond to the department's requests without having all of the information they feel that they need to complete their objection. The final notice should be clearly identified and follow initial notices or requests for information.

RESPONSE 2: The department appreciates Mr. Story's comments. Property owners have 30 days following receipt of a classification and appraisal notice to file a Form AB-26, request for informal review. Once an owner files a Form AB-26 request, the department will contact the property owner to schedule an appointment or request additional documentation. If the property owner fails to respond after attempts to contact them, the department will issue a final written request. The department has further amended ARM 42.20.173(7) to specify 15 instead of 14 working days. This means the property owner will have a full three weeks following the time allowed for filing a Form AB-26 request and providing additional information or scheduling an appointment to respond to the department's final written request. If the property owner fails to respond to the department's final written request and the

department denies the Form AB-26 request, the property owner will have an additional 30 days to file an appeal to the county tax appeal board.

COMMENT 3: Paul R. McKenzie, Lands and Resource Manager for F. H. Stoltze Land & Lumber Company in Columbia Falls, commented that with regard to the repeal of ARM 42.20.503 and 42.20.516, his organization has no objection but contends that the reasons provided for the repeal of these rules is inaccurate and requires modification. The repeal notice states the reason is that class ten land valuation changed from a six-year to a two-year cycle in accordance with Senate Bill 157 and phase-in is not needed. However, the valuation of class ten land remains on a six-year reappraisal cycle and phase-in is important to implementation. Therefore, ARM 42.20.503 is redundant with ARM 42.20.745 and could be repealed if ARM 42.20.745(2)(c) is corrected to show the correct phase-in value of .3332 for year two.

RESPONSE 3: The department appreciates and agrees with Mr. McKenzie's comments and his suggestion that the department amend ARM 42.20.745(2)(c). The department further agrees that the original statements of reasonable necessity provided for repealing ARM 42.20.503 and 42.20.516 were incorrect.

After filing the initial Notice of Public Hearing with the Secretary of State on August 19, 2016, and prior to the public hearing date, the department filed an amended Notice of Public Hearing, on September 2, 2016, to further amend ARM 42.20.745. In the amended notice, the phase-in value in (2)(c) changed from .3342 to .3332. The department also amended the statements of reasonable necessity relating to its proposal to repeal ARM 42.20.503 and 42.20.516, to remove the erroneous reference to a legislative change in the reappraisal cycle for class ten property.

COMMENT 4: Michael Christianson, President of the Montana Forest Owners Association, commented that their organization supports the proposed changes in the amended version of the public hearing notice, MAR Notice No. 42-2-956, which includes the minor corrections to ARM 42.20.505 and 42.20.745, and they also support the repeal of ARM 42.20.502.

RESPONSE 4: The department thanks Mr. Christianson for his comments in support of the proposed changes to ARM 42.20.505 and 42.20.745, and the repeal of ARM 42.20.502.

COMMENT 5: Regarding ARM 42.20.683, Mr. Story commented that they concur with the proposed changes and agree with the Montana Tax Appeal Board ruling regarding what the statute actually says and their assessment that the department does not have the authority to impose the limitations that are being repealed. Mr. Story commented that there are, however, going to be people concerned when they find out that they do not have five years to develop a cherry orchard and he encourages the department to start looking at how they are going to deal with that in a public relations manner to let taxpayers know what is going to happen to them and their tax bills.

RESPONSE 5: The department agrees that the Montana Tax Appeal Board's ruling and subsequent impact to property owners needs to be communicated to the public. At a minimum, the department intends to make this information available on its website and in its local county Department of Revenue offices. The department is also considering further measures it may take to provide additional information to taxpayers.

COMMENT 6: Alice Ammen, of Missoula, commented that the proposed changes to ARM 42.20.683 contain an error that should be corrected to include language pertaining to vineyards. Specifically, Ms. Ammen stated that the last line pertaining to vineyards has been omitted from the rule. It should be similar to the last line for orchards in (13) which states "a vineyard shall be considered agriculture if the provisions of (14) are met" because, like fruit trees, it takes several years for vines to reach maturity.

Ms. Ammen recommends that the department insert a new (15) into the rule stating "the property owner must include with the application documentation sufficient to prove that the vineyard produces and the owner or the owner's agent markets at least \$1,500 in gross annual income once the trees reach production maturity" and subsequently renumbering the following section as (16).

RESPONSE 6: The department appreciates Ms. Ammen's comment that rule changes appear incorrect. The department proposed the rule amendments to implement the Montana Tax Appeal Board (MTAB) ruling in the Matter of State of Montana, Department of Revenue v. Yeager Family Trust. In that case, the MTAB determined that the only requirement for agricultural eligibility is that the land produces \$1,500 in gross income. The MTAB ruling prevents the department from adopting classification criteria or establishing benefits beyond those allowed in statute. Therefore, the stricken language is no longer applicable.

COMMENT 7: Regarding the proposed amendment of ARM 42.20.683, Larry Robertson, Ex-Officio member and technical advisor to the Montana Grape and Winery Association, employee of USA Natural Resources Conservation Service, and private vineyard/winery owner, commented that he is glad the department eliminated the acreage requirement because it is irrelevant for specialty crops, and that he also agrees with the need to show annual revenue of \$1,500.

Mr. Robertson further commented, however, that the elimination of the provisional agricultural classification for five years during the start-up time for the initial crop of vines to reach saleable maturity is extremely detrimental to the growth of a grape and wine industry in Montana. Vineyards are very expensive to establish and maintain. They require extensive trellis and fencing construction costing over \$10,000 per acre and roughly 750 hours of labor per acre per year to manage properly. Mr. Robertson also commented that the elimination of the provisional start-up classification greatly increases the risk to establish a vineyard and will severely inhibit the growth of the vineyard industry. He stated that he would hope that the department will encourage growth of the grape and wine industry in Montana, which will bring in more revenue in the future, and not deter it.

William Woessner and Jean Woessner, members of the Montana Grape and Winery Association, also commented, with regard to ARM 42.20.683, that they strongly oppose the proposed amendment and repeal of the provisional agricultural classification for five years during the start-up to allow time for the initial crop of vines to reach saleable maturity from the rule, because vineyards require considerable upfront investment and five years of husbandry before realizing an economically viable crop. This provision facilitates investment in this emerging industry that will be populated by a large number of small businesses.

RESPONSE 7: The department appreciates and understands Mr. Robertson's and the Woessners' comments relating to the elimination of the one-acre requirement for agricultural eligibility, to the requirement that a taxpayer show \$1,500 in gross annual income, and suggestion that the department retain the provisional classification for five years to allow for a viable crop. The Montana Tax Appeal Board (MTAB) ruled in the Matter of State of Montana, Department of Revenue v. Yeager Family Trust, however, that the department's authority is limited by statute and that it may only require proof of \$1,500 in annual gross income for agricultural eligibility. Under the MTAB's analysis, the department may not require a minimum acreage for agricultural eligibility nor grant provisional agricultural classification because both extend beyond the department's limited statutory authority.

COMMENT 8: Mr. Robertson commented that he strongly disagrees with the department's determination that the amendment and repeal of these rules will not significantly and directly impact small business, and asked what experience the department has in a vineyard operation to make such a statement. Elimination of the provisional agricultural classification for five years during the start-up time for the initial crop of vines to reach saleable maturity will hurt small specialty crop businesses.

The Woessners commented that the department's claim that elimination of this provisional agricultural classification will not significantly and directly small business is completely without merit.

RESPONSE 8: The department recognizes the benefit of a provisional classification to small businesses. However, the Montana Tax Appeal Board (MTAB) ruling in the Matter of State of Montana, Department of Revenue v. Yeager Family Trust, has limited the department's discretion with respect to classifying and appraising specialty crop businesses. As a result of that case, in the same way the department is not able to require at least one acre for crop production, the department can no longer allow for provisional agricultural status where there is no income from the property. The MTAB noted to do so would be "an exercise of power constitutionally reserved to the legislative branch." Therefore, the department must remove the provisional classification to comply with the ruling.

The department recognizes there may be a small business impact to companies like theirs; however, the department based its determination upon its analysis of the MTAB's ruling in the Yeager Family Trust matter noted above.

Therefore, regardless of the impact, the department is required by law to implement the MTAB's ruling.

COMMENT 9: Regarding the proposed language in ARM 42.20.745, Mr. Story commented that he is concerned about the use of the value before reappraisal (VBR) in the appraisal process. He stated that while it is necessary to establish a VBR in long appraisal cycles, many times when a taxpayer looks at a new value and compares it to the value of the last appraisal, they do not know that the listed old value is a VBR and not the value that was on their old appraisal notice. The result of this may be that they do not realize the actual effect of the new appraisal until they receive their tax bill. Mr. Story stated that the department should clearly identify the VBR as such and include an explanation of what a VBR is. There should be some easy way for the taxpayer to be able to compare what their actual previous appraised value was with their new appraised value. The explanation of the VBR is an education issue because it is very confusing to the average taxpayer.

RESPONSE 9: The department agrees that the value before reappraisal concept is confusing and difficult to understand. Forest land is the only remaining cyclically appraised property that is on a six-year cycle. The department is including a statement on the classification and appraisal notice reminding taxpayers that it is on a six-year cycle and directing them to the department's website. The website explains in detail how forest land is reappraised and specifically addresses the concept of the value before reappraisal.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 31, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.9.110, 42.9.111, and)	
42.9.203 pertaining to pass-through)	
entity audit adjustments and the)	
computation of composite tax, and)	
ARM 42.15.219 and 42.15.526)	
pertaining to pension and annuity)	
income exclusions and small)	
business liability funds)	

TO: All Concerned Persons

1. On September 23, 2016, the Department of Revenue published MAR Notice No. 42-2-962 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1660 of the 2016 Montana Administrative Register, Issue Number 18.
2. On October 13, 2016, a public hearing was held to consider the proposed amendment. No members of the public appeared for the hearing and no written comments were received.
3. The department amends the above-stated rules as proposed.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 31, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through III, the amendment of	)	AMENDMENT, TRANSFER AND
ARM 42.2.304, 42.2.503, 42.2.504,	)	AMENDMENT, AND
42.2.505, 42.2.510, 42.2.511,	)	REPEAL
42.3.102, 42.3.103, 42.3.115,)	
42.14.204, 42.15.315, 42.15.316,)	
42.30.103, and 42.30.107, the)	
transfer and amendment of ARM)	
42.3.105 and 42.3.107, and the)	
repeal of ARM 42.2.306, 42.15.320,)	
and 42.23.605 pertaining to the)	
application of penalties and interest)	
and reasonable cause; and also)	
pertaining to the timeframe for)	
appealing notices of assessment)	

TO: All Concerned Persons

1. On September 23, 2016, the Department of Revenue published MAR Notice No. 42-2-963 pertaining to the public hearing on the proposed adoption, amendment, transfer and amendment, and repeal of the above-stated rules at page 1668 of the 2016 Montana Administrative Register, Issue Number 18.

2. On October 13, 2016, a public hearing was held to consider the proposed adoption, amendment, transfer and amendment, and repeal. No members of the public appeared for the hearing and no written comments were received.

3. The department adopts New Rule I (42.2.508), New Rule II (42.2.507), and New Rule III (42.2.506), amends ARM 42.2.503, 42.2.504, 42.2.505, 42.2.510, 42.2.511, 42.3.102, 42.3.103, 42.3.115, 42.15.315, 42.15.316, 42.30.103, and 42.30.107, and repeals ARM 42.2.306, 42.15.320, and 42.23.605 as proposed.

4. The department transfers and amends ARM 42.3.105 and 42.3.107 as proposed, but with the following revisions to the destination rule numbers:

42.3.105 (~~42.2.506~~ 42.2.512) REASONABLE CAUSE (1) through (8) remain as proposed.

42.3.107 (~~42.2.507~~ 42.2.513) PROOF OF REASONABLE CAUSE OR LACK OF NEGLIGENCE (1) through (3) remain as proposed.

5. The department amends ARM 42.2.304 and 42.14.204 as proposed, but with the following changes to correspond with the destination rule number revisions in 4, new matter underlined, deleted matter interlined:

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) through (49) remain as proposed.

(50) "Reasonable cause" means the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return, pay the tax within the prescribed time, or object to a department action as provided for in ARM 42.2.510. Examples of what does or does not constitute reasonable cause may be found in ARM ~~42.2.506~~ 42.2.512.

(51) through (63) remain as proposed.

42.14.204 PENALTIES AND INTEREST (1) Upon request, the late pay and late file penalty may be waived pursuant to ARM ~~42.2.506, 42.2.507~~ 42.2.512, 42.2.513, 42.3.101, 42.3.102, 42.3.103, 42.3.104, 42.3.106, 42.3.108, 42.3.109, 42.3.110, 42.3.111, 42.3.113, 42.3.115, and 42.3.120.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 31, 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 June 30, 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 June 30, 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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2.5.201	and other rules - Definitions - Changes Within the State Procurement Bureau and Central Stores Program, p. 612, 1160
2.5.701	and other rules - State Surplus Property Program, p. 355, 719
2.21.4002	and other rules - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 617, 1838
2.55.502	Individual Loss Sensitive Dividend Distribution Plan, p. 548
2.59.104	Semiannual Assessment for Banks, p. 479, 878
2.59.104	and other rules - Semiannual Assessment - Retention of Bank Records - Definitions - Change in Location - Application and Review Procedures - State, County, and Municipal Issues for Banks, p. 1744
2.59.301	and other rules - Advertising - Standardized Forms and Procedures - Annual Reporting Form for Consumer Loan Licensees - Transition of Licenses to the NMLS, p. 1750
2.59.401	and other rules - Model Bylaws and Statutory Reference for Credit Unions - Supervisory and Examination Fees - Limited Income Persons - Corporate Credit Unions, p. 1738
2.59.416	and other rules - Credit Union Investments, p. 359, 720
2.59.701	and other rule - Application Procedure - Standardized Forms and Procedures - Transition of Escrow Business Licensees to the NMLS, p. 1879
2.59.1201	and other rule - Standardized Forms and Procedures - Transition of Sales Finance Company Licensees to the NMLS, p. 1883

- 2.59.1506 and other rules - Definitions - Standardized Forms and Procedures - Annual Reporting Form for Deferred Deposit Lending, p. 1886
- 2.59.1735 Determining the Amount of Surety Bond for a New Mortgage Broker or Mortgage Lender, p. 630, 1052
- 2.59.1738 and other rule - Definition of "Regularly Engage" - Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 1287, 1845

(Public Employees' Retirement Board)

- 2.43.3501 Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document, p. 784, 1161
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 787, 1162

(Board of Examiners)

- 2.53.201 Model Procedural Rules, p. 627, 1006

(Montana Lottery Commission)

- 2.63.204 and other rules - General Provisions - Revocation or Suspension of License - Prizes, p. 1591

AGRICULTURE, Department of, Title 4

- New Rule Pesticide Certification and Training Fees, p. 551, 1163
- 4.16.201 and other rule - Growth Through Agriculture (GTA), p. 790, 1254, 1690

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- New Rule Adoption of the NAIC Valuation Manual, p. 1494, 1846
- New Rule and other rules - Group Disability Income Opt Out, p. 1497
- New Rule and other rules - Annuity Mortality Tables – Determining Reserve Liabilities, p. 1890
- 6.6.201 and other rules - Life Insurance Buyer's Guide, p. 1754
- 6.6.3702 and other rules - Reporting by Holding Company Systems, p. 246, 824
- 6.6.3801 and other rules - Credit for Reinsurance - Letters of Credit Used in Reduction of Liability for Reinsurance Ceded, p. 1596
- 6.6.4902 and other rules - Patient-Centered Medical Homes, p. 1895
- 6.10.703 Securities Restitution Fund, p. 256, 721

COMMERCE, Department of, Title 8

- New Rule Administration of the 2017 and 2018 Program Year Community Development Block Grant (CDBG) Program – Small-Scale Housing Development and Rehabilitation Application Guidelines, p. 1292, 1944
- New Rule Administration of the 2018 Biennium Federal Community Development Block Grant (CDBG) Program – Planning Grants, p. 554, 879, 1255

- New Rule Administration of the 2016 and 2017 Program Year Federal Community Development Block Grant (CDBG) Program – Public Facilities Projects, p. 633, 1007, 1256
- New Rule Administration of the 2016 and 2017 Program Year Federal Community Development Block Grant (CDBG) Program – Competitive Housing and Neighborhood Renewal Projects, p. 635
- New Rule Administration of the 2016 and 2017 Program Year Community Development Block Grant (CDBG) Program – Affordable Housing Development Projects, p. 932, 1386
- 8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 795, 1053
- 8.119.101 Tourism Advisory Council, p. 1295, 1691
- (Coal Board)
- 8.101.203 and other rule - Applications for Montana Coal Board Grant Assistance, p. 935, 1257

EDUCATION, Title 10

(Office of Public Instruction)

- New Rule and other rule - Distribution of Oil and Gas Production Taxes, p. 558, 881
- 10.10.301 and other rules - School Finance, p. 363, 556, 880

(Board of Public Education)

- 10.53.101 and other rules - K-12 Science Content Standards, p. 1298, 1955
- 10.53.101 and other rules - K-12 Arts Content Standards, p. 938, 1387
- 10.54.7010 and other rules - K-12 Health and Physical Education Content Standards, p. 961, 1389
- 10.56.101 Student Assessment, p. 991, 1392
- 10.57.101 and other rules - Educator Licensure, p. 1775

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.7.201 and other rules - Commercial Bait Seining, p. 259, 585
- 12.11.341 and other rule - Aquatic Invasive Species, p. 263, 882

(Fish and Wildlife Commission)

- 12.6.2215 Exotic Species Classification, p. 1501
- 12.11.206 and other rule - Temporary Client Days on the Beaverhead and Big Hole Rivers, p. 267, 1054

(State Parks and Recreation Board)

- New Rule and other rules - State Parks Public Use, p. 482, 825

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.101 and other rules - Subdivisions/On-Site Subsurface Wastewater Treatment - Application--Contents - Review Procedures--Applicable Rules - Re-review of Previously Approved Facilities: Procedures - Setbacks - Sewage Systems: Agreements and Easements - Existing Systems - Water Supply Systems: Operation and Maintenance, Ownership, Easements, and Agreements - Fee Schedules - Disposition of Fees, p. 2192, 722
- 17.50.523 Transportation, p. 4, 725
- 17.56.101 and other rules - Underground Storage Tanks Petroleum and Chemical Substances - Delegation to Local Governments, p. 1182, 1694

(Board of Environmental Review)

- 17.8.102 and other rule - Incorporation by Reference--Publication Dates - Incorporation by Reference and Availability of Referenced Documents, p. 1109, 1848
- 17.8.610 and other rules - Major Open Burning Source Restrictions - Conditional Air Quality Open Burning Permits - Christmas Tree Waste Open Burning Permits - Commercial Film Production Open Burning Permits - Firefighter Training - Conditions for Issuance or Denial of Permit - General Requirements for Air Quality Operating Permit Content, p. 563, 1164
- 17.8.818 Averaging Period for the PM-2.5 Significant Monitoring Concentration, p. 801, 1439
- 17.30.1001 and other rules - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements - Solid Waste Management - Definitions - Adoption by Reference - Wastewater Treatment Systems: Technical Requirements - Plans for Public Water Supply or Public Sewage System - Plans for Public Water Supply or Wastewater System - Incorporation by Reference and Availability of Referenced Documents, p. 2188, 1008
- 17.38.104 and other rules - Public Water Supply Systems, p. 1900

TRANSPORTATION, Department of, Title 18

- 18.6.202 Outdoor Advertising Control, p. 381, 1440
- 18.8.512 Motor Carrier Services, p. 638, 1009
- 18.8.1502 and other rules - Motor Carrier Services Safety Requirements, p. 1113, 1456
- 18.9.101 and other rules - Motor Fuels Tax, p. 1317, 1849

CORRECTIONS, Department of, Title 20

- New Rule Inmate Worker Savings Subaccount, p. 1623
- New Rule Inmate Trust Accounts, p. 1628

JUSTICE, Department of, Title 23

- 23.16.101 and other rules - Social Card Games Played for Prizes of Minimal Value - Location Managers - Definitions - Transfer of Interest Among Licensees - Transfer of Interest to New Owners - Application for Operator License - Change in Managers, Officers, and Directors - Card Game Tournaments - Large-Stakes Card Game Tournaments - Video Gambling Machine Ticket Vouchers, p. 1914
- 23.16.119 and other rules - Temporary Gambling Authority - Participation in Gambling Operations - Sports Pool Design and Operation - Software Specifications for Video Poker Machines, p. 569, 886

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department rules.

- New Rule and other rules - Workforce Development Activities for Montana HELP Act Participants, p. 105, 728, 1165
- New Rule and other rules - Reopening of Medical Benefits Automatically Closed in Certain Workers' Compensation Claims, p. 2073, 204, 586
- 24.8.201 and other rules - Human Rights Matters, p. 1504
- 24.11.204 and other rules - Unemployment Insurance Program, p. 1630
- 24.26.206 Board of Personnel Appeals Computation of Time, p. 1518
- 24.29.1433 and other rules - Workers' Compensation Medical Service Fee Schedules, p. 641, 1055
- 24.29.1591 Utilization and Treatment Guidelines for Workers' Compensation Injuries, p. 1520
- 24.301.501 and other rules - Applicability of Statutes and Rules - Definitions - Commercial or Business Occupancy - Third Party Inspections - Reciprocity - Requirements for Data Plate - Application for Review - Plan Review Termination - Quality Control - Changes to Reviewed Plans - Unit Identification - Plan Renewal - Insignias - Fees - Inspections - Certificates - Effective Date - Information Required to Dealer - Application for Approval - Model Manufactured Location - Out-of-State Applicant - Evidence of Review - Discontinuance of Review, p. 276, 887

(Board of Behavioral Health)

- 24.154.301 and other rules - Definitions - Fee Schedule - Military Training or Experience - Education Requirement - Application Procedures - Licensure by Endorsement - Supervised Work Experience - Nonresident Licensed Addiction Counselor Services - Inactive Status and Conversion From Inactive to Active Status - Continuing Education

Requirements - Continuing Education Procedures and Documentation
- Unprofessional Conduct - Supervisor Qualifications - Qualified
Treatment Setting - Addiction Counselor Licensure Candidate
Application Procedures - Addiction Counselor Licensure Candidate
Requirements - Addiction Counselor Licensure Candidate Annual
Registration Requirements - Gambling Disorder Education
Requirement for Current Licensed Addiction Counselor Licensees -
Procedural Rules - Public Participation Rules - Renewals - Complaint
Procedure, p. 646, 1457

(Board of Chiropractors)

24.126.411 and other rules - Patient Records Retention - Continuing Education
Requirements - Approved Continuing Education - Unprofessional
Conduct - Sexual Relations With a Patient and Sexual Misconduct -
Board Meetings - Record of Minutes and Hearings - Renewals, p. 270,
733

(Board of Nursing)

24.159.301 and other rules - Definitions - Purpose - Criteria for Delegation of
Nursing Tasks - General Nursing Functions - Parliamentary Authority -
Preparation of Licenses - Duplicate or Lost Licenses - Nursing
Delegation, p. 497, 1010

(Board of Nursing Home Administrators)

24.162.401 and other rules - General Requirements - Fee Schedule - Military
Training or Experience - Examinations - Reciprocity Licenses -
Inactive License - Continuing Education - Nonroutine Applications -
Quorum - Submittals and Requests - Record of Minutes and Hearings
- Application Denial - Hearings or Proceedings - Reinstatement -
Renewals, p. 1222, 1958

(Board of Occupational Therapy Practice)

24.165.302 and other rules - Definitions - Fees - Continuing Education, p. 1523

(Board of Outfitters)

24.171.401 and other rules - Fees - Outfitter Records - Watercraft Identification -
Outfitter Qualifications - Fishing Outfitter Operations Plans - Outfitter
Examination - Operations Plans and Amendments - Renewals -
Unprofessional Conduct and Misconduct - Transfer of River-Use Days,
p. 855, 1960

(Board of Pharmacy)

24.174.501 Examination for Licensure as a Registered Pharmacist, p. 1345, 1696

(Board of Physical Therapy Examiners)

24.177.2105 and other rule - Continuing Education - Dry Needling, p. 576, 1697

(Board of Plumbers)

24.180.2102 and other rules - Continuing Education Requirements - Board Meetings - General Responsibilities - Investigation - Renewals - Complaint Procedure, p. 1790

(Board of Professional Engineers and Professional Land Surveyors)

24.101.413 and other rules - Renewal Dates and Requirements - Standards of Responsible Charge - Fee Schedule - Branch Office - Teaching of Advanced Engineering Subjects - Certificate of Authorization - Board-Approved Curricula - Applications - Exhibits of Land Surveying - Examination Procedures - Grant and Issue Licenses - License Seal - Comity - Classification of Experience - Uniform Standards - Inactive Status - Complaints - Teaching of Land Surveying Subjects - Definitions - Direct Supervision - Application for Emeritus Status - Renewals - Late Renewals, p. 1117

(Board of Psychologists)

24.189.401 and other rules - Fee Schedule - Application Procedures - Minimum Standards - Work Samples—Examination - Temporary Permit - License Preparation - Renewals - Complaint Procedure, p. 1348

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Fee Schedule - Use of CPA/LPA Designation - Licensing and Examinations - Professional Conduct Rules - Mandatory Peer Review - Renewal and Continuing Education - Complaint Procedures - Firms—Registration - Approved Peer Review Programs and Standards - Fee Abatement - Out-of-State Applicants - Continuing Education Requirement, p. 110, 1016

(Board of Real Estate Appraisers)

24.207.2101 Continuing Education, p. 995, 1853

(Board of Veterinary Medicine)

24.225.425 and other rules - Nonroutine Applications - Unprofessional Conduct - Renewals, p. 1795

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Feral Swine Mandatory Reporting - Fees - Additional Requirements for Cattle - Semen Shipped Into Montana, p. 2221, 223

32.2.401 and other rule - Department of Livestock Animal Health Division Fees - Exportation of Alternative Livestock, p. 1646

32.2.404 Brands Enforcement Division Fees, p. 1231, 1570

32.2.406 Licensee Assessments to Administer the Milk Inspection and Milk Diagnostic Lab Functions of the Department, p. 998, 1260

32.3.221 and other rules - Special Requirements for Alternative Livestock as Defined in 87-4-406, MCA - Intrastate Movement of Cattle:

- Identification - Elk-Red Deer Hybridization Tests - Importation of Alternative Livestock, p. 505, 889
32.3.1203 and other rule - Isolation of Rabid or Suspected Rabid Animals - Animal Contacts, p. 863, 1259
32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1527, 1854

(Board of Milk Control)

- New Rule and other rule - Penalties, p. 293, 588

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- New Rule Rye Creek Stream Depletion Zone, p. 2235, 297, 890

(Board of Land Commissioners)

- 36.11.432 and other rule - Grizzly Bear Conservation Measures on the Stillwater and Coal Creek State Forest, p. 8, 589
36.25.1001 and other rules - Cabin Site Leasing, p. 181, 1020

(Board of Oil and Gas Conservation)

- New Rule Notification of Application for Permit to Drill, p. 1531
36.22.1242 Oil and Gas Privilege and License Tax, p. 866, 1571

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- New Rule and other rules - Creating the Montana Achieving a Better Life Experience (ABLE) Program, p. 869, 1575
37.5.301 and other rule - Formal and Informal Hearing and Appeal Procedures Concerning the Children's Mental Health Bureau, p. 1156, 1707
37.8.116 Increasing Certain Fees for Certified Copies of Vital Records, p. 434, 893
37.34.3005 and other rule - Reimbursement of Services Provided to Persons Who Are Recipients of Developmental Disabilities Services Funded by Medicaid, p. 1354, 1709
37.36.604 Updating Poverty Guidelines to 2016 Levels, p. 1048, 1710
37.40.301 and other rules - Nursing Facility Reimbursement - Updating Outdated Terms, p. 697, 1071
37.40.801 and other rules - Hospice Reimbursement and Updates, p. 807, 1167
37.57.101 and other rules - Children's Special Health Services Financial Assistance Program, p. 664, 1855
37.71.401 and other rules - Low Income Weatherization Assistance Program (LIWAP) for the 2014-2015 Heating Season and the 2015-2016 Heating Season, p. 1142, 1574
37.80.101 and other rules - Child Care Assistance Provided Through the Best Beginnings Child Care Scholarship (BBCS) Program, p. 1359, 1711
37.80.101 and other rules - Child Care Assistance - Implementation of Required Policy Changes Under the Child Care and Development Block Grant of 2014, p. 1652, 590

- 37.81.304 Maximum Big Sky Rx Premium Change, p. 1802
- 37.85.104 and other rule - Revision of Fee Schedules for Medicaid Provider Rates Effective July 1, 2016, p. 669, 804, 1058
- 37.85.104 and other rule - Updating Medicaid Fee Schedules With Medicare Rates - Updating Effective Dates to July 1, 2016 and January 1, 2017, p. 1924
- 37.85.105 and other rule - Montana Medicaid Pharmacy Reimbursement, p. 1043, 1462
- 37.85.204 and other rules - Medicaid Program Treatment Limits - Cost-Share Requirements - Medicaid Coverage, p. 409, 829
- 37.85.212 and other rule - Adding a New Provider Called Mobile Imaging/Portable X-Ray Provider Type - Reimbursement for State Fiscal Year 2017, p. 1932
- 37.85.406 and other rules - Hospitals - Inpatient Hospitals - Rural Health Clinics - Federally Qualified Health Centers, p. 705, 840
- 37.85.406 and other rules - Hospital Reimbursement - FQHC and RHC Definitions, p. 1234, 1712
- 37.86.105 and other rules - Changes to Montana Medicaid Pharmacy Reimbursement, p. 684, 1065
- 37.86.1005 Removal of Dental Orthodontia Service Lifetime Limits in Medicaid Dental Services, p. 1373
- 37.86.2102 and other rule - Medicaid Eyeglass Reimbursement, p. 1656
- 37.86.2928 Inpatient Hospital Reimbursement, p. 1799
- 37.87.809 Targeted Case Management Services for Youth With Serious Emotional Disturbance, Reimbursement, p. 1534
- 37.87.903 Children's Mental Health Bureau Medicaid Services Policy Manual Revisions, p. 817, 1393
- 37.87.1303 and other rules - Integrated Co-Occurring Treatment Provider Requirements, p. 1408, 1856
- 37.87.1803 and other rules - Removal of Montana Child and Adolescent Needs and Strengths (CANS) Assessments for Mental Health Centers (MHC) Involving Comprehensive School and Community Treatment (CSCT), p. 1151, 1706
- 37.95.162 and other rules - Annual Training Requirements for Child Care Facilities, p. 1649
- 37.104.3006 and other rules - Trauma Care Councils and Registry, p. 1001, 1461
- 37.106.704 Ten Additional Inpatient Beds Granted by a Waiver Under the Patients and Providers Act of 2008 for Critical Access Hospitals, p. 430, 839
- 37.107.117 Reduction of Application and Renewal Fees Associated With the Montana Marijuana Act Cardholder Registry, p. 298, 1166

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.2.4801 and other rules - Procedural Rules, p. 580, 877, 1966

REVENUE, Department of, Title 42

- New Rule Montana Ammunition Availability Act - Property Tax Exemption Applications, p. 1251, 1862
- New Rule Requests for Nondisclosure of Property Owner Record Information, p. 1429, 1971
- 42.2.303 and other rule - Meetings With Department Leadership, Information Access, and the Department's Acceptance of Power of Attorney Requests, p. 439, 841
- 42.2.304 and other rules - Application of Penalties and Interest - Reasonable Cause - Timeframe for Appealing Notices of Assessment, p. 1668
- 42.2.613 and other rules - Uniform Dispute Review Process - Department's Office of Dispute Resolution, p. 442, 510, 1072
- 42.2.705 Alternative Business Office Hours in Qualified County Offices, p. 1376, 1863
- 42.9.110 and other rules - Pass-Through Entity Audit Adjustments - Computation of Composite Tax - Pension and Annuity Income Exclusions - Small Business Liability Funds, p. 1660
- 42.17.101 and other rules - Computation of Wage Withholding for State Income Taxes, p. 1557, 1974
- 42.18.122 and other rules - Property Reappraisal, p. 1805
- 42.18.206 and other rules - Certification Testing Requirements for Department Property Appraisers, p. 1243, 1714
- 42.19.401 and other rules - Property Tax Assistance Programs, p. 1379, 1865
- 42.19.1401 and other rules - Urban Renewal Districts (URD), Targeted Economic Development Districts (TEDD), Tax Increment Finance Districts (TIFD), p. 1424, 1968
- 42.20.106 and other rule - Golf Course Valuation, p. 1433
- 42.20.173 and other rules - Property Reappraisal Cycles - Assessment Review Deadlines - Electronic Classification and Appraisal Notices - Agricultural Land Regions - Bona Fide Agricultural Operation Determinations (Montana Tax Appeal Board Ruling), p. 1416, 1537
- 42.20.660 and other rules - Agricultural Land Valuation, p. 1833
- 42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 1813
- 42.22.1311 Industrial Machinery and Equipment Trend Factors, p. 456, 736
- 42.23.108 and other rules - Corporate Income Tax, p. 1539
- 42.25.1801 Crude Oil Pricing - Stripper Well Bonus and Stripper Well Exemption Definitions, p. 301, 735
- 42.29.101 and other rules - Universal System Benefits Programs, p. 13, 712, 894, 1027

SECRETARY OF STATE, Office of, Title 44

- New Rule Rotation of Executive Branch Agencies on the State Records Committee, p. 1565, 1866
- 1.2.104 Administrative Rules Services Fees, p. 716, 1465

- 1.2.104 and other rule - Fees Charged by Administrative Rules Services, p. 1939
- 1.2.419 Scheduled Dates for the 2017 Montana Administrative Register, p. 1936
- 44.2.301 and other rules - Business Services Division Filings and Fees, p. 304, 594