

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM     ) AMENDED NOTICE OF PUBLIC  
2.21.6608, 2.21.6612, and 2.21.6613     ) HEARING ON PROPOSED  
pertaining to the Employee Records     ) AMENDMENT  
Management Policy     )

TO: All Concerned Persons

1. On August 18, 2017, the Department of Administration published MAR Notice No. 2-21-563 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1316 of the 2017 Montana Administrative Register, Issue Number 16. Because the department is proposing a change to one of the rules originally proposed for amendment, the hearing is being rescheduled to September 28, 2017, at 10:00 a.m., in Room 136 of the Mitchell Building, 125 N. Roberts Street, Helena, Montana.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on September 18, 2017, to advise us of the nature of the accommodation needed. Please contact Ann Brewer, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, Montana 59620; telephone (406) 444-3879; fax (406) 444-0703; Montana Relay Service 711; or e-mail annbrewer@mt.gov.

3. After additional consideration, the department is proposing a revision to the proposed amendment of ARM 2.21.6612(2) to further clarify the treatment of information regarding an investigation. The initial proposed language, stating in part that "Other documented information related to an investigation, while not a part of the employee personnel records, is confidential..." could be interpreted to exclude that information from public disclosure. The proposed revision clarifies the required actions if a request for this information is received. All other proposed amendments remain as in the original notice.

4. The rule is now proposed to be amended as follows, new matter underlined, deleted matter interlined:

2.21.6612 RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL  
RECORDS (1) through (1)(k) remain as proposed.

~~(2) Employee personnel records do not include documents, information, or other evidence developed as part of an investigation. If an investigation results in disciplinary action, the disciplinary action record is an employee personnel record. Investigations include, but are not limited to, grievances, violations of agency rules, policies, and procedures, or matters that may result in civil or criminal liability.~~  
Disciplinary action records resulting from an investigation are part of the employee

personnel records and are confidential. Other documented information related to an investigation, while not a part of an employee record, will be treated as confidential information to protect the privacy of the individuals involved. If a request for the information is made, the agency shall review the information and balance the merits of public disclosure against an individual's right to privacy to determine whether the information or portions of the information may be released.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Ann Brewer, Department of Administration, P.O. Box 200127, Helena, MT 59620; telephone (406) 444-3879; Montana Relay Service 711; fax (406) 444-0703; or e-mail annbrewer@mt.gov, and must be received no later than 5:00 p.m., October 10, 2017.

6. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department 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.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State August 28, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF PUBLIC HEARING ON  
ARM 4.12.3103 pertaining to Seed        ) PROPOSED AMENDMENT  
Labeling Rules and Viability        )  
Information        )

TO: All Concerned Persons

1. On October 3, 2017, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on September 29, 2017, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

4.12.3103 VIABILITY INFORMATION (1) remains the same.

(2) Seed sold or offered for sale must have current viability information as required by 80-5-134(1)(d), MCA. Seed shall not be sold more than ~~42~~ 15 months after the calendar month and year in which the test for the viability information for that seed was completed.

(3) remains the same.

(4) A seed dealer may use the label of the seed labeler without changing the name for a period of ~~42~~ 15 months following the month in which the viability test was completed, provided that label complies with the Montana labeling requirements and that it is attached to the original container. After this period, viability information must be updated.

(5) remains the same.

AUTH: 80-5-139, MCA

IMP: 80-5-123, MCA

REASON: To create more consistent labeling laws across state lines to allow for trade into and out of Montana state with fewer regulatory hurdles. The risk to the consumer of getting non-viable seeds is low and offset by the lower prices that competition may foster.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, 302 North Roberts, Helena, Montana, 59601; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., October 9, 2017.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses. The financial impact will be positive for both regulated companies and likely consumers with no impact to the State. The exact amount of additional trade generated is speculative and unquantifiable.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State August 28, 2017.



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

In the matter of the adoption of New     )  
Rule I pertaining to dog training        )  
                                                          )  
                                                          )

NOTICE OF PUBLIC HEARINGS  
AND EXTENSION OF COMMENT  
PERIOD ON PROPOSED  
ADOPTION

TO: All Concerned Persons

1. On May 12, 2017, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-473 pertaining to the proposed adoption of the above-stated rule at page 585 of the 2017 Montana Administrative Register, Issue Number 9.

2. The notice of proposed agency action is amended as follows because the department is considering alternative language from the original proposal and the required number of persons has requested a public hearing.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 U.S. Highway 2 West, Glasgow, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed adoption of the above-stated rule.

3. Public comment was collected on the proposed rule for 29 days from May 12, 2017 to June 9, 2017. Based on public comment, the department is proposing an alternative to be considered in conjunction with the original proposed adoption. An extension of the comment period is necessary to address the alternative language. The rule as proposed provides as follows, new matter underlined, deleted matter interlined:

NEW RULE I PERMIT PERMISSION TO TRAIN DOGS IN UPLAND GAME BIRD NESTING AREAS (1) For purposes of this rule, the following definitions ~~apply~~ applies:

(a) "bird nesting area" refers to the nesting activities and habitat of upland game birds and migratory game birds. ~~means any area within the state which the targeted game bird(s) could make a reasonable attempt to successfully produce a nest;~~

(b) ~~"game preserve" means an area that is owned and managed by the state or federal natural agency for the purposes of game protection and propagation;~~

(c) ~~"management area" means any property managed by the state or federal natural agency for the purposes of maintaining wildlife habitat, wildlife propagation or public hunting access;~~

(d) ~~"open fields" means any area of natural surroundings where wildlife may naturally occur and may include bird nesting areas, management areas, or game preserves.~~

(2) A person, party, group, or business wishing to train dogs ~~in open fields~~ must apply for a permit by filing an application on a form provided by the department at the regional office in the region where the person will conduct such activity. under the provisions of 87-4-915(5)(a), MCA, has the permission of the director to train dogs within one mile of any bird nesting or management area or game preserve only if live game birds are not killed or captured during training, and if the person, party, group, or business is training:

(a) not more than four dogs per day; or

(b) more than four dogs per day between September 1 and March 31.

(3) ~~Permits to train dogs in open fields expire September 1 of each year.~~ Permission is not granted for training more than four dogs per day per person, party, group, or business within one mile of any bird nesting or management area or game preserve between April 1 and August 31.

(4) ~~Permit holders must follow the terms and conditions set forth in the permit.~~ This rule does not preclude further site-specific management rules or conditions on public and private lands. Landowner permission must still be obtained for training activities.

(5) This rule does not apply to activities otherwise licensed or permitted by Fish, Wildlife and Parks, such as regulated hunting activities, permitted field trials and permits to train dogs with captive game birds.

REASON: This rule proposal is being amended in response to public comments to provide more clarity in language and to minimize impacts of dog training on game bird populations while not unduly limiting dog training activities in Montana.

The purpose of this rule is to limit disturbance and mortality of nesting birds from training large numbers of dogs without unduly restricting training of single or small numbers of dogs. In recent years, the department has received both written and verbal complaints regarding dog training occurrences. The dog training that has been documented includes as many as 60 dogs at one time as well as the use of horses. When this happens during the nesting and brood rearing season, it can result in negative impacts on bird populations and decreased opportunity for the hunting public. Speaking to the value of healthy game bird populations, other states and provinces have similarly implemented restrictions on some types of dog training. In addition to protecting this wild resource, this proposed rulemaking will help keep Montana from being detrimentally set apart as the easiest state in which to train large numbers of dogs.

The Fish and Wildlife Commission was also approached by bird hunters who were noticing a large decrease in the number of available birds in certain areas during the hunting season. The commission in turn requested that the department act to curtail the impacts of large scale dog training during the nesting season.

Section 87-4-915(5)(a), MCA provides that dogs may be trained in open fields at any time without permission of the director only if (i) live game birds are not killed or captured during training; and (ii) the training is more than one mile from any bird nesting or management area or game preserve. This law codified previously existing department administrative rule language verbatim, and indicates that permission from the director is needed to train dogs within a mile of bird nesting or management areas or game preserves. The language in the proposed rule provides for permission for these activities on a smaller scale during the nesting season and grants permission for larger scale activities outside of the nesting season. Granting this permission will provide clarity and limit administrative process for permission for the public as well as for enforcement purposes.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Enforcement Division, Attn: Mike Lee, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [FWPDogTraining@mt.gov](mailto:FWPDogTraining@mt.gov), and must be received no later than October 13, 2017.

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

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

/s/ Martha Williams  
Martha Williams  
Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State August 28, 2017.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARINGS ON
ARM 12.11.610 and adoption of NEW	)	PROPOSED AMENDMENT AND
RULES I and II pertaining to	)	ADOPTION
recreational use on the Bitterroot	)	
River	)	

TO: All Concerned Persons

1. On October 2, 2017, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On October 3, 2017, at 6:00 p.m., the commission will hold a public hearing at the Bitterroot National Forest Supervisor's Office, 1801 North First Street, Hamilton, Montana, to consider the proposed amendment and adoption of the above-stated rules.

On October 10, 2017, at 6:00 p.m., the commission will hold a public hearing at Fish, Wildlife and Parks Butte Area Resource Office, 1820 Meadowlark Lane, Butte, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

12.11.610 BITTERROOT RIVER (1) remains the same.

(2) Floating of any kind, including the use of a tube, raft, vessel, or similar device, is prohibited on Fridays from July 1 through September 15 from Painted Rocks Dam to Applebury Forest Service Site.

AUTH: ~~23-1-106~~, 87-1-303, MCA

IMP: ~~23-1-106~~, 87-1-303, MCA

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

NEW RULE I BITTERROOT RIVER COMMERCIAL USE PERMIT (1) Any commercial fishing and floating operators are prohibited to operate without a permit between Painted Rocks Dam and Wally Crawford Fishing Access Site.

(2) The number of permits available will be established through the following one-time process:

(a) in order to be eligible for a permit to operate, commercial operators with records of historic use may report their use of the Bitterroot River between Painted Rocks Dam and Wally Crawford Fishing Access Site between January 1, 2014 and December 31, 2016, by March 15, 2018 as prescribed by the department;

(b) the department will only consider documented and historic use that is timely reported; and

(c) the department will notify commercial operators with documented usage, determined at the sole discretion of the department, whether they will receive a permit.

(3) The number of permits distributed in the one-time process in 2018 will establish the annual cap of permits available for this portion of the Bitterroot River for future use until otherwise determined by the department.

(4) Permittees must submit an annual report, as prescribed by the department, including:

(a) dates of river use;

(b) number of clients;

(c) stretch of river used;

(d) access points used; and

(e) and any other information the department deems necessary.

(5) Permittees who do not submit an annual report completely and timely will have their permit revoked.

(6) A permit is considered abandoned after three consecutive years of no activity reported on the annual report.

(7) Revoked and abandoned permits will be made available to all commercial fishing and floating operators via a random lottery to be conducted by the department.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE II BITTERROOT RIVER COMMERCIAL USE PERMIT  
RESTRICTIONS (1) Bitterroot River commercial use permit holders are restricted to two floats per section per day in the following areas:

(a) Painted Rocks Dam to Applebury Forest Service Site;

(b) Applebury Forest Service Site to Trapper Creek Job Corp Site;

(c) Trapper Creek Job Corp Site to Hannon Memorial Fishing Access Site;

and

(d) Hannon Memorial Fishing Access Site to Wally Crawford Fishing Access Site.

(2) Commercial fishing and floating operators are prohibited from operating from June 1 to September 15 as follows:

- (a) between Painted Rocks Dam and Applebury Forest Service Site on Fridays;
- (b) between Applebury Forest Service Site and Trapper Creek Job Corp Site on Saturdays;
- (c) between Trapper Creek Job Corp Site to Hannon Memorial Fishing Access Site on Sundays; and
- (d) between Hannon Memorial Fishing Access Site to Wally Crawford Fishing Access Site on Mondays.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

REASON: The popularity of the Bitterroot River is contributing to growing concern over the quality of the angling and recreational experience of those waters. For a number of years the Department of Fish, Wildlife and Parks (department) has received a large volume of letters and emails from people concerned about the overall amount of angling pressure, level of commercial use, congestion on the water and at access sites, and how this use is affecting the quality of their experience. To substantiate these concerns, the department conducted surveys to assess people's perceptions about conditions on these rivers, and whether conditions have displaced anglers to fishing on other rivers as an alternative.

Based on the public's concerns and the survey results, the department concluded that there was sufficient reason to initiate a river recreation management process pursuant to the river recreation management rules, ARM 12.11.401 through 12.11.455. A citizen advisory council (CAC) was appointed by the department to develop recommendations for how best to manage recreation on this section of river. The CAC considered all the available informal and formal social and biological information related to use of these rivers. They developed a set of objectives for evaluating various means of managing recreation and addressing social conflicts and developed recommendations that represent their own interests and those of others affected by river recreation management. After consideration of various alternative methods to managing recreation, the CAC developed one preferred alternative. On August 10, 2017, the commission approved proposed rule language and a proposed management plan based on the CAC's recommendations.

In addition to the proposed rule language, the department has published a draft environmental assessment for public input evaluating the environmental impacts of the proposed rule language in compliance with the Montana Environmental Policy Act (MEPA). The MEPA and rulemaking processes are being done concurrently.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bitterroot River Recreation, Department of Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT, 59804; or e-mail [shrose@mt.gov](mailto:shrose@mt.gov), and must be received no later than October 13, 2017.

6. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

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

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

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

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

Department of Fish, Wildlife and Parks

/s/ Dan Vermillion

Dan Vermillion

Chair

Fish and Wildlife Commission

Certified to the Secretary of State August 28, 2017.



BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED
20.7.1201, 20.7.1202, 20.7.1203, and	)	REPEAL
20.7.1204 pertaining to the Boot	)	
Camp Incarceration Program	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Corrections proposes to repeal the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on September 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Kim Morrison, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-3803; fax (406) 444-4551; or e-mail KMorrison@mt.gov.

3. The department proposes to repeal the following rules:

20.7.1201 SCREENING COMMITTEE

AUTH: 53-30-403, MCA  
IMP: 53-30-403, MCA

20.7.1202 PROGRAM REQUIREMENTS AND REVIEW

AUTH: 53-30-403, MCA  
IMP: 53-30-403, MCA

20.7.1203 TERMINATION FROM THE PROGRAM

AUTH: 53-30-403, MCA  
IMP: 53-30-403, MCA

20.7.1204 CERTIFICATION BY THE DEPARTMENT THAT THE  
OFFENDER HAS SUCCESSFULLY COMPLETED THE PROGRAM

AUTH: 53-30-403, MCA  
IMP: 53-30-403, MCA

REASON: HB 650 was passed by the 65th Legislative Assembly and was signed into law by the Governor on May 11, 2017. The bill eliminated the Boot Camp

Incarceration Program by repealing 53-30-403, MCA which authorized and created the program. The repeal was effective on July 1, 2017. Because the Boot Camp Incarceration Program no longer exists, the administrative rules that implemented the program (ARM 20.7.1201 through 20.7.1204, inclusive) are no longer needed and are being repealed for that reason.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Quality Assurance Office, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; fax (406) 444-4920; or e-mail KAughney2@mt.gov, and must be received no later than 5:00 p.m., October 6, 2017.

5. 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 the contact person in paragraph 4 no later than 5:00 p.m., October 6, 2017.

6. If the agency receives requests for a public hearing on the proposed action from 25 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. The department does not believe the proposed repeal of rules involves a matter of significant interest to the public because elimination of the Boot Camp Incarceration Program occurred as a result of legislative action and there was opportunity for hearing and public comment during the legislative process.

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

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

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

/s/ Colleen E. Ambrose  
Attorney  
Rule Reviewer

/s/ Reginald Michael  
Director  
Department of Corrections

Certified to the Secretary of State August 28, 2017.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 18, 2017, the Department of Labor and Industry (department) published MAR Notice No. 24-29-323 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1362 of the 2017 Montana Administrative Register, Issue No. 16. A public hearing was scheduled in the notice and is being held on September 8, 2017, in Helena.

2. It was subsequently discovered that the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the department is issuing this amended notice of public hearing to schedule a second public hearing as shown below.

3. On October 2, 2017, at 9:00 a.m., a public hearing will be held in the basement auditorium of the Sanders Building (DPHHS building), 111 North Sanders Street, Helena, Montana, to consider the proposed amendment of the above-stated rule.

4. 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 department no later than 5:00 p.m., on September 25, 2017, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

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

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) through (1)(b) remain the same.

(c) for medical services provided ~~on or after~~ July 1, 2015 through December 31, 2016: "Montana Utilization and Treatment Guidelines, 3rd edition, 2015"; ~~and~~

(d) for medical services provided ~~on or after~~ January 1, 2017 through December 31, 2017: "Montana Utilization and Treatment Guidelines, 4th edition, 2016"; ~~and~~

(e) for medical services provided on or after January 1, 2018: "Montana Utilization and Treatment Guidelines, 5th edition, 2017."

- (2) The Montana Guidelines consist of the following nine chapters and General Guideline Principles which are included at the beginning of each chapter:
- (a) through (f) remain the same.
  - (g) Complex Chronic Pain Disorder;
  - (h) through (5) remain the same.

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

REASONABLE NECESSITY: There is reasonable necessity to update the Montana Utilization and Treatment Guidelines to incorporate the changes to the lower extremities treatment guidelines which have recently been developed by the state of Montana. These updates are part of the annual review and update process for the Utilization and Treatment Guidelines. The updated guidelines have been reviewed by the department's advisory medical providers group, and their comments have been taken into account by the department.

6. A copy of the proposed 2017 publication identified as the "Montana Utilization and Treatment Guidelines, 5th edition, 2017" is available and can be accessed at: [www.mtguidelines.com](http://www.mtguidelines.com). A printed version of the proposed 2017 publication is also available by contacting Maralyn Lytle at the address, e-mail, or telephone numbers listed in paragraph 4 of this notice.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [mlytle@mt.gov](mailto:mlytle@mt.gov), and must be received no later than 5:00 p.m., on October 6, 2017.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Locky Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ Mark Cadwallader

Mark Cadwallader

Alternate Rule Reviewer

/s/ Pam Bucy

Pam Bucy, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 28, 2017.

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.147.1301 applications for cemetery	)	PROPOSED AMENDMENT,
licenses, 24.147.1313 transfer of	)	ADOPTION, AND REPEAL
cemetery ownership, 24.147.1502	)	
prearranged, prefinanced, or prepaid	)	
funerals, and 24.147.1503 requirements	)	
for sale of at-need, preneed, and	)	
prepaid funeral arrangements; the	)	
adoption of NEW RULE I trust funds –	)	
general, NEW RULES II through V	)	
cemetery perpetual care and	)	
maintenance trust accounts – financial	)	
records – annual reporting	)	
requirements – audits, and NEW	)	
RULES VI through IX mortuary and	)	
crematory preneed trust accounts –	)	
financial records – annual reporting	)	
requirements – audits; and the repeal of	)	
ARM 24.147.1304 perpetual care and	)	
maintenance fund reports, 24.147.1305	)	
audit fees, 24.147.1312 restrictions on	)	
use of cemetery funds, 24.147.1314	)	
perpetual care and maintenance funds,	)	
and 24.147.1505 trust funds	)	

TO: All Concerned Persons

1. On October 3, 2017, at 1:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 Funeral Service no later than 5:00 p.m., on September 26, 2017, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdfnr@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board has certain regulatory oversight of trust accounts maintained for both cemetery perpetual

care and maintenance and funeral preneed per Title 37, chapter 19, part 8, MCA. This oversight includes authority to require that minimum accounting principles and practices are observed. The board determined it is reasonably necessary to amend and clarify the rules to carry out its statutory audit duties by ensuring the necessary information is obtained from licensees regarding those trust accounts. Current rules pertaining to cemetery perpetual care and maintenance trusts lack the detail and specificity needed for the board to obtain usable information from its licensees to determine whether an audit is necessary. Additionally, the board currently has no rules regarding mortuary and crematory management responsibilities and reporting preneed funeral trust monies.

The board is proposing these rule changes to clarify trust management responsibilities, detail annual reporting requirements for cemeteries, mortuaries, and crematories, and consolidate all rules on trust responsibilities for consistency, simplicity, better organization, and ease of use for licensees, educators, program administrators, and the general public. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

#### 24.147.1301 APPLICATIONS FOR CEMETERY LICENSES

(1) ~~Applications~~ Applicants for a license to operate a cemetery shall be filed on a form furnished by the department at the principal office of the board. In addition to the payment of the fees, each application shall be accompanied by the following must submit a completed application on forms provided by the department, electronically or by paper. Completed applications include appropriate fees and required documentation, including:

- (a) a certified copy of:
  - (i) articles of incorporation, if applicable; and
  - ~~(ii) application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both, if applicable;~~
  - ~~(iii) land use or zoning permit, if applicable; and~~
  - ~~(iv)~~ (ii) perpetual care and maintenance trust agreement executed by the owner, the presiding officer, or other agent;
- (b) a statement signed by a majority and verified by the owner, the presiding officer, or other agent, which ~~shall set forth~~ contains the following information:
  - (i) names and addresses of the owners, partners, incorporators, directors, officers, cemetery manager, and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;
  - (ii) ~~a statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes; and~~
  - (iii) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held; and



~~(iii)~~ (iv) a statement of the total amount deposited to the perpetual care and maintenance fund, type of investment made or to be made and the proposed rate of contribution for the future. The amount deposited must be broken out by the initial principal investment and the trust interest and dividends earned to date by the previous owner if the cemetery was purchased from a previous licensee;

(c) an independent confirmation from the depository or other such banking institution, savings or building and loan association, or credit union in which the trust(s) is held with proof of deposit of the initial contribution to the perpetual care and maintenance fund;

(d) an accurate and readable map of the proposed cemetery site (scale not less than one inch to 500 feet) and surrounding area showing number of acres, highways, access roads, etc., and area to be initially developed delineated thereon for the cemetery; and

(e) such other matters as the board may require by written notice to the applicant; and

(f) if the cemetery is not a pre-existing cemetery, a certified copy of the:

(i) application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both, if applicable; and

(ii) land use or zoning permit, if applicable.

(2) An application for a new cemetery license must be submitted whenever ownership of a cemetery company changes as described in ARM 24.147.1313.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-814, MCA

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) In addition to the requirements of this rule, an application for a new cemetery license as described in ARM 24.147.1301 must be submitted when ownership of a cemetery company changes.

(2) When there is a change in ownership, the existing license is void and a new license will be issued to the new owner.

~~(4) (3) Whenever~~ When ownership of any cemetery company is proposed to be transferred, the cemetery company ~~shall~~ must notify the board. ~~A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a cemetery company is transferred in a single transaction, or in a related series of transactions to one or more persons, associations, or corporations.~~ The notice shall specify:

(a) the address of the principal offices of the cemetery company; and

(b) whether it will be changed or unchanged, and shall specify the name and address of each new owner and/or the stockholders thereof, regardless of whether or not the principal address has changed.

~~(2) (4)~~ Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall specify:

(a) the address of the principal offices of the cemetery company, whether changed or unchanged; and

(b) ~~shall specify~~ the name and address of each new owner and/or each stockholder owning more than 5 percent of the stock.

~~(3) When there is a change of ownership pursuant to this rule, the existing license shall become void and a new license shall be obtained from the board.~~

~~(4)~~ (5) Every cemetery company shall post and continuously maintain at the main public entrance to the cemetery, a sign which must:

(a) ~~specifying~~ specify the current name and mailing address of the cemetery company;

(b) contain a statement that the name and mailing address of each owner, presiding officer, and/or their agent of the cemetery company may be obtained by contacting the board; ~~and~~

(c) contain the mailing address of the board;

(d) ~~Such signs shall~~ be at least 16 inches high and 24 inches wide; and

(e) ~~shall~~ be prominently mounted upright and vertical.

~~(5)~~ (6) The board shall suspend the license of any cemetery company which is in violation of ~~the sign or public notice any of the~~ requirements of in this rule. ~~Such~~ The license may be reinstated only ~~upon compliance with such~~ when the cemetery company is in compliance with all requirements.

AUTH: 37-1-131, 37-19-202, 37-19-807, 37-19-816, MCA

IMP: 37-1-131, 37-19-816, MCA

#### 24.147.1502 PREARRANGED, PREFINANCED, OR PREPAID FUNERALS

(1) Mortuaries, crematories, and cemeteries shall provide information to allow ~~a continuing opportunity to all persons~~ all people the opportunity to consider, in advance and prior to need, the type and prices of ~~the funeral or alternative thereto~~ funeral arrangements which best meets their needs.

(2) All prearranged, prefinanced, or prepaid ~~funerals~~ funeral arrangements shall be according to the law and rules of the state of Montana.

(3) All cemetery perpetual care and maintenance trusts and mortuary and crematory trusts must be managed per the requirements of statute and this chapter.

AUTH: 37-1-131, ~~37-19-101~~, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-822, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: It is reasonably necessary to add language that makes clear to licensees that the trusts themselves must be maintained per existing statute.

#### 24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS

(1) No person, firm, or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, preneed funeral arrangements, or prepaid funeral agreements, unless that person is a duly licensed mortician ~~or funeral director~~.

(2) The following monies shall be construed as trust funds in the possession of a ~~funeral director~~, mortician, mortuary, cemetery, or any other person, firm, or corporation:

(a) through (5) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-827, 37-19-828, 37-19-829, MCA

**REASON:** It is reasonably necessary to remove references to funeral director to clarify who can sell preneed contracts. Funeral director is an obsolete license type which is no longer issued by this board, and there are no remaining "grandfathered" funeral director licensees in this state.

5. The proposed new rules are as follows:

**NEW RULE I TRUST FUNDS – GENERAL** (1) This rule applies to cemetery perpetual and maintenance trust funds and preneed funeral trust funds managed by mortuaries and crematories.

(2) The following individuals or entities cannot borrow any prepaid funeral trust funds, including principal or accrued interest either directly or indirectly, for the director or officer, or as the partner or agent of others:

- (a) any licensee of the board;
- (b) any director, officer, or employee of any mortuary, cemetery, crematory, or other provider; and
- (c) any member of a cemetery company.

(3) None of those listed in (2) can:

- (a) become an endorser or surety for loans to others; or
- (b) in any manner be an obligor for money borrowed from or loaned by the prepaid funeral trust funds.

(4) No business entity in which a licensee, employee of a licensee, or family member of a licensee has an interest can borrow any of the funds of a prepaid funeral trust fund.

(5) Per 37-19-829, MCA, banking institutions, savings or building and loan associations, or credit unions in which trusts are held are required to submit an annual report to the board regarding trust accounts held by those institutions using a board-developed reporting form.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-827, 37-19-828, 37-19-829, MCA

**REASON:** The board is adopting New Rules I through IX to form a new subchapter and locate all the specific trust management record-keeping and reporting requirements in a single subchapter.

It is reasonably necessary to adopt New Rule I to combine and clarify the requirements for cemetery and funeral trusts currently in ARM 24.147.1312 and 24.147.1505, which are proposed for repeal.

**NEW RULE II CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – GENERAL** (1) These rules are for the purpose of regulating management of cemetery perpetual care and maintenance trusts per the requirements of Title 37, chapter 19, part 8, MCA.

(2) Cemeteries licensed by the board must establish, maintain, and manage perpetual care and maintenance trust funds and appropriate financial records per requirements in 37-19-822, 37-19-823, and 37-19-828, MCA, and these rules.

(3) Perpetual care and maintenance funds must be kept separate from all other cemetery funds.

(4) Records for perpetual care and maintenance funds must be kept separate from all other cemetery financial records.

(5) Cemeteries licensed by the board must maintain all financial records pertaining to cemetery perpetual care and maintenance trusts so those are readily available for inspection and examination by the board.

(6) Cemeteries licensed by the board must submit an annual perpetual care and maintenance fund report to the board on a board-developed reporting form per the requirements in [NEW RULE IV].

(7) Failure to provide the annual report shall void the operating license of the cemetery.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-822, 37-19-823, 37-19-829, MCA

REASON: New Rules II through V are specific to cemetery perpetual care and maintenance trust funds. The board is adopting this rule to combine and clarify information currently in ARM 24.147.1304 and 24.147.1314, which are proposed for repeal. The board is citing to specific existing statutes and New Rule IV because many trust requirements are found in statute, not rule, and this will allow for easier cross-referencing.

NEW RULE III CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – FINANCIAL RECORDS (1) Cemeteries licensed by the board must maintain appropriate records per 37-19-822 and 37-19-823, MCA.

(2) In addition to the minimum requirements in 37-19-822(4), MCA, cemeteries must maintain the following:

(a) appropriate records of plans adopted for general care and maintenance and associated financial records;

(b) appropriate records of any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed; and

(c) any additional associated documents.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-822, 37-19-823, MCA

REASON: Noting that this rule language does not currently exist, the board is adopting it to articulate licensee record-keeping requirements that are above the minimum requirements described in 37-19-822, MCA. The board intends for this rule to identify for licensees exactly the information the board will audit.

NEW RULE IV CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) Per [NEW RULE II] cemeteries will report annually to the board:

- (a) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held;
- (b) final trust balances for both the current year's and previous year's reporting cycles, broken out by institution;
- (c) the amount of trust interest or dividends earned during the current reporting cycle;
- (d) total number of preneed and at-need sales during the current reporting cycle. In addition to the number sold, the cemetery must report the total monetary amounts collected and deposited in the trust per 37-19-822, MCA;
- (e) total expenditures from the net income for the care and maintenance of the cemetery during the current reporting cycle; and
- (f) a signed attestation from the cemetery as to the information contained within the report.

(2) Annual perpetual care and maintenance fund reports must be submitted to the board by February 1.

(a) A cemetery may request a reporting extension prior to the submission deadline. The board will:

- (i) evaluate requests on a case-by-case basis; and
- (ii) notify the requestor whether the extension was granted. If the extension is granted, the board will also notify the requestor as to the length of the extension.

(b) A cemetery that does not file its report within the time prescribed above may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA, including a fine of up to \$1000.

(3) The board will compare the trust principal and interest and dividends reported by the financial institution in [NEW RULE I] to the corresponding information reported by the licensed cemeteries in their annual reports per this rule.

(a) Using this information, the board will make a determination as to whether or not further information and/or an audit is necessary.

(b) If an audit is deemed necessary, the board will conduct an audit per [NEW RULE V].

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-822, 37-19-823, 37-19-828, 37-19-829, MCA

REASON: The board is adopting New Rule IV to relocate information from ARM 24.147.1304, which is proposed for repeal, and more clearly delineate the information required in licensees' annual perpetual care and maintenance fund reports. The board also intends for this new rule to clarify reporting extension requests, the board's review of reports in conjunction with financial institution reports per New Rule I and 37-19-829, MCA, and potential board action regarding annual reports.

Additionally, since these reports will now be reviewed in conjunction with financial institution annual reports, the board is shifting the annual reporting deadline

from June 1 to February 1, which is the statutorily set reporting deadline for the financial institutions under 37-19-829, MCA. Because summer is often the busiest time for cemetery maintenance, the board believes that owners and managers will have more time to prepare reports in the winter months.

NEW RULE V CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST ACCOUNTS – AUDITS (1) At its discretion, the board may conduct audits of licensed cemeteries per 37-19-807(1) and 37-19-808, MCA, and these rules. Reasons for audits include, but are not limited to:

- (a) public complaints; and
- (b) board action on annual trust reports submitted per [NEW RULE I] and [NEW RULE IV].

(2) The board will contract with an independent licensed or certified public accountant to conduct the audit.

(3) The contracted auditor will conduct the audit per these statutes, rules, general audit standards, and board audit guidelines. The audit includes, but is not limited to:

- (a) opinion of the independent public accountant;
- (b) report of the evaluation of internal controls;
- (c) the accountant's letter of qualification;
- (d) trust agreement(s);
- (e) financial statements; and
- (f) documents supporting and verifying each asset of the fund.

(4) The fee charged by the accountant for the actual cost of the audit must be paid by the cemetery company per 37-19-808, MCA.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA

REASON: The board is adopting New Rule V to relocate and clarify information from ARM 24.147.1305, which is proposed for repeal. It also includes new language regarding what is included within a financial audit so that both licensees and the board have a clearer understanding of the actual audit process.

NEW RULE VI MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – GENERAL (1) These rules are for the purpose of regulating management of preneed funeral trust accounts per the requirements of Title 37, chapter 19, part 8, MCA.

(2) Mortuaries and crematories licensed by the board must establish, maintain, and manage preneed funeral trust funds and appropriate financial records per requirements in statute and these rules.

(3) Mortuaries and crematories licensed by the board must maintain all financial records pertaining to preneed funeral trusts so those are readily available for inspection and examination by the board.

(4) Mortuaries and crematories licensed by the board must submit an annual preneed funeral trust report to the board on a board-developed reporting form per the requirements in [NEW RULE VIII].

AUTH: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA  
IMP: 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: New Rules VI through IX specifically apply to mortuary and crematory preneed trust funds. The board is adopting these new rules to begin requiring mortuaries and crematories to report on preneed trust funds as is already required of cemeteries. While these licensees are already statutorily required to maintain trust funds and associated records, the board concluded that to adequately oversee preneed trust accounts per Title 37, chapter 19, part 8, MCA, the board must also require annual trust reporting from mortuaries and crematories. Combined with the annual trust reports submitted by financial institutions per 37-19-829, MCA, New Rules VI through IX will enable the board to ensure that licensees are properly managing their preneed trust accounts and the public is adequately protected.

NEW RULE VII MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – FINANCIAL RECORDS (1) Mortuaries and crematories licensed by the board must maintain appropriate records per statute and these rules.

(2) In addition to preneed agreements as described in ARM 24.147.1504, mortuaries and crematories must maintain the following records:

(a) Montana Department of Public Health and Human Services Medicaid documents;

(b) statement of goods and services for preneed contracts funded by insurance; and

(c) any additional associated documents.

AUTH: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA  
IMP: 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is adopting New Rule VII to articulate mortuary and crematory record-keeping requirements to align with the requirements in Title 37, chapter 19, part 8, MCA, and ensure that licensees know exactly what information the board will audit.

NEW RULE VIII MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – ANNUAL REPORTING REQUIREMENTS (1) Per [NEW RULE VI], mortuaries and crematories will report annually to the board:

(a) the name(s) and address(es) of the banking institution, savings or building and loan association, or credit union in which the trust(s) is held;

(b) final trust balances for both the current year's and previous year's reporting cycles, broken out by institution;

(c) the amount of trust interest or dividends earned during the current reporting cycle;

(d) total number of preneed contracts sold during the current reporting cycle. In addition to the number sold, the mortuaries and crematories must report the total monetary amounts collected and deposited in the trust; and

(e) a signed attestation from the mortuaries and crematories as to the information contained within the report.

(2) Annual funeral preneed trust reports must be submitted to the board by February 1.

(a) Mortuaries and crematories may request a reporting extension prior to the submission deadline. The board will:

(i) evaluate requests on a case-by-case basis; and

(ii) notify the requestor whether the extension is granted. If the extension is granted, the board will also notify the requestor as to the length of the extension.

(b) Mortuaries and crematories that do not file their reports within the time prescribed above may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA, including a fine of up to \$1000.

(3) Per 37-19-829, MCA, and [NEW RULE VI], financial institutions must report to the board regarding all amounts received and held in trust.

(4) The board will compare the trust principal and interest and dividends reported by the financial institutions in [NEW RULE I] to the corresponding information reported by the licensed mortuaries and crematories in these annual reports.

(a) Using this information, the board will make a determination as to whether or not further information and/or an audit is necessary.

(b) If an audit is deemed necessary, the board will conduct an audit per [NEW RULE IX].

AUTH: 37-1-131, 37-19-202, 37-19-708, 37-19-807, MCA

IMP: 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is adopting New Rule VIII to clearly delineate the information required in mortuary and crematory annual preneed trust reports. The board also intends for this new rule to clarify reporting extension requests, the board's review of reports in conjunction with financial institution reports per New Rule I and 37-19-829, MCA, and potential board action regarding annual reports.

Additionally, since these reports will be reviewed in conjunction with financial institution annual reports, the board is setting a February 1 annual reporting deadline, which is the statutorily set reporting deadline for the financial institutions under 37-19-829, MCA.

NEW RULE IX MORTUARY AND CREMATORY PRENEED TRUST ACCOUNTS – AUDITS (1) At its discretion, the board may conduct audits of preneed funeral trusts. Reasons for audits include, but are not limited to:

(a) public complaints; and

(b) board action on annual trust reports submitted per [NEW RULE I] and [NEW RULE VIII].

(2) The board will contract with an independent licensed or certified public accountant to conduct the audit.



(3) The contracted auditor will conduct the audit per these statutes, rules, general audit standards, and board audit guidelines. The audit includes, but is not limited to:

- (a) opinion of the independent public accountant;
- (b) report of the evaluation of internal controls;
- (c) the accountant's letter of qualification;
- (d) trust agreement(s);
- (e) financial statements; and
- (f) documents supporting and verifying each asset of the fund.

(4) The fee charged by the accountant for the actual cost of the audit must be paid by the mortuary or crematory.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-1-131, 37-19-708, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is adopting this new rule to clearly set forth what is included in a financial audit, so that both licensees and the board have a clearer understanding of the actual audit process.

6. The board proposes to repeal the following rules:

24.147.1304 PERPETUAL CARE AND MAINTENANCE FUND REPORTS

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, 37-19-823, MCA

REASON: It is reasonably necessary to repeal this rule and ARM 24.147.1305, 24.147.1312, 24.147.1314, and 24.147.1505 and move the relevant concepts regarding cemeteries' reporting on perpetual care and maintenance funds to New Rules I, II, IV, and V.

24.147.1305 AUDIT FEES

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA

24.147.1312 RESTRICTIONS ON USE OF CEMETERY FUNDS

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

24.147.1314 PERPETUAL CARE AND MAINTENANCE FUNDS

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

24.147.1505 TRUST FUNDS

AUTH: 37-1-131, 37-19-101, 37-19-202, MCA  
IMP: 37-19-827, 37-19-828, 37-19-829, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov), and must be received no later than 5:00 p.m., October 6, 2017.

8. An electronic copy of this notice of public hearing is available at [www.funeral.mt.gov](http://www.funeral.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

9. 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 Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.1301, 24.147.1313, 24.147.1502, and 24.147.1503 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through IX will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.147.1304, 24.147.1305, 24.147.1312, 24.147.1314, and 24.147.1505 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov).

12. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE  
JOHN TARR, CHAIRPERSON

/s/ DARCEE L. MOE

Darcee L. Moe  
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 28, 2017.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.168.402 licensure	)	PROPOSED AMENDMENT AND
requirements, 24.168.406 military	)	REPEAL
training or experience, 24.168.411	)	
general practice requirements,	)	
24.168.2301 unprofessional conduct,	)	
and 24.168.2307 screening panel,	)	
and the repeal of 24.168.711	)	
ophthalmological diagnostic	)	
permissible drugs	)	

TO: All Concerned Persons

1. On October 3, 2017, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal 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 Optometry (board) no later than 5:00 p.m., on September 26, 2017, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 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 dlibsdopt@mt.gov (board's e-mail).

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

24.168.402 LICENSURE REQUIREMENTS (1) remains the same.  
(2) The application material must include the following:  
(a) through (d) remain the same.  
(e) a copy of a self-query of the National ~~Practitioners~~ Practitioner Data Bank and the Healthcare Integrity Data Bank;  
(f) ~~three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant;~~  
(g) and (h) remain the same but are renumbered (f) and (g).  
(3) through (6) remain the same.  
(7) ~~Applications not completed within one year will expire and the applicant will be required to reapply.~~

AUTH: 37-1-131, 37-10-202, 37-10-302, MCA

IMP: 37-1-131, 37-1-304, 37-10-301, 37-10-302, 37-10-304, MCA

REASON: The board is amending (2)(e) to utilize the correct entity name as the two data banks merged in 2013.

The board determined it is reasonably necessary to amend this rule to no longer require affidavits regarding good moral character. The board concluded that adequate information to demonstrate this is obtained through the application's disciplinary/criminal history questions and the results of each applicant's National Practitioner Data Bank (NPDB) self-query.

The board is deleting (7) since the one-year application "time out" provisions are adequately set forth in standardized department application procedures.

24.168.406 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 an optometrist. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(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: Since adopting this rule, the board has become aware that certain military personnel (Reservists and National Guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) Optometrists may conduct a practice in or at any desired location, under the following conditions:

(a) the practice must be owned and under the direct supervision of an optometrist with valid Montana ~~certificate of registration~~ license, except that a duly licensed optometrist is not prohibited from associating with other duly licensed optometrists and/or medical doctors for the purpose of practicing optometry in the following manners:

(i) remains the same.

(ii) a professional corporation, pursuant to ~~35-4-101~~ 35-4-108, et seq., MCA;

(iii) through (3) remain the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-301, MCA

REASON: The board is amending (1)(a) to utilize the correct term "license" as changed by House Bill 203 in 2005. The board is further amending (1)(a)(ii) to correct an erroneous statutory citation. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.168.2301 UNPROFESSIONAL CONDUCT (1) ~~Unprofessional~~ The following constitutes unprofessional conduct by licensees or license applicants includes, but is not limited to, the following items or combination thereof:

(a) through (l) remain the same.

(m) failure to respond to board inquiry or furnish ~~the board, its investigators, or representatives,~~ information legally requested by the board, department investigators, or board representatives;

(n) through (s) remain the same.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board is amending this rule for clarity and ease of use for the reader. Additionally, the board is striking "legally" from (1)(m) as the current language implies that the board would request information illegally from a licensee or applicant.

24.168.2307 SCREENING PANEL (1) The board screening panel shall consist of ~~at least two~~ three board members including the optometrist board member who has served longest on the board, and the public member of the board. The ~~chairperson~~ board president may reappoint screening panel members, or replace screening panel members as necessary at the chairperson's discretion.

~~(2) The screening panel shall not review anonymous complaints.~~

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-1-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align the screening panel makeup with the recent increase to five board members through Senate Bill 70 (2017). The board is also amending the rule to utilize the correct statutory term for the board president.

The board is striking (2) to align with the standardized department complaint procedure, which provides for preliminary review and informal investigation of anonymous complaints. This procedure will help ensure the boards consider all complaints that state a violation of law or rule, and that are supported by sufficient information.

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.

4. The rule proposed to be repealed is as follows:

24.168.711 OPHTHALMOLOGICAL DIAGNOSTIC PERMISSIBLE DRUGS

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board is repealing this rule to align with the requirements of 2-4-305, MCA, that administrative rules may not unnecessarily repeat statutory language. During a review of the rules, the board found that the rule language is identical to that provided in 37-10-101(1)(b), MCA, and it is not necessary to keep in rule.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdopt@mt.gov](mailto:dlibsdopt@mt.gov), and must be received no later than 5:00 p.m., October 6, 2017.

6. An electronic copy of this notice of public hearing is available at [www.optometry.mt.gov](http://www.optometry.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site 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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdopt@mt.gov](mailto:dlibsdopt@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. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.168.402, 24.168.406, 24.168.411, 24.168.2301, and 24.168.2307 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.168.711 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to [dlibsdopt@mt.gov](mailto:dlibsdopt@mt.gov).

10. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY  
DOUG KIMBALL, O.D., PRESIDENT

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

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

Certified to the Secretary of State August 28, 2017.



BEFORE THE BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING ON
24.222.301 definitions, 24.222.401	)	PROPOSED AMENDMENT AND
fees, 24.222.2301 unprofessional	)	ADOPTION
conduct, and the adoption of NEW	)	
RULE I limited licenses and NEW	)	
RULE II supervised professional	)	
experience	)	

TO: All Concerned Persons

1. On October 4, 2017, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Speech-Language Pathologists and Audiologists no later than 5:00 p.m., on September 27, 2017, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdspl@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: To qualify for a speech-language pathologist license in Montana, applicants must complete a supervised professional experience following graduation from a graduate degree program. The 2017 Montana Legislature enacted Chapter 90, Laws of 2017 (House Bill 347), an act providing for a limited speech-language pathologist license while completing the supervised professional experience. The bill was signed by the Governor and became effective on March 23, 2017.

The board is proposing new rules and amending existing rules to implement House Bill 347 by establishing requirements for the limited speech-language pathologist license and what constitutes a supervised professional experience. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.222.301 DEFINITIONS (1) and (2) remain the same.

~~(3) "Colleges, universities, and institutions approved by the board" means those colleges, universities, and institutions accredited by a nationally recognized accrediting agency approved by the board.~~

~~(4) "License" as used in these rules means a valid Montana full status license and does not include probationary or temporary licenses.~~

~~(5) remains the same but is renumbered (3).~~

(4) "Professional experience supervisor" means the Montana licensed speech-language pathologist who supervises the holder of a Montana limited license during the supervised professional experience as described in statute and these rules. The professional experience supervisor must have:

(a) a Montana license in good standing; and

(b) been licensed for at least two years, excluding any period of licensure under a limited license.

~~(6) (5) "Supervision of aide or assistant" means on-site observation and guidance by the supervising licensed speech-language pathologist or audiologist while a clinical activity is performed by the speech-language pathology or audiology aide or assistant. On-site supervision performed by the licensee may include but is not limited to the following:~~

~~(a) through (c) remain the same.~~

AUTH: 37-1-131, 37-15-202, 37-15-301, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-301, 37-15-303, 37-15-313,  
MCA

REASON: To implement House Bill 347, the board is amending this rule to define the qualifications for professional experience supervisors of limited speech-language pathologist licensees. Additionally, as limited licensees must be supervised by a licensed speech-language pathologist, the board is also amending (5) to differentiate between supervision of these licensees and that of aides or assistants. The board is further striking redundant and unnecessary definitions at (3) and (4).

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.

24.222.401 FEES (1) Fees are payable to the board. ~~The board assumes no responsibility for loss in transit of such remittances. All fees are nonrefundable.~~

~~(2) The board has established the following fees~~ Fees are:

~~(a) Combined application and original license fee for speech-language pathologist and/or audiologist~~ \_\_\_\_\_ \$ 350

~~(b) Renewal fee for speech-language pathologist and/or audiologist~~ \_\_\_\_\_ 200

~~(c) Placement or renewal of a license on inactive status for a speech-language pathologist and/or audiologist~~ \_\_\_\_\_ 100

~~(d) A combined application and temporary license fee for a speech pathologist and/or audiologist~~ \_\_\_\_\_ 50

~~(e) Registration for speech-language pathologist aide or assistant and/or audiologist aide or assistant~~ \_\_\_\_\_ 30

(a) limited license (speech-language pathologist):	
(i) application	\$ 27
(b) speech-language pathologist:	
(i) application	192
(ii) annual renewal of active license	110
(iii) placement of license on inactive status	55
(iv) annual renewal of inactive license	55
(c) audiologist:	
(i) application	192
(ii) annual renewal of active license	110
(iii) placement of license on inactive status	55
(iv) annual renewal of inactive license	55
(d) speech-language pathologist and audiologist (dual license):	
(i) initial application	192
(ii) annual renewal of active license	110
(iii) placement of license on inactive status	55
(iv) annual renewal of inactive license	55
(e) aide or assistant annual registration	30
(3) remains the same.	

AUTH: 37-1-134, 37-15-202, MCA

IMP: 37-1-134, 37-1-141, 37-15-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, and ensure that the board's fees related to its program area will provide the amount of money usually needed for the operation of the board for services. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. Therefore, the board is proposing these amendments to reduce application and renewal fees for all license types by 45%. This reduction will allow the board to gradually reduce its cash balance to meet the statutory requirements while ensuring adequate revenue to support board activities through the next biennium. The board estimates the fee reductions will affect approximately 627 licensees and applicants and result in a \$60,855 reduction in annual revenue.

The board is adding (2)(a) to set a fee for a limited license within the reduction framework described above that will adequately fund the costs of implementing the new provisions of House Bill 347.

24.222.2301 UNPROFESSIONAL CONDUCT (1) through (1)(i) remain the same.

(j) allowing aides and assistants to perform functions not allowed under the board's rules; ~~and~~

(k) failing to provide appropriate supervision to aides and assistants and services to clients; ~~and~~

(l) failing to provide appropriate supervision to the holder of a limited license who is engaged in supervised professional experience.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-15-202, MCA

REASON: To ensure adequate public protection regarding limited licensees and the associated supervision requirements, the board is adding the failure of a speech-language pathologist to properly supervise a limited license holder to those acts considered by the board as unprofessional conduct.

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

5. The proposed new rules are as follows:

NEW RULE I LIMITED LICENSES (1) A limited license permits an individual to complete a supervised professional experience as described in [NEW RULE II] in order to meet requirements for licensure as a speech-language pathologist.

(2) Applicants for limited licensure must submit a completed application on forms provided by the department, electronically or by paper. Completed applications include appropriate fees and required documentation.

(3) Applicants for limited licensure must:

(a) have a minimum of a master's degree in speech-language pathology or communication disorders from a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of American Speech-Language Hearing Association or its equivalent. The transcript must be certified and sent directly from the school;

(b) during the graduate degree program, have completed a supervised clinical practicum experience;

(c) pass examinations as determined by the board in ARM 24.222.510; and

(d) have a professional experience supervisor as defined in these rules.

(4) Limited licenses expire two years from the date issued and are not renewable. If a limited license expires and the supervised professional experience is not completed, the person must reapply for another limited license.

AUTH: 37-1-131, 37-15-202, 37-15-301, 37-15-302, 37-15-303, 37-15-307, MCA

IMP: 37-1-131, 37-15-301, 37-15-303, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule I and clearly delineate the minimum licensing requirements for a limited license. The proposed education and exam requirements are identical to those for speech-language pathologist licensure since limited license applicants will have completed their graduate programs and associated supervised clinical practicum experience. The only remaining speech-language pathologist licensing requirement for limited license applicants is completion of a supervised professional experience.

NEW RULE II SUPERVISED PROFESSIONAL EXPERIENCE (1) A limited

licensee may perform all duties and functions of a licensed speech-language pathologist while engaged in a supervised professional experience.

(2) A Montana supervised professional experience must:

(a) be a minimum of 36 weeks totaling no less than 1260 hours. A minimum of 1008 of the total 1260 hours must be in direct client contact, which includes, but is not limited to:

- (i) assessment;
- (ii) diagnosis;
- (iii) evaluation;
- (iv) screening;
- (v) treatment;
- (vi) report writing; and
- (vii) family/client consultation.

(3) The limited licensee and professional experience supervisor must both notify the board ten days prior to any change in supervisor.

(4) Per ARM 24.222.2301, the supervisor may be subject to disciplinary action for failure to adequately supervise the limited licensee.

AUTH: 37-1-131, 37-15-202, 37-15-301, 37-15-303, MCA

IMP: 37-1-131, 37-15-301, 37-15-303, MCA

REASON: The board is adopting this new rule to clearly set forth the standards for a supervised professional experience under a limited license. These requirements are substantially equivalent to national standards for similar types of supervised professional experiences for speech-language pathologists.

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 the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdspl@mt.gov](mailto:dlibsdspl@mt.gov), and must be received no later than 5:00 p.m., October 6, 2017.

7. An electronic copy of this notice of public hearing is available at [www.slpaud.mt.gov](http://www.slpaud.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. 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 Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdsdp@mt.gov](mailto:dlibsdsdp@mt.gov); or 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, apply and have been fulfilled. The primary bill sponsor was contacted on August 1, 2017, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.222.301 and 24.222.2301 does not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I and New Rule II does not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.222.401 does significantly and directly impact small businesses. Those affected are private practitioners of speech-language pathology and audiology with less than 50 employees. The probable and direct effects would be a benefit to small businesses due to the reduction in operating costs from the reduced licensing fees. The board determined that there are no adverse effects due to these proposed amendments so there is no alternative method(s) to eliminate adverse effects.

Documentation of the board's above-stated determinations is available upon request to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to [dlibsdsdp@mt.gov](mailto:dlibsdsdp@mt.gov).

11. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
LUCY HART PAULSON, Ed.D., CCC-SLP  
CHAIRPERSON

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

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

Certified to the Secretary of State August 28, 2017.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 36.12.101, 36.12.105,	)	PROPOSED AMENDMENT AND
36.12.107, 36.12.117, 36.12.121,	)	REPEAL
36.12.1301, 36.12.1501, 36.12.1702,	)	
and 36.12.1801 and the repeal of	)	
ARM 36.12.106 pertaining to water	)	
right permitting	)	

To: All Concerned Persons

1. On October 6, 2017, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Ted Doney Conference Room (second floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 29, 2017, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) and (2) remain the same.

(3) "Animal unit ~~month~~ (AUM)" means a measurement of livestock numbers:

(a) one beef cow = 1 AUM

(b) one dairy cow = 1.5 AUM

(c) one horse = 1.5 AUM

(d) three pigs = 1 AUM

(e) five sheep = 1 AUM

(f) 300 chickens = 1 AUM

(4) through (12) remain the same.

(13) "Combined appropriation" means an appropriation of water from the same source aquifer by two or more groundwater developments, ~~that are physically manifold into the same system.~~ the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a "combined appropriation." They can be separate

developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."

(14) through (38) remain the same.

~~(39) "Municipal use" means water appropriated by and provided for those in and around a municipality or an unincorporated town.~~

(40) through (89) remain the same but are renumbered (39) through (88).

AUTH: 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, ~~85-2-520~~, MCA

REASONABLE NECESSITY: The proposed amendment deletes the word "month" when referring to an animal unit (AU) because the rule is intended to provide a definition for livestock numbers, not the amount of forage required for livestock per month.

The purpose of the amendment to the definition of "combined appropriation" is to comply with the controlling judicial decision. On Sept. 13, 2016 the Montana Supreme Court, in *Clark Fork Coalition v. Tubbs*, 2016 MT 229, 384 Mont. 503, 380 P.3d 771, upheld the *Order on Petition for Judicial Review*, Cause No. BDV-2010-874, Montana First Judicial District Court, Lewis and Clark County (Oct. 17, 2014), invalidating the department's 1993 administrative rule defining "combined appropriation" because the rule was inconsistent with the Montana Water Use Act. The court reinstated the department's previous rule defining "combined appropriation," originally adopted in 1987. *Clark Fork Coalition*, 2016 MT at ¶ 46, 384 Mont. at 520, 380 P.3d at 783.

The purpose of the repeal of the definition of "municipal use" is to make the department's rule consistent with the controlling judicial decision. The department previously repealed its administrative rule defining "municipal use" on June 2, 2006. The rule was reinstated on April 16, 2007 in compliance with the *Decision and Order*, Cause No. ADV-2006-454, Montana First Judicial District Court, Lewis and Clark County (March 26, 2007). On appeal, the Montana Supreme Court reversed the order of the Montana First Judicial District Court and held that the repeal was valid. *Lohmeier v. State*, 2008 MT 307, 346 Mont. 23, 192 P.3d 1137.

36.12.105 TEMPORARY EMERGENCY APPROPRIATIONS (1) A person may use water for a temporary emergency appropriation ~~may be made necessary to protect lives or property~~ without prior approval from the department, but the use appropriation must cease immediately when the water is no longer required to meet the emergency.



(2) A person may use water for temporary emergency fire training without prior approval of the department. A person who uses water for temporary emergency fire training must publish notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail notice to each potentially affected appropriator in the area of the proposed point of diversion 30 days prior to the planned appropriation.

(a) The notice must include:

(i) the name and address of the person conducting the training;

(ii) the purpose for which the water is being used;

(iii) the source of water being appropriated;

(iv) the starting and ending date of the proposed use of water;

(v) the point of diversion;

(vi) the proposed place of use; and

(vii) the diversion flow rate and volume of water to be used during the period of use.

(b) A copy of the published notice or the individual notice must be provided to the department at least two days prior to the use of water.

(c) The duration of a temporary emergency appropriation for fire training may not exceed seven consecutive or nonconsecutive days per year.

(23) A temporary emergency appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business.

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-330, 85-2-341, 85-2-343, 85-2-344, MCA

REASONABLE NECESSITY: The 2017 Montana Legislature enacted Chapter 264, Laws of 2017 (House Bill 429), an act extending the water right permit exemption for certain operations and training of a local government fire agency, effective October 1, 2017. House Bill 429 allows for "...temporary emergency appropriations, including for emergency fire training..." without obtaining a permit from the department. While the controlling language in House Bill 429 is for temporary emergency appropriations, meaning the appropriation is both temporary and done in the instance of an emergency, training done to prepare for emergency fires is not typically conducted in the midst of an emergency. Given that there is generally planning involved in a training exercise, and individuals with existing water rights on the source proposed to be used for emergency fire training have a property right that could be adversely affected by the temporary appropriation, notice of the planned appropriation is reasonable.

36.12.107 FILING FEE REFUNDS (1) through (3) remain the same.

(4) No refund will be authorized once the department has sent the applicant a deficiency letter.

(4) through (8) remain the same but are renumbered (5) through (9).

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-113, 85-2-302, MCA

REASONABLE NECESSITY: The purpose of this proposed amendment is to ensure the filing fees collected and retained by the department are commensurate with its costs in processing the application. The department spends a significant amount of resources processing an application in order to identify deficiencies in the application. Refunding the filing fee if an application is withdrawn after a deficiency letter is issued to the applicant results in the department's costs exceeding the fees. The department has been following this practice since 2012.

36.12.117 OBJECTION TO APPLICATION (1) through (8) remain the same.

(9) An Objection to Application is correct and complete if it includes the following legible information:

(a) through (f) remain the same.

(g) facts explaining how the person has standing to object. To have standing, a person must have property, water rights, or other interests that would be adversely affected were the application to be granted. The objection must describe how the person's property, water rights, or interests will be adversely affected if the water right application were granted; and

(h) if an objector is claiming adverse effect to instream flow water rights for fish, wildlife, and recreation, the objector must:

(i) describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected;

(ii) identify the point or points where the instream flow water right is measured and monitored; and

(h) remains the same but is renumbered (i).

(10) through (17) remain the same.

AUTH: 85-2-308, MCA

IMP: 85-2-308, MCA

REASONABLE NECESSITY: This amendment is proposed to make the department's rules consistent with the controlling statute. For instream water rights for fish, wildlife, and recreation, 85-2-308(5), MCA, requires the department's rules to include language requiring the objector to provide the information contained in the amended rule in a correct and complete objection.

36.12.121 AQUIFER TESTING REQUIREMENTS (1) and (2) remain the same.

(3) Minimum testing procedures are as follows.

(a) Pumping must be maintained at a constant discharge rate ~~equal to or greater than the proposed pumping rate for the entire duration of the test.~~

(b) The discharge rate must be equal to or greater than the proposed rate for the entire duration of the test if the application is for one well or if the total proposed rate for multiple wells can be obtained from a single well. The discharge rate may be less than the proposed rate if the application is for multiple wells and the total proposed rate cannot be obtained from a single well, so long as the remainder can be demonstrated from the remaining wells under (f).

(b) through (j) remain the same but are renumbered (c) through (k).

AUTH: 85-2-113, 85-2-370, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-337, 85-2-341, 85-2-343, 85-2-344,  
85-2-360, 85-2-361, 85-2-362, 85-2-402, 85-2-419, 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: The proposed language is intended to more clearly state the aquifer testing requirements, resulting in less ambiguity.

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE (1) A permit application will not be assigned a priority date and will be returned to the applicant if any of the following is not completed on the application form or included with the application:

- (a) through (h) remain the same.
- ~~(i) a map conforming to standards identified in ARM 36.12.111; and~~
- ~~(j) the appropriate filing fee found at ARM 36.12.103; and~~
- (i) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015.

(2) A change application will be returned to the applicant if any of the following is not completed on the application form:

- (a) through (d) remain the same.
- ~~(e) a map conforming to standards identified in ARM 36.12.111; and~~
- ~~(f) the appropriate filing fee found at ARM 36.12.103; and~~
- (f) for projects proposed in sage grouse habitats designated as a core area, general habitat, or a connectivity area, a letter from the Montana Sage Grouse Habitat Conservation Program stating the project is consistent with Executive Orders 12-2015 and 21-2015.

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-310, MCA

REASONABLE NECESSITY: While a map conforming to the standards identified in ARM 36.12.111 is required for a correct and complete application, such a map is not required in order to accept the application.

The purpose of the proposed amendment is to facilitate pre-application consultation between the applicant and the Montana Sage Grouse Habitat Conservation Program, if the project is located within sage grouse habitat, in order for the department to ensure its decisions on permit and change applications are consistent with the Conservation Strategy. Pursuant to Executive Orders 12-2015 and 21-2015, regarding the implementation of the Montana Sage Grouse Conservation Strategy, all new land uses or activities subject to state agency review, approval, or authorization must be consistent with the Conservation Strategy. Because the department must adhere to statutory timelines that are triggered with the submittal and acceptance of an application, it is appropriate for an applicant to consult with the Program prior to submitting an application. Consistency with Executive Orders 12-2015 and 21-2015 is not part of the department's review criteria for applications.

However, unless the applicant demonstrates consistency with the Executive Orders, the department cannot accept the application for processing.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION (1) remains the same.

(2) The priority date on a permit application or the date received on a change application will not be changed if:

(a) all of the requested information in the deficiency letter is postmarked and submitted to the department within 30 days of the date of the deficiency letter; or

(b) within 45 days of the date of the deficiency letter, the department has granted an extension. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.

(3) The permit application priority date or change application date received will be changed to the date when the department receives all of the requested information if:

(a) all of the requested information in the deficiency letter is postmarked and submitted between 31 and 90 days of the date of the deficiency letter; or

(b) in cases where an extension is granted by the department, 45 to 90 days of the date of the deficiency letter.

~~(2) If all of the requested information in the deficiency letter is postmarked and submitted to the department within 30 days of the date of the deficiency letter or an extension of time of no more than 15 days, the priority date on a permit application will not be changed, or for change applications, the date received will not be changed. A request for extension of time must be submitted in writing.~~

~~(3) If all of the requested information in the deficiency letter is postmarked or submitted within 31 to 90 days of the date of the deficiency letter unless extended under (2), the permit application priority date will be changed to the date when the department receives all of the requested information, or for a change application, the date received will be changed.~~

(4) remains the same.

AUTH: 85-2-113, MCA

IMP: 85-2-302, MCA

REASONABLE NECESSITY: The proposed amendment is necessary to more clearly state the timelines and outcomes when a deficiency letter is sent to an applicant.

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY ~~(1) Substantial credible information must be provided showing there is surface water physically available at the flow rate and volume that the applicant seeks to appropriate for the proposed period of diversion.~~

~~(21) If actual stream gaging records are available, or the source has been otherwise measured, and or quantified by a public entity, the records shall be used to estimate the median of the mean monthly flow rates and volumes for the stream~~

gaging station period of record during the proposed months of diversion at the source of supply in the amount the applicant seeks to appropriate.

~~(32) If actual flow rate and volume data stream gaging records are not available, or the source has not been otherwise measured or quantified by a public entity, to estimate the median of the mean monthly flows, then the department shall use an accepted method for estimating surface water flow rates and volumes shall be used in conjunction with discharge measurements to validate the estimation technique used. Some accepted methods are listed in (5).~~

~~(4) When stream flow gaging station data are not available and monthly median flow estimation techniques are used, the following stream discharge data must be collected:~~

~~(a3) Except as provided in (4), Sstream-flow measurements in cfs or gpm must be collected at least once every month during the proposed period of diversion at the most suitable location on the source of supply, and which is typically at or directly upstream of the proposed point of diversion.~~

~~(b4) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions, the department may grant a variance to the measurement requirements in (3). approved by the department, at least three measurements must be collected during the period of proposed appropriation. These measurements should be taken during each of the following periods:~~

~~(i) high flow conditions (May through June for mountain streams and March through May for prairie streams);~~

~~(ii) following runoff and prior to baseflow (July through August for mountain streams and May through June for prairie streams); and~~

~~(iii) baseflow (August through March for all streams).~~

~~(a) A request for a variance from measurement requirements must be submitted in writing to the appropriate regional office.~~

~~(b) A variance may not completely relieve the applicant of the requirement of taking measurements.~~

~~(e5) Measurements must be submitted on Form 649 in electronic format with all information and data provided.~~

~~(d) A request for a variance from measurement requirements may be submitted for nonperennial streams. The request must be submitted in writing to the appropriate regional office.~~

~~(6) In addition to validating estimation techniques, measurements may, in some cases and upon approval of the department, be used as evidence of physical availability.~~

~~(57) The methods described in the following reports may contain be acceptable accepted methods for estimating surface water flow rates and volumes:~~

~~(a) through (n) remain the same.~~

~~(60) Other professionally documented hydrologic methods for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. Natural Resources and Conservation Service-developed mean annual runoff data, and drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.~~

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, 85-2-311, MCA

REASONABLE NECESSITY: The proposed amendment is intended to clarify what measurement data may be used to demonstrate physical surface water availability and to validate estimation techniques. The proposed language also allows for a variance from specific measurement requirements in order to provide more flexibility when considering specific source types and conditions while still soliciting information needed for the department to process the application.

36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

(1) and (2) remain the same.

(3) The applicant does not need to explain that the flow rate ~~and~~ or volume for each purpose is reasonable if:

(a) and (b) remain the same.

AUTH: 85-2-113, 85-2-302, MCA  
IMP: 85-2-302, MCA

REASONABLE NECESSITY: The "and" implied that the department did not need an explanation of the flow rate if the volume being requested conformed to standard amounts. The proposed language clarifies that an explanation of the flow rate is needed even if the volume conforms to the standards set out in ARM 36.12.115 or 36.12.1902.

4. The department proposes to repeal the following rule:

36.12.106 TESTING AND MONITORING

AUTH: 85-2-113, MCA  
IMP: 85-2-113, MCA

REASONABLE NECESSITY: This rule restates verbatim statutory language in 85-2-369, MCA. Pursuant to 2-4-305, MCA, "rules may not unnecessarily repeat statutory language."

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m., October 6, 2017.

6. Ada Montague, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Aliselina Strong, PO Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail astrong@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on August 21, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the board's above-stated determination is available upon request to Montana Department of Natural Resources and Conservation Water Rights Bureau, P.O. Box 201601, Helena MT 59620-1601, or to mheffner@mt.gov.

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

/s/ Barbara Chillcott  
BARBARA CHILLCOTT  
Rule Reviewer

Certified to the Secretary of State August 28, 2017.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.4.301 and 42.4.302 ) PROPOSED AMENDMENT  
pertaining to calculating the elderly )  
homeowner/renter tax credit )

TO: All Concerned Persons

1. On September 28, 2017, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third East Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 15, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.4.301 DEFINITIONS The following definitions apply to this subchapter:

(1) "Amenities" are items that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the pleasure and enjoyment of the occupant(s), rather than to their indispensable needs. For periods beginning after December 31, 2016, "amenities" means services unrelated to the occupation of a dwelling and provided by personnel, including but not limited to meals, housekeeping, transportation, assisted living, or nursing care.

(2) "Gross household income" as defined under 15-30-2337, MCA, is further defined as:

(a) remains the same.

(b) ~~federal refunds received during the tax year to the extent that the amount recovered reduced the claimant's Montana income tax in a prior year~~ refundable credits received; and

(c) ~~Montana any state income tax and~~ refundable credits received, including elderly homeowner/renter credit refunds received.

(3) remains the same.

(4) "Rent" is the amount of money charged to a tenant to occupy a dwelling. "Rent" does not include amenities ~~such as meals, housekeeping, nursing care, etc.~~

AUTH: 15-30-2620, MCA



IMP: 15-30-2337, 15-30-2338, 15-30-2340, MCA

REASON: The department proposes amending ARM 42.4.301 to update three definitions.

The department proposes modifying the terms "amenities" and "rent," in order to equalize and simplify the reporting of rents by elderly taxpayers, regardless of the type of dwelling they occupy. The proposed amendments revise the definition of rent by removing details describing amenities, because that term is separately defined in (1), and also address the situation where taxpayers living in long-term care facilities often struggle to determine what constitutes amenities in their payment to the long-term care institutions. Amending these terms will make it easier for elderly taxpayers to segregate which portion of their payment is for rent, and which portion is for amenities provided by personnel. Personnel is commonly understood to include all employees of the long-term care facility and all professionals providing services under a contract they signed with the long-term care institution. It also includes all volunteers providing services, for which residents are charged.

The department is leaving the original definition of "amenities" in place, as it would still apply to previous reporting periods, and revising the definition for reporting periods that would begin in tax year 2017. This corresponds with changes being proposed for ARM 42.4.302, in this same rulemaking notice, which expands the amount of rent that can be reported as allowable toward the credit.

The department also proposes revising the definition of the term "gross household income" for accuracy, by limiting the inclusion of federal and state tax refunds in gross household income to refundable credits of any kind, as these are the only credits that are added to gross income in the year they are received. Taxes derived from gross income received in previous years were already accounted for in the gross income of that year. Requiring them to be reported as gross income in the current tax year, when refunded, would result in counting them twice.

42.4.302 COMPUTATION OF ELDERLY HOMEOWNER/RENTER TAX CREDIT (1) remains the same.

(2) To calculate the credit, an eligible claimant is allowed to use property taxes billed:

(a) on property held in a revocable trust if the grantor(s) of the property or their spouse is the claimant and are trustees of the revocable trust;

(b) as rent if the property occupied by the claimant is in a name other than the claimant; or

(c) if the claimant has a living trust or a life estate.

~~(2)(3)~~ When a taxpayer lives in a health care facility, long-term care facility, or a residential care facility (facility), as defined in 50-5-101, MCA, the rent allowed in calculation of the property tax credit is the actual out-of-pocket rent paid ~~subject to (7).~~

~~(3)(a)~~ Where ~~if~~ one spouse lives in a health care facility, long-term care facility, or a residential care facility as defined in 50-5-101, MCA, ~~facility~~ and the other lives at a different address, they are ~~only~~ allowed to ~~take report either~~ the rent ~~at paid for~~ the facility or the rent/property taxes billed for the other address, but not both. Married taxpayers who are living apart are entitled to file and receive only one

claim per year.

~~(4) Property taxes billed on property held in a revocable trust are allowable as long as the grantor(s) of the property or their spouse is the eligible claimant and are trustees of the revocable trust.~~

~~(5) Property taxes billed are allowable as rent if the property occupied by an eligible claimant is in a name other than the claimant.~~

~~(6) Property taxes billed to an eligible claimant who has a living trust or a life estate are allowable.~~

~~(7) If~~

~~(b) Prior to January 1, 2017, if a claimant lives lived in a healthcare facility, long-term care facility, or a residential care facility as defined in 50-5-101, MCA, but does facility that did not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed will be is limited to:~~

~~(i) \$20 a day for periods beginning on or before December 31, 2014; or~~

~~(ii) \$30 a day for periods beginning after December 31, 2014.~~

~~(c) For claims for periods beginning after December 31, 2014 2016, the rent allowed will be limited to \$30 a day. if a claimant lives in a facility, the out-of-pocket rent being claimed must exclude payments for amenities. To satisfy this obligation, the claimant must either:~~

~~(i) utilize a detailed statement provided by the facility itemizing the amount paid for rent and the amount paid for amenities separately; or~~

~~(ii) determine the amount of allowable rent by deducting the amenities from the total amount paid as follows:~~

~~(A) 20 percent for services related to board such as meals, housekeeping, laundry, and transportation;~~

~~(B) 30 percent for services related to continuous care such as assisted living, medical care, paramedical care, memory care, medical supplies, and pharmacy; or~~

~~(C) 50 percent if the services in both (A) and (B) are provided.~~

~~(d) Examples of calculating the allowable rent in (c) are as follows:~~

~~(i) Val rents a room in an independent living facility. Her \$1,000 monthly payment includes utilities and parking, but no services delivered by personnel. No calculation is needed. Val is allowed to report the full \$1,000 per month as rent.~~

~~(ii) Paul rents a room in an independent living facility. In addition to utilities and cable, his \$2,500 monthly payment includes board such as housekeeping, meals, and transportation provided by staff and contractors. The facility's year-end statement does not break out his total paid. Paul deducts 20 percent (\$2,500 - 20%) for the board services to calculate \$2,000 per month as allowable rent to report.~~

~~(iii) Ron lives in a long-term care facility and receives board services, assistance with daily living activities, and special memory care. The facility's year-end statement partially breaks out his \$40,000 total payment, showing the amount charged by a contractor for his memory care. It does not list the amounts charged for board and care provided by staff. Ron deducts 50 percent (\$40,000 - 50%) for board (20%) and care (30%) to calculate \$20,000 as allowable rent to report for the year.~~

~~(iv) George rents an apartment in an assisted living facility. The facility's year-end statement breaks out his \$30,000 total payment as \$14,400 for rent, \$5,000 for board, and \$10,600 for care. George may report the \$14,400 stated rent~~

amount or, alternately, choose to deduct 50 percent from the total (\$30,000 - 50%) for board (20%) and care (30%) to calculate \$15,000 as allowable rent to report for the year.

(v) Mary rents a room in an assisted living facility for six months while recovering from a medical procedure. Her \$2,000 total monthly payment includes assistance with daily living activities provided by staff, but she chose not to receive any additional services such as board. The facility does not itemize her payment. Mary deducts 30 percent from the monthly payment (\$2,000 - 30%) for the care to calculate \$1,400 per month in allowable rent. Mary may report either the allowable rent paid to the facility, or the monthly rent she paid for her primary residence during the same six-month period, but not both.

AUTH: 15-30-2620, MCA

IMP: 15-30-2340, 15-30-2341, 50-5-101, MCA

REASON: The department proposes the reorganization of ARM 42.4.302 into three distinct sections to avoid unnecessary cross-references and to eliminate repetitive language. The proposed changes essentially move the content of (4), (5), and (6) up as new (2), combining them into a single section.

The department also proposes combining together previous (2), (3), and (7), as newly numbered (3), and amending the content to simplify the calculation of rents when claimants are residents of long-term care facilities, and to provide an alternative method for quantifying the allowable rental amount that is more responsive to differences in pricing.

The proposed amendments to the rule still require the claimant to distinguish rent from amenities, using the revised definition of that term in ARM 42.4.301. However, the proposed amendment to the definition of "amenities," in this same rulemaking notice, modifies the scope of what would constitute rent. That amendment also modifies the alternative rent determination when the claimant is unable to obtain a clear distinction between rent and amenities. The proposed amendments replace the per-diem rental amount with a deduction, which is a fraction of the overall out-of-pocket amount paid depending on two types of services, board or care, included in the payment. This new calculation would take effect with the 2017 tax year.

This substitution is justified by the fact that the credit is designed to compensate increases in the cost of living of elderly homeowners and renters. The per-diem approach did not capture large variations in the cost of long-term care facilities. The quantitative limitation of the per diem method resulted in providing a credit based on gross household income rather than cost of living. This result was often perceived as being unfair by taxpayers. The new alternative method allows the rental amounts to reflect differences in the cost of living when renting in a long-term care facility. It provides a means to reach the amount of rent through an acceptable approximation of the cost.

The deduction for board is set at 20 percent of the payment and the deduction for care is set at 30 percent of the payment. When both types of services are rendered, claimants must add both rates to determine the deduction.

These deductions were determined based on a sample of 48 long-term care

invoices that random taxpayers provided with their return or upon request between the 2012 and 2016 tax years. Only invoices providing a clear breakdown between rent and services were used. Invoices were selected to reflect trends in pricing over the last four years, and geographic diversity. Invoices were issued by 22 institutions located in 12 different counties across the state.

To simplify the calculation of the credit, the rates were rounded to the closest decile of the median percentage of the cost for board or care listed in the sample. For board, the department found a median percentage of 19.30 percent, and the average found was 25.31 percent. The deduction for board was rounded to 20 percent. The median percentage cost found for care was 28.95 percent; and the average for this cost was 32 percent. The deduction for care was rounded to 30 percent.

The calculation does not require any count of the numbers of days spent in the facility. To determine the amount of rent, taxpayers only need the overall amount paid and the knowledge that services for board or care are rendered by personnel on a continuous basis, regardless of whether these services are delivered by staff of the facility or contractors. As proposed to be amended, the rule also provides helpful examples illustrating the alternative calculation for the rent.

The department further proposes adding 15-30-2341, MCA, as an implementing citation for this rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than October 11, 2017.

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

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

7. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov/rules](http://revenue.mt.gov/rules), or through the Secretary of State's web site at [sos.mt.gov/ARM/register](http://sos.mt.gov/ARM/register).

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 4.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State August 28, 2017.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.9.106, 42.9.203, 42.9.301, ) PROPOSED AMENDMENT  
42.9.401, and 42.9.501 pertaining to )  
pass-through entities )

TO: All Concerned Persons

1. On September 28, 2017, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 15, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.9.106 COMPOSITE RETURN, WITHHOLDING, OR WAIVER FOR PARTNERS, SHAREHOLDERS, MANAGERS, AND MEMBERS THAT ARE SECOND-TIER PASS-THROUGH ENTITIES (1) remains the same.

(2) The department may waive the requirements to remit tax or pay composite tax on behalf of a domestic second-tier pass-through entity for the current tax year, as set forth in (1), if the first-tier pass-through entity obtains from the domestic second-tier pass-through entity a completed Form PT-AGR and files it with the department by the due date of the first-tier pass-through entity's tax return, including extensions. On Form PT-AGR, the domestic second-tier pass-through entity owner must:

(a) remains the same.

(b) establish that the domestic second-tier pass-through entity's share of Montana source income should be fully accounted for in a resident individual, fiduciary, or corporate income tax return; and

(c) through (4) remain the same.

(5) For the purposes of (2), (3), and (4), ~~and pursuant to 15-30-3313, MCA, a "domestic second-tier pass-through entity" means a second-tier pass-through entity whose interest is entirely held, either directly or indirectly, by one or more resident individuals~~ has the same meaning as provided in 15-30-3313, MCA.

(6) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3313, MCA

IMP: ~~15-1-201~~, 15-30-2620, 15-30-3302, 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.9.106 to implement Senate Bill (SB) 252, L. 2017, which revised the definition and waiver requirements of a "domestic second-tier pass-through entity" as it pertains to pass-through entity withholding.

The department proposes amending (2) to correspond with the revised definition of the term by adding "fiduciary, or corporate" income tax returns in (b), where the rule provides for what the domestic second-tier pass-through entity owner must establish when filing a Form PT-AGR. The department also proposes amending (5) to replace the current definition of "domestic second-tier pass-through entity" with a reference to the definition of the term in 15-30-3313, MCA, instead, because the revised definition in the statute is extensive and unnecessary to repeat in the rule.

The department further proposes striking an unnecessary implementing citation from the rule.

42.9.203 COMPUTATION OF COMPOSITE TAX (1) through (3) remain the same.

(4) Examples of the computations in (3) are as follows:

(a) remains the same.

(b) Example 1b. Participant's share of federal income: Assume that the partnership in Example 1a. has one electing eligible participant in the composite tax return, an individual. To determine the electing partnership's share of federal taxable income, multiply the entity's federal income (as reported on Form PR-1, line 15) by the ratio of the participant's distributive share of Montana source income (~~Form PR-1, Schedule III, column D~~ as reported on the participant's Montana Schedule K-1, part 2) over the entity's total Montana source income (Form PR-1, line 21). Assume the participant's share of Montana source income is \$10,000.

Participant's share of Montana source income ( <del>Form PR-1, line 21</del> )	\$10,000
Divide by total Montana source income ( <u>Form PR-1, line 21</u> ) <del>over the entity's Montana source income</del>	÷ \$20,000
Ratio of participant's share of Montana source income over the entity's <u>total</u> Montana source income	50%
Multiply by the partnership's federal income from all sources (Form PR-1, line 15)	x \$60,000
Participant's share of federal income	\$30,000

(c) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3312, MCA

IMP: 15-30-2103, 15-30-2512, 15-30-3302, 15-30-3312, 15-31-121, MCA

REASON: The department proposes amending ARM 42.9.203 to eliminate references to Schedule III, because it has been eliminated from both Forms PR-1 and CLT-4S beginning with tax year 2017, and is therefore no longer necessary to reference in the rule. The department also proposes minor corrections to the composite tax examples to correct language errors and update form references.

The reference to Schedule III in the example in (4)(b) is proposed to be stricken and replaced with a reference to the Montana Schedule K-1 instead. For the purpose of calculating composite tax, a partner or shareholder's "Montana source income" can now be found on the Montana Schedule K-1.

Also, in the example in (4)(b), line one of the table incorrectly references Form PR-1, line 21, and is therefore proposed to be stricken. That reference actually belongs on line two, where it is proposed to be added. Additionally, the language on line two of the table appeared to direct the taxpayer to divide total Montana source income by total Montana source income, when it should be directing the taxpayer to divide line one by line two, and is therefore proposed to be stricken. Furthermore, line three was missing the word "total" and the department proposes adding it in.

The proposed amendments to this rule are unrelated to new legislation.

42.9.301 PASS-THROUGH ENTITY INFORMATION RETURNS FOR PARTNERSHIPS (1) Every partnership that has Montana source income must file a ~~form~~ Form PR-1, Montana Partnership Information and Composite Tax Return, on or before the 15th day of the ~~fourth~~ third month following the close of its annual accounting period.

~~(2) Approval of an extension to file the partnership's federal Return of Partnership Income or federal Return of Income for Electing Large Partnerships automatically extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana partnership information return in order to receive the Montana extension. A six-month extension of time to file a partnership return is automatically allowed if any tax, penalties, and interest due are paid on or before the date the return is filed.~~

(3) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.301 to update language pertaining to the filing of extensions for partnership returns, and to update the rule to correspond with a change enacted by the passage of House Bill (HB) 42, L. 2017, which revised the filing deadline for partnerships to align it with the federal filing deadline.



As provided in HB 42, the partnership return is now due on or before the 15th day of the third month, instead of the fourth month, following the close of the partnership's annual accounting period. Therefore, the department proposes updating the language in (1) to reflect the new required due date. The department also proposes making a grammatical correction in this section by capitalizing the word "Form," because it is part of a name.

Additionally, the department proposes changing the automatic extension provisions for partnerships in (2). Currently, an extension is allowed to a partnership if they have an approved federal extension. The department proposes making the extension automatic, without regard to the federal extension, provided that any tax, penalties, and interest due are paid on or before the date the return is filed, for consistency with the way individual income tax extensions are handled. The proposed change in this section of the rule is unrelated to the new legislation.

42.9.401 PASS-THROUGH ENTITY INFORMATION RETURNS FOR S CORPORATIONS (1) remains the same.

~~(2) Approval of an extension to file the S corporation's federal income tax return for an S corporation automatically extends the time for filing the Montana return to the date approved for filing the federal return. A copy of the federal extension form must be attached to the Montana S corporation information return in order to receive the Montana extension.~~ A six-month extension of time to file an S corporation return is automatically allowed if any tax, penalties, and interest due are paid on or before the date the return is filed.

(3) remains the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.401 to change the automatic extension provisions for S corporations in (2). Currently, an extension is allowed to an S corporation if they have an approved federal extension. The department proposes making the extension automatic, without regard to the federal extension, provided that any tax, penalties, and interest due are paid on or before the date the return is filed, for consistency with the way individual income tax extensions are handled.

The proposed amendment of this rule is unrelated to new legislation.

42.9.501 PASS-THROUGH ENTITY INFORMATION RETURNS FOR SINGLE-MEMBER LLC TREATED AS DISREGARDED ENTITY (1) through (7) remain the same.

(8) If the single member of the LLC is a partnership, the LLC must file the return on or before the 15th day of the ~~fourth~~ third month following the close of the partnership's annual accounting period.

(9) through (13) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-30-3302, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, 15-31-101, 15-31-111, MCA

REASON: The department proposes amending ARM 42.9.501 due to the passage of House Bill (HB) 42, L. 2017, which revised the filing deadline for partnerships to align with the federal filing deadline.

As provided in HB 42, the partnership return is now due on or before the 15th day of the third month, instead of the fourth month, following the close of the partnership's annual accounting period. Therefore, the department proposes updating the language in (8) to reflect this new due date for filing a disregarded entity information report when the single member of a limited liability company is a partnership. No additional amendments are proposed for this rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than October 11, 2017.

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

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

7. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov/rules](http://revenue.mt.gov/rules), or through the Secretary of State's web site at [sos.mt.gov/ARM/register](http://sos.mt.gov/ARM/register).

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 42, L. 2017, Representative Kim Abbott, and the primary sponsor of Senate Bill 252, L. 2017, Senator Mark Blasdel, were both contacted by regular mail on June 14, 2017 and August 11, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 4.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State August 28, 2017.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 1.2.419 pertaining to the ) PROPOSED AMENDMENT  
scheduled dates for the 2018 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On September 28, 2017, 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 rulemaking process 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., September 21, 2017, to advise us of the nature of the accommodation that you need. Please contact Jeff Hindoién, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-6197; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail Jeffrey.Hindoién@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

<del>2017 Register Publication Schedule</del>		
Issue	Filing (due by noon)	Publication
1	<del>December 27</del>	January 6
2	<del>January 9</del>	January 20
3	<del>January 23</del>	February 3
4	<del>February 6</del>	February 17
5	<del>February 27</del>	March 10
6	<del>March 13</del>	March 24
7	<del>April 3</del>	April 14
8	<del>April 17</del>	April 28
9	<del>May 1</del>	May 12
10	<del>May 15</del>	May 26
11	<del>May 30</del>	June 9
12	<del>June 12</del>	June 23

13	June 26	July 7
14	July 10	July 21
15	July 24	August 4
16	August 7	August 18
17	August 28	September 8
18	September 11	September 22
19	October 2	October 13
20	October 16	October 27
21	October 30	November 9
22	November 13	November 24
23	November 27	December 8
24	December 11	December 22

2018 Register Publication Schedule

<u>Issue</u>	<u>Filing (due by noon)</u>	<u>Publication</u>
<u>1</u>	<u>January 2</u>	<u>January 12</u>
<u>2</u>	<u>January 16</u>	<u>January 26</u>
<u>3</u>	<u>January 30</u>	<u>February 9</u>
<u>4</u>	<u>February 13</u>	<u>February 23</u>
<u>5</u>	<u>March 6</u>	<u>March 16</u>
<u>6</u>	<u>March 20</u>	<u>March 30</u>
<u>7</u>	<u>April 3</u>	<u>April 13</u>
<u>8</u>	<u>April 17</u>	<u>April 27</u>
<u>9</u>	<u>May 1</u>	<u>May 11</u>
<u>10</u>	<u>May 15</u>	<u>May 25</u>
<u>11</u>	<u>May 29</u>	<u>June 8</u>
<u>12</u>	<u>June 12</u>	<u>June 22</u>
<u>13</u>	<u>June 26</u>	<u>July 6</u>
<u>14</u>	<u>July 10</u>	<u>July 20</u>
<u>15</u>	<u>July 31</u>	<u>August 10</u>
<u>16</u>	<u>August 14</u>	<u>August 24</u>
<u>17</u>	<u>August 28</u>	<u>September 7</u>
<u>18</u>	<u>September 11</u>	<u>September 21</u>
<u>19</u>	<u>September 25</u>	<u>October 5</u>
<u>20</u>	<u>October 9</u>	<u>October 19</u>
<u>21</u>	<u>October 23</u>	<u>November 2</u>
<u>22</u>	<u>November 7</u>	<u>November 16</u>
<u>23</u>	<u>November 27</u>	<u>December 7</u>
<u>24</u>	<u>December 11</u>	<u>December 21</u>

(2) remains the same.

AUTH: 2-15-401, MCA

IMP: 2-4-312, MCA

REASONABLE NECESSITY: ARM 1.2.419 is proposed to be amended to set dates pertinent to the twice-monthly publication of the Montana Administrative Register

during 2018. The schedule is being proposed at this time in order that it may be adopted in a timely manner to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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: Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing Jeffrey.Hindoien @mt.gov, and must be received no later than 5:00 p.m., October 6, 2017.

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

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

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

/s/ JEFFREY M. HINDOIEN  
Jeffrey M. Hindoien  
Rule Reviewer

/s/ COREY STAPLETON  
Corey Stapleton  
Secretary of State

Dated this 28th day of August, 2017.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.11.226, 44.11.227,	)	AMENDMENT
44.11.302, and 44.11.605 pertaining	)	
to campaign finance reporting,	)	NO PUBLIC HEARING
disclosure, and practices	)	CONTEMPLATED

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices proposes to amend the above-stated rules.

2. The Office of the Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Commissioner of Political Practices no later than 5:00 p.m. on September 29, 2017, to advise us of the nature of the accommodation that you need. Please contact Jaime MacNaughton, Office of the Commissioner of Political Practices, P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov.

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

44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to candidates for the state legislature are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~\$1,700~~ \$1,750;

(b) a candidate for the state senate may receive no more than ~~\$2,800~~ \$2,850.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2016~~ 2018.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, 13-37-218, MCA

IMP: 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits for candidates from political committees for the 2018 election cycle.

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$660~~ \$680;

(b) a candidate for other statewide office may receive no more than ~~\$330~~ \$340;

(c) a candidate for all other public offices may receive no more than ~~\$170~~ \$180.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$23,850~~ \$24,500;

(b) a candidate for other statewide offices may receive no more than ~~\$8,600~~ \$8,850;

(c) a candidate for Public Service Commission may receive no more than ~~\$3,450~~ \$3,550;

(d) a candidate for senate may receive no more than ~~\$1,400~~ \$1,450;

(e) a candidate for all other public offices may receive no more than ~~\$850~~ \$900.

(3) and (4) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits to candidates from individuals or political parties for the 2018 election cycle. The law is currently under review by the 9th Circuit Court of Appeals in *Lair v. Motl*. Section (1) contribution limits will only be enforced if the 9th Circuit upholds the State's individual and political committee contribution limits as enacted by citizen initiative in November 1994. Section (2) political party contribution limits will be effective the day after publication of the adoption notice.

44.11.302 STATEMENTS AND REPORTS, FILING (1) through (1)(b) remain the same.

(c) Except as provided in ~~(1)(d)~~ and (2), the following candidates shall also file all reports electronically:

(i) candidates for the legislature;

(ii) candidates for the public service commission; and

(iii) candidates for district court judge.

~~(d) Candidates listed in (c) shall file all reports electronically only if the total amount of contributions received or the total amount of expenditures made exceeds \$500, for all elections in a campaign, excluding the filing fee paid by an individual.~~

(2) As provided by 13-37-226, MCA, electronic filing is mandatory for those candidates listed in (1) ~~except for those qualifying under (1)(d)~~. Candidates listed in



(1)(c) may submit a written request for a waiver from the requirement that reports be filed electronically. Electronic filing is mandatory for committees who are required to file electronically by statute. Committees who are required to file electronically by this rule, may apply for a waiver. The commissioner may provide a waiver if the candidate or committee establishes that they cannot file electronically for reasons such as they do not have reasonable access to the technology necessary to file electronically.

(3) and (4) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-117, 13-37-225, 13-37-226, 13-37-231, MCA

REASON: The 2017 Legislature passed SB 3 which makes candidate filing fees a campaign expenditure, and the source of the contributions which funded the expenditure subject to reporting and disclosure. Including candidate filing fees as a campaign expenditure makes the automatic electronic filing waiver found in (1)(d) irrelevant in all PSC and District Court Judge elections, and legislative candidates can request a waiver under (2).

44.11.605 ELECTIONEERING COMMUNICATION (1) through (3)(c) remain the same.

(d) any other regular or normal communication by a local government or a state agency that includes information about a candidate, ballot issue, or election. A local government or state agency informational communication concerning a ~~ballot~~ ballot issue ~~by local government or a state agency~~ is not a regular and normal communication and is subject to reporting and disclosure as an electioneering communication. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

(4) through (8) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

REASON: Confusion has arisen for state and local agencies regarding whether informational ballot issue expenditures are required to be reported and disclosed under the law and rule. Examples of regular and normal communication would be a local election official posting a sample of the upcoming ballot for members of the public to access, the location of voting places, and the date and times the polls will be open. The language of the rule has been amended to clarify that when a state or local agency expends funds to communicate information to the public regarding an issue on the ballot, the communication is susceptible to no reasonable interpretation other than as an electioneering communication under (1), (3)(b) and (5) and is subject to reporting and disclosure.

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: Jaime MacNaughton, Office of the Commissioner of Political Practices, 1209 Eighth Ave., P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail CPPRules@mt.gov, and must be received no later than 5:00 p.m., October 6, 2017.

5. If persons who are directly affected by the proposed actions which 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 to Jaime MacNaughton at the above address no later than 5:00 p.m., October 6, 2017.

6. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an associating 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 143 persons based on the number of candidates in the 2016 and 2017 election cycles (1,435).

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

8. For ARM 44.11.302, the bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. On July 27, 2017, Sen. Kary was contacted by e-mail and letter and on August 4, 2017 by phone by Jaime MacNaughton regarding SB 3. The proposed rule is not contrary to the primary sponsor's comments as received by the COPP pursuant to 2-4-110(2)(e), MCA. For ARM 44.11.226, 44.11.227, and 44.11.605, 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 COPP has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton  
Jaime MacNaughton  
Rule Reviewer

/s/ Jeffrey Mangan  
Jeffrey Mangan  
Commissioner of Political Practices  
Office of the Commissioner of Political Practices

Certified to the Secretary of State August 28, 2017.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 2.43.3502 pertaining to the        )  
investment policy statement for the        )  
Defined Contribution Retirement Plan        )  
and ARM 2.43.5102 pertaining to the        )  
investment policy statement for the        )  
457 Deferred Compensation Plan        )

TO: All Concerned Persons

1. On June 23, 2017, the Public Employees' Retirement Board published MAR Notice No. 2-43-561 pertaining to the proposed amendment of the above-stated rules at page 815 of the 2017 Montana Administrative Register, Issue Number 12.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ William Holahan  
William Holahan  
Legal Counsel  
and Rule Reviewer

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

Certified to the Secretary of State August 28, 2017.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.43.1306 pertaining to actuarial )  
rates and assumptions and ARM )  
2.43.2309, 2.43.2310 and 2.43.2319 )  
pertaining to service purchases )

TO: All Concerned Persons

1. On June 23, 2017, the Public Employees' Retirement Board published MAR Notice No. 2-43-562 pertaining to the proposed amendment of the above-stated rules at page 818 of the 2017 Montana Administrative Register, Issue Number 12.

2. The Public Employees' Retirement Board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ William Holahan  
William Holahan  
Legal Counsel  
and Rule Reviewer

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

Certified to the Secretary of State August 28, 2017.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New        ) NOTICE OF ADOPTION  
Rule I pertaining to definition of "alter"    )  
for mortgage licensees                        )

TO: All Concerned Persons

1. On July 7, 2017, the Department of Administration published MAR Notice No. 2-59-559 pertaining to the proposed adoption of the above-stated rule at page 965 of the 2017 Montana Administrative Register, Issue Number 13.

2. No comments were received.

3. The department has adopted New Rule I (ARM 2.59.1755) exactly as proposed.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State August 28, 2017.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 18.6.202 pertaining to Outdoor Advertising Control ) NOTICE OF ADOPTION AND AMENDMENT ) ) )

TO: All Concerned Persons

1. On July 7, 2017, the Transportation Commission (commission) and the Department of Transportation (department) published MAR Notice No. 18-164 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 971 of the 2017 Montana Administrative Register, Issue Number 13.

2. The commission and the department have adopted New Rule I (18.6.236) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (18.6.236) ADVERTISING ON TRANSIT SHELTERS AND BENCHES (1) through (7) remain as proposed.

(8) Spacing requirements for a transit advertising permit include:

(a) permits must be located at least 500 feet from another transit advertising permit, on the same side of the controlled route, unless the applicant justifies a lesser distance, which must be approved by the department's outdoor advertising control program; and

(b) through (11) remain as proposed.

(12) Existing shelter or bench advertising must comply with this rule within one year, or before ~~[effective date of New Rule I]~~ September 9, 2018, or the advertising will be deemed illegal.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-112, 75-15-113, MCA

3. The commission and the department have amended ARM 18.6.202 as proposed.

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

COMMENT #1: One comment was received stating transit systems are struggling financially. The comment stated the inspection fee will be \$150, but New Rule I did not state what the "advertising fee" might be. The comment requested this fee be kept low.

RESPONSE: The commission and department note the standard inspection fee for all outdoor advertising permits is \$150 per application. New Rule I(2)(d) allows a qualified applicant to submit multiple applications simultaneously and only one inspection fee will be charged for all application locations within the same applicant's jurisdictional area, rather than a separate \$150 fee for each shelter or bench sign location. This "combination" inspection fee was designed to save money for local government and transit agency applicants. The commission and department note there is also a \$10 initial permit fee for each transit advertising permit, but the department does not charge an "advertising fee" for a transit advertising permit.

COMMENT #2: One comment was received stating New Rule I(6) which states the location of advertising on a shelter wall should be changed. The comment stated since most shelters run parallel with the road, this rule basically makes the advertising opportunity less than optimal. The comment stated the rule would eliminate use of the larger back panel of the shelter, and would only allow exterior use of the panel facing away from traffic. The comment stated this placement would make it impossible to sell as drivers will not look into their rear-view mirrors to read an advertisement.

RESPONSE: The commission and department examined transit shelter advertising from around the U.S., and found the panel placement described in New Rule I to be the standard placement. Other states which allow shelter advertising have not found the placement to discourage advertisers. The panel placement is also limited due to safety concerns, as transit authorities did not want advertising on the panel facing traffic, as this may block the view into the shelter, and prohibit bus drivers from seeing whether passengers are occupying the shelter. The placement proposed in (6) will also allow control of aesthetics along controlled routes, and help alleviate "sign clutter."

COMMENT #3: Three comments were received stating New Rule I(8)(a) requiring transit advertising shelters or benches to be located at least 500 feet from each other on the same side of the controlled route should be changed. A comment stated there may be situations in which a transit agency may determine the riding public would benefit from shelters that are located closer than 500 feet from one another. A comment stated 500 feet may be at another intersection. The comments requested New Rule I be amended to allow requests for a shelter closer than 500 feet to another shelter when it is in the best interests of the traveling public, or when the next intersection is less than 500 feet.

RESPONSE: The commission and department note New Rule I addresses *advertising* on shelters or benches, not shelter or bench placement itself. Shelters may be placed in right-of-way locations deemed safe by issuance of an encroachment permit. The commission and department agree with the comment that transit advertising permits on shelters *with advertising* may need some flexibility in placement, due to local street configurations. The commission and department will amend the rule as shown above to allow an applicant to justify a lesser distance for *advertising permits* on shelters, which exception must be approved by the department's outdoor advertising control program.



COMMENT #4: Two comments were received stating New Rule I will prevent companies from investing in future transit shelters, because the investment will be at the mercy of a third party such as a City or County Commission, or a transit district. A comment stated many states allow transit shelter providers to operate independently, with a local company assuming all liability, capital investment and long-term expense. A comment stated the rule as written precludes investors from constructing and maintaining shelters, and will leave taxpayers to pick up the bill instead. A comment stated private parties should continue to be responsible for construction and maintenance of the shelters, which would save transit authorities and agencies time and money.

RESPONSE: The commission and department note New Rule I does not address the investment in, or ownership of transit shelters or benches, but rather offers the ability to advertise on the shelters or benches, when a transit advertising permit is obtained. New Rule I also does not address payments for construction or maintenance of shelters, whether by taxpayers or otherwise, but instead allows local control over these questions. The local transit agency or local government will make its own decision on shelter placement and ownership issues, whether through an independent operator or its own means, as has always been the case. The local transit agency or government must only apply for the transit advertising permit if advertising is desired on a shelter, to show evidence the shelter and its advertising is being used for the public good, as is required by federal regulations.

COMMENT #5: Two comments were received stating MDT engineers and maintenance chiefs have provided an effective level of oversight for the last decade. The comment stated the engineers examine an encroachment permit application for potential traffic concerns, and to verify the stop is on a transit route, usually visiting the site at least once. A comment stated that addition of a paragraph on the encroachment permit explaining the need for the shelter and listing its specifications could easily address MDT's concerns about a particular shelter. The comments requested grandfathering of existing shelters as a "customary courtesy" afforded businesses that operate in good faith until laws are changed by the State.

RESPONSE: The commission and department do not agree the existing process of encroachment permit issuance by MDT Maintenance staff would "address MDT's concerns about a particular shelter." The commission and department agree MDT Maintenance must evaluate the safety of shelter or bench placement within the right-of-way, and issue an encroachment permit, as will continue to be required by New Rule I. The commission and department note, however, the advertising to be placed on a shelter or bench is regulated under different statutes and rules, and must show right-of-way use is for the public good to meet federal standards for non-highway use of the right-of-way. New Rule I's transit advertising permit will therefore address both safety and public good advertising requirements. Grandfathering of existing shelters with advertising would not address the current illegal status of this prohibited advertising within the right-of-way.

COMMENT #6: One comment was received stating the proposed rules do not address retained ownership of each shelter. The comment stated this ambiguity frustrates the purposes the rule proposes to support. The comment stated this impedes private investment instead of encouraging it. The comment stated no business can afford to invest in a project that it may or may not retain ownership of in the future.

RESPONSE: See response to Comment #4 above.

COMMENT #7: One comment was received stating the transit advertising permit required by New Rule I cannot be obtained by a private party, but must be obtained by a transit or governmental authority. The comment stated this process would be a waste of time and money for those agencies when they will be subcontracting that work out to a third party private entity anyway. The comment stated the transit advertising permits should be available to private parties.

RESPONSE: New Rule I will require a transit agency or local government to obtain the transit advertising permit to meet the federal regulations which only allow non-highway use of the right-of-way (e.g., shelters with advertising) if the use is for the public good. By restricting the transit advertising permit to a transit agency or local government applicant which runs a transit system that benefits the public, the commission and department are able to comply with the federal requirement on non-highway uses of the right-of-way.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

/s/ Barb Skelton  
Barb Skelton  
Chair  
Transportation Commission

Certified to the Secretary of State August 28, 2017.

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 37.79.326 pertaining to Healthy )  
Montana Kids (HMK) dental benefit )  
program procedures updates )

TO: All Concerned Persons

1. On May 26, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-790 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 644 of the 2017 Montana Administrative Register, Issue Number 10.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to July 1, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

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

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State August 28, 2017.

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 37.85.212, 37.86.101,                 )  
37.86.104, 37.86.105, 37.86.205, and    )  
37.86.1201 pertaining to physician       )  
program updates                            )

TO: All Concerned Persons

1. On May 26, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-794 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 647 of the 2017 Montana Administrative Register, Issue Number 10.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to July 1, 2017. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

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

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State August 28, 2017.

## **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 an online 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<br>Subject | 1. Consult ARM Topical Index.<br>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, 2017. This table includes those rules adopted during the period March 31, 2017, through June 30, 2017, 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, 2017, 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 2017 Montana Administrative Register.

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

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