MONTANA ADMINISTRATIVE REGISTER

2017 ISSUE NO. 18
SEPTEMBER 22, 2017
PAGES 1536-1716

ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of NEW RULES I through V relating to corporate governance annual disclosures	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On October 17, 2017, at 9:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the basement conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on October 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to set forth the procedures for filing and the required contents of the CGAD necessary to carry out the provisions of the Corporate Governance Disclosure Act, 33-2-2101 through 33-2-2109, MCA.

AUTH: 33-2-2105, MCA
IMP: 33-2-2101, 33-2-2102, 33-2-2103, 33-2-2104, 33-2-2105, 33-2-2106, 33-2-2107, 33-2-2108, 33-2-2109, MCA

NEW RULE II DEFINITIONS The following definitions apply to this subchapter:

(1) "CGAD" means the corporate governance annual disclosure required under Title 33, chapter 2, part 21, MCA.

(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in 33-2-1101, MCA.

(3) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators. "Senior management" includes the chief executive officer, chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other "C" level executive.

AUTH: 33-2-2105, MCA
IMP: 33-2-2101, 33-2-2102, 33-2-2103, 33-2-2104, 33-2-2105, 33-2-2106, 33-2-2107, 33-2-2108, 33-2-2109, MCA

NEW RULE III FILING PROCEDURES (1) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by Title 33, chapter 2, part 21, MCA, shall, no later than June 1 of each calendar year, submit to the commissioner a CGAD that contains the information described in [New Rule IV] for the prior calendar year.

(2) The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that:

(a) the insurer or insurance group has implemented the corporate governance practices; and

(b) a copy of the CGAD has been provided to the insurer's or insurance group's board of directors or the appropriate committee of the board of directors.

(3) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this subchapter and is permitted to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

(4) For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

(a) The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which:

(i) the insurer's or insurance group's risk appetite is determined;

(ii) the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or

(iii) legal liability for failure of general corporate governance duties would be placed.

(b) If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) As outlined in 33-2-2104, MCA, if the CGAD is completed at the insurance group level, and if the lead state has substantially adopted the requirements contained in the Corporate Governance Disclosure Act, then it must be filed with the lead state of the group as determined by the procedures outlined in the financial analysis handbook adopted in [New Rule V]. A copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer upon request.

(6) An insurer or insurance group may comply with this section by referencing other existing documents, including the ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, or foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in [New Rule IV]. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(7) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating any changes made since the filing. If no changes were made, the insurer or insurance group should state that in the filing.

AUTH: 33-2-2105, MCA
IMP: 33-2-2101, 33-2-2102, 33-2-2103, 33-2-2104, 33-2-2105, 33-2-2106, 33-2-2107, 33-2-2108, 33-2-2109, MCA

NEW RULE IV CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE (1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, and shall include any relevant attachments or example documents that are used in the governance process.

(2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure. Its description shall include consideration of:

(a) the board of directors, including the rationale for the current board size and structure, the committees ultimately responsible for overseeing the insurer or insurance group, and the levels at which that oversight occurs, such as the ultimate control, intermediate holding company, or legal entity level; and

(b) the duties of the board and each of its significant committees and how they are governed, such as bylaws, charters, or informal mandates, as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(3) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and its significant committees, including a discussion of:

(a) how the qualifications, expertise, and experience of each board member meets the needs of the insurer or insurance group;

(b) how an appropriate amount of independence is maintained on the board and its significant committees;

(c) the number of meetings held by the board and its significant committees over the past year, and information on director attendance;

(d) how the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include:

(i) whether a nomination committee is in place to identify and select individuals for consideration;

(ii) whether term limits are placed on directors;

(iii) how the election and reelection processes function; and

(iv) whether a board diversity policy is in place and if so, how it functions.

(e) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance. The discussion should disclose any board or committee training programs.

(4) The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of:

(a) any processes or practices, including suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

(i) identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(ii) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(b) the insurer's or insurance group's code of business conduct and ethics, including consideration of:

(i) compliance with laws, rules, and regulations; and

(ii) proactive reporting of any illegal or unethical behavior.

(c) the insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include:

(i) the board's role in overseeing management compensation programs and practices;

(ii) the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(iii) how compensation programs are related to both company and individual performance over time;

(iv) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(v) any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(vi) any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and

(vii) the insurer's or insurance group's plans for chief executive officer and senior management succession.

(5) The insurer or insurance group shall describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(a) how oversight and management responsibilities are delegated between the board, its committees, and senior management;

(b) how the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(c) how reporting responsibilities are organized for each critical risk area. The description must allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

(i) risk management processes. An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to 33-2-1130 through 33-2-1138, MCA;

(ii) actuarial function;

(iii) investment decision-making processes;

(iv) reinsurance decision-making processes;

(v) business strategy and finance decision-making processes;

(vi) compliance function;

(vii) financial reporting and internal auditing; and

(viii) market conduct decision-making processes.

AUTH: 33-2-2105, MCA
IMP: 33-2-2101, 33-2-2102, 33-2-2103, 33-2-2104, 33-2-2105, 33-2-2106, 33-2-2107, 33-2-2108, 33-2-2109, MCA

NEW RULE V ADOPTION OF NAIC FINANCIAL ANALYSIS HANDBOOK

(1) For purposes of review of holding company systems and corporate governance disclosures, the commissioner adopts the financial analysis handbook, volumes one and two, most recently published on January 2, 2017 by the National Association of Insurance Commissioners. Copies of both volumes of the financial analysis handbook are available at: www.naic.org/prod_serv_publications.htm.

AUTH: 33-2-2105, 33-2-1117, MCA
IMP: 33-2-1111, 33-2-2101, 33-2-2104, MCA

REASON: The CSI proposes to adopt NEW RULES I through V in support of implementation of the Corporate Governance Annual Disclosure Act (Act). The Act was passed by the 2017 Legislature and signed by Governor Bullock on February 13, 2017. The Act is model legislation derived from the National Association of Insurance Commissioners (NAIC) Corporate Governance Annual Disclosure Model Act. The Act, and specifically 33-2-2106, MCA, requires that corporate governance annual disclosures be prepared consistent with rules promulgated for the purpose. The NAIC has developed the Corporate Governance Annual Disclosure Model Regulation for this purpose; New Rules I through IV are derived from this model regulation.

The disclosure requirements of the Act take effect in the calendar year 2018; adoption of these rules is necessary to provide insurers with guidance on what

actions are required to comply with the Act. New Rules I and II set forth the purpose of the rules and definitions used therein. New Rule III is necessary to provide insurers guidance regarding the procedure for filing the required disclosures. New Rule IV describes the contents of the corporate governance annual disclosure; this adoption is required under 33-2-2106(2), MCA. Finally, New Rule V adopts the most current version of the NAIC financial analysis handbook, as required by 33-2-1111 and 33-2-2104, MCA.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., October 25, 2017.

5. Michael A. Kakuk, Attorney, has been designated to preside over and conduct this hearing.

6. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ to specify for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

7. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 28, 2017.

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

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

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State September 11, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I, the amendment of ARM 6.6.503, 6.6.504, 6.6.506, 6.6.507A, 6.6.507B, 6.6.507C, 6.6.507E, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.517, 6.6.519, 6.6.521, and 6.6.526, and the repeal of 6.6.511 and 6.6.511A pertaining to Medicare supplement insurance.	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 12, 2017, at 9:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), will hold a public hearing in the basement conference room, at the Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Ave., Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on October 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

NEW RULE I STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2020 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY TO INDIVIDUALS NEWLY ELIGIBLE FOR MEDICARE ON OR AFTER JANUARY 1, 2020 (1) The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires that the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare part B deductible may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of the appropriate rules of this subchapter.

(2) The standards and requirements of ARM 6.6.507E shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(a) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in ARM 6.6.507E(7)(c) but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(b) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in ARM 6.6.507E(7)(e) but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(c) Standardized Medicare supplement benefit Plans C, F, and F with High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(d) Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in ARM 6.6.507E(7)(g) but shall not provide coverage for 100% or any portion of the Medicare Part B deductible. However, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

(e) The reference to Plans C or F contained in ARM 6.6.507E(3) is deemed a reference to Plans D or G for purposes of this rule.

(3) This rule applies to only individuals that are newly eligible for Medicare on or after January 1, 2020:

(a) by reason of attaining age 65 on or after January 1, 2020; or

(b) by reason of entitlement to benefits under part A pursuant to section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under section 226(a) of the Social Security Act on or after January 1, 2020.

(4) For purposes of ARM 6.6.507C, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F With High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G With High Deductible), respectively, that meet the requirements of this rule.

(5) In the case of a State described in Section 1882(p)(6) of the Social Security Act (″waivered″ alternative simplification states) MACRA prohibits the coverage of the Medicare Part B deductible for any Medicare supplement policy sold or issued to an individual that is newly eligible for Medicare on or after January 1, 2020.

(6) On or after January 1, 2020, the standardized benefit plans described in (2)(d) may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in ARM 6.6.507E(7).

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA

IMP: 33-15-303, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

REASON: Federal law (specifically 42 CFR § 1395ss(a)) encourages states to set up regulation of Medicare supplement insurance at least as stringent as the model

adopted by the National Association of Insurance Commissioners (NAIC). Changes to the NAIC model law were recently adopted to account for the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), which was signed into law on April 16, 2015. Section 401 of MACRA prohibits the sale of Medigap policies that cover Part B deductibles to "newly eligible" Medicare beneficiaries defined as those individuals who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020. Issuers selling such policies to "newly eligible" Medicare beneficiaries on or after January 1, 2020 are subject to fines, and/or imprisonment of not more than five years, and/or civil money penalties of not more than $25,000 for each prohibited act. For "newly eligible" persons, references in the law to Medigap Plans C and F are deemed as references to Plans D and G.

Typically, amendments by Congress to Medicare federal statutes have consistently directed that the changes to the Model Regulation must be adopted by the states one year after the date the NAIC adopted the amended Model Regulation. While MACRA did not contain such a requirement, the Commissioner believes that adding this new rule to existing Medicare supplement rules is necessary to ensure that Montana law conforms to the "equal to or more stringent than the NAIC Model Standard" requirement.

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

6.6.503 APPLICABILITY AND SCOPE (1) and (1)(a) remain the same.

(b) all certificates which have been delivered or issued for delivery in this state and issued under group Medicare supplement policies ~~which have been delivered or issued for delivery in this state~~.

(2) remains the same.

AUTH: 33-1-313, 33-22-904, MCA
IMP: 33-22-904, MCA

Reason: The change to ARM 6.6.503 is to clarify a potential ambiguity in the original language. These rules apply when a certificate is delivered or issued for delivery in Montana, no matter where the group Medicare supplement policy was issued.

6.6.504 DEFINITIONS For purposes of this subchapter, the terms defined in 33-22-903, MCA, will have the same meaning in this subchapter unless clearly designated otherwise. The following definitions are in addition to those in 33-22-903, MCA.

(1) and (2) remain the same.

(3) "Creditable coverage":

(a) means, with respect to an individual, coverage of the individual provided under any of the following:

(a) through (j) remain the same but are renumbered (i) through (x).

~~(4)~~(b) ~~"Creditable coverage" shall~~ does not include:

(i) one or more, or any combination of, the following:

(a) through (h) remain the same but are renumbered (A) through (H).

~~(5)~~(ii) ~~"Creditable coverage" shall not include~~ the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(a) through (c) remain the same but are renumbered (A) through (C).

~~(6)~~(iii) ~~"Creditable coverage" may not include~~ the following benefits if offered as independent, noncoordinated benefits:

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

~~(7)~~(iv) ~~"Creditable coverage" shall not include~~ the following if it is offered as a separate policy, certificate, or contract of insurance:

(a) through (c) remain the same but are renumbered (A) through (C).

(8) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 USC section 1002 (Employee Retirement Income Security Act).

(9) remains the same but is renumbered and (5).

(6) "MACRA" means the Medicare Access and CHIP Reauthorization Act of 2015.

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

~~(11)~~(8) "Medicare supplement policy" has the meaning provided for in 33-22-903, MCA, except that "Medicare supplement policy" does not include Medicare advantage plans established under Medicare Part C, outpatient prescription drug plans established under Medicare Part D, or any health care prepayment plan (HCPP) that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the Social Security Act. ~~Policies that are advertised, marketed or designed primarily to cover out-of-pocket costs under Medicare advantage plans (established under Medicare Part C) must comply with the Medicare supplement requirements contained in Montana administrative rule and statute.~~

(9) "MMA" means the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(12) remains the same but is renumbered (10).

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

(15) remains the same but is renumbered (11).

AUTH: 33-1-313, 33-22-904, MCA
IMP: 33-22-902, 33-22-903, 33-22-923, MCA

REASON: The proposed changes to this rule are mostly non-substantive. The changes are meant to bring the rule in line with Montana rule drafting procedures. The terms "MACRA" and "MMA" are included because they are used in multiple rules in this subchapter. The last sentence of (8) is being deleted because it is not part of the definition of Medicare supplement policy, and the requirements of Medicare Part C plans are covered by ARM 6.6.507A, 6.6.507E, and New Rule I.

6.6.506 PROHIBITED POLICY PROVISIONS (1) Except for permitted preexisting condition clauses as described in ~~ARM 6.6.510, 6.6.522, and~~ ARM 6.6.507(1)(a)(i) and 6.6.507D(1)(a)(i), no policy or certificate may be advertised,

solicited, or issued for delivery in this state as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) through (4)(c)(ii) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA
IMP: 33-15-303, 33-22-902, 33-22-904, 33-22-905, MCA

REASON: The purpose of this change is to fix the citation to the correct provisions in other rules in this subchapter dealing with preexisting condition exclusions.

6.6.507A STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY ON OR AFTER JULY 1993, AND WITH AN EFFECTIVE DATE FOR COVERAGE PRIOR TO JUNE 1, 2010 (1) through (4) remain the same.

(5) The following descriptions detail the contents of the standardized benefit Plans A through J:

(a) Standardized Medicare Supplement Benefit Plan A must be limited to the basic ("core") benefits common to all benefit plans, as established in ARM 6.6.507~~(4)~~(5).

(b) Standardized Medicare Supplement Benefit Plan B must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5), plus the Medicare Part A deductible as established in ARM 6.6.507~~(4)~~(5)(b)(i).

(c) Standardized Medicare Supplement Benefit Plan C must include only ~~the following:~~

~~(i)~~ the core benefit, as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iii), and (viii), respectively.

(d) Standardized Medicare Supplement Benefit Plan D must include only ~~the following:~~

~~(i)~~ the core benefit, as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (viii), and (x), respectively.

(e) Standardized Medicare Supplement Benefit Plan E must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (viii), and (ix), respectively.

(f) Standardized Medicare Supplement Benefit Plan F must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iii), (v), and (viii), respectively.

(g) Standardized Medicare Supplement Benefit High Deductible Plan F shall include only ~~the following:~~

~~(i)~~ 100% of covered expenses following the payment of the annual High Deductible Plan F deductible. ~~The covered expenses include:~~

~~(A)~~(i) The covered expenses are the core benefit as defined in ARM 6.6.507(5),~~;~~ plus

~~(B)~~ the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iii), (v), and (viii), respectively.~~;~~

(ii) The annual High Deductible Plan F deductible ~~shall~~ must consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy, and ~~shall~~ must be in addition to any other specific benefit deductibles. The annual High Deductible Plan F deductible ~~shall~~ will be $1500.00 for 1998 and 1999, and ~~shall~~ must be based on the calendar year. It ~~shall~~ will be adjusted annually thereafter by the secretary to reflect the change in the consumer price index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.00.

(h) Standardized Medicare Supplement Benefit Plan G must include only the ~~following:~~

~~(i)~~ core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, the skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iv), (viii), and (x), respectively.

(i) Standardized Medicare Supplement Benefit Plan H must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, the skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (vi), and (viii), respectively.

~~(iii)~~ However, the outpatient prescription drug benefit may not be included in a Medicare supplement policy or certificate sold after December 31, 2005.

(j) Standardized Medicare Supplement Benefit Plan I must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, the skilled nursing facility care, 100% of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (v), (vi), (viii), and (x), respectively.

~~(iii)~~ However, the outpatient prescription drug benefit may not be included in a Medicare supplement policy or certificate sold after December 31, 2005.

(k) Standardized Medicare supplement benefit plan J must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507~~(4)~~(5),~~;~~ plus

~~(ii)~~ the Medicare Part A deductible, the skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as established in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iii), (v), (vii), (viii), (ix), and (x), respectively.

~~(iii)~~ However, the outpatient prescription drug benefit shall not be included in a Medicare supplement policy or certificate sold after December 31, 2005.

(l) Standardized Medicare Supplement Benefit High Deductible Plan J shall consist of ~~only the following:~~

~~(i)~~ 100% of covered expenses following the payment of the annual High Deductible Plan J deductible. ~~The covered expenses include:~~

~~(A)~~(i) The covered expenses must be only the core benefit as defined in ARM 6.6.507(5),~~;~~ plus

~~(B)~~ the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit, and at-home recovery benefit as defined in ARM 6.6.507~~(4)~~(5)(b)(i), (ii), (iii), (v), (vii), (viii), (ix), and (x), respectively. However, the outpatient prescription drug benefit may not be included in a Medicare supplement policy or certificate sold after December 31, 2005.~~;~~

(ii) The annual High Deductible Plan J deductible ~~shall~~ must consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy, and ~~shall~~ must be in addition to any other specific benefit deductibles. The annual deductible ~~shall~~ will be $1500.00 for 1998 and 1999, and ~~shall~~ must be based on a calendar year. It ~~shall~~ will be adjusted annually thereafter by the secretary to reflect the change in the consumer price index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.00.

~~(iii) the outpatient prescription drug benefit may not be included in a Medicare supplement policy or certificate sold after December 31, 2005.~~

(6) The following descriptions detail the contents of two Medicare supplement plans mandated by the MMA:

(a) standardized Medicare Supplement Benefit Plan K must consist of only those benefits described in ARM 6.6.507~~(4)~~(5)(c)~~(ii)~~(i); and

(b) standardized Medicare Supplement Benefit Plan L must consist of only those benefits described in ARM 6.6.507~~(4)~~(5)(c)(ii).

(7) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit ~~shall~~ may not include an outpatient prescription drug benefit.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA
IMP: 33-22-902, 33-22-904, 33-22-905, MCA

REASON: The proposed changes to this rule are mostly non-substantive, and will hopefully both follow the NAIC model more closely and make the rule easier to read. Errors in citations to other rules were fixed, and other changes were made to conform this rule to Montana rule drafting procedures.

6.6.507B OPEN ENROLLMENT (1) No issuer ~~shall~~ may deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of ~~such~~ a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for a policy or certificate is submitted~~:~~

~~(a)~~ prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B.~~; or~~

~~(b) during the 63-day period following termination of coverage under a group or individual health insurance policy or certificate for a person enrolled, or eligible for enrollment in Medicare Part B, and who resides in this state, upon the request of the individual.~~

(2) and (3) remain the same.

~~(4) There shall be a one-time open enrollment from October 15, 2015, to December 7, 2015, for individuals who meet the following criteria:~~

~~(a) the individual became eligible and the individual's enrollment became effective for Medicare Part A and Medicare Part B by reason of disability, prior to October 18, 2013; and~~

~~(b) the individual did not apply for coverage from an issuer, or applied for coverage from an issuer and was denied.~~

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA
IMP: 33-22-902, 33-22-904, MCA

REASON: The proposed changes to this rule are mostly non-substantive. The changes are meant to bring the rule in line with Montana rule drafting procedures. Section (4) is being removed because the allotted time period for the special enrollment period has passed. The only substantive change is removing previous subsection (1)(b), because it is already covered in ARM 6.6.507C, and the redundant language was potentially confusing.

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS (1) through (1)(b)(i) remain the same.

(ii) discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; ~~and~~ or

(iii) ~~may not~~ impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) if an eligible person who originally purchased an issue-age rated plan ~~and then~~ applies for another issue-age plan from any issuer on a guaranteed issue basis, then that issuer must rate the replacement policy or certificate using the age at which the original policy or certificate ~~being replaced~~ was rated.

(2) through (2)(b) remain the same.

(c) The individual: ~~is enrolled with:~~

(i) is enrolled with one of the following organizations:

(A) through (d) remain the same.

(i) of the insolvency of the issuer or bankruptcy of the non-issuer organization; ~~or~~

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

(ii) the subsequent enrollment under (2)(e) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the Federal Social Security Act).~~; or~~

(f) through (i) remain the same.

(3) The ~~following describes the~~ guaranteed issue time period~~s in the case of~~:

(a) for an individual described in (2)(a)~~;, the guaranteed issue period~~

(i) begins on the later of:

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

~~(ii)~~(B) the date that the applicable coverage terminates or ceases; ~~and~~

(iii) remains the same but is renumbered (ii).

(b) for an individual described in (2)(b), (c), (e), (f), or (h), whose enrollment is terminated involuntarily, ~~the guaranteed issue period~~ begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) for an individual described in (2)(d)(i) or (ii)~~, the guaranteed issue period begins on the earlier of~~:

(i) begins on the earlier of:

~~(i)~~(A) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other similar notice if any; ~~and~~ or

~~(ii)~~(B) the date that the applicable coverage is terminated~~,~~;

(ii) and ends on the date that is 63 days after the date the coverage is terminated;

(d) for an individual described in (2)(b), (d)(iii), (d)(iv), (e), or (f) who disenrolls voluntarily, ~~the guaranteed issue period~~ begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date;

(e) for an individual described in (2)(g), ~~the guaranteed issue period~~ begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D;

(f) for an individual described in (2) but not described in the preceding provisions of (3) ~~the rule~~, ~~the guaranteed issue period~~ begins on the effective ~~dates~~ date of disenrollment and ends on the day that is 63 days after the effective date; and

(g) for an individual described in (2)(i), ~~the guaranteed issue period~~ begins on the date the individual is informed of the individual's eligibility for Medicare by reason of disability and end 63 days after that date.

(4) ~~The following describes the~~ An individual is entitled to an extension of the guarantee issue time periods for ~~extended~~ Medicare supplement and Medicare select access ~~for~~ if there is an interrupted trial period, as follows ~~periods in the case of~~:

(a) if an individual described in (2)(e) (or deemed to be so described, pursuant to this subsection) whose enrollment with an organization or provider described in (2)(e)(i) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, then the subsequent enrollment shall be deemed to be an initial enrollment described in (2)(e);

(b) if an individual described in (2)(f) (or deemed to be so described, pursuant to this subsection) whose enrollment with a plan or in a program described in (2)(f) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, then the subsequent enrollment shall be deemed to be an initial enrollment described in (2)(f); and

(c) through (6)(b) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA
IMP: 33-22-902, 33-22-904, 33-22-905, MCA

REASON: The proposed changes to this rule are non-substantive. The changes are meant to bring the rule in line with Montana rule drafting procedures.

6.6.507E STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010 (1) and (2) remain the same.

(3) If an issuer makes available any of the additional benefits described in ARM 6.6.507D(4)(b) or offers standardized benefits Plans K or L (as described in ARM 6.6.507E(8)(a) and (b) of this subchapter), then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic core benefits as ~~describe~~ described in (2), a policy form or certificate form containing either Standardized Benefit Plan C (as described in ARM 6.6.507E(7)(c) of this subchapter) or Standardized Benefit Plan F (as described in ARM 6.6.507E(7)(e) of this subchapter).

(4) through (7)(a) remain the same.

(b) Standardized Medicare Supplement Benefit Plan B must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507D(4)(a), plus 100% of the Medicare Part A deductible as established in ARM 6.6.507D(4)(b)(i).

(c) Standardized Medicare Supplement Benefit Plan C must include only ~~the following:~~

~~(i)~~ the core benefit, as established in ARM 6.6.507D(4)(a)~~,~~; plus

~~(ii)~~ 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as established in ARM 6.6.507D(4)(b)(i), (iii), (iv), and (vi), respectively.

(d) standardized Medicare Supplement Benefit Plan D must include only ~~the following:~~

~~(i)~~ the core benefit, as established in ARM 6.6.507D(4)(a)~~,~~; plus

~~(ii)~~ 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as established in ARM 6.6.507D(4)(b)(i), (iii), and (vi), respectively.

(e) Standardized Medicare Supplement Benefit regular Plan F must include only ~~the following:~~

~~(i)~~ the core benefit as established in ARM 6.6.507D(4)(a)~~,~~; plus

~~(ii)~~ 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country, established in ARM 6.6.507D(4)(b)(i), (iii), (iv), (v), and (vi), respectively.

(f) standardized Medicare Supplement Benefit High Deductible Plan F shall include only ~~the following:~~

~~(i)~~ 100% of covered expenses following the payment of the annual High Deductible Plan F deductible. ~~The covered expenses include:~~

~~(A)~~(i) ″Covered expenses″ for this subsection are the core benefit as defined in ARM 6.6.507D(4)(a)~~,~~; plus

~~(B)~~ 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in ARM 6.6.507D(4)(b)(i), (iii), (iv), (v), and (vi), respectively.~~;~~

(ii) The ″annual high deductible Plan F deductible″ ~~shall~~ must consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement regular Plan F policy, and ~~shall~~ must be in addition to any other specific benefit deductibles. The basis for the deductible ~~shall~~ will be $1500 and ~~shall~~ will be adjusted annually from 1999 by the Secretary to reflect the change in the consumer price index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(g) Standardized Medicare Supplement Benefit Plan G must include only the ~~following:~~

~~(i)~~ core benefit as established in ARM 6.6.507D(4)(a)~~;~~~~,~~ plus

~~(ii)~~ 100% of the Medicare Part A deductible, ~~the~~ skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as established in ARM 6.6.507D(4)(b)(i), (iii), (v), and (vi), respectively. Effective January 1, 2020, the standardized benefit plans described in

[New Rule I(2)(d)] (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(8) remains the same.

(9) Standardized Medicare Supplement Plan M shall include only ~~the following:~~

~~(a)~~ the basic (core) benefit as defined in ARM 6.6.507D(4)(a), plus 50% of the Medicare Part A deductible~~;~~,

~~(b)~~ skilled nursing facility care, and

~~(c)~~ medically necessary emergency care in a foreign country as defined in ARM 6.6.507D(4)(b)(ii), (iii), and (vi), respectively.

(10) Standardized Medicare Supplement Plan N shall include only ~~the following:~~

~~(a)~~ the basic (core) benefit as defined in ARM 6.6.507D(4)(a), plus 100% of the Medicare Part A deductible~~;~~,

~~(b)~~ skilled nursing facility care~~;~~, and

~~(c)~~ medically necessary emergency care in a foreign country as defined in ARM 6.6.507D(4)(b)(i), (iii), and (vi), respectively, with copayments in the following amounts:

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

(11) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits must include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, are cost-effective, and are offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. New or innovative benefits must not include an outpatient prescription drug benefit. New or innovative benefits ~~shall~~ may not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

AUTH: 33-1-313, 33-22-904, 33-22-905, MCA
IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

REASON: The proposed changes to this rule are mostly non-substantive, and will hopefully both follow the NAIC model more closely and make the rule easier to read. The one substantive change is the inclusion of language to subsection (7)(g) necessary to comply with MACRA, as explained in the reason for New Rule I, above.

6.6.508 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM (1) A Medicare supplement policy form or certificate form must~~:~~

~~(a)~~ not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

~~(i)~~(a) at least 75% of the aggregate amount of premiums earned in the case of group policies~~, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health care maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices~~; or

~~(ii)~~(b) at least 65% of the aggregate amount of premiums earned in the case of individual policies.~~, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices; or~~

~~(iii)~~(2) The loss ratio must be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. ~~incurred~~ Incurred health care expenses where coverage is provided by a health maintenance organization must not include:

(A) through (E) remain the same but are renumbered (a) through (e).

~~(F)~~(f) administrative costs; ~~and~~ or

~~(G)~~(g) claims processing costs.

~~(b)~~(3) ~~all~~ All filings of rates and rating schedules must demonstrate that expected claims in relation to premiums comply with the requirements of this rule when combined with actual experience to date. Filings of rate revisions must also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(4) The experience used to calculate an expected loss ratio must be the separate experience of any plan. However, if there is more than one Plan H, I, or J because of the requirements of the MMA, the experience of each plan issued before September 9, 2005, and of each H, I, or J Plan of any type issued on or after September 9, 2005, must be combined for the purpose of determining the expected loss ratio. The experience must also be provided separately for each of these plans for the department's records.

~~(c)~~(5) Policy forms or plans utilizing ~~for purposes of this rule, policies issued as a result of~~ solicitations of individuals through the mails or by mass media advertising (including print, broadcast, and electronic advertising) on or before December 8, 2017, must be regarded as group policies for purposes of rate increase filings. This does not change the yearly benchmark filing required by (7). For policy forms or plans using advertising after December 8, 2017, the loss ratios required by this rule do not change regardless of any advertising methods used.~~; and~~

~~(d)~~(6) ~~for~~ For policies issued prior to September 30, 1993, expected claims in relation to premiums shall meet:

~~(i)~~(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;

~~(ii)~~(b) the appropriate loss ratio requirement from (1)(a)~~(i)~~ and ~~(ii)~~(b) when combined with actual experience beginning with June 21, 1996 to date; and

~~(iii)~~(c) the appropriate loss ratio requirement from (1)(a)~~(i)~~ and ~~(ii)~~(b) over the entire future period for which the rates are computed to provide coverage.

~~(2)~~(7) Annual reporting and refund or credit calculations must conform to the following requirements ~~An issuer shall collect and file with the commissioner by May 31 of each year~~:

(a) an issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in ~~Appendix A of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 2001 (see~~ ARM 6.6.524~~),~~ for each type in a standard Medicare supplement benefit plan;

(b) ~~If~~ if, on the basis of the experience as reported, the benchmark ration since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation (see ARM 6.6.524) must be done on a statewide basis for each type in a standard Medicare Supplement Benefit Plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded;

(c) for the purposes of this subsection, for policies or certificates issued prior to September 30, 1993, the issuer shall make the refund or credit calculation separately for all individual policies combined and all group policies combined for experience after February 13, 2004~~. The first report shall be due by May 31, 2005~~; and

(d) a refund or credit ~~shall~~ must be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. ~~Such~~ The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the secretary ~~of health and human services~~, but in no event shall it be less than the average rate of interest for 13-week treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

~~(3)~~(8) An issuer of Medicare supplement policies and certificates issued before or after the effective date of these rules in this state must file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner~~, demonstrating that it is in compliance with the foregoing~~. The supporting documentation must also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. ~~Such~~ The demonstration must exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

~~(a)~~(9) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in the state must file with the commissioner, in accordance with the applicable filing procedures of this state:

~~(i)~~(a) appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates; and~~.~~ ~~Such supporting documents as necessary to justify the adjustment must accompany the filing. An issuer must make such premium adjustments as are necessary to~~

~~produce and expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.~~

~~(ii) an issuer must make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.~~

~~(A) the experience used to calculate an expected loss ratio must be the separate experience of any plan. If there is more than one Plan H, I, or J because of the requirements of the MMA, the experience of each plan issued before September 9, 2005, and of each H, I, or J Plan of any type issued on or after this date must be combined for the purpose of determining the expected loss ratio. The experience must also be provided separately for each of these plans for the department's records.~~

~~(iii) if an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this rule; and~~

(b) any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. ~~Such~~ The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(10) An issuer must make such premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described in this rule, should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Any premium adjustment filings must include all necessary supporting documents to justify the adjustment.

(11) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this rule.

~~(4)~~(12) The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of this rule if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. Any ~~such~~ determination of compliance ~~is~~ should be made without consideration of any refund or credit for ~~such~~ the reporting period. Public notice of ~~such~~ the hearing shall be furnished in a manner deemed appropriate by the commissioner.

AUTH: 33-1-313, 33-22-904, 33-22-906, MCA
IMP: 33-15-303, 33-22-902, 33-22-906, MCA

REASON: Most of the proposed changes to this rule are non-substantive. The changes are meant to provide clarity and to conform the language to Montana rule drafting requirements. In addition, surplus language accidentally not removed from previous amendments has been deleted.

The only substantive change is the modification of previous subsection (1)(c)—proposed (5)—regarding loss ratio standards based on mass media advertising of Medicare supplement policies. The proposed changes clarify that policies which do mass media or direct mail advertising must be treated as group only for purposes of rate increase filings. The rule was never meant to change the benchmark form that insurers use to report yearly benchmark calculations. Moving forward, the commissioner has determined that it is not appropriate to modify the loss ratio standard for either individual or group Medicare supplement policies based on how those policies are advertised. This rule change is anticipated to be effective December 8, 2017, when the final adoption notice is published.

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES (1) remains the same.

(2) An issuer must file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the MMA~~, only~~ with the commissioner in the state in which the policy or certificate was issued.

(3) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation, together with the outline of coverage, have been filed with and approved by the commissioner in accordance with the filing requirements and procedures adopted by the commissioner.

(4) Except as provided in (4)(a), an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare ~~Supplement Benefit Plan~~ supplement benefit plan.

(a) through (ii) remain the same.

(iii) the addition of either guaranteed issue or underwritten coverage; or

(iv) the offering of coverage to individuals eligible for Medicare by reason of disability.

(b) through (5)(d) remain the same.

(i) ~~The~~ the issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates~~.~~; and

(ii) ~~The~~ the issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest~~.; and~~

~~(iii) The issuer applies the revised rating methodology to in force business as well as to new business. The issuer must refund the difference between the total amount of premium each insured individual actually paid under the existing rating methodology and the total amount of premium the individual would have paid if the revised rating methodology had been applied since the issue date of that individual's coverage, if the difference is greater than zero dollars. The refund process must be carried out in a form and manner prescribed and approved by the commissioner.~~

(6) ~~Except as provided in (6)(a), the~~ The experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in ARM 6.6.508, except that

~~(a) Forms~~ forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An issuer may not file a rate structure for its Medicare supplement policies and certificates after January 1, 2006, based upon a structure or methodology with any groupings of attained ages greater than one year for each year the rate increases. The rate change may be flat at the beginning and end of the rate structure, but otherwise the ratio between rates for successive ages must exhibit a smooth pattern as age increases. For example, the commissioner may allow a rate structure that has the same rate for policyholders younger than 68, a rate that smoothly increases some percentage each successive year through age 90, and then maintains the same rate for policyholders older than 90.

(8) An issuer has the option of offering Medicare supplement plans on an attained age basis, issue age basis, or a dual rating basis. Only one rating methodology may be chosen per Medicare supplement benefit plan, except as provided in (4)(a).

(a) Regardless of the rating methodology chosen, an issuer must provide adequate information to consumers so they may make informed decisions on their Medicare supplement purchases.

(b) If an issuer elects to offer dual rating, the issuer must:

(i) provide a choice between an issue age or attained age rating methodology to individual policyholders, for individual policies, or to group policyholders (not certificate holders) for group policies;

(ii) develop materials which disclose both rating methodologies, including how the methodologies differ in the near term and the long term;

(iii) provide the same commission for both methodologies;

(iv) allow consumers to switch from an attained age rating methodology to an issue age rating methodology; and

(v) prohibit consumers from switching from an issue age rating methodology to an attained age rating methodology.

(9) As a one-time exception to (5), between [the adoption of this amendment] and July 1, 2018, issuers may discontinue currently existing plans and re-file the same plan for the sole purpose of applying the individual or group loss ratio to rate filings regardless of advertising methods, as set forth in ARM 6.6.508(1) and (5). All other details of the re-filed plan must remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-905, 33-22-906, MCA
IMP: 33-22-904, 33-22-906, MCA

REASON: Most of the proposed changes to this rule are non-substantive. Most of the changes are meant to provide clarity and to conform the language to Montana rule drafting requirements. The first substantive change is to (7), which is meant to conform the rule to current standard practice. Most insurers that have attained age rates do not change the rates for either very young or very old policyholders. The commissioner does not see any reason to curtail this practice.

The second substantive change is the inclusion of (8) on rating methodologies. The purpose of this section is to expressly allow dual rating, which has been allowed in the past but was not clearly defined in rule. New (8) will expressly allow this practice, and ensure that the practice will not harm consumers.

Finally, (9) allows insurers to re-file current Medicare supplement plans under the new ARM 6.6.508(5), applying loss ratios to those plans regardless of the advertising method used. Typically insurers are not allowed to discontinue existing plans without a 5-year moratorium on re-entering the market pursuant to (5), but the Commissioner has determined that it would be in the public interest to allow this one-time exception, given the proposed changes to existing rules.

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (9) remain the same.

(10) The CSI adopts and incorporates by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, (MDL-651), page 651-563 through page 651-1064, which was last adopted in the 1st quarter of 2017, and is available online at http://www.naic.org/prod_serv_model_laws.htm. ~~sets forth the Medicare payment tables for insurers, and specifically in this rule are the Outlines of Medicare Supplement Coverage-Cover Page: 1 of 2: Benefit Plan(s) A, B, C, D, E, F, G, H, I, J, and High Deductible Plans F & J; Outline of Medicare Supplement Coverage - Cover Page 2: Benefit Plan(s) K, L, M & N, which include similar services as Plans A-J, but cost-sharing for the basic benefits is at different levels, adopted 7/17/09.~~ Specifically, those pages of the NAIC MDL-651 set forth benefit charts, disclosures to insureds, and outlines of coverage for Medicare supplement plans that must be included in the outline of coverage provided to the

consumer in the same order as set forth in NAIC MDL-651. Copies of the NAIC MDL-651 ~~Model rule containing Plans A - N~~ are also available for public inspection at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, Legal Department, 840 Helena Avenue, Helena, Montana 59601~~, or on the department's web site~~. Persons obtaining a copy of these forms must pay the cost of providing such copies.

(11) and (12) remain the same.

AUTH: 33-1-313, 33-22-904, 33-22-907, MCA
IMP: 33-15-303, 33-22-902, 33-22-904, 33-22-907, MCA

REASON: The incorporation by reference to NAIC model regulation MDL-651 has been updated to reference the correct page numbers and the web address where the model may be found online.

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) Application forms must include the following questions designed to elicit information as to whether, as of the date of application, the applicant currently has Medicare supplement, Medicare advantage, Medicaid coverage, or another health policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements as the following may be used.~~:~~ Application forms must use the following statements and questions in substantially the same format as follows:

~~(a) (STATEMENTS)~~

~~(1) You do not need more than one Medicare supplement policy.~~

~~(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.~~

~~(3) You may be eligible for benefits under Medicaid and may not need a medicare supplement policy.~~

~~(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy must be suspended if requested during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. Upon receipt of timely notice, the issuer must either return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility or provide coverage to the end of the term for which premiums were paid, at the option of the insured, subject to adjustment for paid claims. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare part D while your policy was suspended, the reinstated policy will not have~~

~~outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.~~

~~(5) If you are eligible for and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare part D while your policy was suspended, the reinstated policy will not have prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of suspension.~~

~~(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).~~

~~(b) (QUESTIONS)~~

~~If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.~~

~~[Please mark yes or no below with an "X"]~~

~~To the best of your knowledge:~~
~~(1)(a) Did you turn age 65 in the last 6 months?~~
~~YES _____ NO _____~~
~~(b) Did you enroll in Medicare Part B in the last 6 months? YES _____ NO _____~~
~~(c) If yes, what is the effective date? _____~~
~~(d) Did you enroll in Medicare Part C in the last 6 months? YES _____ NO _____~~
~~(e) If yes, what is the effective date? _____~~
~~(f) Did you enroll in Medicare Part D in the last 6 months? YES _____ NO _____~~
~~(g) If yes, what is the effective date? _____~~
~~(2) Are you covered for medical assistance through the state Medicaid program? [NOTE TO APPLICANT: If you are participating in a "spend-down"~~

~~program and have not met your "share of cost," please answer NO to this question.]~~
~~YES _____ NO _____ If yes,~~

~~(a) Will Medicaid pay your premiums for this Medicare supplement policy?~~
~~YES _____ NO _____~~

~~(b) Do you receive any benefits from Medicaid other than payments toward your Medicare part B premium?~~

~~YES _____ NO _____~~

~~(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.~~

~~Start _/_____/_____ End _/_____/_____~~

~~(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy? YES _____ NO _____~~

~~(c) Was this your first time in this type of Medicare plan? YES _____ NO _____~~

~~(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan? YES _____ NO _____~~

~~(4)(a) Do you have another Medicare supplement policy in force? YES _____ NO _____~~

~~(b) If so, with what company, and what plan do you have [optional for direct mailers]?~~

~~_____~~

~~(c) If so, do you intend to replace your current Medicare supplement policy with this policy?~~

~~YES _____ NO _____~~

~~(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan.) YES _____ NO _____~~

~~(a) If so, with what company and what kind of policy?~~

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~(b) What are your dates of coverage under the other policy? Start _/_____/_____ End _/_____/_____~~

~~(If you are still covered under the other policy, leave "end" blank.)~~

(STATEMENTS)

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy must be suspended if requested during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. Upon receipt of timely notice, the issuer must either return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility or provide coverage to the end of the term for which premiums were paid, at the option of the insured, subject to adjustment for paid claims. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare part D while your policy was suspended, the reinstated policy will not have prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(QUESTIONS)

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please

include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an ″X″]

To the best of your knowledge:

(1)(a) Did you turn age 65 in the last 6 months?
YES _____ NO _____

(b) Did you enroll in Medicare Part B in the last 6 months?
YES _____ NO _____

(c) If yes, what is the effective date? _____

(d) Did you enroll in Medicare Part C in the last 6 months?
YES _____ NO _____

(e) If yes, what is the effective date? _____

(f) Did you enroll in Medicare Part D in the last 6 months?
YES _____ NO _____

(g) If yes, what is the effective date? _____

(2) Are you covered for medical assistance through the state Medicaid program?
[NOTE TO APPLICANT: If you are participating in a ″spend-down″ program and have not met your ″share of cost,″ please answer NO to this question.]
YES _____ NO _____

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?
YES _____ NO _____

(b) Do you receive any benefits from Medicaid other than payments toward your Medicare Part B premium?
YES _____ NO _____

(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave ″END″ blank.
Start / / End / /

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

YES NO

(c) Was this your first time in this type of Medicare plan?
YES NO

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?
YES NO

(4)(a) Do you have another Medicare supplement policy in force?
YES NO

(b) If so, with what company, and what plan do you have [optional for direct mailers]?

_____

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?
YES NO

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan.)
YES NO

(a) If so, with what company and what kind of policy?

_____
_____
_____

(b) What are your dates of coverage under the other policy?
Start / / End / /
(If you are still covered under the other policy, leave "end" blank.)

[End Statements and Questions Form]

~~(6)~~(2) Producers shall list any other health insurance policies they have sold to the applicant, including:

(a) Policies sold which are still in force~~.~~; and

(b) Policies sold in the past five years which are no longer in force.

~~(7)~~(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

~~(8)~~(4) Upon determining that a sale will involve replacement of medicare supplement coverage, and prior to the issuance or delivery of the medicare supplement policy or certificate, an issuer, other than a direct response insurer, or its producer must furnish the applicant a notice regarding replacement of medicare supplement coverage. One copy of the notice signed by the applicant and the

producer, except where coverage is sold without a producer, must be provided to the applicant and an additional signed copy must be retained by the issuer for three years. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of medicare supplement coverage.

~~(9)~~(5) The notice required by (4) for an issuer must be in substantially the same form as below and be in no less than 12 point type~~.~~:

~~(c) NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE~~

~~(Insurance Company's Name and Address)~~

~~SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.~~

~~According to (your application) (information you have furnished), you intend to terminate existing Medicare or Medicare advantage supplement insurance and replace it with a policy to be issued by (Company Name). Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.~~

~~You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. Terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement or Medicare advantage coverage is a wise decision.~~
~~STATEMENT TO APPLICANT BY ISSUER, OR PRODUCER:~~

~~I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare advantage plan. The replacement policy is being purchased for the following reason(s) (check one):~~

~~_____ Additional benefits.~~
~~_____ No change in benefits, but lower premiums.~~
~~_____ Fewer benefits and lower premiums.~~
~~_____ Other. (please specify)~~
~~_____ My plan has outpatient prescription drug coverage and I am enrolling in part D.~~
~~_____ Disenrollment from a Medicare advantage plan. Please explain reason for disenrollment. [optional only for direct mailers.]~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

(Insurance Company's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to terminate existing Medicare or Medicare advantage supplement insurance and replace it with a policy to be issued by (Company Name). Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. Terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement or Medicare advantage coverage is a wise decision.

STATEMENT TO APPLICANT BY ISSUER, OR PRODUCER:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare advantage plan.–The replacement policy is being purchased for the following reason(s) (check one):

___ Additional benefits.

___ No change in benefits, but lower premiums.

___ Fewer benefits and lower premiums.

___ My plan has outpatient prescription drug coverage and I am enrolling in part D.

___ Disenrollment from a Medicare advantage plan. Please explain reason for disenrollment. [optional only for direct mailers.]

___ Other. (please specify)

_____

_____

~~(~~1.~~)~~ ~~Note~~**Note**: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing pre-existing condition limitations, please skip to statement ~~(~~2~~)~~ below. Health conditions which you may presently have

(pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

~~(~~2.~~)~~ State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

~~(~~3.~~)~~ If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Producer or Other Representative)*

_____

[Typed Name and Address of Issuer or Producer]

The above ″Notice to Applicant″ was delivered to me on:

_____

(Date)

_____

(Applicant's Signature)

*Signature not required for direct response sales.

[END OF NOTICE FORM]

~~**~~(6) Paragraphs ~~(~~1.~~)~~ and ~~(~~2.~~)~~ of the replacement notice, above (applicable to preexisting conditions), may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

AUTH: 33-1-313, 33-22-904, 33-22-907, MCA
IMP: 33-15-303, 33-22-904, 33-22-907, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

REASON: The proposed changes to this rule are non-substantive. The changes to the rule numbering are meant to correct errors in numbering between substantive sections of this rule, and numbering of forms to be provided to the consumer. The changes to the format of the forms are meant to make the forms more readable.

6.6.517 PERMITTED COMPENSATION ARRANGEMENTS (1) An issuer or other entity may provide commission or other compensation to a producer ~~or other representative~~ for the sale of a ~~medicare~~ Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) remains the same.

(3) No issuer or other entity shall provide compensation to its producers, ~~or other representatives~~ and no producer ~~or other representative~~ shall receive, compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

(4) remains the same.

(5) As part of the annual filing under ARM 6.6.508~~(3)~~(6), the entity providing ~~medicare~~ Medicare supplement policies shall provide copies of commission schedules.

(a) An issuer must provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a Medicare supplement insurance policy or certificate. For purposes of this rule, ″reasonable compensation″ shall be at least 3% of the premium paid for the policy or certificate.

(b) An issuer may not vary the commission paid on the sale or renewal of a Medicare supplement insurance policy or certificate due to any factor other than the first year or renewal status of the policy or certificate. For example, issuers may not vary the commission based on the plan marketed or the age, health status, location, or claims experience of the insured. Issuers may pay a different commission on a policy transferred to a different producer for servicing purposes following the initial sale, or on a policy sold over the internet, so long as there is no other variation in the commission for any other reason.

AUTH: 33-1-313, 33-22-904, MCA
IMP: ~~33-15-303,~~ 33-22-902, 33-22-904, 33-22-906, MCA

REASON: The language ″or other representative″ is being deleted because allowing compensation to entities not licensed as insurance producers in Montana would violate 33-17-1103, MCA. The Commissioner proposes adding subsections (5)(a) and (5)(b) in order to prohibit insurers from discriminating between Medicare supplement policyholders, some of whom only qualify for Medicare because of a preexisting condition or illness. In addition, the Commissioner seeks to establish a minimum commission level to make sure insurers are actively marketing their open

Medicare supplement plans, as required by ARM 6.6.508A. The reference to 33-15-303, MCA, as an implementing statute has been removed, because this rule does not address the contents of insurance policies. Finally, the word "Medicare" has been capitalized for consistency in this subchapter.

6.6.519 STANDARDS FOR MARKETING (1) through (1)(f) remain the same.

(g) provide to the enrollee an appropriate disclosure statement if the enrollee has accident and sickness insurance. These statements must be identical to the disclosure statements in ~~Appendix C of the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 2001, (see~~ ARM 6.6.526~~)~~.

(2) and (3) remain the same.

AUTH: 33-1-313, 33-18-235, 33-22-904, MCA
IMP: 33-15-303, 33-18-202, 33-18-204, 33-22-907, 33-22-908, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

REASON: The department proposes to remove the reference to the NAIC model regulation because it was outdated, and is redundant with the content of ARM 6.6.526.

6.6.521 REPORTING OF MULTIPLE POLICIES (1) On or before March 1 of each year, every issuer shall report, on the form contained in ~~Appendix B of the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, April 2001 (see~~ ARM 6.6.525~~)~~, information for every individual resident of this state for which the issuer has in force more than one ~~medicare~~ Medicare supplement insurance policy or certificate. The following information must be reported:

(a) through (2) remain the same.

AUTH: 33-1-313, 33-22-904, MCA
IMP: 33-15-303, 33-22-904, 33-22-907, MCA

REASON: The department proposes to remove the reference to the NAIC model regulation because it was outdated, and is redundant with the content of ARM 6.6.525.

6.6.526 APPENDIX C DISCLOSURE STATEMENTS (1) through (1)(b) remain the same.

(c) [Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- [outpatient prescription drugs if you are enrolled in Medicare Part D]
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in all health insurance policies you already have.
√ For more information about Medicare and Medicare Supplement insurance, review the ″Guide to Health Insurance for People with Medicare,″ available from the insurance company.
√ For help in understanding your health insurance, contact your state insurance department or state [health] insurance [assistance] program [SHIP].

(d) through (n) remain the same.

AUTH: 33-22-904, 33-22-905, MCA
IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

REASON: This change corrects a small error in the Montana rule from the NAIC model.

5. The department proposes to repeal the following rules:

6.6.511 FORMS OUTLINING COVERAGE on page 6-141 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-22-904, MCA
IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923, 33-22-924, MCA

6.6.511A FORMS OUTLINING COVERAGE on page 6-143 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-22-904, MCA
IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-924, MCA

REASON: The department is proposing to repeal ARM 6.6.511 and 6.6.511A because they are redundant. The forms outlining coverage are already incorporated by reference into Montana law by ARM 6.6.509(10).

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., October 20, 2017.

7. Michael A. Kakuk, Attorney, has been designated to preside over and conduct this hearing.

8. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Requests may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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

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

/s/ Michael A. Kakuk	/s/ Kris Hansen
Michael A. Kakuk	Kris Hansen
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State September 11, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the repeal of ARM 6.6.4901, 6.6.4902, 6.6.4903, 6.6.4905, 6.6.4906, 6.6.4907, 6.6.4908, and 6.6.4909 regarding patient-centered medical homes	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), proposes to repeal the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on October 3, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

3. The department proposes to repeal the following rules:

6.6.4901 PURPOSE on page 6-1095 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4902 PATIENT-CENTERED MEDICAL HOME QUALIFICATION on page 6-1095 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4903 NATIONAL ACCREDITATION on page 6-1096 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4905 ESTABLISHMENT AND DUTIES OF THE PATIENT-CENTERED MEDICAL HOMES STAKEHOLDER COUNCIL on page 6-1096 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4906 TIMELINES FOR REQUIRED REPORTING on page 6-1097 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4907 PATIENT-CENTERED MEDICAL HOME REPORTING—SPECIFIC QUALITY MEASURES REQUIRED on page 6-1097 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4908 STANDARDS FOR PAYMENT METHODS on page 6-1098 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

6.6.4909 MEASURES RELATED TO COST AND MEDICAL USAGE–UTILIZATION MEASURES on page 6-1099 of the Administrative Rules of Montana.

AUTH: 33-40-104, MCA
IMP: 33-40-104, 33-40-105, MCA

REASON: The CSI proposes to repeal these rules effective December 31, 2017, because the implementing legislation in Title 33, chapter 40, MCA, terminates on December 31, 2017. Therefore, the rules will no longer be effective after that date.

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: Michael A. Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., October 30, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m., October 30, 2017.

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

having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 8 persons based on the number of medical clinics and payors participating in the patient-centered medical home program.

7. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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/ Michael A. Kakuk	/s/ Kris Hansen
Michael A. Kakuk	Kris Hansen
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State September 11, 2017.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of soliciting applications for membership on a negotiated rulemaking committee to amend ARM 10.55.701 to require a policy for suicide prevention programs in schools	))))))	NOTICE OF NEGOTIATED RULEMAKING

TO: All Concerned Persons

1. The Office of Public Instruction intends to establish an independent negotiated rulemaking committee to amend ARM 10.55.701 requiring a policy on suicide prevention programs in schools and to consult on the preparation of an economic impact statement. This negotiated rulemaking process is required by 20-7-101, MCA (2015).

2. The independent negotiated rulemaking committee will consider issues for the purpose of reaching a consensus on the proposed rule amendment requiring schools to adopt a policy for suicide prevention.

3. Interests that are likely to be significantly affected by the proposed rule are those related to Montana K-12 public schools of all sizes.

4. The individuals proposed to represent state agencies on the negotiated rulemaking committee are: Timothy Tharp, Deputy Superintendent, Office of Public Instruction; Linda Vrooman Peterson, Accreditation and Educator Preparation Division Administrator, Office of Public Instruction; Tracy Moseman, Director of Coordinate School Health, Office of Public Instruction; Karin Olsen Billings, Health Enhancement and Safety Division Administrator, Office of Public Instruction; Kyle A. Moen, Chief Legal Counsel, Office of Public Instruction; and Peter Donovan, Executive Director, Board of Public Education.

5. The agency is seeking applications from interested parties to serve on the committee. The agency will seek individuals likely to be significantly affected by the proposed rule amendment, including individuals from the following groups: school district trustees, K-12 school administrators, K-12 teachers and counselors, school business officials, parents, and taxpayers. Members of the committee will be selected based on the following criteria:

cultural diversity
geography
suicide prevention experience
district and school size
grade levels served

6. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On September 22, 2017, this notice will be published in the Montana Administrative Register (MAR). The notice will also be mailed to persons known to the agency to have an interest in this matter.

(b) Applications for membership on the negotiated rulemaking committee must be received no later than October 23, 2017. After receipt and consideration of the comments and applications, the agency will establish a negotiated rulemaking committee no later than October 27, 2017. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rule amendment. The committee members will be notified in writing of their selection and receive an information packet.

(c) The negotiated rulemaking committee will convene its first meeting in November, 2017. Teleconferencing and e-mail correspondence will be utilized as much as possible. The committee will begin with an initial draft of the amendment at this meeting.

(d) The committee will transmit a report to the agency specifying the areas in which the committee has reached consensus and the issues that remain unresolved.

(e) Thereafter the Superintendent of Public Instruction will develop recommendations and present them to the Board of Public Education for formal rulemaking.

7. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to Dr. Linda Vrooman Peterson, lvpeterson@mt.gov, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, no later than October 23, 2017:

(a) the person's name or the nominee's name, address, and contact information including telephone or e-mail address;

(b) evidence that the person or nominee represents any of the specific criteria of interest groups listed above;

(c) the name of the school district in which the nominee lives or works, and the relationship of the person or nominee to it;

(d) a commitment that the person or nominee will be able to participate in the negotiated rulemaking process and will actively participate in good faith in the development of the proposed rule amendment under consideration; and

(e) the ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

8. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620, faxed to (406) 444-2893, or electronic mail to bemarlow@mt.gov no later than October 23, 2017.

9. The agency proposes to limit the size of the negotiated rulemaking committee to no more than fifteen persons and two "alternate" members selected in the event a member is unable to participate. However, after receipt of comments

and applications, the agency may determine that a smaller or larger number is necessary to adequately represent the interests of the persons significantly affected by the proposed rule amendment. The selected committee members may represent other parties or agencies that have a significant relationship with Montana schools.

10. The agency will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the agency of the nature of the accommodation you need when applying for membership on the committee.

11. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

12. The specific grant of rulemaking authority authorizing the Board of Public Education to adopt the proposed rules is found in 20-7-101, MCA. The proposed rule amendment will implement Title 20, chapter 7, part 1, MCA.

/s/ Kyle A. Moen
Kyle A. Moen
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen, Superintendent
Office of Public Instruction

Certified to the Secretary of State, September 11, 2017.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.103, 17.36.106, 17.36.112, 17.36.116, 17.36.310, 17.36.314, 17.36.326, 17.36.330, 17.36.331, 17.36.333, 17.36.334, 17.36.335, 17.36.345, 17.36.802, and 17.36.804 pertaining to the adoption of a new version of Department Circular DEQ-8	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On October 13, 2017 at 10:00 a.m., in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the department will hold a public hearing to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., October 6, 2017, to advise of the nature of the accommodation that you need. Please contact Sandy Scherer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.36.103 APPLICATION--CONTENTS (1) through (1)(r) remain the same.

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

(i) through (v) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, [Sections 1 and 2, Chapter 344, Laws of 2017], 76-4-125, MCA

REASON: Under 76-4-104(6)(b), MCA, the department must require adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available before a subdivision can be approved. In the past, subdivisions have been developed and lots have been sold in areas where an exemption or a water right cannot be granted. The amendment is reasonably necessary to allow the department to better assess the dependability of a proposed surface water supply and to help prevent the development of a subdivision using

surface water when water is not legally available for use.

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures and timelines for review of subdivision applications by the reviewing authority are as provided in [Section 1, Chapter 344, Laws of 2017]. ~~follows:~~

~~(a) Upon receipt of a subdivision application, the department will have 55 days to approve, conditionally approve, or deny the subdivision application, unless an environmental impact statement is required, in which case action must be taken within 120 days.~~

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

~~(i) If the local reviewing authority recommends denial of an application, the recommendation must be in the form of a denial letter sent to the applicant within 45 days after receipt of the application. The local reviewing authority shall send a copy of the application and denial letter to the department. A denial letter issued by the local reviewing authority shall constitute the department's final action regarding the denial unless the department finds, pursuant to ARM 17.36.116, that the recommended denial was in error.~~

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

~~(2) Pursuant to 76-4-125(1)(b), MCA, for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, the department shall provide an informational written notice to the applicant, within five working days after receipt of an application, if any of the following items is not submitted with the application:~~

~~(a) the certification required by ARM 17.36.108(1)(a);~~

~~(b) if applicable, an approval from the local governing body under Title 76, chapter 3, MCA; or~~

~~(c) if applicable, public comments or summaries of public comments collected as provided in 76-3-604(7)(a), MCA.~~

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

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA, [Section 1, Chapter 344, Laws of 2017], 76-4-125, MCA

REASON: The subdivision review process described in the existing rule is now outdated in light of the 2017 Legislature's revisions to the Sanitation in Subdivisions Act. See Chapter 344, Laws of 2017. The proposed changes delete the old requirements and specify that the review process will be as provided in Chapter 344, Laws of 2017. Because that statute describes the process and timelines for review, it is unnecessary to repeat the requirements in the administrative rules.

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) through (5) remain the same.

(6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed, ~~and~~ are not affected by a proposed change to another facility, are operating properly, and meet the conditions of their approval. To determine whether previously approved water and sewer facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years.

(7) and (8) remain the same.

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

REASON: ARM 17.36.112 applies to rewrites of certificates of subdivision approval when no new subdivision is proposed. Under the existing rule, previously approved facilities are not subject to re-review if they are not being changed and will not be affected by a change to another facility, meaning that previously approved facilities that could now pose a risk to human health or the environment are not subject to re-review. The proposed changes require that, to avoid re-review, the systems also must operate properly and meet the conditions of their approval. Previously approved facilities that are not operating properly could pose a risk to human health or the environment, such as malfunctioning drainfields or sewage lagoons. Likewise, facilities that do not meet their conditions of approval—such as wells or drainfields that were not constructed in their approved locations—could pose a risk to human health or the environment. The proposed changes also resolve any ambiguity in the existing rule, which provides a method of determining whether previously approved facilities are operating properly but does not state that improperly operating facilities are subject to re-review.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) through (2)(a)(v) remain the same.

(vi) other applicable laws and regulations; ~~and~~

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a department-approved registered sanitarian or professional engineer~~.~~; and

(c) for individuals previously qualified under this subsection, complete at least one subdivision review in the preceding two years. Previously qualified individuals who have not completed at least one subdivision review in the preceding two years shall, prior to performing subdivision review, satisfy the requirements in subsection (2)(a).

(3) and (4) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-105, MCA

REASON: ARM 17.36.116(2) provides the requirements for individuals to conduct subdivision reviews for a local department or board of health, but the rule does not provide a way to ensure that such an individual remains competent. The proposed rule requires a previously qualified individual to retake the department's written exam if the individual has not completed a review in the preceding two years. This change is proposed because an individual who has not completed a subdivision review for two or more years may not be aware of changes to statutes, administrative rules, or department circulars. A reviewer's familiarity with these requirements is especially important because of the department's limited oversight of a local authority's review of subdivision applications.

17.36.310 STORM DRAINAGE (1) The applicant shall submit a storm drainage plan in accordance with department Circular DEQ-8 to the reviewing authority. ~~The plan must include a design report, calculations, and plan sheets sufficient to provide construction details of the storm drainage system and must conform with the requirements of either (2) or (3).~~

~~(2) Except as provided in (3), a storm drainage plan must be designed in accordance with Department Circular DEQ-8.~~

~~(a) for lots proposed for uses other than as single living units, a storm drainage plan submitted under (2) must be prepared by a professional engineer and the storm drainage system is subject to the requirements in ARM 17.36.314;~~

~~(b) a storm drainage plan submitted under (2) must include a maintenance plan for all drainage structures. The maintenance plan must describe the maintenance structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed off-site storm drainage structures or facilities.~~

(2) Storm drainage plans must be prepared by a professional engineer and must comply with the requirements in ARM 17.36.314 if the subdivision application proposes either of the following:

(a) six or more lots; or

(b) a commercial lot or a lot proposed for use other than a single living unit, with greater than 25% impervious area.

~~(3) Regardless of the type of use or the number of commercial or residential~~

~~units proposed, a storm drainage plan is not subject to the requirements of (2) if all of the requirements in (3)(a) through (h) are met. To be exempt from the requirements of (2), a storm drainage plan must be submitted demonstrating that:~~

~~(a) the proposed subdivision has five or fewer lots;~~

~~(b) the area of disturbance within each proposed lot has a slope of three percent or less;~~

~~(c) unvegetated areas including, but not limited to, road surfaces, road cuts and fills, roofs, and driveways, comprise less than 15 percent of the total acreage of each proposed lot;~~

~~(d) drainage structures, such as road ditches, exist or, if necessary, will be constructed;~~

~~(e) completion of the proposed subdivision will not increase the amount of pre-development storm water runoff, during the 100-year 24-hour storm event, between proposed lots and from the proposed subdivision area to an adjoining property;~~

~~(f) the proposed subdivision will not alter pre-development pass-through water flow patterns;~~

~~(g) the applicant provides the reviewing authority with a 7 1/2 minute USGS topographic map showing the proposed subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns; and~~

~~(h) no buildings or drainfields in the subdivision will be flooded during the 100-year 24-hour storm event.~~

(3) A storm drainage plan submitted under (2) must include a maintenance plan for all drainage structures. The maintenance plan must describe the drainage structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed storm drainage structures or facilities.

(4) The applicant shall obtain an easement if the reviewing authority determines the easement is needed to allow adequate operation and maintenance of the facilities. The easement must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. The easement must be in one of the following forms:

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

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

(5) The reviewing authority may waive the requirements of (1), (2), and (3) for subdivisions located entirely within a first-class or second-class municipality, as described in 7-1-4111, MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM 17.30.1102, if:

(a) the applicant submits to the reviewing authority a letter of consent from the municipal or MS4 entity on a form provided by the department; and

(b) the municipal or MS4 entity requires the applicant to comply with storm water drainage design standards. The design standards applicable to the applicant may not be less stringent than the requirements of Circular DEQ-8.

~~(4)~~(6) If ~~fill~~ material will be ~~placed~~ displaced or added within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals have been obtained.

(5) through (7) remain the same but are renumbered (7) through (9).

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

REASON: The existing rule contains requirements for the design of storm drainage plans, as well as a requirement that such plans must be designed in accordance with Department Circular DEQ-8. The proposed rule removes these requirements in favor of only the reference to DEQ-8. The proposed rule is proposed because design standards are more appropriately addressed through the more specific and detailed requirements of DEQ-8, and consolidating the requirements eases the administrative burden on both applicants and the reviewing authority.

The existing rule requires that a professional engineer prepare plans for lots proposed for uses other than as single living units. The proposed changes modify this rule to require that a professional engineer prepare storm drainage plans for major subdivisions, and commercial sites with 25 percent or more impervious area. Requiring that a professional engineer prepare plans for these types of sites is reasonably necessary because these sites require complex storm drainage plans due to roads, parking, and other impervious surfaces. Further, the proposed changes require that a professional engineer submit certified as-builts under ARM 17.36.314, which is reasonably necessary to ensure that the storm drainage facilities for these more complicated sites are constructed according to the approved plans.

The proposed changes would move existing (2)(b) to new (3). "Maintenance structures" would be changed to "drainage structures" for clarity. The proposed changes also remove the word "off-site" for the types of storm drainage structures or facilities that must have easements and agreements. This change is reasonably necessary to clarify when easements and agreements must be included in a storm drainage maintenance plan. A single project may involve several contiguous lots, with storm drainage facilities crossing lot lines. Easements in such a situation are necessary to protect the integrity of the facilities should any of the lots be sold in the future. New (4) requires that easements be in writing and signed by the grantor or, if the same person owns both parcels, requires that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure that the easement is of record and therefore effective.

The changes also propose an exemption to the requirement for storm drainage design reports for those applications also subject to local (Municipal/MS4) storm water review, so long as the local review complies with DEQ-8. This change is proposed because review by the department in such cases would be duplicative and would not provide any additional value to the applicant or the department and would not provide any additional protection to human health or the environment.

Finally, the proposed changes require that an applicant receive approval from the local floodplain permit coordinator if the applicant plans on displacing or adding material within a floodplain, instead of only adding material. Because many counties have adopted rules that require permits for the addition and removal of material within designated flood plains, this change is necessary to ensure that all the appropriate approvals have been obtained from the floodplain coordinator.

17.36.314 REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS (1) through (4) remain the same.

(5) If construction of the system is not completed within three years after the department has issued its written approval of the plans and specifications, the approval is void and plans and specifications must be resubmitted to the department, with appropriate fees, for review and approval. If the original conditions of approval, applicable rules, and design standards have not changed since the department approved the system, the department shall reissue the approval to allow an additional three years to complete construction.

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

REASON: Certain systems may take more than three years to be constructed, for any number of reasons. Under the existing rule, an applicant whose approval has expired must seek re-approval of the system, even when there have been no changes to the original conditions of approval or applicable rules and standards. When there have not been any changes, such re-review is duplicative and provides no value to the applicant, the department, public health, or the environment. Thus, the proposed changes, which allow the department to reissue the original approval for three more years, are reasonably necessary to avoid the unnecessary expenditure of costs and resources by both the department and the applicant. The proposed changes also make some stylistic changes that are necessary to clarify the rule.

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) through (4) remain the same.

(5) If an application includes a ~~Users of multiple user and~~ shared or multiple-user sewage system~~s~~ that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement ~~must have an agreement~~ that identifies the rights and responsibilities of each user. ~~When a lot is sold, the new owner shall sign the user agreement.~~ User agreements must be in a form acceptable to the department.

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

REASON: The proposed changes remove the mandatory requirement that all users of a shared or multiple-user sewage treatment system must have a user

agreement. Some shared or multiple-user systems do not need user agreements because they are located on a single lot. The change is also reasonably necessary to clarify that the person responsible for submitting the user agreement to the department is the applicant, not the users of the system, since the lots may not have been sold at the time of the application.

The proposed changes also omit the requirement that the user agreement be signed by all users each time the lot is sold. The department does not regulate or monitor sales of properties, so the department has no way of enforcing this requirement. However, the certificate of subdivision approval will continue to apply to properties if they are sold, so any conditions of approval based on a user agreement will continue to apply to new property owners.

17.36.330 WATER SUPPLY SYSTEMS—GENERAL (1) through (4) remain the same.

(5) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Except as provided in ~~Pursuant to~~ 76-4-104(6)(i), MCA, each proposed well isolation zone must be located wholly within the boundaries of the proposed subdivision where the well is located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

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

REASON: The 2017 Legislature amended 76-4-104(6)(i), MCA, to allow a well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary to extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. *See* Section 2, Chapter 261, Laws of 2017. In light of that change, the proposed amendment is reasonably necessary to remove a conflict between the administrative rules and the amended statute.

17.36.331 WATER SUPPLY SYSTEMS: WATER QUALITY (1) through (1)(e) remain the same.

(f) a surface water or ground water source under the direct influence of surface water, as described in Department Circular PWS-5, may not be used as a water source for a non-public system unless a waiver is granted in accordance with ARM 17.36.601. The waiver may be granted by the department only if:

(i) the system is an existing individual or shared water supply that uses surface water or ground water under the direct influence of surface water; and

(ii) adequate treatment is provided through filtration and disinfection.

(2) Public water supply systems are subject to the requirements of Title 75, chapter 6, MCA, and the rules promulgated thereunder. All public water supplies must be designed by a professional engineer and must comply with the requirements in ARM 17.36.314.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-107, MCA

REASON: The amended rule applies to existing systems that cannot obtain approval of any new well. For example, a cabin site near a lake may have historically used surface water supplies for domestic use and may not be able to drill a new well because of the location. Under the existing rule, such systems cannot use surface water or ground water under the direct influence of surface water, meaning that such systems would have few remaining options for acquiring a water source. The proposed rule is therefore reasonably necessary to provide flexibility in the design of some non-public systems. At the same time, the proposed rule protects public health by (1) limiting the use of surface water to non-public systems, (2) requiring that the water is appropriately treated or filtered, and (3) subjecting a request to use surface water to the waiver process of ARM 17.36.601.

The proposed changes also require that all public water supply systems be designed by a professional engineer. Under 76-4-107(2), MCA, a professional engineer must certify that a public water supply system has been constructed according to approved specifications. However, ARM 17.38.101 of the public water supply rules does not require that a public non-community system be designed by a professional engineer. This creates a gap between the systems that are required to be designed by professional engineers and the systems that are required to be certified by professional engineers. Because many engineers will only certify their own designs or the designs of other engineers, a public system could be designed by someone other than a professional engineer but could not be certified under the statute. The requirement in the proposed changes is therefore reasonably necessary to ensure that systems can be certified in compliance with the statute.

17.36.333 WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION

(1) The applicant shall meet the following requirements relating to the design and construction of water supply systems:

(a) proposed individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(b) existing individual and shared wells must have been constructed in accordance with the rules in effect at the time of construction;

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

(2) remains the same.

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

REASON: Some subdivision applications involve existing individual or shared wells that will not be modified by the proposed new facilities in the application. These existing wells might not satisfy current construction requirements if those requirements have changed since the wells were constructed, meaning that they cannot be approved under the existing subdivision rules. The proposed changes

would allow these wells to be approved if they were constructed in accordance with the rules that existed at the time of their construction. The construction rules do not require that wells be re-constructed every time that the rules are changed, so the proposed change will eliminate an unnecessary re-construction caused by the subdivision rules. In doing so, the proposed change will continue to promote consistency between the construction rules and the subdivision rules (since the change only applies to existing wells that were constructed according to the rules in place at the time of their construction), and will continue to protect public health (since applicants already must demonstrate that the quality and quantity of their water source is adequate).

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) through (4) remain the same.

(5) If an application ~~proposed subdivision~~ includes a shared or multiple-user water supply system that serves more than one lot, ~~or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require~~ the applicant ~~to~~ shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. ~~The user agreement must be signed by all users when the lots are sold.~~ User agreements must be in a form acceptable to the department.

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

REASON: The proposed changes add multiple-user water supply systems to the types of systems that must submit a user agreement. This change is reasonably necessary to ensure the correct operation and maintenance of multiple-user systems. The proposed changes are also reasonably necessary to clarify that user agreements are not necessary if the system only serves a single lot.

The proposed changes also remove the requirement that the user agreement be signed by all users, since the lots may be undeveloped at the time of the application. Further, the department does not regulate or monitor sales of properties, so the department has no way of enforcing this requirement. However, the certificate of subdivision approval will continue to apply to properties if they are sold, so any conditions of approval based on a user agreement will continue to apply to new property owners.

The proposed changes also substitute "application" for "proposed subdivision." This change is proposed because this rule also applies to applications that do not concern new divisions of land, such as applications for deviations from certificate of subdivision approvals under 76-4-130, MCA, and applications for the removal of sanitary restrictions.

17.36.335 WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) and (2) remain the same.

(3) For existing non-public water supply systems within a proposed subdivision, the applicant shall submit information to allow the reviewing authority to

review the quality, quantity, and dependability of the existing system.

(a) The applicant shall submit, for each existing water supply source, water quality analyses for nitrates ~~(as nitrogen)~~, nitrites and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrates, nitrites and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water constituent exceeds the human health standards in Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) remains the same.

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

REASON: High levels of both nitrates and nitrites have been known to cause health risks to individuals. The change is reasonably necessary to protect public health and to provide consistency between the water quality review of existing water supply systems and proposed water supply systems in ARM 17.36.331.

17.36.345 ADOPTION BY REFERENCE (1) through (1)(e) remain the same.

(f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," ~~2002~~ 2017 edition;

(g) through (2) remain the same.

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

REASON: The department is proposing to adopt a new version of Department Circular DEQ-8, which provides design standards for subdivision storm water drainage facilities. The existing circular was last updated in 2002, and the proposed changes are reasonably necessary to clarify requirements for storm drainage review, correct inconsistencies in the existing circular, standardize certain requirements for better uniformity and predictability, and provide information on new technologies that can be used in the design of storm drainage facilities (e.g., the use of pre-treatment facilities to protect water quality).

The new version of DEQ-8 is being proposed in conjunction with changes to ARM 17.36.310, which currently contains both requirements for the design of storm drainage plans and a requirement that such plans be designed in accordance with DEQ-8. The department is proposing to remove the design requirements from the rule in favor of only the reference to DEQ-8. Together, these changes would

consolidate the design requirements and make them easier to understand and comply with.

The proposed changes in the new circular are as follows:

Foreword The proposed changes add a foreword that explains that the circular is based on demonstrated technology, that certain storm water drainage systems require permits for Class V injection wells, and that the circular replaces previous versions.

Chapter 1: Introduction This chapter includes an applicability statement to explain the role and purpose of storm drainage review in subdivisions and adds a section with definitions of terms used in the document, which is reasonably necessary to make the circular easier to use.

Chapter 2: Submission of Plans This chapter outlines the documents that must be submitted for review of a storm drainage plan, including a report, drawings, construction documents, and an operation and maintenance plan. This information is not new, but has been consolidated into one location for ease of use.

The chapter also describes the process for obtaining deviations from the circular. The section does not create new requirements for obtaining a deviation, but it makes the process more clear by explaining in one place which terms in the circular create mandatory requirements, what constitutes adequate justification for a deviation, and what each deviation request must include to ensure protection of public health, safety, and the environment.

The chapter also specifies that the spreadsheets, design examples, and illustrations included in the circular are for informational purposes and are not regulatory in nature. This is necessary to clarify that the examples are not required designs and do not cover every requirement in the circular.

Chapter 3: Design Criteria This chapter moves the requirements from ARM 17.36.310 for an exempt plan, now renamed a simplified plan, to this document. The use of this plan has been expanded to include subdivisions with five or more lots, so long as the subdivision has less than 25 percent impervious area, has development on slopes less than 3 percent, and does not alter historic runoff patterns outside the subdivision. Under these circumstances, a simplified plan is as protective as a standard plan, so the expanded applicability is appropriate in cases where a standard plan would provide no additional protective measures.

The chapter also establishes the requirement for an initial storm drainage facility to retain, detain, or infiltrate the first 0.5 inches of runoff from a storm event. The first 0.5 inches of rainfall may flush surface pollutants from developments and allow them to enter state ground or surface waters and this requirement is proposed to capture possible pollutants onsite and keep them from entering state waters.

The chapter explains the designation of pre-development conditions in the review of a storm drainage plan. For undeveloped land or developed land for which there has been no previous storm drainage review under the Sanitation in Subdivisions Act, the pre-development condition is land without any improvements. This requirement is reasonably necessary because there may be sites that have

existing improvements that have historically caused storm drainage runoff issues, and this requirement ensures that new divisions of land do not allow historically unlawful practices to continue. For sites that have been approved under the Sanitation in Subdivisions Act, the relevant pre-development site conditions are those conditions that were previously reviewed and approved.

The chapter also provides that precipitation values be determined from one of the following: (1) information provided through the National Oceanic and Atmospheric Administration (NOAA); (2) a tabulated list of cities provided in Appendix A with runoff amounts used by the Montana Department of Transportation; (3) individually developed intensity-duration-frequency (IDF) curves for each site; and (4) other applicable sources. Although all these methods are currently accepted in the existing circular, this updated format provides guidance to users of the document.

Additionally, the chapter outlines when stormwater runoff peak flow rates and stormwater runoff volume calculations are necessary for onsite and offsite basins during different storm events and removes inconsistencies in this requirement from the current circular. It specifies that the methods for calculating these impacts are found in Appendix B.

Chapter 4: Conveyance Structures This chapter outlines the methods used in standard engineering practices to determine the capacity or flow rate of the three most common types of conveyance structures (open channels, pipes, and culverts). Flow volume calculations are required for conveyance structures used in standard plans, and this chapter allows ease of reference for those individuals proposing to use these facilities in their design.

Chapter 5: Retention/Detention Facilities The existing circular refers to "closed-basin ponds" and the interchangeable terms "detention ponds" and "retention ponds." The proposed changes in this chapter clarify this terminology by separating these facilities into "detention ponds" (i.e., ponds with an outlet that temporarily detain storm water) and "retention ponds" (i.e., ponds without an outlet that retain storm water until it evaporates or infiltrates). Because detention ponds are more complicated to construct than retention ponds, the proposed changes allow detention ponds only in standard plans, while retention ponds are allowed in both standard and simplified plans. The changes in this chapter also provide the required standards for each type of pond and outline the methods used in standard engineering practices to determine the capacity or volume of each facility, which is reasonably necessary to ensure that facilities are sized, located, and designed appropriately, and to allow ease of reference for those individuals proposing to use these facilities in their design.

Chapter 6: Infiltration Basins This chapter discusses both infiltrative structures and lawn/landscaping used for stormwater controls. The requirements remove consideration of snowmelt when using lawns/landscaping, which is reasonably necessary because state-wide variations in site characteristics, climate, and melt conditions make it difficult to quantify the impacts from snowmelt. The chapter adds a new procedure for determining infiltration rates for structures,

outlined in Appendix C, and requires the facility to be constructed above groundwater level and to drain within 48 hours. The changes were necessary to ensure the systems are sized appropriately, to protect water quality, and to ensure they address potential for successive storm events, respectively.

Chapter 7: Pre-Treatment Some storm water designs require pre-treatment elements to prevent pollutant-containing storm water from discharging into state waters or to preserve the functionality of the facilities (e.g., keeping trash from clogging the facilities). This new chapter addresses different methods for treatment of stormwater, including vegetated filter strips, vegetated swales, screens, oil/water separators, proprietary spinners/swirl chambers, and drain inlet inserts. These additions are reasonably necessary to provide applicants with information about ways that pre-treatment elements can be incorporated into the storm water facilities.

Appendix A: Precipitation Appendix A has a map with 102 stations across the state with precipitation data. The data is tabulated for the 2-, 10-, and 100-year 24-hour storm events for each station. This is reasonably necessary to provide a basis for calculating precipitation amounts for various requirements throughout the circular.

Appendix B: Acceptable Hydrologic Methods, Models and Time of Concentration Appendix B describes the common engineering models used to determine runoff rate and volume for stormwater. These methods include the Rational Method, the Modified Rational Method, and the TR-55 or SCS Curve Stage-Storage Method, along with a discussion of Time of Concentration and other Computer Models. For the Rational Method, the curve number for undeveloped area was changed from 0.3 to 0.2. The typical range for this curve number is 0.1 to 0.3, and an average curve number of 0.2 is reasonably necessary to allow a better estimate for soil/development conditions across the state.

Appendix C: Infiltration The soil infiltration rate is used to size infiltration facilities. The existing circular requires that infiltration be calculated by a percolation test or "other appropriate testing." The proposed changes require that infiltration be calculated according to a provided infiltration-rate table or by conducting an onsite test (an encased falling head test). These changes are reasonably necessary because the percolation test is better suited for wastewater calculations, not storm water calculations, and "other appropriate testing" provides no guidance to applicants. The encased falling head test is the standard engineering method for calculating infiltration, but the infiltration-rate table provides a simpler way of estimating infiltration when the applicant does not want to conduct the encased falling head test. In addition to being more accurate than the existing circular, these changes standardize the methods accepted by the department, making storm water design and approval more consistent and predictable.

Appendices D through P Appendices D through O provide formulas and examples of spreadsheets, design plans, and drawings. Specifically, Appendix D provides common engineering formulas for determining the rate of discharge for

orifices and weirs from a detention facility, and Appendix E provides common engineering formulas used for determining the peak flow rate for open channel flow (Chezy-Manning Equation) and for curb and gutter facilities. Appendix F provides an example spreadsheet used to calculate a simplified storm drainage plan, and Appendix G provides an example spreadsheet used to calculate a standard storm drainage plan. Appendices H through N provide design examples for different types of storm drainage designs, and Appendix O provides typical drawings for a slotted riser pipe and weir. Appendix P is a works-cited page.

These changes are reasonably necessary to inform applicants of the types of formulas and designs that are acceptable to the department and to assist applicants in the design of storm water facilities.

17.36.802 FEE SCHEDULES (1) through (1)(b)(ii)(A) remain the same.

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

(C) - connection to water main ~~distribution system~~ per lot or unit $ ~~70~~ 35.00

(iii) public water system:

(A) new system per component per ARM 17.38.106 fee schedule

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

(C) - connection to water main ~~distribution system~~ per lot or structure $ ~~70~~ 35.00

(c) through (c)(iii)(B) remain the same.

(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems $ 95.00 (plus $105.00/hour for review in excess of two hours)

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

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

(B) - connection to sewer main ~~collection system~~ per lot or unit $ ~~70~~ 35.00

(vi) new public wastewater system per component per ARM 17.38.106 fee schedule

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

(B) - connection to sewer main ~~collection system~~ per lot or structure $ ~~70~~ 35.00

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

(iii) reissuance of ~~original~~ approval statement where no review is required per request $ 60.00

(iv) through (vii) remain the same.

(A) - ~~plans exempt from~~ simplified Circular DEQ-8 review per lot $ 40.00

(B) - ~~plans subject to~~ standard Circular DEQ-8 review:

(I) through (viii) remain the same.

(2) After issuance of two denial letters, the reviewing agency may charge $105 per hour for the remainder of the review.

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

REASON: The rule amendments would make changes to the terms used in the rule and the fees applied by the rule.

First, the proposed changes substitute "water main" for "distribution system" and "sewer main" for "collection system." These changes are reasonably necessary to provide consistency with the defined terms in ARM 17.36.101. Fees for connections to water and sewer mains would decrease from $70.00 to $35.00, which is reasonably necessary to make the fee commensurate with the actual cost of review. The department estimates that 100 applications per year will be affected by the changes to review fees for connecting to water and sewer mains. The cumulative impact is difficult to estimate because these fees are charged per lot, and each application contains a different number of lots. However, the department roughly estimates that this change will affect 300 lots per year, for an approximate decrease of $10,500.

Second, the proposed changes clarify that the fee in ARM 17.36.802(1)(d)(iii) applies when the department reissues an approval without review, as provided in the proposed changes to ARM 17.36.314. The department does not know the cumulative impacts or numbers of applications that this will affect.

Third, the rule amendments modify the terms for fees associated with storm drainage plan review, substituting the terms "simplified plan" and "standard plan" for "exempt plan" and "non-exempt plan." These term changes are necessary to be consistent with the terms used in the new version of Department Circular DEQ-8. The words "for review" are proposed to be added to (1)(c)(iv) to clarify the fee and to be consistent with the rest of the rule.

Fourth, the proposed changes apply a $105 per-hour fee for reviewing an application after the reviewing authority has issued two denial letters. The current rules allow fees to be applied for individual component reviews, but this time spent is difficult to document. The per-hour fee is therefore reasonably necessary to provide a more definable threshold for additional fees in cases where they are warranted. The department estimates that this will affect 25 applications per year, with about 10 hours charged for each application, for an estimated cumulative impact of $26,250.

17.36.804 DISPOSITION OF FEES (1) remains the same.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

(a) for subdivisions with individual wastewater treatment systems, the department shall reimburse ~~$25~~ 35 per lot plus 80 percent of the review fee under ARM 17.36.802 for the following actions performed by the local governing body:

(i) through (iii) remain the same.

(3) The department may reimburse counties that have not been delegated review authority but that perform review services including, but not limited to, inspection of proposed and approved facilities and assistance to persons in the application procedure as follows:

(a) ~~$25~~ 35 per parcel for subdivisions with individual or shared wastewater treatment systems. A site evaluation must accompany the submittal.

(4) remains the same.

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

REASON: The proposed changes increase the department's reimbursement to local authorities for certain subdivision-related activities. This increased reimbursement is reasonably necessary to allow local health departments to recover actual costs of review, inspection, and enforcement. This reimbursement increase will apply to every county in the state, proportional to the number of reviews that each county does for the department. The department estimates that this increase will amount to approximately $60,000 per year.

4. A copy of proposed Department Circular DEQ-8 (2017) may be viewed at the department's website using the following path: http://deq.mt.gov/Water/PWSUB/sub. Copies may also be obtained by contacting Leata English at (406) 444-4224, or by emailing her at: LEnglish@mt.gov.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., October 20, 2017. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

7. Aaron Pettis, attorney for the department, has been designated to preside over and conduct the hearing.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply. The department notified the primary sponsors of Chapters 261 and 344, Laws of 2017, by sending them letters on September 1, 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 significantly and directly impact small businesses.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North BY: */s/ Tom Livers*
JOHN F. NORTH TOM LIVERS,
Rule Reviewer Director

Certified to the Secretary of State, September 11, 2017.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to Ignition Interlock Devices	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Justice proposes to adopt the above-stated rules about ignition interlock devices due to comments received in response to MAR Notice No. 23-3-245, proposed in Issue No. 23 and amended in Issue No. 24 of the 2016 Montana Administrative Register and adopted in Issue No. 12 of the 2017 Montana Administrative Register.

2. The Department of Justice 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 Justice Motor Vehicle Division no later than 5:00 p.m. on October 6, 2017, to advise us of the nature of the accommodation that you need. Please contact Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-1776; or e-mail msnowberger@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply throughout this chapter:

(1) "Certificate holder" means the manufacturer or vendor who the department has issued a certificate authorizing the use of a particular IID, or a manufacturer or vendor to install, service, calibrate, remove, and monitor certified IIDs.

(2) "Circumvention" means the attempted or successful bypass of an ignition interlock device (IID), including but not limited to:

(a) operating a vehicle without a properly functioning IID;

(b) disconnecting any part of the IID including the control head while the vehicle is in operation;

(c) altering the IID;

(d) introducing any breath sample from an air compressor, manual air pump, or other mechanical device to start, attempt to start, or operate a vehicle equipped with an IID;

(e) introducing a breath sample from someone who is not the restricted driver;

(f) introducing any altered, diluted, contaminated, stored, or filtered breath sample;

(g) intentionally disrupting or blocking a digital image identification device;

(h) operating the interlock vehicle after the IID detects excess breath alcohol.

(3) "Manufacturer" means the person, company, or corporation who produces the IID.

(4) "Manufacturer representative" means the employee designated to act on behalf of and/or represent the manufacturer in all matters relating to the IID certification process, compliance, and reporting requirements with the State of Montana.

(5) "Service center" means a location where certified IIDs are serviced, installed, monitored, removed, and calibrated.

(6) "Tampering" means any act or attempt to disable or circumvent the operation of an IID.

(7) "Vendor" means a person, company, business, or distributor who is contracted by a manufacturer to manage the installation, calibration, and removal of IIDs.

(8) "Vendor representative" means the employee designated to act on behalf of and/or represent the vendor in all matters relating to the repair, installation, calibration, and removal of IIDs.

(9) "Violation reset" means a driver had a violation requiring an unscheduled service of the IID.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

NEW RULE II LOW BREATH VOLUME MEDICAL EXEMPTION (1) An individual, manufacturer, or vendor may request to lower the minimum breath sample because a restricted driver has diminished lung capacity.

(2) Diminished capacity may be established through documentation submitted to the department by the appropriate judicial authority or by a medical professional.

(3) It is solely within the department's discretion to issue an exemption.

AUTH: 61-8-441, MCA
IMP: 61-8-441, MCA

REASON: On June 23, 2017, the Department of Justice published MAR Notice No. 23-3-245 pertaining to the adoption of new rules relating to ignition interlock devices at page 896 of the 2017 Montana Administrative Register, Issue Number 12. The department had previously conducted a public hearing on the proposed adoption of the ignition interlock device rules on January 18, 2017. During that hearing, commenters brought up the need for a rule relating to definitions of terms used in the proposed rules as well as the need for a rule addressed to low breath volume medical exemptions. The department has determined that those comments were instructive and valuable and has therefore put forth this proposal to adopt additional rules in those two areas.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-1776; or e-mail msnowberger@mt.gov, and must be received no later than 5:00 p.m., October 20, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michele Snowberger at the above address no later than 5:00 p.m., October 20, 2017.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 3 persons based on the number of interlock providers. No member of the general public has requested to be on the notice list.

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

8. The bill sponsor notice requirements of 2-4-302, MCA, have been fulfilled. Senator Bill Wilson was originally contacted concerning ignition interlock device rulemaking by letter dated January 13, 2017. He will be contacted again concerning these additional rules prior to September 15, 2017.

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

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

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

Certified to the Secretary of State September 11, 2017.

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

In the matter of the amendment of ARM 24.138.304 definition of nonroutine application, 24.138.505 dentist licensure by credential, 24.138.509 dental hygiene limited access permit, 24.138.530 licensure of retired or nonpracticing dentist or dental hygienist for volunteer service, 24.138.601 restricted temporary licensure of nonresident volunteer dentists and dental hygienists, 24.138.2106 exemptions and exceptions, 24.138.3221 minimum qualifying standards, 24.138.3223 minimum monitoring standards; the adoption of NEW RULE I infection control; and the repeal of ARM 24.138.518 renewals	))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 13, 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, 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 Dentistry (board) no later than 5:00 p.m., on October 6, 2017, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.304 DEFINITION OF NONROUTINE APPLICATION (1) ~~A nonroutine application includes all criteria as defined in ARM 24.101.402.~~ "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by ARM 24.101.402 or by these rules.

(a) A nonroutine application means that according to the application, the applicant reveals that one or more of the following scenarios apply to the applicant:

(i) they have voluntarily surrendered, canceled, forfeited, or failed to renew a license as a result of any of the following:

(A) a complaint filed against them;

(B) a consent agreement; or

(C) an investigation or disciplinary proceedings;

(ii) they have voluntarily or involuntarily surrendered their privileges to provide services to health maintenance organizations, Medicare/Medicaid, or other payers, or have voluntarily or involuntarily surrendered hospital privileges, health maintenance organization participation, Medicare/Medicaid, or other payers during a pending investigation or in anticipation of an investigation, or have had such privileges reprimanded, denied, restricted, suspended, placed on probation, revoked, or subjected to other sanction or action;

(iii) they have been expelled from or asked to resign from any professional organization, or have been censured by a professional organization;

(iv) they have had civil or criminal charges pending or have pleaded guilty, forfeited bond, or been convicted of a crime (including plea of no contest or deferred prosecution), whether or not an appeal is pending, with the exception of the following:

(A) minor-in-possession charges or convictions;

(B) one misdemeanor committed more than five years ago; or

(C) traffic offenses, unless the illegal use or possession of alcohol or drugs is involved;

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

(vi) there are inconsistencies in the application or in the supporting documentation of the application, or any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

(2) The board may also consider applications as nonroutine in any of the following instances:

(a) remains the same.

(b) the dental hygiene credentialing applicant does not meet the practice hours required by board rule;

(c) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-101, 37-1-131, 37-4-301, 37-4-402, 37-29-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clearly delineate the criteria for categorizing license applications as nonroutine. This change will further implement 37-1-101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board has previously relied on its September 2009 nonroutine motion, this rule amendment will replace that motion

and provide licensing staff clarification and guidance to differentiate between routine and nonroutine applications.

The board is also amending (2)(b) as only dental hygiene credentialing applicants are required to document proof of practice hours pursuant to ARM 24.138.506.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) and (2) remain the same.

(3) Application material remains valid for one year from the time it is received in the office.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-1-304, 37-4-301, MCA

REASON: The board is amending this rule to align with current standardized department procedures for license application processing that includes a one-year life span from the initial date of application. After one year, an application will automatically time out and the applicant will be required to reapply. Standardized application procedures will enhance efficiency and create cost savings in the licensing process.

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

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through (1)(c) remain the same.

(d) ~~provides the name and address of the public health facility or facilities where the applicant intends to provide services under a LAP~~ acknowledges on the application that the applicant understands which public health facilities are eligible to provide services under a limited access permit pursuant to 37-4-405, MCA;

(e) through (5) remain the same.

AUTH: ~~37-1-131,~~ 37-4-205, 37-4-405, MCA
IMP: 37-4-405, MCA

REASON: The board determined it is reasonably necessary to amend this rule to enable dental hygienists with limited access permits (LAP) to provide services in any facility that qualifies under 37-4-405, MCA, without reapplying for the LAP or notifying the board office of a work location change. Noting there is no requirement in rule or the license renewal process for LAP holders to update work locations, the board believes this amendment will increase access to care in these facilities.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.138.530 LICENSURE OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST FOR VOLUNTEER SERVICE (1) through (1)(d) remain the same.

(e) a ~~notarized~~ signed statement that the applicant shall not accept any form

of remuneration for any dental or dental hygiene services rendered while in possession of the volunteer license;

(f) through (5) remain the same.

AUTH: 37-1-131, ~~37-1-141,~~ 37-4-340, MCA
IMP: 37-1-131, 37-1-141, 37-4-340, MCA

REASON: The board is amending this rule and ARM 24.138.601 as the department has determined and the board agrees that it is not necessary to require notarized applications. In anticipation of and to further facilitate the online submission of license applications, the board will no longer require the signature or content to be notarized on any application. Eliminating this requirement may also increase access to care for low income citizens by expediting the processing of these types of applications.

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

24.138.601 RESTRICTED TEMPORARY LICENSURE OF NONRESIDENT VOLUNTEER DENTISTS AND DENTAL HYGIENISTS (1) through (1)(c) remain the same.

(d) a ~~notarized~~ signed statement that the applicant shall not receive monetary or other compensation for providing any dental or dental hygiene services in Montana, while in possession of the temporary volunteer license.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA
IMP: 37-1-131, 37-1-141, 37-4-341, MCA

24.138.2106 EXEMPTIONS AND EXCEPTIONS (1) remains the same.

(2) New licensees shall be exempt from continuing education requirements until March 1st ~~of the year~~ following their initial licensure in Montana, however, they are encouraged to participate actively in continuing education programs.

(3) The board may prorate continuing education credit to licensees after March 1st following their initial licensure in Montana related to the balance of the three-year audit cycle from the date of initial licensure. Dentists may be prorated 20 continuing education credits per audit cycle or 1.66 credits per month licensed. Dental hygienists may be prorated 12 continuing education credits per audit cycle or 1.00 credit per month licensed. Denturists may be prorated 12 continuing education credits per audit cycle or 1.00 credit per month licensed.

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

AUTH: 37-1-319, ~~37-4-205, 37-29-201,~~ MCA
IMP: 37-1-306, 37-1-319, MCA

REASON: In 2015 the board amended its continuing education (CE) rules to require a CE audit every three-year cycle from an annual audit cycle of a select group of licensees based on their year of initial licensure. The board was concerned that new

licensees may be audited after their first year of exemption with little time to provide the full credit hours required. Therefore, the board is amending this rule to clarify the CE requirements for new licensees and prorate CE hours for those new licensees who may be audited in the first three-year audit cycle after their initial licensure per ARM 24.138.2104.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.138.3221 MINIMUM QUALIFYING STANDARDS (1) and (2) remain the same.

(3) With respect to moderate sedation, no dentist shall administer drugs to achieve the state known as moderate sedation during a dental procedure or a dental-surgical procedure, unless ~~he or she~~ the dentist has received formal training in moderate sedation techniques from an institution, organization, or training course ~~approved by the board~~. If training for moderate sedation is through continuing education, proof of course content must accompany the initial application in the form of a course outline or syllabus. A minimum of 60 hours of instruction plus management of at least 20 dental patients, by the intravenous route, per participant, are required to achieve competency in moderate sedation techniques. The dentist must furnish evidence of having completed this training.

(a) through (6) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify and reinforce the board's intention that it is the licensee's responsibility to determine which moderate sedation courses and training meet the rule requirements. The board does not approve these courses.

24.138.3223 MINIMUM MONITORING STANDARDS (1) through (1)(c) remain the same.

(d) Food and Drug Administration approved medical devices or manual sphygmomanometer stethoscope for monitoring blood pressure shall be used during the sedation procedure.

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

(d) Food and Drug Administration approved medical devices or manual sphygmomanometer stethoscope for monitoring blood pressure shall be used during the sedation procedure.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA
IMP: 37-1-131, 37-4-101, 37-4-408, 37-4-511, MCA

REASON: Upon recommendation of the board's anesthesia committee, the board determined it is reasonably necessary to amend this rule to further ensure public safety. Food and Drug Administration (FDA) approved medical devices or a manual

sphygmomanometer stethoscope provide more accurate readings than non-FDA-approved or over-the-counter devices. The board concluded that this amendment is critical for patients under deep sedation/general anesthesia and moderate sedation.

4. The proposed new rule is as follows:

NEW RULE I INFECTION CONTROL (1) Each person who is licensed pursuant to the provisions of Title 37, chapter 4, MCA, shall comply with the provisions of the Guidelines for Infection Control in Dental Health-Care Settings, 2003. The board adopts and incorporates by reference the guidelines which set forth the Centers for Disease Control and Prevention (CDC) recommendations for infection prevention and control in a dental-care setting. A copy of the guidelines is available, free of charge, from the CDC web site at https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a1.htm.

AUTH: 37-1-131, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1005, MCA

REASON: Due to licensee inquiries and an increasing number of complaints by the public and dental office staff regarding unsanitary conditions in dental offices, the board is adopting NEW RULE I to address dental office infection control. The board concluded that adopting these standards is necessary to ensure public safety and provide a consistent reference tool for board inspectors and investigators to use in gauging the seriousness of violations.

5. The board proposes to repeal the following rule:

24.138.518 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-141, 37-29-306, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals. Also, CPR, ACLS, and PALS certification is addressed in ARM 24.138.403.

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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., October 20, 2017.

7. An electronic copy of this notice of public hearing is available at www.dentistry.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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@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, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.304, 24.138.505, 24.138.509, 24.138.530, 24.138.601, 24.138.2106, 24.138.3221, and 24.138.3223 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 RULE I 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 24.138.518 will not significantly and directly impact small businesses.

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

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

BOARD OF DENTISTRY
GEORGE JOHNSTON, DDS
PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.

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

In the matter of the amendment of ARM 36.12.101, 36.12.105, 36.12.107, 36.12.117, 36.12.121, 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	)))))))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 8, 2017, the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-196 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1485 of the 2017 Montana Administrative Register, Issue Number 17.

2. On October 6, 2017, at 10:00 a.m., the department 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. The comment period is being extended to allow time for the Water Policy Interim Committee (WPIC) to review and discuss the proposed amendment and repeal with the department.

3. 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 us 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, 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.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m., October 20, 2017.

/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 September 13, 2017.

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

In the matter of the amendment of ARM 37.8.102 and 37.8.311 pertaining to the amendment of birth certificate gender designations and issuance of a replacement certificate	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 12, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 28, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.8.102 DEFINITIONS In addition to the definitions contained in 50-15-101, MCA, the following definitions apply to this chapter:

(1) through (7) remain the same.

(8) "Intersex condition" means having, or having been diagnosed by a medical professional to have, any of a variety of conditions in which a person is born with a variation of chromosomes, gonads, sex hormones, or reproductive anatomy that is incongruent with typical notions of female or male bodies.

(8) through (12) remain the same, but are renumbered (9) through (13).

AUTH: 50-15-102, 50-15-103, MCA
IMP: 50-15-101, 50-15-103, MCA

37.8.311 ADOPTIONS, NAME CHANGES, AND ~~SEX~~ GENDER CHANGES

(1) through (4) remain the same.

(5) The ~~sex~~ gender of a registrant as cited on a certificate may be ~~amended only~~ corrected if the department receives ~~a certified copy of an order from a court~~

~~with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure.~~ :

(a) a correction affidavit accompanied by a completed gender designation form issued by the department certifying under penalty of law that that the individual has undergone gender transition or has an intersex condition and that the gender designation on their birth certificate should be changed accordingly, and the request for gender designation is for the purpose of ensuring the birth certificate accurately reflects their gender and is not for any fraudulent or other unlawful purpose; or

(b) a correction affidavit accompanied by presentation of a government-issued identification displaying the correct gender designation; or

(c) a correction affidavit accompanied by a certified copy of an order from a court with appropriate jurisdiction indicating that the gender of an individual born in Montana has been changed. The order must contain sufficient information for the department to locate the original record. If the registrant's name is also to be changed, the order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be amended.

(6) ~~If the order directs the issuance of a~~ A new certificate issued pursuant to (5) will ~~that does~~ not show amendments, ~~the new certificate~~ will not indicate on its face that it was amended, and the old certificate will be placed in a sealed file. If the ~~sex~~ gender of an individual was listed incorrectly on the original certificate due to a data entry error, refer to ARM 37.8.108.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department is proposing to amend ARM 37.8.102 and 37.8.311 in order to conform departmental processes related to birth certificate gender designations with modern medical practices, assist in preventing potential discriminatory coverage exclusions by health insurance plans, and to minimize the potential for discrimination pursuant to Section 1557 of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. 18116) (Section 1557). Because the department is a covered entity within the meaning of Section 1557, it provides individuals equal access to health programs and activities without discrimination on the basis of gender, and treats individuals consistent with their gender identity. Mismatched identification, however, can lead to denial of benefits and other potentially discriminatory acts. The proposed amendments are necessary for the department to fully meet its obligations under state and federal authorities, and conform vital records processes to the recommendations of The American Medical Association, American Psychological Association, World Professional Association for Transgender Health, and National Association of Social Workers.

Fiscal Impact

This proposed rule amendment has an administrative cost of $000.00 in state fiscal year (SFY) 2017 and $000.00 in SFY 2018.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on October 20, 2017. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

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

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

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

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

/s/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

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

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.19.401, 42.19.403, and 42.19.405 pertaining to property tax assistance programs	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 12, 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 adoption and 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 October 2, 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 rule as proposed to be adopted provides as follows:

NEW RULE I INTANGIBLE LAND VALUE PROPERTY TAX ASSISTANCE PROGRAM FOR RESIDENTIAL PROPERTY (1) Property taxpayers meeting the requirements of the intangible land value property tax assistance program, as described in 15-6-240, MCA, may submit an application for assistance to the department. The application form is available [pending publication] on the department's web site at revenue.mt.gov.

(2) Applications must be submitted by March 1 in order to be considered for the current tax year as provided in 15-6-240, MCA.

(3) Qualifying applicants shall affirm that the property owned and maintained by the applicant is the applicant's primary residence. If verification is necessary, the applicant may demonstrate they meet this requirement with such indicators including, but not limited to:

(a) the mailing address for receipt of bills and correspondence;

(b) the address on file with the applicant's employer as the place of residence; or

(c) the mailing address listed on the applicant's federal and state tax returns, driver's license, car registration, hunting and fishing licenses, or voter registration.

(4) Qualifying applicants must provide documentation that the land for which the applicant is seeking assistance has been owned by the applicant or a family

member of the applicant within three degrees of consanguinity (ancestral line of descent) for at least 30 consecutive years. Acceptable types of documentation include, but are not limited to:

(a) property deeds showing ownership of the land;

(b) property tax records indicating ownership in the name of the applicant;

(c) bills of sale indicating ownership in the name of the applicant; or

(d) documents showing the transfer of the land from one degree of consanguinity to the next degree.

(5) Computation of the degree of consanguinity is calculated as follows:

(a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(i) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(ii) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree of consanguinity are the individual's:

(i) parent or child (relatives in the first degree);

(ii) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(iii) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

(6) As described in 15-6-240, MCA, if the department's appraised value of the land is greater than 150 percent of the appraised value of the primary residence and improvements situated on the land, then the land is valued at 150 percent of the appraised value of the primary residence and improvements, subject to the following:

(a) The subject property will not qualify if the land value is less than the statewide average of the land multiplied by the acreage of land of the subject property.

(7) For the purpose of administering (6), the department determines the statewide average value of land to be the average market value per acre of all taxable class four residential land that is valued using the acre market land valuation models. The average market value per acre is calculated by taking the total appraised value of all taxable class four residential land valued using the acre land valuation models divided by the total acreage of all taxable class four residential land valued using the acre land valuation models.

(8) Qualifying applicants are required to reapply for the intangible land value property tax assistance program each property valuation cycle.

AUTH: 15-1-201, MCA

IMP: 15-6-240, 15-6-301, MCA

REASON: The department proposes adopting New Rule I in support of Senate Bill (SB) 94, L. 2017 (15-6-240, MCA), which enacted a new property tax assistance program for certain properties. The intangible land value property tax assistance program assists residential property owners when their land value, as determined by the department, is disproportionately higher than the department's value of their home and other improvements, such as out buildings, located on their land. The tax assistance applies to the portion of the property owner's land value that is in excess of 150 percent of the department's appraisal market value of the home and other improvements located on the land.

As proposed, the new rule summarizes the qualifications for the program, references the statute for locating details, provides guidelines, outlines the application process, provides where to locate an application form, and addresses the application deadline.

Because SB 94 requires applicants to affirm that the property is their primary residence, as defined in 15-6-240, MCA, the department proposes including this requirement in (3) along with a list of indicators the applicant could use to support their affirmation if necessary. The new law also requires applicants to provide documentation proving property ownership within three degrees of consanguinity (ancestral line of descent) for 30 years. Therefore, the department proposes including this requirement in (4) along with a list of acceptable forms of documentation the applicant could provide.

The department further proposes detailing how the three degrees of consanguinity is calculated, in (5), to help property taxpayers determine if they qualify for the program.

The department proposes detailing the minimum equalization of value requirement, in (6), to set forth how the department calculates the statewide average value of land to make it clear that the calculation does not include agricultural or forest property that is valued based upon its productivity and not market value, or other residential property that is valued using a unit of measure other than acreage. Section (7) is proposed to be included in the rule to explain how the department uses acre land valuation models to calculate the statewide average value of land.

The department also proposes including the reapplication requirement in (8), as a reminder that renewal is not automatic.

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

<u>42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (PTAP)</u> (1) and (2) remain the same.

(3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence must be the only residence for which the taxpayer claims property tax assistance in a given tax year. <u>The department will apply the full year benefit to the primary residence when:</u>

<u>(a) a qualifying applicant owns and occupies the primary residence at the</u>

time the tax roll is provided to the county treasurer for billing. If the property ownership changes between that time and the end of the calendar year, the benefit remains on the property for the full tax year; or

(b) in the case of a separately assessed mobile or manufactured home, a qualifying first time applicant receives a classification and appraisal notice from the department and applies for the property tax assistance within 30 days from the date on the notice affirming that their home is their primary residence.

(4) If ~~the taxpayer~~ a qualifying applicant owns and lives in one Montana dwelling for less than 7 months during the tax year, and in another Montana dwelling for less than 7 months of the same tax year, the time in both dwellings can be combined to meet the 7-month requirement. ~~In addressing such situations~~ When a change in the property ownership occurs prior to the time the tax roll is provided to the county treasurer's office for billing, the department will apply the benefit as follows:

(a) ~~the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed~~ if a qualifying applicant owned and occupied the property for less than 7 months of the tax year, the department will remove the benefit from the property. The benefit may be transferred to another primary residence, if the qualifying applicant purchases one, as provided in 15-6-301, MCA; ~~and~~ or

(b) ~~when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home~~ if a qualifying applicant owned and occupied the property for at least 7 months of the tax year, the department will apply the benefit for the number of days that the qualifying applicant owned and occupied the property, based on the date of sale. The property will be assessed at the full tax rate for the portion of the year following the date of sale.

~~(4)~~(5) An applicant may demonstrate the 7-month occupancy requirement in ~~(3)~~(4) with such indicators including, but not limited to:

(a) through (c) remain the same.

(5) through (8) remain the same, but are renumbered (6) through (9).

~~(9)~~(10) ~~Applicants and participants in the PTAP as it existed on December 31, 2014, shall be entered into the department's annual verification process and will not be required to submit a new application.~~ An applicant is not required to reapply once the department has entered their application into its verification process except as provided in (3) and (4).

~~(10)~~(11) ~~In reappraisal years, the~~ The April 15 application deadline is waived if a first-time applicant forwards an application to the department within 30 days ~~after~~ from the date on the classification and appraisal notice.

(11) through (15) remain the same, but are renumbered (12) through (16).

AUTH: 15-1-201, 15-6-302, MCA
IMP: 15-6-301, 15-6-302, 15-6-305, MCA

REASON: The department proposes amending ARM 42.19.401 to implement House Bill 554, L. 2017, which modified the definition of "primary residence" and added a definition of "qualifying property" related to eligibility for the property tax

assistance program.

The proposed amendments to (3) and newly numbered (4) build upon those definitions by providing details about how the department determines whether a property qualifies for the property tax assistance benefit when the property ownership changes. Including the additional detail is intended to address taxpayer inquiries and concerns about how the department determines whether a property qualifies for the benefit in a given tax year.

The department further proposes striking the first sentence in newly numbered (10), pertaining to applicants and participants of PTAP as it existed in 2014, to be consistent with this change enacted by House Bill 74, L. 2017, which struck similar outdated language from 15-6-302, MCA.

The department also proposes removing the lead-in phrase "in reappraisal years" from newly numbered (11), because it is unnecessary. For any year in which a taxpayer receives a classification and appraisal notice, they have 30 days from the date on the notice to submit an application for assistance. The department also proposes correcting unclear wording in this section by replacing the word "after" with "from." The proposed amendment to this section of the rule is unrelated to new legislation.

42.19.403 MONTANA DISABLED VETERAN (MDV) PROPERTY TAX ASSISTANCE PROGRAM (1) and (2) remain the same.

(3) A taxpayer's primary residence is a dwelling in which the taxpayer can demonstrate they lived at least 7 months of the year for which the assistance is claimed. The primary residence must be the only residence for which the taxpayer claims property tax assistance in a given tax year. The department will apply the full year benefit to the primary residence when:

(a) a qualifying applicant owns and occupies the primary residence at the time the tax roll is provided to the county treasurer for billing. If the property ownership changes between that time and the end of the calendar year, the benefit remains on the property for the full tax year; or

(b) in the case of a separately assessed mobile or manufactured home, a qualifying first time applicant receives a classification and appraisal notice from the department and applies for the property tax assistance within 30 days from the date on the notice affirming that their home is their primary residence.

(4) If ~~the taxpayer~~ a qualifying applicant owns and lives in one Montana dwelling for less than 7 months during the tax year, and in another Montana dwelling for less than 7 months of the same tax year, the time in both dwellings can be combined to meet the 7-month requirement. ~~In addressing such situations~~ When a change in the property ownership occurs prior to the time the tax roll is provided to the county treasurer's office for billing, the department will apply the benefit as follows:

(a) ~~the department will apply the full year benefit to the primary residence that the qualified applicant owns and occupies when their property taxes are billed~~ if a qualifying applicant owned and occupied the property for less than 7 months of the tax year, the department will remove the benefit from the property. The benefit may be transferred to another primary residence, if the qualifying applicant purchases one, as provided in 15-6-301, MCA; ~~and~~ or

(b) ~~when such property transfers the department will notify the seller that they must provide their new property information to the department before the department will transfer the benefit to the applicant's new home~~ if a qualifying applicant owned and occupied the property for at least 7 months of the tax year, the department will apply the benefit for the number of days that the qualifying applicant owned and occupied the property, based on the date of sale. The property will be assessed at the full tax rate for the portion of the year following the date of sale.

~~(4)~~(5) An applicant may demonstrate the 7-month occupancy requirement in ~~(3)~~(4) with such indicators including but not limited to:

(a) through (c) remain the same.

(5) through (8) remain the same, but are renumbered (6) through (9).

~~(9)~~(10) ~~Applicants and participants in the MDV as it existed on December 31, 2014, shall be entered into the department's annual verification process and will not be required to submit a new application.~~ A veteran is not required to reapply once the department has entered their application into its verification process except as provided in (3) and (4).

~~(10)~~(11) ~~In reappraisal years, the~~ The April 15 application deadline is waived if a first-time applicant forwards an application to the department within 30 days ~~after~~ from the date on the classification and appraisal notice.

(11) through (15) remain the same, but are renumbered (12) through (16).

AUTH: 15-1-201, 15-6-302, MCA
IMP: 15-6-301, 15-6-302, 15-6-311, MCA

REASON: The department proposes amending ARM 42.19.403 to implement House Bill 554, L. 2017, which modified the definition of "primary residence" and added a definition of "qualified property" related to the property tax assistance program. The proposed amendments to (3) and newly numbered (4) build upon those definitions by providing details about how the department determines whether a property qualifies for the property tax assistance benefit when the property ownership changes. Including the additional detail is intended to address taxpayer inquires and concerns about how the department determines whether a property qualifies for the benefit in a given tax year.

The department further proposes striking the first sentence in newly numbered (10), pertaining to applicants and participants of the MDV program as it existed in 2014, to be consistent with a change enacted by House Bill 74, L. 2017, which struck similar outdated language from 15-6-302, MCA.

The department also proposes removing the lead-in phrase "in reappraisal years" from newly numbered (11) because it is unnecessary. Any year in which a taxpayer receives a classification and appraisal notice, they have 30 days from the date on the notice to submit an application for assistance. The department also proposes correcting unclear wording in this section by replacing the word "after" with "from." The proposed amendment to this section of the rule is unrelated to new legislation.

The department further proposes adding 15-6-302, MCA, as an implementing citation for the rule.

42.19.405 DEFINITIONS The following definitions apply to rules ~~found~~ in this subchapter.

(1) and (2) remain the same.

(3) "Qualifying applicant" means:

(a) an individual who is the record owner of the land and improvements that are the primary residence of the individual; or

(b) a revocable trust if the land and improvements are the primary residence of the grantor.

(c) Ownership interests that are not qualifying applicants include, but are not limited to, partnerships, corporations, limited liability corporations, transferrable revocable trusts, and irrevocable trusts.

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

AUTH: 15-1-201, 15-6-302, MCA
IMP: 15-6-134, 15-6-240, 15-6-301, 15-6-302, 15-6-305, 15-6-311, ~~15-30-2101,~~ MCA

REASON: The department proposes amending ARM 42.19.405 to add a definition for the term "qualifying applicant." This term is used in New Rule I, as proposed for adoption in this same rulemaking notice. New Rule I implements Senate Bill (SB) 94, L. 2017, which enacted a new property tax assistance program for residential property owners whose land value is disproportionately higher than the department's value of their home and other improvements. The term is also used in other rules located in this same subchapter of ARM Title 42, pertaining to property tax assistance programs. An applicant may only qualify for assistance through these programs on property that they own and occupy as their primary residence. Because the statute is very limited as to who qualifies, the proposed definition is intended to provide guidelines to property taxpayers concerning the limited types of property ownership that may meet the requirements of the statutes and rules covering these various property tax assistance programs. Some types of property ownership do not meet these requirements.

The department also proposes updating the implementing section of the rule by adding two supporting statutes, 15-6-240, MCA, (SB 94, L. 2017), and 15-6-302, MCA, and proposes deleting 15-30-2101, MCA, because it serves no purpose for this rule.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 24, 2017.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons

who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of House Bill 74, Representative Greg Hertz, and House Bill 554, Representative Becky Beard, were contacted by regular mail on June 14, 2017, and subsequently notified on August 25, 2017 and September 5, 2017. The primary sponsor of Senate Bill 94, Senator Keith Regier, was contacted by regular mail on June 27, 2017, and subsequently notified on August 25, 2017 and September 5, 2017.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 42.4.403, 42.4.502, 42.4.1702, 42.4.2301,42.4.2302, 42.4.2303, 42.4.2704, 42.4.2802, and 42.4.4115, and the repeal of ARM 42.4.601, 42.4.602, 42.4.603, 42.4.702, 42.4.703, 42.4.2402, 42.4.2403, 42.4.2404, 42.4.2501, 42.4.2502, 42.4.2503, 42.4.3301, 42.4.3302, 42.4.3303, 42.4.3304, 42.4.3305, and 42.4.3306 pertaining to tax credits	))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 12, 2017, at 3 p.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 adoption, amendment, and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on October 2, 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 rule as proposed to be adopted provides as follows:

NEW RULE I APPLICATION OF CREDITS AGAINST CORPORATE INCOME TAX LIABILITY (1) Only the corporation that earned the tax credit may claim that credit against its own corporate income tax liability. A corporation earns a tax credit if it is the entity that made the qualifying investment or expenditure to generate the applicable tax credit.

(2) Except as provided for in 15-32-508, MCA, in the case of a merger or consolidation, if a credit is earned by a corporation that is no longer in existence the credit may not be claimed against the tax liability of the surviving corporation.

(3) Except as provided for in 15-32-508, MCA, in the case of a corporate entity that has converted to a disregarded entity, any credit earned by the entity prior to the conversion may not be claimed against the tax liability of another entity.

(4) As provided in (1), tax credits are applied on a separate entity basis. A tax credit may not be transferred, assigned, or otherwise used to reduce the tax liability of any other corporation, even if that other corporation is a member of the same unitary business group as the corporation that earned the credit.

AUTH: 15-31-501, MCA
IMP: 15-30-2320, 15-30-2326, 15-30-2380, 15-31-125, 15-31-130, 15-31-131, 15-31-132, 15-31-134, 15-31-150, 15-31-151, 15-31-161, 15-31-171, 15-32-115, 15-32-402, 15-32-503, 15-32-602, 15-32-701, 15-32-703, 15-50-207, 17-6-316, MCA

REASON: The department is seeing more corporate reorganizations in recent years and seeks to be transparent in providing guidance to taxpayers on how credits are tracked and applied. Therefore, the department proposes adopting New Rule I to provide detailed guidance to taxpayers regarding the application of income tax credits to their corporate income tax liability. The rule is intended to be informational and is not a change in the department's long-standing practices.

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

42.4.403 COMPUTATION OF CREDIT FOR TAX PAID TO ANOTHER STATE OR COUNTRY (1) through (3) remain the same.

(4) Examples of how to calculate these credits paid to another state or country are outlined in (a) through (c):

(a) Example 1 - Taxpayer, a full-year Montana resident, sold real property in State X in ~~2008~~ 2017. State X does not provide nonresidents a credit for income earned in that state if that income is taxable in another state. In ~~2009~~ 2018, the taxpayer was legally required to, and did, file a ~~2008~~ 2017 State X income tax return reporting the transaction and paying State X an income tax of $700. The taxpayer's $5,000 gain on the sale of the State X property was included in the taxable income reported on the ~~2008~~ 2017 Montana income tax return. The taxpayer's ~~2008~~ 2017 Montana income tax liability was $3,400. The taxpayer's total ~~2008~~ 2017 Montana AGI was $23,000, which included the $5,000 gain on the sale of property in State X. The amount of credit the taxpayer may claim against the ~~2008~~ 2017 Montana income tax liability is $700, the smaller of the amounts in (i) through (iii):

(i) through (iii) remain the same.

(b) Example 2 - Taxpayer, a full-year Montana resident, was a shareholder in an S corporation that was engaged in banking in State X in ~~2009~~ 2017. State X does not allow S corporations engaged in financial businesses to elect state-level S corporation treatment and imposes a tax on them measured by net income. The following represents what occurred:

(i) The S corporation was required to and did file a ~~2009~~ 2017 income tax return with State X in ~~2010~~ 2018 and paid a tax measured by its net income of $132,000, $121,000 by estimated payments made in ~~2009~~ 2017 and the balance of $11,000 in ~~2010~~ 2018 when it filed its ~~2009~~ 2017 return;

(ii) The S corporation paid $15,000 tax to State X for tax year ~~2008~~ 2016 when it filed its ~~2008~~ 2016 return in ~~2009~~ 2017. The S corporation's non-separately

stated and separately stated items for tax year ~~2009~~ 2017 were as follows, of which the Montana resident shareholder's share was 10~~%~~ percent:

(A) An ordinary income of $2,000,000 from banking business includes a deduction of $136,000 for State X taxes paid in ~~2009~~ 2017, $121,000 for estimated payments in ~~2009~~ 2017, and $15,000 for ~~2008~~ 2016 taxes paid in ~~2009~~ 2017;

Tax exempt interest income	$1,200,000
Ordinary dividends	300,000

(B) The taxpayer's total ~~2009~~ 2017 Montana AGI was $500,000, which included 10~~%~~ percent of the S corporation's ordinary dividends, or $30,000, and 10~~%~~ percent of the ordinary income from its banking business, or $200,000;

(C) The shareholder's $200,000 share of the S corporation's ordinary income from its business was reduced by the shareholder's share of the S corporation's deduction for $136,000 income taxes paid to State X in ~~2009~~ 2017, or by $13,600 (had the shareholder paid the shareholder's 10~~%~~ percent share of the State X's taxes rather than the S corporation, the shareholder's 10~~%~~ percent pro rata share of the S corporation's ordinary income for ~~2009~~ 2017 would have been $213,600);

(D) The shareholder's 10~~%~~ percent share of the S corporation's tax-exempt interest, or $120,000, is exempt from Montana individual income tax but is subject to tax by State X; and

(E) Assume the taxpayer's ~~2009~~ 2017 Montana tax liability would be $50,000 if the credit were not claimed;

(iii) The taxpayer calculates the Montana income tax liability and the amount of credit the taxpayer may claim against the ~~2009~~ 2017 income tax liability as follows:

(A) remains the same.

(B) The taxpayer's pro rata share of the tax reported and paid to State X by the S corporation for ~~2009~~ 2017 ($13,200) is multiplied by the proportion of the taxpayer's pro rata share of the S corporation income taxed in State X that is not exempt in Montana ($230,000) to the taxpayer's pro rata share of the amount of income that is taxable in State X, including income that is exempt in Montana ($350,000):

Ordinary income from banking operations	$200,000
Ordinary dividends	30,000
S corporation income exempt from Montana tax	120,000

Taxpayer's share of income tax reported and paid to State X on income that is not exempt in Montana:

$13,200 x $230,000 / $350,000 = $8,674

(C) through (c) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-124, MCA

REASON: The department proposes amending ARM 42.4.403 to update the

tax years in the examples in (4) with more current tax years and to replace the % symbol with "percent," where applicable, to correct the format of the language in that section. No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.502 CAPITAL GAIN CREDIT (1) ~~For the applicable tax years shown below, an individual may claim a credit against their Montana individual income tax of up to 1% of their net capital gain. For tax years beginning after December 31, 2006, an~~ An individual may claim a credit against their Montana individual income tax of up to 2~~%~~ percent of their net capital gain. The credit is based on the net capital gain as shown on the individual's Montana individual income tax return. Spouses who file a joint return for federal income tax purposes but a separate return for Montana income tax and who elect to claim the same amount of capital loss deduction as shown on their joint federal income tax return as provided in 15-30-2110, MCA, ~~for tax years beginning after December 31, 2006,~~ must compute the capital gain credit consistently. The credit is nonrefundable and may not be carried back or carried forward to any other tax year. The credit must be applied before any other credit.

(2) remains the same.

(3) For an estate or trust filing a ~~form~~ Form FID-3, Montana fiduciary return, the credit is calculated on the net capital gains reported minus any net capital gains distributed to any beneficiary.

(4) Married taxpayers filing separately must compute and report their capital gains and losses as provided in ARM 42.15.206. ~~For tax years beginning after December 31, 2006, spouses who have filed a joint federal return and are filing a separate Montana return, may not, except as provided in (5), calculate the credit based on their separate gains and losses, but must net gains and losses and calculate the credit on the net capital gain shown on their joint federal return, allocating the resulting credit between them.~~

(5) ~~For tax years beginning after December 31, 2008, spouses~~ Spouses may elect to report all of their capital gains and losses separately for the current and future tax years. An election is made by claiming a capital gains credit calculated on a net capital gain amount that is different from the net capital gain shown on the taxpayer's joint federal income tax return, or claiming a capital loss deduction that is greater than the amount that would be allowed for federal income tax purposes if the taxpayer had filed a separate federal income tax return.

(6) The following are examples of how the credit is applied:

~~(a) Example: For tax year 2005, John and Barbara file a joint 2005 federal income tax return reporting $5,000 of net capital gain. John's income consists of $50,000 in wages and $8,000 of net capital gain. Barbara's income consists of $35,000 in wages and $3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to $80 against his Montana income tax. Barbara is not entitled to claim any credit against her tax.~~

	Federal Return	Montana Return	
		Column A	Column B
Wages	$85,000	$50,000	$35,000
Sch. D capital gain (loss)	$ 5,000	$ 8,000	($ 3,000)
Fed. adjusted gross income	$90,000	$58,000	$32,000
Montana adjustment for capital loss limit			$ 1,500
Montana adjusted gross income	$91,500	$58,000	$33,500
Capital loss carryover			($ 1,500)

(b) Example: For tax year 2006, John, a single Montana resident with $1,300 of net capital gain, is entitled to an elderly homeowner credit of $500. His Montana tax, before credits, is $400. He may claim the $13 capital gain credit before determining the amount of his refundable elderly homeowner tax credit.

Montana tax before credits	$ 400
Capital gain credit	($ 13)
Montana tax after capital gain credit	$ 387
Elderly homeowner credit	($ 500)
Refund	$ 113

(c) Example: For tax year 2006, Mary has wages of $80,000 and has $50,000 of net capital gain, $30,000 of which was realized from an investment in a small business investment corporation that is exempt from Montana income tax as provided in 15-33-106, MCA. Mary is entitled to a capital gain credit of $200, 1% of the $20,000 net capital gain included in her Montana adjusted gross income.

(d) Example: For tax year 2006, Patrick, a nonresident, has wages of $50,000, net capital gain of $8,000, and a distributive share of $10,000 of ordinary income from an S corporation. In this example, the $10,000 ordinary income from the S corporation is Montana source income. The wages and capital gain are not Montana source income. Assume that his Montana tax, computed as if he were a resident, on his taxable income after Montana exemptions, exclusions, and deductions, is $3,000. The capital gain credit of $80 is applied against the tax determined as if he were a resident.

Montana tax determined as if resident	$3,000
Capital gain credit	($ 80)
Tax to which nonresident ratio applied	$2,920
Ratio of Montana source income to income from all sources ($10,000/$68,000)	.147
Montana tax ($2,920 x .147)	$ 429

(e) Example: For tax year 2007, John and Barbara file a joint 2007 federal income tax return reporting $5,000 of net capital gain. John's income consists of $50,000 in wages and $8,000 of net capital gain. Barbara's income consists of $35,000 in wages and $3,000 of net capital loss. If they file separately rather than jointly for Montana, they must separately compute and report their capital gains and

~~losses as provided in ARM 42.15.206. John may claim a capital gain credit of up to $160 ($8,000 x 2%) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.~~

	~~Federal Return~~	~~Montana Return~~	
		~~Column A~~	~~Column B~~
~~Wages~~	~~$85,000~~	~~$50,000~~	~~$35,000~~
~~Sch. D capital gain (loss)~~	~~$ 5,000~~	~~$ 8,000~~	~~$(3,000)~~
~~Fed. adjusted gross income~~	~~$90,000~~	~~$58,000~~	~~$32,000~~
~~Montana adjusted gross income~~	~~$90,000~~	~~$58,000~~	~~$32,000~~

~~(f)~~(a) Example: For tax year ~~2009~~ 2017, John and Barbara file a joint ~~2009~~ 2017 federal income tax return reporting $2,000 of net capital gain. John's income consists of $50,000 in wages and $8,000 of net capital gain. Barbara's income consists of $35,000 in wages and $6,000 of net capital loss. If they file separately rather than jointly for Montana, unless they elect to separately report their capital gains and losses for this and future years as provided in (5), their capital gain credit is 2~~%~~ percent of their net capital gain of $2,000, or $40.

~~(g)~~(b) Example: Assume the same facts as the example in ~~(f)~~(a) except that the spouses do elect to separately report their capital gains and losses as provided in ~~subsection~~ (5). John may claim a capital gain credit of up to $160 ($8,000 x 2%) against his Montana income tax. Barbara is not entitled to claim any credit against her tax.

	Federal Return	Montana Return	
		Column A	Column B
Wages	$85,000	$50,000	$35,000
Sch. D capital gain (loss)	$ 2,000	$ 8,000	$(6,000)
Fed. adjusted gross income	$87,000	$58,000	$32,000
Montana adjustment for capital loss limit			$ 4,500
Montana adjusted gross income	$94,500	$58,000	$36,500
Montana capital loss carryover			($ 4,500)

AUTH: 15-30-2618, MCA
IMP: 15-30-2104, 15-30-2106, 15-30-2301, MCA

REASON: The department proposes amending ARM 42.4.502 to remove language and examples throughout the rule that pertained to calculating the capital gain credit for tax years beginning prior to December 31, 2008, because it is outdated, it pertains to tax years that are at least eight years in the past, and it is unlikely there are many taxpayers that would still require this type of detailed guidance by rule. Information about the capital gain tax credit for earlier tax years will always remain available to the occasional taxpayer who needs it by contacting the department directly.

The department further proposes capitalizing a word in (3) and updating the tax years used in the two remaining examples in (6) with more current tax years. No other changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.1702 CREDIT FOR ~~TEMPORARY~~ EMERGENCY LODGING (1) The owner or operator of an establishment in Montana that is licensed by the Montana Department of Public Health and Human Services (DPHHS) to provide lodging may claim the credit described in (2) against the taxes imposed in 15-30-2103, or 15-31-101, MCA, for furnishing temporary lodging in Montana, at no cost, to an individual who has been referred by a DPHHS designated charitable organization because the individual is in ~~temporary immediate danger from an assault or potential assault by a partner or family member~~ immediate need of shelter based on an imminent or existing threat to the safety or security of the individual or family. Additional information regarding the program is available at ~~www.dphhs.mt.gov/publichealth/fcs/emergencylodging.shtml~~ dphhs.mt.gov/publichealth/FCSS/PublicAccommodations/emergencylodging.aspx.

(2) The amount of credit is $30 for each night, up to five nights, of gratis lodging provided to a referred individual or family during a calendar year. The credit must be claimed by the person that owns or operates the licensed establishment in the Montana tax return or report that includes the establishment's lodging receipts for the period during which the creditable lodging was provided. If the credit is claimed by an entity taxed as an S corporation or partnership, the credit must be attributed to shareholders or partners in the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes. The credit is "refundable," and if the amount of the credit exceeds the taxpayer's liability, if any, under 15-30-2103, or 15-31-101, MCA, for the period during which the creditable lodging was provided, the excess will be refunded to the taxpayer.

(3) The credit is $30 per night ~~regardless of the number of individuals in the room~~ for each referred individual or family. For example, if two people or two families are provided lodging in the same room for three nights, the amount of the credit is $90 (three nights of lodging multiplied by $30 per night).

(4) When applying the limitation of five nights' lodging under 15-30-2381 and 15-31-171, MCA, each individual or family is treated as having been provided one night of lodging even if two or more referred individuals or families share a room for one night. An establishment may offer a referred individual or family more than five night's emergency lodging during a calendar year, but only the first five nights qualify for the credit.

(5) The room must be provided at no cost to either the individual, family, or the referring organization.

(6) The credit must be claimed on Form ~~TELC~~ ELC, ~~Temporary~~ Emergency Lodging Credit.

(7) through (9) remain the same.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2103, 15-30-2381, 15-31-101, 15-31-102, 15-31-171, MCA

REASON: The department proposes amending ARM 42.4.1702 due to the passage of Senate Bill (SB) 175, L. 2015, which expanded the temporary emergency lodging credit to include families as well as individuals.

The term "family" or "families" is proposed to be inserted into the language of the rule where applicable and the word "temporary" is proposed to be stricken from the title of the rule and also from the title of the associated form used to report the credit in (6), to correspond with this change in the law enacted by SB 175.

Additionally, the department proposes updating a web site address in (1) and adding language to (4) to make it clear that the limitation referred to in this section specifically pertains to the number of nights' lodging eligible for the credit.

42.4.2301 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Agreement" means the contract for participation entered into between the Montana Department of Fish, Wildlife and Parks (FWP) and the landowner(s) for purposes of guaranteeing access to ~~state~~ public land under the unlocking ~~state~~ public lands program.

(2) "Tax certification number" means the number issued by FWP certifying that the landowner is providing qualified access to ~~state~~ public land under the unlocking ~~state~~ public lands program provided for in 87-1-294, MCA.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2301 to replace the word "state" with "public," where applicable, within the terms defined in the rule to align the rule content with the change in the statute. The department further proposes adding the identifier "Montana" to the title of Fish, Wildlife and Parks, in (1).

42.4.2302 CLAIMING THE UNLOCKING ~~STATE~~ PUBLIC LANDS TAX CREDIT (1) To claim the unlocking ~~state~~ public lands tax credit, a taxpayer shall file a Montana tax return (Form 2 for individuals, Form FID-3 for estates and trusts, or Form CIT for C corporations), whether or not they are otherwise required to file a tax return for the year the credit is being claimed.

(2) remains the same.

(3) A taxpayer who files a tax return on a fiscal year basis shall claim the credit for the tax year in which the agreement was certified by ~~FWP~~ the Montana Department of Fish, Wildlife and Parks.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking

isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2302 to replace the word "state" with "public" in the title of the rule, and in (1) to align the rule content with the change in the statute. The department further proposes replacing the acronym FWP in (3) with the full name of the agency to properly format the rule language. The acronym is not previously identified or further used in the rule.

42.4.2303 ALLOCATION OF CREDIT FOR ACCESS THROUGH LAND WITH MULTIPLE OWNERS AND LAND OWNED BY PASS-THROUGH ENTITIES

(1) For purposes of calculating the tax credit permitted by the unlocking ~~state~~ public lands program, parcels held wholly or in part by an entity disregarded for tax purposes shall be treated as owned by the entity's owner or owners. For example, a parcel held in the name of a single-member limited liability company that is disregarded for tax purposes shall be considered as owned by the sole member, or sole member and spouse, if applicable.

(2) and (3) remain the same.

(4) A partnership that is entitled to the credit may allocate the total credit in a manner that is mutually agreeable to its partners. Evidence of such an allocation may include, but is not limited to, Montana ~~Schedule(s)~~ Schedules K-1, terms of the partnership agreement that are specific to this credit, or a separate agreement between the partners regarding the allocation of this credit. If evidence of the allocation is not provided to the department upon request, or if the information provided is deficient, the total credit must be allocated to the partners in the same manner the partnership allocated its income and losses to its owners for Montana income tax purposes.

AUTH: 15-1-201, MCA
IMP: 15-30-2380, 87-1-294, MCA

REASON: Senate Bill 309, L. 2015, expanded the credit for unlocking isolated land to include access to federal land as well as state land. Therefore, the department proposes amending ARM 42.4.2303 by replacing the word "state" with "public" in (1) to align the rule content with the change in the statute. The department also proposes removing the parentheses from the word "schedule(s)" in (4) because parentheses are not applicable to use in the context of this sentence in that section.

42.4.2704 TAX CREDIT AND DEDUCTION LIMITATIONS (1) through (3)(a) remain the same.

(b) Example of an allowable deduction when ~~and~~ an outright gift is used for the Qualified Endowment Credit:

Time Period	Market Value	Maximum Credit	Credit Percentage	Allowable Deduction
7/1/03 - 12/31/19	$55,000 -	($10,000 / .20)	=	$5,000

(4) through (6) remain the same.

(7) The rate a beneficiary will use to calculate their credit for an allowable contribution passed to them by an estate will be based on the nature of the gift made by the estate. For example, if an estate makes an outright gift to a qualified endowment on July 17, ~~2012~~ 2017, and the contribution is passed to a beneficiary, the beneficiary will calculate their credit using the 20 percent rate.

(8) remains the same.

(9) The maximum credit that may be claimed in a tax year by any donor for allowable contributions from all sources is limited to the maximum credit stated in (1) and (2). In the case of a married couple that makes a joint contribution, the contribution is assumed split equally. If each spouse makes a separate contribution, each may be allowed the maximum credit as stated in (1) and (2).

(a) Example 1: Assume a married couple makes a joint planned gift to a qualified endowment on September 1, ~~2012~~ 2017. The allowable contribution made by the couple is $30,000. That couple is eligible to take a credit of up to $12,000, with each claiming a credit of $6,000.

(b) Example 2: Assume a married couple makes separate planned gifts to qualified endowments on September 1, ~~2012~~ 2017, which result in an allowable contribution of $20,000 for each person. They each would be eligible to take a credit of up to $8,000.

(10) remains the same.

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162, MCA

REASON: The department proposes amending ARM 42.4.2704 to update the tax years used in the examples throughout the rule with more current tax years, and to make a grammatical correction in (3)(b). No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2802 HEALTH INSURANCE FOR UNINSURED MONTANANS CREDIT

~~(1) Montana law provides two different tax credits for health insurance purchased by employers for employees. A program administered by the commissioner of insurance, and referred to as the Insure Montana Credit, provides incentives, including a refundable tax credit provided in 15-30-2368 and 33-22-2006, MCA, for eligible, prequalified small employers. The rules related to that program are located in ARM Title 6, chapter 6, subchapter 52. No tax form is required to claim the preauthorized, refundable credit. Rather, the prequalified employers claim it as a line item on their individual income or corporate income tax return or, if they are taxed as an S corporation or partnership, they report it as a line item on their information returns and the pass-through entity owners claim their part as a line item on their individual income tax or corporate income tax returns, including a copy of the certificate issued by the Montana State Auditor's Office, verifying the amount of the credit.~~

~~(2)~~(1) The ~~rules in this subchapter apply to a second credit, referred to as the~~ Health Insurance for Uninsured Montanans Credit, provided ~~in 15-30-2367 and 15-~~

~~31-132, MCA. The credit~~ under 15-30-2367, MCA, against individual income tax, and 15-31-132, MCA, against corporate income tax, is subject to specific conditions and limitations listed in 15-31-132, MCA. It is not refundable, and any unused credit amount may not be carried over to another tax year. ~~An employer cannot claim both the small employer credit provided in Title 33, chapter 22 and the Title 15, chapter 30 and 31, MCA tax credit.~~

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

~~(4)~~(3) The credit may not be claimed for a period of more than 36 consecutive months that begins with the first month for which the credit is claimed. The credit may be claimed for any month qualifying insurance is provided during the 36-month period even if the employer either stops paying for insurance or does not claim the credit for other months. For example, company XYZ provides qualifying insurance for its employees from January 1, ~~2009~~ 2017, until December 31, ~~2009~~ 2017, but then stops paying in ~~2010~~ 2018. The employer is eligible to claim the credit through ~~2011~~ 2019 if it starts covering its employees again in ~~2011~~ 2019.

~~(5)~~(4) For ten years after the last payment within the 35 months following the first month for which the credit is claimed, the employer or the employer's successor is ineligible to claim the credit. The 10-year period of ineligibility expires sooner if the credit is not claimed for the full 36-month period. For example, company ABC provides qualifying insurance for its employees from January 1, ~~2009~~ 2017 until December 31, ~~2010~~ 2018. The employer, or its successor, is eligible to claim the credit again January 1, ~~2021~~ 2029.

(6) through (10) remain the same, but are renumbered (5) through (9).

AUTH: 15-31-501, MCA
IMP: 15-30-2367, ~~15-30-2368,~~ 15-31-132, 33-1-207, MCA

REASON: The department proposes amending ARM 42.4.2802 due to the passage of House Bill (HB) 137, L. 2017, which repealed the credit provided in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit) and the related statute, 15-30-2368, MCA.

To align the rule with the changes enacted by HB 137, the department proposes striking (1) to remove the language which describes the Insure Montana Credit and revising the language in (2) to remove the repealed statute and language rendered outdated and unnecessary by the change in the statute. Section (2) and subsequent sections are proposed to be renumbered to accommodate the amendments. Additionally, the department proposes updating the examples in newly numbered (3) and (4) with current tax years.

42.4.4115 PROPERTY TAX EXEMPTION FOR LAND ADJACENT TO TRANSMISSION LINE RIGHT-OF-WAY OR EASEMENT (1) and (2) remain the same.

(3) The application will be forwarded to the department's Property Assessment Division (PAD) office in Helena referred to as the "central office.". ~~.~~ The PAD central office will process the application and determine if the property meets the requirements of exemption.

(4) The central office will issue a letter indicating whether the application for exemption has been granted or denied and provide a copy of the letter to the applicant, the local county office, and the Business and Income Taxes Division ~~(BITD)~~.

(5) remains the same.

AUTH: 15-24-3116, MCA
IMP: 2-15-1763, 15-6-229, MCA

REASON: The department proposes amending ARM 42.4.4115 to insert the acronym PAD in the second sentence of (3) as an identifier. The department also proposes inserting missing words in the division title name in (4) as a grammatical correction and removing the acronym BITD from that sentence, because it is not further used in the rule. No substantive changes are being proposed for the rule at this time and the changes that are being proposed are unrelated to any new legislation being addressed in this same rulemaking notice.

5. The department proposes to repeal the following rules:

42.4.601 DEFINITIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2154, 15-30-2370, MCA

REASON: The department proposes repealing ARM 42.4.601 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice, and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.602 RURAL PHYSICIAN'S CREDIT – QUALIFICATIONS – LIMITATIONS

AUTH: 15-30-2372, MCA
IMP: 15-30-2370, 15-30-2371, MCA

REASON: The department proposes repealing ARM 42.4.602 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.603 RURAL PHYSICIAN'S CREDIT - REPAYMENT

AUTH: 15-30-2372, MCA

IMP: 15-30-2371, MCA

REASON: The department proposes repealing ARM 42.4.603 because the rural physician's credit provision it provides for expired as of December 31, 2010. The credit was allowed only in the first four years the physician opened a rural practice, and tax year 2013 was the last tax year this credit may have been claimed. Therefore, the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.702 QUALIFYING FOR THE PROPERTY TAX CREDIT UNDER 15-30-2336, MCA

AUTH: 15-1-201, 15-30-2104, 15-30-2636, MCA
IMP: 15-1-201, 15-30-2636, MCA

REASON: The department proposes repealing ARM 42.4.702 because it is no longer applicable with the passage of Senate Bill 10, L. 2017, which repealed the refundable income tax credit provision provided for under 15-30-2336, MCA.

42.4.703 CALCULATION OF THE REFUNDABLE INDIVIDUAL INCOME TAX CREDIT UNDER 15-30-2336, MCA

AUTH: 15-30-2336, MCA
IMP: 15-6-134, 15-6-222, 15-30-2336, MCA

REASON: The department proposes repealing ARM 42.4.703 because it is no longer applicable with the passage of Senate Bill 10, L. 2017, which repealed the refundable income tax credit provision provided for under 15-30-2336, MCA.

42.4.2402 INSURE MONTANA REFUNDABLE CREDIT

AUTH: 15-30-2104, MCA
IMP: 15-30-2368, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2402 because it is no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2403 REDUCTION OF DEDUCTIONS ALLOWED FOR INSURANCE CLAIMS

AUTH: 15-30-2104, MCA
IMP: 15-30-2368, 15-31-130, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2403 because it is

no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2404 COORDINATION WITH OTHER HEALTH INSURANCE CREDITS

AUTH: 15-30-2104, MCA
IMP: 15-30-2367, 15-30-2368, 15-31-130, 15-31-132, 33-22-2006, 33-22-2007, MCA

REASON: The department proposes repealing ARM 42.4.2404 because it is no longer applicable with the passage of House Bill 137, L. 2017, which repealed the credit provided for in Title 33, chapter 22, part 20, MCA, pertaining to the Small Business Health Insurance Purchasing Pool (also known as the Insure Montana Credit), and the related statute, 15-30-2368, MCA.

42.4.2501 DEFINITIONS

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-32-701, MCA

REASON: The department proposes repealing ARM 42.4.2501 because the oilfield crush facility tax credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture, and therefore this rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2502 CARRYOVER AND RECAPTURE OF OILSEED CRUSH FACILITY TAX CREDIT

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-32-701, MCA

REASON: The department proposes repealing ARM 42.4.2502 because the credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.2503 CARRYOVER AND RECAPTURE OF BIODIESEL OR BIOLUBRICANT PRODUCTION FACILITY TAX CREDIT

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

IMP: 15-32-701, 15-32-702, MCA

REASON: The department proposes repealing ARM 42.4.2503 because the credit provision it provides for expired as of December 31, 2014. The carryforward and recapture periods are still in effect; however, department records show that none of the very few credits claimed prior to the expiration of the credit provision are available for carryforward or subject to recapture. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3301 DEFINITIONS

AUTH: 15-31-911, MCA
IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3301 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation proposed to be implemented in this same rulemaking notice.

42.4.3302 STATE CERTIFICATION

AUTH: 15-31-911, MCA
IMP: 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3302 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3303 SUBMISSION OF COSTS AND APPLICATION FOR TAX CREDIT

AUTH: 15-30-2620, 15-31-911, MCA
IMP: 15-30-2103, 15-31-906, 15-31-907, 15-31-908, 15-31-911, MCA

REASON: The department proposes repealing ARM 42.4.3303 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3304 CERTIFICATION FOR EMPLOYMENT PRODUCTION TAX CREDIT

AUTH: 15-31-911, MCA
IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3304 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3305 QUALIFIED EXPENDITURES

AUTH: 15-31-911, MCA
IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3305 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.4.3306 PENALTY AND INTEREST

AUTH: 15-31-911, MCA
IMP: 15-30-2101, 15-31-906, 15-31-907, 15-31-908, MCA

REASON: The department proposes repealing ARM 42.4.3306 because the media production tax credit provision it provides for expired as of December 31, 2014, and therefore the rule is no longer necessary. The repeal of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 24, 2017.

7. Dan Whyte, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. 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 6 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.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of House Bill 137, Representative Moffie Funk, and Senate Bill 10, Senator Mark Blasdel, were contacted by regular mail on June 14, 2017, and subsequently notified on August 29, 2017 and September 5, 2017. The primary sponsors of Senate Bill 175 (2015), Senator Cynthia Wolken and Senate Bill 309 (2015), Senator Jedediah Hinkle, were contacted by regular mail on August 29, 2017 and September 5, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 6.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, amendment of ARM 42.25.501, 42.25.502, 42.25.511, 42.25.512, 42.25.514, 42.25.1701, 42.25.1707, and 42.25.1708, and repeal of ARM 42.25.515 and 42.25.1706 pertaining to coal valuation for coal gross proceeds and coal severance tax on coal production	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 12, 2017, at 10:30 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 adoption, amendment, and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on October 2, 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 rule as proposed to be adopted provides as follows:

NEW RULE I RIGHT TO REVIEW RECORDS (1) The department may examine records of coal companies and their related parties, including contracts for the sale of coal, to determine the price of coal. Records obtained shall be considered confidential.

AUTH: 15-35-122, MCA
IMP: 15-35-103, 15-38-109, MCA

REASON: The department proposes adopting New Rule I, to be placed in ARM Title 42, chapter 25, subchapter 17, pertaining to coal severance tax, as a matter of transparency to set forth by rule the department's authority to examine all necessary records when determining the price of coal for the purposes of administering the coal severance tax. As proposed to be adopted, this rule will harmonize with a similar provision provided for in ARM 42.25.514, pertaining to the department's administration of gross proceeds taxes on coal production.

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

42.25.501 DEFINITIONS The following definitions apply to this subchapter:

(1) "~~Agreement not at arm's~~ Arm's-length transaction" means ~~an~~ a contract, negotiation, or agreement between ~~two~~ or among parties ~~when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price~~ where the parties have independent interests and are not related.

(2) remains the same.

~~(3) "Final destination" means the location where the coal is utilized by the purchaser in any industrial, commercial, or energy conversion process.~~

~~(4)~~(3) "FOB mine price" means contract revenue ~~exclusive of all shipping expenses or any other expense incurred by the producer~~ less reasonable and actual costs incurred to transport the taxable coal from the mine to a sales point remote from the mine after the coal ~~has been~~ is prepared for shipment.

(4) "Impute" means to assign a market value to coal by inference under circumstances set forth in 15-35-107, MCA.

(5) "Market value" means ~~an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold~~ the value at which coal would change hands between a willing buyer and a willing seller under market and economic conditions at the time of sale, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Agreements that are not arm's-length transactions do not reflect the market value of coal.

~~(6) "Third party intermediary" means any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of, or for the benefit of, another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a purchaser and is not considered the contract sales price for tax purposes.~~

(6) "Related parties" means any relationship that has the ability to influence whether each party has independent interests and could influence a party's independence in negotiating a transaction; or

(a) when any of the following circumstances exist:

(i) Affiliation. The parties are members, affiliates, subsidiaries, or any other affiliations under the same ownership of a parent entity.

(ii) Common control. The parties are, directly or indirectly, under common or joint control.

(iii) Family member. A party is a close family member of a person who is part of key management personnel or who controls another party to a transaction. A close family member is an individual's domestic partner and children, children of the domestic partner, and dependents of the individual or the individual's domestic partner.

(iv) Individual control. A party is controlled or significantly influenced by a member of key management personnel or by a person who controls another party to the transaction.

(v) Joint venture. The parties are members of a joint venture.

(vi) Key management. The parties share key management personnel.

(7) "Related-party transaction" is a contract, negotiation, or agreement between or among related parties, as defined in (6).

(a) Related-party transactions are not considered an arm's-length transaction as that term is defined in (1).

(b) If at any time the parties to an arm's-length transaction become related parties, that agreement shall be considered to be a related-party transaction from that point forward.

AUTH: 15-23-108, MCA
IMP: 15-23-701, 15-23-702, 15-23-703, MCA

REASON: The department proposes amending ARM 42.25.501 to clearly define terms used in this subchapter pertaining to the determination of the market value of the coal.

The definitions of "final destination" and "third party intermediary" are proposed to be removed from the rule because these terms are not used in determining taxable value and therefore do not require defining.

The term "agreement not at arm's-length" is proposed to be changed to "arm's-length transaction" and the definition revised to make it clearer and eliminate unnecessary verbiage.

The definition of the term "FOB mine price" is proposed to be amended to enhance the language by providing the point at which reasonable transportation costs can be reduced from the purchase price of the coal.

The definition of the term "market value" is also proposed to be amended to more clearly provide when a purchase price between a buyer and seller may establish market value of the coal.

The department also proposes adding the term "impute" to the rule to provide the location where the term is defined in statute, for ease of locating.

The department further proposes defining the term "related-parties" to include different circumstances to identify transactions that are not arm's-length and therefore do not establish the market value of coal, and also proposes defining "related-party transaction" to identify what constitutes a transaction among related parties. The department proposes defining these terms to provide guidance in determining how the market value of coal is calculated, for the purposes of applying the rules in this subchapter.

42.25.502 FILING REQUIREMENTS (1) Each year on or before March 31, all persons engaged in mining coal in this state are required to compute and file the current Department of Revenue form ~~"gross proceeds #1"~~ reflecting the preceding calendar year production. All information requested on this form must be furnished and the form must be signed by an officer of the firm mining the coal.

(2) A person who sells coal under a contract which is not an arm's-length ~~agreement~~ transaction must comply with (1) and must upon request of the department furnish a copy of ~~his~~ their federal income tax return and copies of ~~his~~ their current sales contracts.

(3) A person who is producing coal and who uses the production in ~~his~~ their own manufacturing and/or energy conversion process must comply with (1) and (2).

AUTH: 15-23-108, MCA
IMP: 15-23-701, MCA

REASON: The department proposes amending ARM 42.25.502 to remove an outdated reference to an old gross proceeds tax form and simply direct the taxpayer to use the most current form available instead. The department also proposes adding the words "contract" and "negotiation" in (2), to better depict the arrangements in which coal is exchanged in non-arm's-length transactions to provide the department with sufficient information to properly administer the tax, and updating the terminology in (2) and (3) by replacing the word "his" with "their."

42.25.511 DETERMINATION OF CONTRACT SALES PRICE (1) The ~~department shall determine the~~ contract sales price of the coal is calculated immediately after the point the coal is prepared for shipment to the first arm's-length purchaser~~, as~~ of the coal. "Prepared for shipment" and "purchaser" are defined in 15-35-102, MCA. ~~To arrive at~~ Contract sales price will be the calculated FOB mine price ~~any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue~~. Transportation costs that reduce the contract sales price of the coal shall not reduce the contract sales price below zero. The contract sales price will be ~~determined~~ further adjusted by deducting from either the FOB mine price or a value imputed by the department:

(a) and (b) remain the same.

~~(2) In computing production taxes the operator may include that amount which he expects to pay or the amount charged to the purchaser. If the taxes actually paid on the production are more or less than the production taxes deducted and affect the contract sales price, the difference shall be an adjustment in production taxes deducted for the following year.~~

~~(3)~~(2) ~~Contract sales price should be computed for~~ The formula in (1) should be applied to each contract individually ~~with the exception of those contracts for which the department imputes value. The resource indemnity trust tax and the gross proceeds tax deductions shall be the actual amount charged to the purchaser~~.

AUTH: 15-23-108, MCA
IMP: 15-23-701, 15-23-702, MCA

REASON: The department proposes amending ARM 42.25.511 to provide taxpayers with further guidance regarding how to calculate the contract sales price, as defined in 15-35-102, MCA. As proposed to be amended, this rule will harmonize with ARM 42.25.1707, an identical rule pertaining to coal severance tax that the department is also proposing to amend in this same rulemaking notice.

The department proposes amending (1) to make the language clearer and easier to understand, and proposes eliminating the language in (2) as the cyclical deduction of production taxes is calculated and determined in the current year of the tax filing, eliminating the need to carry forward excess taxes paid in the following

year.

The department further proposes amending newly numbered (2) to make it clear what the section refers to and to remove unnecessary verbiage.

42.25.512 IMPUTED VALUATION ~~(1) The department may impute the value when the coal is sold or used under the following circumstances:~~

~~(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process; or~~

~~(b) a person sells coal under a contract which is not an arm's length agreement and the transaction price is less than market value.~~

(1) When imputing value pursuant to 15-35-107, MCA, the department may use valuation methods which approximate the value of the coal at its intended market use, including but not limited to comparable sales, comparable sales adjusted to FOB mine price, or published coal sales indexes. Contract term, tonnage, quality, Btu rating, and any other appropriate comparability criteria will be considered.

(2) ~~The~~ If using comparable sales in computing value, the department will maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.

AUTH: 15-23-108, MCA
IMP: 15-23-701, 15-23-702, 15-35-107, 15-38-109, MCA

REASON: The department proposes amending ARM 42.25.512 to further clarify that a variety of valuation methods may be used by the department to impute coal value and to provide those methods in the rule for transparency.

The department proposes striking the existing language in (1) because current statute suffices for describing instances when imputation may be performed. The department proposes new language for (1) to describe methods of imputing value. The department further proposes adding language to the beginning of (2) to better identify what the department is holding confidential and adding 15-38-109, MCA, as an implementing citation for the rule.

As proposed to be amended, this rule will identically harmonize with ARM 42.25.1708, a coal severance tax rule the department is also proposing to amend in this same rulemaking notice.

42.25.514 RIGHT TO AUDIT (1) and (2) remain the same.

AUTH: 15-23-108, MCA
IMP: 15-23-701, 15-23-702, 15-23-703, 15-38-109, MCA

REASON: The department proposes amending ARM 42.25.514 to add 15-38-109, MCA, as an implementing citation in support of the rule. No language changes are being proposed for the rule.

42.25.1701 DEFINITIONS The following definitions apply to this subchapter:

(1) "~~Agreement not at arm's~~ Arm's-length transaction" means ~~an~~ a contract,

negotiation, or agreement between ~~two~~ or among parties ~~when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price~~ where the parties have independent interests and are not related.

(2) remains the same.

~~(3) "Final destination" means the location where the coal is utilized by the purchaser in any industrial, commercial, or energy conversion process.~~

~~(4)~~(3) "FOB mine price" means contract revenue ~~exclusive of all shipping expenses or any other expense incurred by the producer~~ less reasonable actual costs incurred to transport the taxable coal from the mine to a sales point remote from the mine after the coal ~~has been~~ is prepared for shipment.

(4) "Impute" means to assign a market value to coal by inference under circumstances set forth in 15-35-107, MCA.

(5) "Market value" ~~is defined as an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold~~ means the value at which coal would change hands between a willing buyer and a willing seller under market and economic conditions at the time of sale, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Agreements that are not arm's-length transactions do not reflect the market value of coal.

~~(6) "Third party intermediary" means any individual, corporation, partnership, subsidiary, or other entity which purchases coal on behalf of, or for the benefit of, another party. Any coal purchased by a third party intermediary is considered to be a purchase by a broker and not a purchaser and is not considered the contract sales price for tax purposes.~~

(6) "Related parties" means any relationship that has the ability to influence whether each party has independent interests and could influence a party's independence in negotiating a transaction; or

(a) when any of the following circumstances exist:

(i) Affiliation. The parties are members, affiliates, subsidiaries, or any other affiliations under the same ownership of a parent entity.

(ii) Common control. The parties are, directly or indirectly, under common or joint control.

(iii) Family member. A party is a close family member of a person who is part of key management personnel or who controls another party to a transaction. A close family member is an individual's domestic partner and children, children of the domestic partner, and dependents of the individual or the individual's domestic partner.

(iv) Individual control. A party is controlled or significantly influenced by a member of key management personnel or by a person who controls another party to the transaction.

(v) Joint venture. The parties are members of a joint venture.

(vi) Key management. The parties share key management personnel.

(7) "Related-party transaction" is a contract, negotiation, or agreement between or among related parties, as defined in (6).

(a) Related-party transactions are not considered an arm's-length transaction as that term is defined in (1).

(b) If at any time the parties to an arm's-length transaction become related parties, that agreement shall be considered to be a related-party transaction from that point forward.

AUTH: 15-35-122, MCA
IMP: 15-35-103, MCA

REASON: The department proposes amending ARM 42.25.1701 to clearly define terms used in this subchapter pertaining to the determination of the market value of the coal.

The definitions of "final destination" and "third party intermediary" are proposed to be removed from the rule because these terms are not used in determining taxable value and therefore do not require defining.

The term "agreement not at arm's-length" is proposed to be changed to "arm's-length transaction" and the definition revised to make it clearer and eliminate unnecessary verbiage.

The definition of the term "FOB mine price" is proposed to be amended to enhance the language by providing the point at which reasonable transportation costs can be reduced from the purchase price of the coal.

The definition of the term "market value" is also proposed to be amended to more clearly provide when a purchase price between a buyer and seller may establish market value of the coal.

The department also proposes adding the term "impute" to the rule to provide the location where the term is defined in statute, for ease of locating.

The department further proposes defining the term "related-parties" to include different circumstances to identify transactions that are not arm's-length and therefore do not establish the market value of coal, and also proposes defining "related-party transaction" to identify what constitutes a transaction among related parties. The department proposes defining these terms to provide guidance in determining how the market value of coal is calculated, for the purposes of applying the rules in this subchapter.

42.25.1707 DETERMINATION OF CONTRACT SALE PRICE (1) The ~~department shall determine the~~ contract sales price of the coal is calculated immediately after the point the coal is prepared for shipment to the first arm's-length purchaser~~, as~~ of the coal. "Prepared for shipment" and "purchaser" are defined in 15-35-102, MCA. ~~To arrive at~~ Contract sales price will be the calculated FOB mine price ~~any shipping or any other expenses incurred after the coal is prepared for shipment may be excluded from the contract revenue~~. Transportations costs that reduce the contract sales price of the coal shall not reduce the contract sales price below zero. The contract sales price will be ~~determined~~ further adjusted by deducting from either the FOB mine price or a value imputed by the department:

(a) and (b) remain the same.

~~(2) In computing production taxes the operator may include the amount that the operator expects to pay or the amount charged to the purchaser. If the taxes actually paid on the production are more or less than the production taxes deducted~~

~~and affect the contract sales price, the difference shall be an adjustment in production taxes deducted for the following year.~~

~~(3)~~(2) The ~~above~~ formula in (1) should be applied to each contract individually ~~with the exception of those contracts for which the department must impute value. The resource indemnity trust tax and the gross proceeds tax deductions shall be the actual amount charged to the purchaser~~.

AUTH: 15-35-122, MCA
IMP: 15-35-103, MCA

REASON: The department proposes amending ARM 42.25.1707 to provide taxpayers with further guidance regarding how to calculate the contract sales price, as defined in 15-35-102, MCA. As proposed to be amended, this rule will harmonize with ARM 42.25.511, an identical rule pertaining to coal gross proceeds tax that the department is also proposing to amend in this same rulemaking notice.

The department proposes amending (1) to make the language clearer and easier to understand, and proposes eliminating the language in (2) as the cyclical deduction of production taxes is calculated and determined in the current year of the tax filing, eliminating the need to carry forward excess taxes paid in the following year.

The department further proposes amending newly numbered (2) to make it clear what the section refers to and to remove unnecessary verbiage.

42.25.1708 IMPUTED VALUATION ~~(1) The department may impute the value when coal is sold or used under the following circumstances:~~

~~(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process; or~~

~~(b) a person sells coal under a contract that is not an arm's length agreement, and the transaction price is less than market value.~~

(1) When imputing value pursuant to 15-35-107, MCA, the department may use valuation methods which approximate the value of coal at its intended market use, including but not limited to comparable sales, comparable sales adjusted for FOB mine price, or published coal sales indexes. Contract term, tonnage, quality, Btu rating, and any of the appropriate comparability criteria will be considered.

~~(2) The department will consider market value to mean the FOB mine price of a similar ton of coal, as established by the marketplace. In determining said FOB mine prices, the department will consider the contract term, tonnage, quality, Btu rating, and any other appropriate comparability criteria.~~

~~(3)~~(2) ~~The~~ If using comparable sales in computing value, the department will maintain the confidentiality of all comparable contract data and will use contract data provided by the producer in question whenever possible.

AUTH: 15-35-122, MCA
IMP: 15-35-107, 15-38-109, MCA

REASON: The department proposes amending ARM 42.25.1708 to further clarify that a variety of valuation methods may be used by the department to impute

coal value and to provide those methods in the rule for transparency.

The department proposes striking the existing language in (1) because the current statute suffices for describing instances when imputation may be performed. The department proposes new language for (1) to describe methods of imputing value. The department further proposes adding language to the beginning of (2) to better identify what the department is holding confidential and adding 15-38-109, MCA, as an implementing citation for the rule.

As proposed to be amended, this rule will harmonize with ARM 42.25.512, a coal gross proceeds tax rule the department is also proposing to amend in this same rulemaking notice.

5. The department proposes to repeal the following rules:

42.25.515 IMPUTED VALUATION FOR COAL

AUTH: 15-35-122, MCA
IMP: 15-35-107, MCA

REASON: The department proposes repealing ARM 42.25.515 because the content is sufficiently covered in 15-35-107, MCA, and ARM 42.25.512, as proposed to be amended in this same rulemaking notice, rendering this rule no longer necessary.

42.25.1706 IMPUTED VALUATION FOR COAL

AUTH: 15-35-122, MCA
IMP: 15-35-107, MCA

REASON: The department proposes repealing ARM 42.25.1706 because the content is sufficiently covered in 15-35-107, MCA, and ARM 42.25.1708, as proposed to be amended in this same rulemaking notice, rendering this rule no longer necessary.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 24, 2017.

7. Dan Whyte, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. 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 6 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.

9. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

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 adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 6.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the employer apprenticeship tax credit	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On October 12, 2017, at 1:30 p.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 adoption of the above-stated rule. 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 October 2, 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 rule as proposed to be adopted provides as follows:

NEW RULE I EMPLOYER APPRENTICESHIP TAX CREDIT (1) Subject to the restriction that apprenticeship tax credits may not exceed the taxpayer's total tax liability, the total amount of credit an employer participating in a state-registered apprenticeship training program may claim is determined by the Montana Department of Labor and Industry (DLI). The department can only adjust the total credit allocation among the owners of an S corporation, partnership, or limited liability company in order to conform to 15-30-2357 and 15-31-173, MCA, and this rule.

(a) If the employer is an S corporation, the shareholders' share of the total credit is based on their pro rata share of income or loss.

(b) If the employer is a partnership or a limited liability company that is taxed like a partnership, the partners' or members' share of the total credit is based on the their distributive share of the entity's income or loss reported for Montana income tax purposes.

(2) A taxpayer who files a tax return on a calendar year basis shall claim the credit for the tax year in which the DLI approved the credit.

(3) A taxpayer who files a tax return on a fiscal year basis shall claim the credit allowed for the calendar year that ends within the taxpayer's fiscal period.

(4) The taxpayer shall include copies of all tax certification numbers, agreements, DLI approval notice, and supporting documents when filing their return. If the return is filed electronically using software that does not support attachments,

the taxpayer shall retain the information and provide it to the department upon request.

(5) When reviewing a claim for the credit, the department may request additional information to determine a taxpayer's eligibility for the allocation of the credit being claimed. This information may include, but is not limited to:

(a) a Montana Schedule K-1 issued by a partnership, S corporation, or fiduciary indicating the partner, shareholder, or beneficiary's share of the credit; or

(b) a return filed by a partnership, S corporation, or fiduciary including information showing the owners of the entity.

AUTH: 15-30-2357, 15-31-501, MCA
IMP: 15-30-2357, 15-31-173, 39-6-109, MCA

REASON: The department proposes adopting New Rule I to implement House Bill 308, L. 2017 (15-30-2357, 15-31-173, and 39-6-109, MCA), which provides a credit to employers for creating new or expanding existing apprenticeship opportunities within their organization.

The Montana Department of Labor and Industry is responsible for taking applications and approving the credit for each eligible employer. Rules related to the application and approval process will be established by that agency.

The department shall review a claim for credit and determine that the amount approved is the amount claimed. Additionally, the department may determine that the amount of credit allocated to a taxpayer from a pass-through entity is correct. As proposed, the new rule outlines how a partnership or S corporation allocates the credit to partners and shareholders.

The department also proposes that the taxpayer must submit documentation supporting the claimed credit with their tax return. If a taxpayer's electronic filing software does not support attachments, the taxpayer must retain the records and provide the documentation upon request from the department.

As proposed, the rule also provides guidance for situations where there is a timing difference because an employer operates on a fiscal 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: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 24, 2017.

5. Dan Whyte, 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, or through the Secretary of State's web site at 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 308, Representative Casey Schreiner, was contacted by regular mail on June 14, 2017, and subsequently notified on August 29, 2017 and September 5, 2017.

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

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.13.310, 10.13.313, and 10.13.409 pertaining to traffic education	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Superintendent of Public Instruction published MAR Notice No. 10-13-128 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1210 of the 2017 Montana Administrative Register, Issue Number 15.

2. The Superintendent of Public Instruction has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Kyle A. Moen
Kyle A. Moen
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State September 11, 2017.

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

In the matter of the adoption of an emergency rule closing a portion of Lake Frances in Pondera County	)))	NOTICE OF ADOPTION OF AN EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) Several wildfires are burning in the area including the Scalp Fire, Strawberry Fire, and Crucifixion Fire.

(b) Fire suppression efforts include several aircraft scooping and bucketing water from Lake Frances.

(c) The closure is necessary so aircraft crews can safely operate and maneuver without potential collisions with recreationists on the lake. The closure is also necessary so recreationists, including those with limited maneuverability, are not subject to potential collision with large, heavy water buckets suspended from helicopters.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 18 of the 2017 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 29, 2017, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The emergency rule is effective September 12, 2017 when this rule notice is filed with the Secretary of State.

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

<u>RULE I LAKE FRANCES EMERGENCY CLOSURE</u> (1) Lake Frances is located in Pondera County.

(2) Lake Frances is closed to all public occupation and recreation including, but not limited to, floating, swimming, wading, and boating.

(3) This rule is effective as long as the lake is needed as a source of water for fire suppression efforts. This will depend on the extent and duration of the fire in

the area. Posted signs regarding the emergency closure will be removed when the rule is no longer effective.

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

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; or e-mail jesssnyder@mt.gov. Any comments must be received no later than October 22, 2017.

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.

/s/ Mike Volesky
Mike Volesky
Acting Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State September 12, 2017.

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

In the matter of the amendment of ARM 24.174.401 fee schedule, 24.174.602 internship requirements, and 24.174.605 foreign intern requirements	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Board of Pharmacy (board) published MAR Notice No. 24-174-69 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1235 of the 2017 Montana Administrative Register, Issue No. 15.

2. On August 25, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Two comments were received by the September 1, 2017, deadline.

3. A summary of the comments and the board's response follow:

COMMENT 1: Two commenters expressed support for the entirety of the proposed amendments.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.174.401, 24.174.602, and 24.174.605 exactly as proposed.

BOARD OF PHARMACY
STARLA BLANK, RPh
PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.

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

In the matter of the amendment of ARM 24.189.601 application procedures, 24.189.602 exemptions, 24.189.604 minimum standards, 24.189.625 licensure of foreign-trained psychologists, 24.189.810 competency, 24.189.813 limits of confidentiality, 24.189.2104 continuing education program options, 24.189.2107 continuing education implementation, and 24.189.2305 practice of psychology	)))))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2017, the Board of Psychologists (board) published MAR Notice No. 24-189-36 regarding the public hearing on the proposed amendment of the above-stated rules, at page 992 of the 2017 Montana Administrative Register, Issue No. 13.

2. On August 1, 2017, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Two comments were received by the August 4, 2017, deadline.

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

COMMENT 1: One commenter opposed adding PESI-approved courses to the list of approved CE program options in ARM 24.189.2104, stating this might lead to an erosion in the quality of CE programs for psychologists, and open the flood gates to other providers of CE programs to also want to be formally included in the rules.

RESPONSE 1: The board appreciates all comments made during the rulemaking process and will consider future rule changes based on these comments. According to ARM 24.189.2101(2), the licensee is responsible to select quality programs that contribute to his/her knowledge and competence which also must meet the qualifications in ARM 24.189.2101, 24.189.2104, and 24.189.2107. The board is amending this rule to clarify the board-approved continuing education (CE) courses for licensees and streamline the audit process. The board reviewed its approved CE courses and determined that it is appropriate to add these approved providers as qualified to provide CE courses.

COMMENT 2: One commenter stated that it is unclear how the changes to the informed consent procedures in ARM 24.189.2305(11) will apply when children are the clients.

RESPONSE 2: The board appreciates all comments made in the rulemaking process and will consider future rule changes based on these comments as this comment exceeds the changes contained in this rulemaking notice. Licensees must follow the requirements of ARM 24.189.2305(11) in addition to those currently in ARM 24.189.813(1) with respect to children clients. The board determined these changes are basic ethical standards applicable to all psychologists and that application of these provisions to all licensees will enable the board to better protect public health and safety. The amendments will help clarify expectations of licensees so licensees do not place clients at risk or confuse them.

4. The board has amended ARM 24.189.601, 24.189.602, 24.189.604, 24.189.625, 24.189.810, 24.189.813, 24.189.2104, 24.189.2107, and 24.189.2305 exactly as proposed.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, PH.D, CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.

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

In the matter of the amendment of ARM 24.189.301, 24.189.401, 24.189.601, 24.189.633, and 24.189.2104 and the adoption of NEW RULES I through XII pertaining to behavior analysts and assistant behavior analysts licensure, continuing education, and unprofessional conduct	))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 4, 2017, the Board of Psychologists (board) published MAR Notice No. 24-189-37 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1240 of the 2017 Montana Administrative Register, Issue No. 15.

2. On August 25, 2017, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the September 1, 2017, deadline.

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

COMMENT 1: Numerous commenters objected to behavior analysts (BA) and assistant behavior analysts (ABA) working on the communication needs of their clients, and requested the board amend ARM 24.189.301 to specify this.

RESPONSE 1: The board notes that the legislature established the definition of the practice of applied behavior analysis for behavior analysts and assistant behavior analysts in Senate Bill 193 (SB193). The board invites the commenters to bring their concerns to their respective legislators for possible future legislative changes.

COMMENT 2: Several commenters stated the new fees being added to ARM 24.189.401 are too high and suggested reducing them to reflect that processing BA and ABA applications will involve less work. The commenters also requested the board eliminate the supervision fees as there are no similar fees for licensed psychologists.

RESPONSE 2: The board discussed fees with stakeholders very early in the legislative process for SB193, and specifically intended no adverse fiscal impact on the rest of the board's licensees. The board is statutorily required by section 7 of SB193 to set fees that adequately fund the costs of implementing the two new

license types. The board and department continually monitor the board's budget, including expenses, income, and licensee numbers, and will adjust fees in the future, as needed.

COMMENT 3: Many commenters objected to the BA licensure standards in NEW RULE I, stating they are unnecessary and redundant with requirements of the Behavior Analyst Certification Board (BACB), including examination, references attesting to moral character, etc.

RESPONSE 3: The board is a regulatory agency statutorily mandated to license and regulate its licensees for the protection of Montana's public. As such, the board does not defer to outside organizations, but must adopt and enforce administrative rules necessary to ensure the health, welfare, and safety of Montana citizens.

COMMENT 4: Several commenters were concerned about the requirement in NEW RULE I to obtain a moral character reference from a psychologist. The commenters suggested amending the rule to allow references from other licensed medical professionals such as psychologists, medical doctors, occupational therapists, or speech therapists.

RESPONSE 4: The board agrees the requirement may be overly restrictive and is amending the rule to allow one reference from a licensed psychologist, physician, or certified nurse practitioner.

COMMENT 5: Several commenters suggested that NEW RULE II be deleted as unnecessary in view of the requirements of the BACB.

RESPONSE 5: The board is required to adopt a rule to implement 37-1-145, MCA, and ensure consideration of relevant military experience or training for licensure. Additionally, section 7 of Senate Bill 193 specifies that the provisions of 37-1-145, MCA, apply to licensure of BAs and ABAs.

COMMENT 6: Several commenters objected to the ABA licensure standards in NEW RULE III, stating they are unnecessary and redundant with requirements of the Behavior Analyst Certification Board (BACB), including examination, references attesting to moral character, etc.

RESPONSE 6: See RESPONSE 3.

COMMENT 7: Several commenters were concerned about the requirement in NEW RULE III to obtain a moral character reference from a psychologist. The commenters suggested amending the rule to allow references from other licensed medical professionals such as psychologists, medical doctors, occupational therapists, or speech therapists.

RESPONSE 7: See RESPONSE 4.

Comments 8-12 relate to New Rule IV:

COMMENT 8: Several commenters objected to the 100 hours of additional supervision required for BA licensure because the requirement was not contained in SB193, and suggested the board strike (1) and (2).

RESPONSE 8: Senate Bill 193 allows the board to establish licensure requirements for both BAs and ABAs in addition to those in statute, as necessary to ensure qualified and competent licensees. The board determined this modest number of extra supervision hours will help ensure BA applicants are adequately prepared for private practice.

COMMENT 9: Several commenters were concerned that the limit of three supervisees per BA was unnecessary and too restrictive considering current business models, and suggested 10 supervisees as Missouri requires.

RESPONSE 9: While not primarily concerned with impact to current business models, the board does not want to unnecessarily hinder the practice of BAs and ABAs. Therefore, the board is amending this rule to increase the number of supervised student interns from three to seven, if the BA is not also supervising a behavior technician or ABA.

COMMENT 10: Several commenters objected to subsections (7) through (12) as unnecessarily duplicative and suggested the board revise them to align with current BACB standards.

RESPONSE 10: See RESPONSE 3.

COMMENT 11: Several commenters believed that requiring a change of supervision to be reported within three business days is too restrictive and recommended 30 days as more appropriate.

RESPONSE 11: Noting that licensees will eventually report these changes online and in real time, the board is further amending this rule to require supervision changes reported within five business days.

COMMENT 12: Several commenters were concerned regarding the three-business-day reporting requirement because student rosters are considered protected information.

RESPONSE 12: The board and department follow HIPAA requirements and do not provide this information to others. Further, the rule does not request student rosters, just the names of interns, behavior techs, and ABAs being supervised by a BA.

COMMENT 13: Several commenters suggested the board eliminate NEW RULES V, VI, and VII and instead require compliance with BACB continuing education

requirements because the new rules are unnecessarily duplicative and inconsistent with SB193.

RESPONSE 13: See RESPONSE 3.

COMMENT 14: Several commenters requested the board amend NEW RULES VIII through XII to be consistent with the BACB's *Professional and Ethical Compliance Code for Behavior Analysts* unless Montana's laws or regulations impose licensee conduct standards that are not covered in the BACB code.

RESPONSE 14: See RESPONSE 3.

4. The board has amended ARM 24.189.301, 24.189.401, 24.189.601, 24.189.633, and 24.189.2104 exactly as proposed.

5. The board has adopted New Rules II (24.189.904), V (24.189.913), VI (24.189.916), VII (24.189.919), VIII (24.189.922), IX (24.189.925), X (24.189.928), XI (24.189.931), and XII (24.189.934) exactly as proposed.

6. The board has adopted New Rules I (24.189.901), III (24.189.907), and IV (24.189.910) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I BEHAVIOR ANALYST APPLICATION PROCEDURES

(1) through (2)(f)(i) remain as proposed.

(ii) one from a licensed psychologist, physician, or certified nurse practitioner.

(3) and (4) remain as proposed.

NEW RULE III ASSISTANT BEHAVIOR ANALYST APPLICATION PROCEDURES (1) through (2)(g)(i) remain as proposed.

(ii) one from a licensed psychologist, physician, or certified nurse practitioner.

NEW RULE IV BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

(1) through (3)(a) remain as proposed.

(b) more than ~~three~~ seven student interns if the analyst is not also supervising a behavior technician or an assistant behavior analyst.

(4) A behavior analyst shall report to the board all student interns, behavior technicians, and assistant behavior analysts within ~~three~~ five business days of commencement of supervision of each student intern, behavior technician, or assistant behavior analyst.

(5) through (13) remain as proposed.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, Ph.D., CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.212 additional requirements for cattle, 32.3.212B importation of cattle from Mexico, 32.4.201 identification of alternative livestock with the exclusion of omnivores and carnivores, and 32.4.1302 requirements for mandatory surveillance of Montana alternative livestock farm cervidae for chronic wasting disease	))))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2017 the Department of Livestock published MAR Notice No. 32-17-285 pertaining to the proposed amendment of the above-stated rules at page 1001 of the 2017 Montana Administrative Register, Issue Number 13.

2. On July 21, 2017 the Department of Livestock published MAR Notice No. 32-17-285 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1101 of the 2017 Montana Administrative Register, Issue Number 14.

3. The department has amended ARM 32.4.201 and 32.4.1302 as proposed.

4. The Board of Livestock has voted that there will be no further action on ARM 32.3.212 and 32.3.212B.

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

ARM 32.3.212 AND 32.3.212B

COMMENT #1: One importer of M-branded cattle stated that the incidence of TB in the United States is less than .001%. In addition, through exhaustive work between the government of Mexico and the USDA, there are states in Mexico that have a lower TB rate than some states in the USA. All of the cattle we import are from the state of Chihuahua, which has achieved "eradication" status as outlined by the USDA. Further, those cattle are required to have a negative TB test before they are allowed to cross into the US and then have a second clean test before they can ship into Montana. All of this means that our herd of M-branded roping steers has been tested and proved clean more than any native herd originating in Montana. I urge

you to consider, as an alternative, requiring that the cattle be TB tested 60-90 days after entering the state to confirm that they are clean.

RESPONSE #1: Thank you for your comment. MDOL agrees that there is extensive work done by both the USDA and Mexico to ensure that animals imported into the United States and Montana are negative for tuberculosis (TB) and that Montana's current importation requirements exceed those of the USDA. Despite these requirements, tuberculosis is still found in Mexican origin cattle.

COMMENT #2: One commenter stated that Montana has the most stringent requirements of all states concerning TB. Don't let this pass; let's work together to figure out a better solution.

RESPONSE #2: The department disagrees. In consideration of this rule, MDOL consulted surrounding states for their import requirements and our current regulations that require two negative tests are consistent with multiple states. One noticeable difference, is that multiple states allow animals with a single negative test to enter the state under quarantine until a second TB test can be completed. The proposed language in this rule is modeled after North Dakota's current import requirements for Mexican origin cattle.

COMMENT #3: Another commenter stated that currently, the USDA requires at least one TB test prior to entry into the United States, which most states accept. Additionally, Montana requires another TB test prior to gaining entry into the state's borders. You would think that the minimum of two USDA tests would prove the animal does not have TB. If the test results are not reliable, fix the tests.

RESPONSE #3: The current testing protocol used for cattle relies on the caudal fold test. This test is reported to have a sensitivity of 85%. This means that if the test is used on 100 positive animals, it is only capable of detecting 85 of them. For animals suspect on this test, the comparative cervical test is used as a confirmatory test. The sensitivity of the test is only 75%. Animal health regulations recognize the limitations of this test. The development of improved testing methods is beyond the scope of this rulemaking process.

COMMENT #4: Several commenters also expressed that cattle are already testing twice. What science is backing this rule? Since there has not been to date any TB directly related to a Mexican horned steer, banning on the basis they carry TB after being tested by the USDA not once, but twice before entering Montana is ludicrous.

RESPONSE #4: Thank you for your comment. The department agrees, the state of Montana has had no cases of TB associated with Mexican origin cattle. Please see Responses #2 and #3.

COMMENT #5: As a PRCA stock contractor, the proposed amendment will have a direct impact on my livelihood. I think it is important to note that we are in the unique position of making our living through the transportation of our livestock. As such we

are more concerned about the health status of American livestock than most folks and support measures that legitimately secure that health. The steers we import from Mexico have been twice tested to TB by a USDA vet, before being allowed into Montana. The first test is done on the Mexico side of the border; if a steer is even a "reactor" to the test he is branded with an NC and will never be allowed to cross the border to America. The cattle are again tested, in the United States, before they are shipped to Montana. Each and every one of the cattle we import have had two negative TB tests before reaching Montana.

Additionally, M-branded sport cattle (for PRCA purposes at least) are exclusively mature castrated males, which limits the methods TB could be transmitted. Unlike dairy and beef breeds that are at risk of contracting the disease from unpasteurized milk, these cattle are long ago weaned when they are repeatedly tested.

Further, the US and Mexico have worked jointly to contain TB to such an extent that currently there are zones in Mexico with lower TB rates than some states in America. The 25-page "United States-Mexico Joint Strategic Plan for Collaboration on Bovine Tuberculosis" lays out the detailed plans implemented from 2013 to present to get zones in Mexico to "eradication" status. In previous years, the USDA has required even further testing of M-branded cattle before allowing importation to the United States

RESPONSE #5: The department appreciates your comment and agrees regarding the significant work done to prevent the importation of a TB-positive animal from Mexico. Regarding Mexican origin cattle for sporting purposes being exclusively castrated males and this limiting the methods that TB could be transmitted, TB is transmitted through respiratory secretions. This is typically through animals being in close proximity to each other or through exposure to contaminated shared equipment. The sexual status of animals has no impact on their ability to transmit disease.

Please see Responses #1 and #3 for additional information regarding the importation and testing of Mexican origin cattle.

COMMENT #6: One rodeo producer stated every year they import 180-220 M-branded sport type cattle for use in PRCA rodeos and some jackpots through the state. This rule could end up costing their company $160,000 – 200,000 per year, depending on cattle prices. Due to the rules of the PRCA, they would still have to buy M-branded cattle for rodeos outside Montana, as well as native raised Corriente-type cattle for Montana rodeos. Native raised Corriente-type cattle are light boned, lighter horned, and overall less rugged at the same weight, than M-branded cattle. They have less durability and need to be replaced after fewer runs than M-branded cattle.

RESPONSE #6: The department thanks the commenter for the perspective on the potential economic impact of the proposed regulation. The department is charged with both fostering and protecting our livestock industry from disease. The

department agrees that particular care must be taken when considering rules that would significantly impact producers in our state.

COMMENT #7: I am a team roper and since North Dakota has banned the importing of M-branded cattle, the quality of team ropings in our state has gone downhill, mainly due to and because we do not have the proper number of cattle to produce a good event. We now go to Montana to the Yost arena in Billings and compete on great cattle at great events. A lot of North Dakotans come to Montana because of the quality of ropings in your state.

RESPONSE #7: The department thanks you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #8: Many commenters stated that team roping is a huge sport and brings tourist/travel dollars to communities state wide. Don't hurt Montana's pocket book.

RESPONSE #8: Thank you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #9: Many commenters expressed concern that this amendment will cripple the team roping industry in Montana. Team ropers and their families are a very big part of the Ag industry in Montana and spend millions of dollars in travel, equipment, horses, tack every year in this state.

RESPONSE #9: Thank you for your comment. Please see Response #6 for the responsibilities of the department in protecting our livestock industry.

COMMENT #10: It is the opinion of the PRCA that the proposed amendments as to require that test eligible M-branded or Mx-branded cattle imported into Montana require proof of a whole herd negative tuberculosis test on the birth herd of origin are not only unnecessary, but place impossible restrictions on the importers and herd owners of said livestock. Adoption of such amendments would directly affect the quality of timed event stock and overall caliber of PRCA sanctioned events in Montana. The PRCA recognizes the seriousness of tuberculosis infection on the entire agriculture industry as well as human health. However, with a prevalence less than .001% nationwide and no cases of TB confirmed in Montana since 1991, the proposed amendments appear inordinate and misdirected.

RESPONSE #10: The department thanks you for your comment. The department is charged with the protection of our livestock industry and is authorized in 81-2-102(1)(e)(i), MCA to "… adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into the this state." The department agrees that the restrictions in the proposed rule are significant and are not commensurate with the risk of introduction of TB to domestic cattle from importation of Mexican origin cattle. The quality of

these animals for sporting purposes is outside of the scope of these regulations. Please see Responses #1 and #6 for information on the incidence of TB and the potential economic impact of this regulation.

COMMENT #11: Several commenters stated that M-branded cattle have harder horns, are quicker and stronger, live longer, cowboys favor and spectators enjoy them. I would like to see the study that shows that bovines with horns have more susceptibility of TB than bovines without horns – that is a wild theory, a bovine is a bovine. So, why take this drastic measure of banning an industry?

RESPONSE #11: The department thanks you for your comment. The proposed rule was promulgated in response to the potential risk of introduction of TB from the importation of Mexican origin cattle. Please see Response #1 for information on TB in Mexican origin cattle.

COMMENT #12: One commenter stated that the rules and bylaws, by which the Professional Rodeo Cowboys Association conducts business, are the backbone to a successful and progressive Livestock Welfare Program. These rules and bylaws do not only ensure fairness in competition, but preserve the historical integrity of, and provide for the future of, the sport. Specific requirements are set for timed event cattle utilized at PRCA-sanctioned events.

RESPONSE #12: The department thanks you for your comment. The content of the rules and bylaws of the Professional Rodeo Cowboys Association are beyond the scope of this rulemaking process.

COMMENT #13: Another commenter also stated that per PRCA rules (R8.12.2, R8.12.3. AND R812.4), cattle used in steer wrestling, team roping and steer roping are required to be of Mexican origin. These rules are in place for two reasons: quality of competition and humane use of animals. The cattle from Mexico have bigger horns, better bone quality and more muscle structure, which all makes for cattle with more durability and longevity.

As well, native raised Corriente cattle are of a much larger form at a much younger age, meaning they have softer, small horns, less bone mass and less muscle structure than M-branded cattle of the same weight. In addition, they are much larger at a young age so they are not as mature when they are a proper size to use as a sport. Along with all of this, there are not enough native, sport-type cattle being raised in the United States to fulfill the needs of the industry.

Native Corriente-type cattle raised state-side are typically part of a cottage industry and are only produced in small herds. As a result, in order to put together enough cattle for a large event, several herds must be assembled together, making the cattle uneven for competition.

RESPONSE #13: The department thanks you for your comment. The quality and quantity of animals for sporting purposes is outside of the scope of these

regulations. The department is charged with the protection of our livestock from the introduction of contagious and infectious disease. Please see Responses #10 and #11.

COMMENT #14: Several commenters feel there are no studies with facts that show horned cattle have spread more TB than nonhorned cattle. Humans have been incriminated in spreading TB to dairy cattle in some instances. Beef cattle, from everything I have been able to read have shown more prevalence in positives. Most of the roping cattle end up in the feedlots at some point and are not breeding or standing around to die.

RESPONSE #14: The department thanks you for your comment. Please be informed, however, that the proposed amendment applies to all Mexican origin cattle and not just to horned or sporting cattle from Mexico. It is correct that humans have also been implicated in the spread of TB. Please see Response #1 for information on TB in Mexican origin cattle.

COMMENT #15: One commenter shared that data obtained from the United States Department of Agriculture shows that, since 2001, there have been 416 tuberculosis cases in feeder and event cattle, of which only six cases have been attributed to event cattle of Mexico origin. Far and above the relatively low case could be attributed to event cattle, no tuberculosis cases have been attributed to event cattle of Mexico origin since 2011. Moreover, since 2001, less than 3% of all tuberculosis cases in the U.S. link back to an event cattle strain of tuberculosis. The philosophy that Mexico-origin Corriente event cattle pose increased risks regarding bovine tuberculosis are not necessarily supported by current data.

RESPONSE #15: The department thanks you for your comment. The information that you included citing the low risk of TB from Mexican origin cattle is correct.

COMMENT #16: Several commenters stated that North Dakota has implemented this same regulation and there are several cowboys who have completely quit entering rodeos in North Dakota. It is not out of the realm of possibility to have some of Montana's favorite sons designate other circuits and stop rodeoing all together in Montana if this rule is passed.

RESPONSE #16: Thank you for your comment. Please see Response #6 on the potential economic impact to industry in Montana.

COMMENT #17: Several commenters do not support this proposed amendment as the proposed measures would not provide any additional protection to the Montana beef industry and would be an extreme burden on those in the sport cattle industry. Similar regulations have been enacted in North Dakota and have proven ineffective. In addition, while the recent outbreak in Canada was likely a catalyst for concerns, it should be noted that Canada does not allow M-branded cattle into the country.

RESPONSE #17: The department thanks you for your comment. The department agrees that this proposed rule would have a significant impact to producers in the sport cattle industry. While the risk from Mexican origin cattle is low, it should be noted that there are detections of TB in Mexican origin cattle in the U.S. on an annual basis. Please see Response #1 for additional information on the detection of TB in Mexican origin cattle.

North Dakota has enacted similar requirements for Mexican origin cattle and has recently had a TB positive dairy herd. The epidemiological investigation of the TB case suggests human introduction of TB into the positive herd. To our knowledge, North Dakota has not had any TB positive cases associated with Mexican origin cattle.

The statement about Mexican origin cattle not being eligible for entry into Canada is correct. The recent TB case, while of a strain previously isolated in a Mexican dairy cow, was not attributed to contact with Mexican origin cattle.

COMMENT #18: Several commenters stated that if the department was committed to changing the import requirements for Mexican origin cattle, that some middle ground should be evaluated instead of a ban on Mexican origin cattle into Montana.

RESPONSE #18: The department thanks you for your comment. It is important to note that the proposed regulations are not a ban of Mexican origin cattle. The department recognizes, however, that due to the unique management of Corriente cattle in Mexico, obtaining the proposed negative test on the birth herd of origin will be a nearly impossible requirement for importers to meet. The department agrees that the risk from Mexican origin cattle is low and that working with industry on revised import regulations would be appropriate.

COMMENT #19: Several commenters expressed concern that the proposed regulations regarding M-branded cattle are government overreach and were done with political motivations in mind.

RESPONSE #19: The department thanks you for your comment. Evaluation of the merits of this rule are based upon the responsibilities of the Department of Livestock to protect the livestock industry of Montana and the risk of the introduction of TB from Mexican origin cattle. Please see Response #1 for information on the rate of TB in Mexican origin cattle.

COMMENT #20: One commenter stated the facts are that there have been significant strides in the eradication of TB both here in the United States and in Mexico, and the facts also show that Mexican cattle are not the only source of TB but also wildlife and even humans can infect cattle with TB.

RESPONSE #20: The department thanks you for your comment. It is true that wildlife and humans can also serve as reservoirs for TB in the U.S.

COMMENT #21: One commenter states that small producers risk entire beef industry.

RESPONSE #21: The department thanks you for your comment. The mission of the department is the protection of the entire livestock industry in Montana. Rules are established based upon risk, and not in response to the size of a segment of industry.

COMMENT #22: I live in Nebraska and agree 100% with the ban. There are enough USA native cattle to cover all rodeo and team roping events. It's time the USA steps up and protects the native USA cattle producer. We follow every law and vaccine program. You know the Mexican cattle owners are not doing the same thing. Why should we all expose ourselves when there are enough cattle in the USA to support the roping and rodeo events? There are only a handful that make a 6 zero living but there are thousands of us that raise native cattle that suffer with the influx of Mexican cattle. They purchase them for less and it only benefits them – not the ranchers that raise healthy, native cattle. Rodeos and roping events will do fine without the Mexican cattle.

RESPONSE #22: Thank you for your comment. The department is considering this rule based upon the potential risk of introduction of TB from Mexican origin cattle. The number of cattle available for sporting events is beyond the scope of this rulemaking process. Please see Response #1 and #5 for information on the potential risk of TB from Mexican origin cattle.

COMMENT #23: One practicing veterinarian shared that he knows two people this change could affect, but he is not sure their 600 head are worth risking the industry in Montana. He doesn't believe 600 roping steers should have the potential to disrupt our whole beef industry. If they can figure out how to keep quarantined and ship directly to a lot out of state that has an M-branded plan, then he would say "ok," and otherwise likes the idea of not allowing M-branded cattle.

RESPONSE #23: The department thanks you for your comment. Please see Response #21 regarding the merits by which this rule is evaluated.

The department appreciates the suggestion on intermediate requirements to address the potential risk of the introduction of TB into Montana from Mexican origin cattle. Please see Response #18 on alternative options for import requirements for M-branded cattle.

ARM 32.4.201 and 32.4.1302

COMMENT 24: One elk farm producer and the North American Elk Breeders Association support changes to the proposed rules. "This change would bring Montana on par with common regulatory rules in other states…" Since 2012, states have overwhelmingly opted for states to train cervid producers to take their own samples and submit them to the lab and not incur a vet bill every time an animal

dies. It is in the best interest for the elk producer to learn how to take good samples, they might not get credit for the test if it is not a quality sample. NAEBA believes the question to allow producers to tag their own animal should be resolved immediately to allow it. We are not aware of another state that does not allow this. Mandating veterinarians must tag animals is a solution in search of a problem. Montana already has a mandatory Chronic Wasting Disease program for elk producers, which requires an annual inventory. Therefore, a certificate veterinarian will hold ranches accountable for their inventories at least once every year. NAEBA respectfully urges Montana to make these changes without further delay.

RESPONSE #24: Thank you for your comment. Your comment is correct that this proposed rule change will make Montana more consistent with the regulatory rules of other states with alternative livestock programs. The department agrees that this change will benefit alternative livestock producers while not compromising surveillance for chronic wasting disease (CWD).

COMMENT #25: Montana Fish, Wildlife and Parks (FWP) views CWD testing of all alternative livestock mortalities as a critical component of CWD surveillance for the state of Montana. The agency understands that the proposed rule changes, which will allow some alternative livestock owners to tag animals and collect samples for CWD testing, are intended to improve CWD program compliance and we defer to Montana Department of Livestock to determine the best practices to attain this goal. FWP advocates that the Montana Department of Livestock maintain authority to adjust these rules if the proposed changes do not improve compliance.

RESPONSE #25: The department thanks FWP for their comments.

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

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

Certified to the Secretary of State September 11, 2017.

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

In the matter of the amendment of ARM 37.40.307, 37.40.311, 37.40.337, and 37.40.361 pertaining to revising nursing facility reimbursement rates for state fiscal year 2018	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 21, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-789 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1121 of the 2017 Montana Administrative Register, Issue Number 14.

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

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

Comment 1: Several comments were received expressing that the rule amendment fully implements House Bill (HB) 618 (2017) and are in support of the proposed rule amendment.

Response 1: The department thanks the respondents for their support of the proposed rule amendments.

Comment 2: Several comments were received that the intent of HB 618 is to cover the cost of implementing new federal regulations.

Response 2: The department thanks the commenters and notes that federal regulations are not within the state's control.

Comment 3: One comment stated the proposed rate does not cover nursing facilities' costs.

Response 3: The department thanks the commenter for expressing their concern and agrees that the nursing facility rate does not cover costs. Medicaid nursing facility rates are calculated utilizing a case-mix price-based system. Federal laws or regulations do not mandate that established Medicaid rates must cover all of the actual costs incurred by nursing facility providers. This is not a standard by which the legal adequacy of rates has been measured in the past nor is it the standard that will be utilized in the future. Factors that are considered in the establishment of this

price include the cost of providing nursing facility services, Medicaid recipient's access to nursing facility services, and the quality of nursing facility care as well as budgetary or funding levels.

Comment 4: One commenter expressed concern that HB 618 was created without the knowledge of Senate Bill (SB) 261 (2017).

Response 4: The department thanks the commenter for expressing their concern and notes that the enactment of legislation is the responsibility of the Montana Legislature. The department was not asked to assist in the drafting of HB 618 or SB 261.

Comment 5: Several comments thanked the department for splitting the rate changes into two proposed rules.

Response 5: The department thanks the respondents for their support.

Comment 6: Several comments supported the direct care wage distributions appropriated by the Legislature.

Response 6: The department concurs with these comments and will continue to implement the direct care wage funding for nursing facility direct care workers.

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/ Caroline Warne	/s/ Sheila Hogan
Caroline Warne	Sheila Hogan, Director
Rule Reviewer	Public Health and Human Services

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.160 and 42.21.165 pertaining to livestock reporting and per capita fees - honey bees	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Department of Revenue published MAR Notice No. 42-2-971 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1277 of the 2017 Montana Administrative Register, Issue Number 15.

2. On August 24, 2017, a public hearing was held to consider the proposed amendment. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. No written comments were received.

3. The department amends ARM 42.21.160 as proposed.

4. Based upon the comments received, the department amends ARM 42.21.165 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.21.165 LIVESTOCK REPORTING AND PER CAPITA FEE PAYMENT

(1) through (2)(a) remain as proposed.

(b) cattle (heifer and steer calves 9 months and older, yearlings, ~~heifers, steers,~~ cows, and bulls);

(c) through (6) remain as proposed.

5. A summary of the comments received and the department's response is as follows:

COMMENT 1: Bob Story, Executive Director of the Montana Taxpayers Association, testified that the proposed amendments are great, for the most part, but the new language defining the term "cattle" in ARM 42.21.165(2)(b) should be changed for better clarification. He commented that people know what yearlings, cows, and bulls are, but the department should consider adding the word "calves" after heifers and steers because livestock owners sometimes do not sell their heifer and steer calves by the February 1 reporting date and they should be reporting them for per capita fee purposes if they are 9 months of age or older.

RESPONSE 1: The department appreciates Mr. Story's input and also consulted with the Montana Department of Livestock (DOL) regarding his suggestion. The DOL agreed and the department has further amended ARM 42.21.165(2)(b) to include the recommended language to achieve better clarity.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.19.1104 pertaining to tax exemptions for nonfossil energy systems, the repeal of ARM 42.19.1240 pertaining to taxable rate reductions for value-added property, and the repeal of ARM 42.19.1301 and 42.19.1302 pertaining to the department's notification of property tax liens	))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 4, 2017, the Department of Revenue published MAR Notice No. 42-2-972 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1280 of the 2017 Montana Administrative Register, Issue Number 15.

2. On August 24, 2017, a public hearing was held to consider the proposed amendment and repeal. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. No written comments were received.

3. The department repeals ARM 42.19.1240, 42.19.1301, and 42.19.1302 as proposed.

4. Based upon the comments received, the department amends ARM 42.19.1104, as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.19.1104 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) The property owner of record, or the property owner's agent, must make application to the local department office for classification as a nonfossil form of energy generation on a form available on the department's website or from the local department office before March 1 ~~or within 30 days from the date on the classification and appraisal notice, whichever is later,~~ to be considered for exemption for the current tax year.

(2) and (2)(a) remain as proposed.

(b) If the energy system is completed prior to March 1 of a year, the application must be filed by March 1 ~~or within 30 days from the date on the classification and appraisal notice, whichever is later,~~ of that year in order for an exemption to apply for the full ten-year period.

(c) If the energy system is completed after March 1 of a year, the application must be filed by March 1 ~~or within 30 days from the date on the classification and appraisal notice, whichever is later,~~ of the next year in order for an exemption to

apply for the full ten-year period.

(d) If an applicant misses the deadlines outlined above, they will lose one year of exemption potential for every deadline date that passes. For example:

(i) If an individual completes installation of an energy system in August of the current year, but does not apply for an exemption ~~within 30 days from the date on the classification and appraisal notice~~ by March 1 of the next year, the exemption would ~~start on January 1 of the following year and~~ be allowed for a total of nine years.

(ii) through (3) remain as proposed.

5. A summary of the comments received and the department's response is as follows:

COMMENT 1: Bob Story, Executive Director of the Montana Taxpayers Association, testified that the theme throughout the rule about the date of March 1 or 30 days from the receipt of the appraisal notice, which comes out in June or May, is confusing to him and would likely be confusing to the average citizen too. He questioned whether the 30 day language is necessary to include in the rule.

RESPONSE 1: The department appreciates Mr. Story's input on the rule and understands how it could be confusing. Therefore, the department is further amending the rule to remove the 30 day language from (1) and (2)(b), (c), and (d)(i). Removing this language will also align the rule with language in other rules pertaining to property tax exemptions.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.15.214 pertaining to resident military salary exclusion	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Department of Revenue published MAR Notice No. 42-2-973 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1284 of the 2017 Montana Administrative Register, Issue Number 15.

2. On August 24, 2017, a public hearing was held to consider the proposed amendment. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. No written comments were received.

3. The department amends ARM 42.15.214 as proposed.

4. The comment received and the department's response is as follows:

COMMENT 1: Bob Story, Executive Director, Montana Taxpayer's Association, testified that he has listened to this concept for a couple of legislative sessions where the National Guard has tried to get clarification on what is taxable income and what is not. He commented that it has been a confusion to policy makers to sort out Title 10 and Title 30 (U.S. Code) and hopefully this rule solves that problem.

RESPONSE 1: The department appreciates Mr. Story's support of the rule amendment.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State September 11, 2017.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On July 21, 2017, the Secretary of State published MAR Notice No. 44-2-226 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1137 of the 2017 Montana Administrative Register, Issue Number 14.

2. The Secretary of State has amended the above-stated rule as proposed.

3. No comments or testimony were received.

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

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 11th day of September, 2017.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.2.302, 44.5.301, and 44.5.302 pertaining to online filing of annual reports	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 4, 2017, the Secretary of State published MAR Notice No. 44-2-227 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1290 of the 2017 Montana Administrative Register, Issue Number 15.

2. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.2.302 SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) through (3) remain as proposed.

(4) System users are required to set up an account through ePass (the state of Montana's online access portal), which identifies them for the purpose of authentication, unless the Secretary of State is granted an exception from complying with ePass policies or standards.

(4) through (7) remain as proposed, but are renumbered (5) through (8).

44.5.301 REQUIREMENTS FOR ANNUAL REPORT ONLINE FILING

(1) through (10) remain as proposed.

AUTH: 2-15-401, 2-15-404, 35-1-1307, 35-1-1308, 35-1-1315, MCA
IMP: 2-15-404, 35-1-1104, ~~35-1-1308, 35-1-1315~~, 35-2-904, 35-8-208, MCA

44.5.302 FORM OF ANNUAL REPORT (1) remains as proposed.

AUTH: 2-15-401, 2-15-404, 35-1-1307, 35-1-1308, 35-1-1315, MCA
IMP: 2-15-404, 35-1-217, 35-1-1104, ~~35-1-1308, 35-1-1315~~, 35-2-904, 35-8-208, MCA

3. The Secretary of State's office received comments from the State Administration and Veterans Affairs (SAVA) Committee counsel and has thoroughly considered the comments received. A summary of the comments received and the Secretary of State's responses are as follows:

COMMENT # 1: SAVA counsel expressed concern over the proposed deletion of the language formerly contained in ARM 44.2.302(6) regarding the establishment of

an ePass account for use of the system and its connection to the identification requirement referenced in 2-15-404, MCA.

RESPONSE # 1: The proposed deletion of ARM 44.2.302(6) was broader than intended, and the final rule retains the reference to ePass.

COMMENT # 2: SAVA counsel made recommendations concerning the placement of certain statutory provisions in the authority and implementation sections for both ARM 44.5.301 and 44.5.302.

RESPONSE # 2: The recommendations of SAVA counsel have been accepted and incorporated into the final rule.

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

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 11th day of September, 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 Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 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.

ADMINISTRATION, Department of, Title 2

New Rule	Due Date of Annual Financial Statement for Escrow Licensee, p. 623, 1141
New Rule	Definition of "Alter" for Mortgage Licensees, p. 965, 1516
2.21.3703	and other rules - Recruitment and Selection Policy, p. 1309
2.21.6608	and other rules - Employee Records Management Policy, p. 1316, 1443
2.59.1002	Merger Application Procedures for Banks, p. 724, 1295
2.59.1706	and other rules - Surety Bond – Table Funding – Application of Financial Standards – Reporting Forms for Mortgage Servicers – Standardized Forms and Procedures of the Nationwide Mortgage Licensing System – Clarification of Definition, p. 576, 1049

(Public Employees' Retirement Board)

2.43.1306	and other rules - Actuarial Rates and Assumptions - Service Purchases, p. 818, 1515
2.43.3502	and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 815, 1514

(State Banking Board)

2.60.203	and other rules - Closure or Relocation of Bank Branch - Certificate of Authorization - Procedural Rules - Deposit Liability - Incorporation for State-Chartered Banks, p. 260, 486

(Montana Lottery Commission)
2.63.1201 Prizes, p. 388, 782

AGRICULTURE, Department of, Title 4

New Rules Hemp Definitions - License Applications, p. 114, 283
New Rule Pesticides, p. 1322
4.4.306 Hail Insurance Program, p. 207, 437
4.10.201 and other rules - Pesticide Housekeeping Changes, p. 2261, 626
4.12.1405 and other rules - Nursery Program, p. 1319
4.12.3103 Seed Labeling - Viability Information, p. 1445

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)
New Rules Air Ambulance - Hold Harmless Dispute Resolution, p. 1069
6.2.101 and other rules - Agency Rulemaking and Contested Case Procedures - Agency Debt Collection Practices, p. 1200
6.6.101 and other rules - Insurance Producer Licensing - Electronic Filing of the Appointment and Termination of Insurance Producers, p. 1206
6.6.304 and other rules - Replacement of Life Insurance - Medicare Select - Life Insurance Illustrations - Funeral Insurance - Title Insurance - Group Coordination of Benefits - Loss Cost Advisory Rate Filings - Hazardous Financial Conditions - Audited Reports and Annual Statements - Holding Company Systems - Guaranty Association - Actuarial Opinions - Captive Insurers - Mortality Tables - Viatical Settlement Agreements, p. 1186
6.6.1804 and other rules - Unfair Discrimination - Accreditation Fees - Small Employer Reinsurance - Insure Montana Program - Managed Care Community Networks, p. 1078
6.6.8301 and other rule - Establishment or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual - Updates to the Public Participation Guidelines, p. 1324

COMMERCE, Department of, Title 8

8.94.3729 and other rule - Administration of the 2017 and 2018 Program Year Federal Community Block Grant (CDBG) Program – Public Facilities Projects – Affordable Housing Projects, p. 582, 869
8.94.3817 Administration of the 2019 Biennium Treasure State Endowment Program – Planning Grants, p. 580, 868
8.99.806 Implementation of the Primary Sector Workforce Training Program, p. 730, 1143
8.99.917 and other rule - Implementation of the Big Sky Economic Development Trust Program, p. 727, 1142

8.111.303 and other rules - Financing Programs - Conditions of Financial Assistance - Approved Lenders - Approved Servicers - Counseling Requirements - Eligibility Requirements - Repayment of the Loan - Definitions - Housing Credit Allocation Procedure - Lender and Servicer Requirements and Limits - Loan Terms and Conditions - Confidentiality and Disclosure of Information, p. 460, 783

EDUCATION, Title 10

(Board of Public Education)
10.57.101 and other rules - Educator Licensure, p. 1775, 2330
10.64.301 School Bus Requirements, p. 391

(Superintendent of Public Instruction)
10.13.310 and other rules - Traffic Education, p. 1210

FISH, WILDLIFE AND PARKS, Department of, Title 12

New Rule Dog Training, p. 585, 1447
12.3.109 Disease Management, p. 1328
12.5.701 and other rules - Aquatic Invasive Species, p. 209, 438

(Fish and Wildlife Commission)
12.11.501 and other rules - Flathead Lake, p. 118, 661
12.11.501 and other rule - Madison River, p. 121, 663
12.11.501 and other rules - Fort Peck Dredge Cuts - Fort Peck Reservoir, p. 124, 664
12.11.610 and other rule - Recreational Use on the Bitterroot River, p. 1451

ENVIRONMENTAL QUALITY, Department of, Title 17

New Rules Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1331
17.30.660 Nutrient Standard Variances, p. 394, 470, 869
17.50.403 and other rules - Definitions of Solid Waste Management - Landfarm Facility Standards - Compost Standards and Definitions, p. 3, 285, 666

(Board of Environmental Review)
17.24.645 and other rules - Ground and Surface Water Monitoring - Definitions - Use and Classification Standards - Adoption by Reference, p. 2372, 602
17.38.104 and other rules - Public Water Supply Systems, p. 1900, 220

TRANSPORTATION, Department of, Title 18

18.6.202 and other rule - Outdoor Advertising Control, p. 971, 1517

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

(Public Safety Officers Standards and Training Council)

LABOR AND INDUSTRY, Department of, Title 24

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

(Board of Architects and Landscape Architects)

24.114.101 and other rules - Board Organization - Public Participation - Definitions - Fee Schedule - Architect Seal - Fee Abatement - Military Training or Experience - Architect Examination - Architect Licensure by Examination - Licensure of Applicants Registered in Another State - Architect Emeritus Status - Landscape Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Landscape Architect Examinations - Landscape Architect Licensure by Endorsement - Landscape Architect Seal - Architect Continuing Education Requirements - Unprofessional Conduct - Screening and Adjudication Panels - Solicitation of Business by Nonresident Architects - Architects-In-Training - Renewals - Replacement Licenses, p. 976

(Board of Barbers and Cosmetologists)

24.121.301 and other rules - Definitions - Nonroutine Applications - Licensure by Examination - Licensure by Credentialing With an Out-of-State License - Licensure Equivalency for Professional Education - Application for Postsecondary School Licensure - Inspection–School Layout - School Curricula - Teacher-Training Curriculum - Teaching Methodology Coursework - Salons/Booth Rental - Implements, Instruments, Supplies, and Equipment - Anonymous Complaints, p. 2396, 221

24.121.601 and other rules - Licensure by Examination - School Operating Standards - School Curricula - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program, p. 1364

(Board of Clinical Laboratory Science Practitioners)

24.129.401 and other rules - Fees - Supervision - Minimum Standards for Licensure - Military Training or Experience - Temporary Practice Permits - Unprofessional Conduct - Nonroutine Applications, p. 2040, 299

(Board of Dentistry)

24.138.3227 Onsite Inspection of Facilities, p. 45, 223

(Board of Funeral Service)

24.147.1301 and other rules - Applications for Cemetery Licenses - Transfer of Cemetery Ownership - Prearranged, Prefinanced, or Prepaid Funerals - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Trust Funds–General - Cemetery Perpetual Care and Maintenance Trust Accounts - Financial Records - Annual Reporting Requirements - Audits - Mortuary and Crematory Preneed Trust Accounts - Restrictions on Use of Cemetery Funds, p. 1461

(Board of Massage Therapy)

24.155.604 and other rules - Licensure by Examination - Licensure of Out-of-State Applicants - Nonroutine Applications, p. 1085

(Board of Medical Examiners)

24.156.501 and other rules - Renewal Dates and Requirements - Definitions - Medical Student's Supervision and Permitted Activities - Internship - Fee Schedule - Revocation or Suspension Proceedings - Unprofessional Conduct - Application for Licensure - Professional Conduct and Standards of Professional Practice - Application for Physician Assistant License - Supervision of Physician Assistant - Chart Review - Continuing Education and Refresher Requirements - Medical Direction - Application for Temporary Non-Disciplinary Physician License - Application for Physician Licensure in Another State Via Interstate Compact - Post-Graduates-Supervision and Permitted Activities - Board Meetings - Medical Schools - Intern's Scope of Practice - Residency - Resident's Scope of Practice - Temporary License - Reinstatement - License Requirement - Application for a Telemedicine License - Fees - Failure to Submit Fees - Issuance of a Telemedicine License - Renewals - Effect of Determination That Application for Telemedicine License Does Not Meet Requirements - Sanctions - Obligation to Report to Board - Board Policy - Maintaining NCPPA Certification, p. 49, 487

(Board of Nursing)

24.159.301 and other rule - Continuing Education, p. 2406, 604

24.159.1006 and other rule - Direct Supervision and Standards Related to the Practical Nurse's and Registered Nurse's Role in Cosmetic Procedures, p. 1232

(Board of Optometry)

24.168.401 and other rule - Fees - Continuing Education, p. 214, 788

24.168.402 and other rules - Licensure Requirements - Military Training or Experience - General Practice Requirements - Unprofessional Conduct - Screening Panel - Ophthalmological Diagnostic Permissible Drugs, p. 1474

(Board of Outfitters)

24.171.408 and other rules - Outfitter Records - Safety and First Aid Provisions - Watercraft Identification - Outfitter Qualifications - Successorship - Fishing Outfitter Operations Plan - Operations Plans and Amendments – Renewals, p. 428

(Board of Pharmacy)

24.174.401 and other rules - Fee Schedule - Internship Requirements - Foreign Intern Requirements, p. 1235

24.174.1712 Prescription Drug Registry Fee, p. 264, 1144

(Board of Private Security)

24.182.101 and other rules - Organization - Procedural Rules - Public Participation - Definitions - Fee Schedule - Identification Pocket Card - Insurance and Surety Bond Requirements - Regulations of Uniform - Qualification of Firearms for Armed Endorsement - Requalification Required Annually - Required Information for Application - Military Training or Experience - Written Examination - Temporary Practice Permit - Private Investigator Trainee - Certified Firearms Instructor - Company Licensure and Branch Offices - Firearms Training Courses - Private Investigator Training Program - Private Security Guard Training Program - Security Alarm Installer Training Program - Alarm Response Runner Training Program - Standards for Continuing Education - Annual Continuing Education Requirements - Non-approved Activities - Auditing of Continuing Education Hours - Inactive Status and Conversion to Active Status - Alarm Response Runner - Private Investigator - Private Security Guard - Process Server - Resident Manager - Security Alarm Installer - Nonroutine Applications - Experience Requirements, p. 823

(Board of Psychologists)

24.189.301 and other rules - Behavior Analysts and Assistant Behavior Analysts Licensure, Continuing Education, and Unprofessional Conduct, p. 1240

24.189.601 and other rules - Application Procedures - Exemptions - Minimum Standards - Licensure of Foreign-Trained Psychologists - Competency - Limits of Confidentiality - Continuing Education Program Options - Continuing Education Implementation - Practice of Psychology, p. 992

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Licensing - Renewals - Continuing Education - Complaint Procedures - Credit for Blended Learning - Professional Conduct, p. 1088

(Board of Realty Regulation)

24.210.641 and other rules - Unprofessional Conduct - New Licensee Mandatory Continuing Education – Salespersons - Course Provider – Continuing Real Estate Education – Course Approval - Continuing Real Estate Education – Instructor Approval - Renewals - New Licensee Mandatory Continuing Education – Property Manager - Nonroutine Applications - Trust Account Course Requirement - Application for Determination of Equivalent Experience for Broker Licensing, p. 319, 1145

(Board of Speech-Language Pathologists and Audiologists)

24.222.301 and other rules - Definitions - Fees - Unprofessional Conduct - Limited Licenses - Supervised Professional Experience, p. 1479

24.222.502 and other rules - Speech-Language Pathologist and Audiologist Licenses - Military Training or Experience - Licensure of Out-Of-State Applicants - Examinations - Establishing the Practitioner-Patient Relationship - Competence - Practice Limits - Maintenance and Retention of Records - Continuing Education - Nonroutine Applications - Board Standards and Policy - Applications for License - Qualifications for Active Temporary License - Temporary Practice Permits - Policy - Continuing Education Definitions - Renewals - Complaint Procedure, p. 628, 1401

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Animal Health Division Fees - Definitions - Testing Within the DSA - Brucellosis Tests to Be Reported, p. 267, 492, 1296
32.2.403 Diagnostic Laboratory Fees, p. 850, 1297
32.3.212 and other rules - Additional Requirements for Cattle - Importation of Cattle From Mexico - Identification of Alternative Livestock With the Exclusion of Omnivores and Carnivores - Requirements for Mandatory Surveillance of Montana Alternative Livestock Farm Cervidae for Chronic Wasting Disease, p. 1001, 1101
32.18.102 and other rules - Special Identification Marks – Age Tally Mark – Numeral Mark – Placement of Digits, p. 592, 907

(Board of Milk Control)
32.23.301 Licensee Assessments, p. 127, 304
32.24.101 and other rules - Organization of Board - Penalties - Initial Determination and/or Loss of Quota Records - New Producers– Percentage of Milk Sales Assigned to Quota Milk - Transfer of Quota - Reassignment of Quota From the Unassigned Quota Pool and Readjustment of Quota Into the Statewide Quota System - Producer Committee - Request for Review, Hardship, and Appeals - Reports and Records - Computation of Price for Quota Milk and Excess - Procedures for Pooling of Returns From Pool Milk - Payments to Pool Dairymen and Adjustment of Accounts - Marketing of Surplus Milk to Nonpool Handlers - Required Utilization of Surplus Milk - Procedures, Purchase Price, and Terms - Definitions - Transactions Involving the Purchase and Resale of Milk Within the State - Regulation of Unfair Trade Practices - Licensee Assessments - Additional Producer Assessment - Procedural Rules - Pricing Rules - Quota Definitions - Pooling Plan Definitions - Proceeds and Losses for Surplus Milk Over Quota, p. 732, 1151

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Water Right Permitting, p. 1485

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37.114.101 and other rules - Reporting and Control of Communicable Disease, p. 161, 343

PUBLIC SERVICE REGULATION, Department of, Title 38

New Rules Minimum Filing Requirements for Rate Adjustments for Taxes and Fees, p. 332, 601, 790
38.5.1010 and other rules - Electric Standards for Utilities - Pipeline Safety, p. 2321, 789
38.5.3401 Operator Service Provider Rules, p. 1369

REVENUE, Department of, Title 42

42.2.705 Alternative Business Office Hours in Qualified County Offices - Removing Pondera County, p. 182, 355
42.4.301 and other rule - Calculating the Elderly Homeowner/Renter Tax Credit, p. 1494
42.9.106 and other rules - Pass-Through Entities, p. 1500
42.12.105 and other rules - Premises Suitability Requirements - Conditions for Operating All Types of Alcoholic Beverage Licenses, p. 2117, 493
42.12.132 and other rules - Alcoholic Beverage Establishment Location Managers - Compliance With Laws and Rules - Penalty Schedule - Consumer Promotions - Contract Manufacturing, p. 2170, 346
42.13.601 and other rules - Conditions for Operating a Brewery - Production Threshold - Beer Reporting Requirements, p. 1286
42.15.214 Resident Military Salary Exclusion, p. 1284
42.19.1104 and other rules - Tax Exemptions for Nonfossil Energy Systems - Taxable Rate Reductions for Value-Added Property - Department's Notification of Property Tax Liens, p. 1280
42.20.101 and other rules - Property Tax Exemption Applications - Exemptions for Veterans' Organizations - Exemption Notifications to County Treasurers - Valuation of Condominiums and Townhomes, p. 1383
42.20.171 and other rules - Land Classification - Natural Disaster Reduction - Forest Land Eligibility and Valuation, p. 1390
42.20.173 and other rules - Deadlines for Classification and Appraisal Reviews - Consideration of Sales Price and Fee Appraisals as Market Value Indicators, p. 1374
42.21.160 and other rule - Livestock Reporting and Per Capita Fees–Honey Bees, p. 1277
42.31.501 and other rule - Taxation of Internet Revenue, p. 780, 1154

SECRETARY OF STATE, Office of, Title 44

1.2.102 and other rule - Official Versions of the ARM and Register, p. 658, 867, 1054
1.2.104 Administrative Rules Services Fees, p. 483, 802

1.2.419 Scheduled Dates for the 2018 Montana Administrative Register, p. 1506
44.2.204 Access to Documents and Fees for Copies, p. 1137
44.2.302 and other rules - Online Filing of Annual Reports, p. 1290
44.14.301 and other rules - Fees Charged by the Records and Information Management Division, p. 480, 801

(Commissioner of Political Practices)
44.11.226 and other rules - Campaign Finance Reporting, Disclosure, and Practices, p. 1509

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in August 2017 appear. Potential vacancies from October 1, 2017 through December 31, 2017, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2017.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Environmental Review			
Mr. Dexter Busby	Governor	New	8/1/2017
Great Falls			1/1/2021
Qualifications (if required): Experience or background in environmental science			
Mr. John DeArment	Governor	New	8/1/2017
Missoula			1/1/2021
Qualifications (if required): Experience or background in hydrology			
Ms. Christine Deveny	Governor	New	8/1/2017
Helena			1/1/2021
Qualifications (if required): Expertise or background in local government planning			
Mr. John Felton	Governor	New	8/1/2017
Billings			1/1/2019
Qualifications (if required): Expertise or background as county health officer or as a medical doctor			
Ms. Hillary Hanson	Governor	New	8/1/2017
Kalispell			1/1/2019
Qualifications (if required): Public representative			
Mr. Christian Tweeten	Governor	New	8/1/2017
Missoula			1/1/2021
Qualifications (if required): Attorney			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Environmental Review Cont.			
Mr. Tim Warner	Governor	New	8/1/2017
Bozeman			1/1/2019
Qualifications (if required):	Public representative		
Board of Pardons and Parole			
Ms. Renee Bauer	Governor	New	8/14/2017
Helena			1/1/2021
Qualifications (if required):	Extensive experience in corrections		
Ms. Kristina Lucero	Governor	New	8/14/2017
Missoula			1/1/2019
Qualifications (if required):	Extensive experience in criminal justice system and knowledge of American Indian culture		
Board of Private Security			
Ms. Holly Dershem-Bruce	Governor	Reappointed	8/1/2017
Glendive			8/1/2020
Qualifications (if required):	Member of the public		
Mr. James Thomas	Governor	Reappointed	8/1/2017
Canyon Creek			8/1/2020
Qualifications (if required):	Member of the Montana Public Safety Officer Standards and Training (POST) Council		

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Veterans' Affairs			
Major General Matthew T. Quinn	Governor	New	8/1/2017
Fort Harrison			1/1/2021
Qualifications (if required): Director of the Department of Military Affairs, non-voting member			
Mr. Clarence Sivertsen	Governor	Reappointed	8/1/2017
Belt			8/1/2021
Qualifications (if required): Veteran from Region 3			
Mr. Jason Smith	Governor	New	8/1/2017
Helena			1/1/2021
Qualifications (if required): Director of the Office of Indian Affairs, non-voting member			
Capitol Complex Advisory Council			
Ms. Tatiana Gant	Governor	Fishbaugh	8/25/2017
Helena			1/1/2021
Qualifications (if required): Director of the Montana Arts Council			
Child Abuse and Neglect Review Commission			
Ms. Georgia J. Cady	Governor	New	8/25/2017
Columbus			9/30/2021
Qualifications (if required): Representative of an organization that works with homeless children and youth			
Ms. Abigail Catherine Eyre	Governor	New	8/25/2017
Polson			9/30/2021
Qualifications (if required): Medical provider with experience in treating co-occurring disorders			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Child Abuse and Neglect Review Commission Cont.			
Ms. Nichole Griffith	Governor	New	8/25/2017
Great Falls			9/30/2021
Qualifications (if required): Rep. of private organizations involved in matters related to child abuse and neglect			
Ms. Mary Patricia Hansen	Governor	New	8/25/2017
Missoula			9/30/2021
Qualifications (if required): Medical provider who is involved in matters related to child abuse and neglect			
Ms. Arlene Templer	Governor	New	8/25/2017
Ronan			9/30/2021
Qualifications (if required): Representative of the Montana Indian Tribes			
Ms. Laura Weiss Smith	Governor	New	8/25/2017
Helena			9/30/2021
Qualifications (if required): Rep. of the Child and Family Services Div. of DPHHS			
Ms. Jennifer Wihlborg	Governor	New	8/25/2017
Missoula			9/30/2021
Qualifications (if required): Licensed provider who serves children with disabilities			
Criminal Justice Oversight Council			
Ms. Melissa Kelly	Governor	New	8/1/2017
Bozeman			8/2/2019
Qualifications (if required): Represents a prerelease center			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Criminal Justice Oversight Council Cont.			
Ms. Majel Russell	Governor	New	8/1/2017
Billings			8/2/2019
Qualifications (if required): Montana Tribal Member with expertise in criminal justice			
Ms. Amy Tenney	Governor	New	8/1/2017
Helena			8/2/2019
Qualifications (if required): Representative of crime victims			
Ms. Robin Turner	Governor	New	8/1/2017
Helena			8/2/2019
Qualifications (if required): Representative of crime victims			
District Court Judge District 7 Department 1			
Ms. Olivia C. Rieger	Governor	Simonton	8/4/2017
Glendive			1/1/2021
Qualifications (if required): none stated			
Montana Achieving a Better Life Experience (ABLE) Program Oversight Committee			
Mr. Jonathan William Bennion	Governor	Reappointed	8/25/2017
Clancy			9/1/2021
Qualifications (if required): Experience working on behalf of disabled individuals			
Director John Lewis	Governor	Hogan	8/25/2017
Helena			9/1/2019
Qualifications (if required): Director of the Department of Administration			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana HELP Act Oversight Committee			
Ms. Kristen Hansen	Governor	Laslovich	8/25/2017
Helena			6/30/2019
Qualifications (if required): Representative of State Auditor's Office			
Montana Invasive Species Council			
Mr. David Brooks	Governor	New	8/8/2017
Missoula			5/9/2021
Qualifications (if required): Representative of fishing organizations			
Mr. Bryce Christiaens	Governor	New	8/1/2017
Missoula			5/9/2021
Qualifications (if required): County Weed Districts Representative			
Mr. Dennis Clairmont	Governor	New	8/1/2017
Pablo			5/9/2021
Qualifications (if required): Representative of Confederated Salish and Kootenai Tribal Government			
Ms. Amy Gannon	Governor	New	8/1/2017
Missoula			5/9/2021
Qualifications (if required): Representative of the Montana Department of Natural Resources and Conservation			
Mr. Leigh Greenwood	Governor	New	8/1/2017
Missoula			5/9/2021
Qualifications (if required): Representative of conservation organizations			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Invasive Species Council Cont.			
Ms. Jane Mangold	Governor	New	8/1/2017
Bozeman			5/9/2021
Qualifications (if required):	Representative of the Montana State University Extension Service		
Ms. Kim Mangold	Governor	New	8/1/2017
Helena			5/9/2021
Qualifications (if required):	Representative of the Montana Department of Agriculture		
Mr. Mike Miller	Governor	New	8/1/2017
Helena			5/9/2021
Qualifications (if required):	Representative of the Montana Department of Transportation		
Mr. Steve Tyrrel	Governor	New	8/1/2017
Lavina			5/9/2021
Qualifications (if required):	Representative of agriculture		
Mr. Steve Wanderaas	Governor	New	8/1/2017
Vida			5/9/2021
Qualifications (if required):	Representative of conservation districts		
Mr. Andy Welch	Governor	New	8/1/2017
Helena			5/9/2021
Qualifications (if required):	Representative of hydropower utility industry		

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Invasive Species Council Cont.			
Mr. Tom Woolf	Governor	New	8/1/2017
Helena			5/9/2021
Qualifications (if required): Representative of the Montana Department of Fish, Wildlife and Parks			
Montana Poet Laureate			
Mr. Lowell Jaeger	Governor	Craig	8/1/2017
Bigfork			8/1/2019
Qualifications (if required): Poet Laureate			
State Parks and Recreation Board			
Mr. Rockwood Scott Brown	Governor	Towe	8/23/2017
Billings			1/1/2019
Qualifications (if required): District 5 member			
Ms. Angie Grove	Governor	Conradi	8/23/2017
Helena			1/1/2021
Qualifications (if required): District 1 member			
Ms. Mary Sheehy Moe	Governor	Sexton	8/23/2017
Great Falls			1/1/2019
Qualifications (if required): District 3 member			
Ms. Betty Stone	Governor	Smith	8/23/2017
Glasgow			1/1/2021
Qualifications (if required): District 4 member			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
State Parks and Recreation Board Cont.			
Mr. Jeffrey Welch	Governor	Reappointed	8/23/2017
Livingston			1/1/2021
Qualifications (if required): District 2 member			
State Workforce Innovation Board			
Superintendent Elsie Arntzen	Governor	New	8/1/2017
Helena			7/27/2019
Qualifications (if required): Superintendent of Public Instruction or designee			
Mr. Dean Bentley	Governor	New	8/1/2017
Butte			5/9/2021
Qualifications (if required): Business representative			
Ms. Casey Blumenthal	Governor	New	8/1/2017
Helena			5/9/2019
Qualifications (if required): Business representative			
Commissioner Pam Bucy	Governor	New	8/1/2017
Helena			7/27/2019
Qualifications (if required): Representative of the Department of Labor and Industry			
Mr. Clayton Christian	Governor	New	8/1/2017
Helena			7/27/2019
Qualifications (if required): Representative of the Office of the Commissioner of Higher Education			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
State Workforce Innovation Board Cont.			
Mr. Ken Fichtler Helena Qualifications (if required): Governor or designee	Governor	New	8/1/2017 7/27/2019
Ms. Jennifer Kobza Billings Qualifications (if required): Business representative	Governor	New	8/1/2017 7/27/2019
Commissioner Michael McGinley Dillon Qualifications (if required): Local government elected official	Governor	New	8/1/2017 7/27/2019
Mr. Kevin Phillip Joseph Poulin Helena Qualifications (if required): Business Representative	Governor	New	8/1/2017 7/27/2019
Mr. Loren Rose Seeley Lake Qualifications (if required): Business representative	Governor	New	8/1/2017 7/27/2019
Mr. Scott Trent Missoula Qualifications (if required): Business representative	Governor	New	8/1/2017 7/27/2019

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
State Workforce Innovation Board Cont.			
Ms. Jane Weber	Governor	New	8/1/2017
Great Falls			7/27/2019
Qualifications (if required): Local government elected official			
Statewide Public Safety Communications System Advisory Council			
Commissioner Joe Briggs	Governor	New	8/25/2017
Great Falls			7/1/2019
Qualifications (if required): Representative of county government			
Mr. Tim Burton	Governor	New	8/25/2017
Helena			7/1/2019
Qualifications (if required): Rep. of a municipality, designated by the Montana league of cities and towns			
Sheriff Chuck Curry	Governor	New	8/25/2017
Kalispell			7/1/2019
Qualifications (if required): Representative of the law enforcement community			
Mr. Robert DesRosier	Governor	New	8/25/2017
Browning			7/1/2019
Qualifications (if required): Representative of tribal governments			
Atty. Gen. Tim Fox	Governor	New	8/25/2017
Helena			7/1/2019
Qualifications (if required): Attorney General			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Statewide Public Safety Communications System Advisory Council Cont.			
Mr. Clinton Loss	Governor	New	8/25/2017
Helena			7/1/2019
Qualifications (if required):	Representative of the emergency medical community		
Ms. Marjean Penny	Governor	New	8/25/2017
Bozeman			7/1/2019
Qualifications (if required):	Rep. of the assoc. of pub-safety communications officials, designated by the MT chapter		
Ms. Siri Smillie	Governor	New	8/25/2017
Helena			7/1/2019
Qualifications (if required):	Representative of the Governor's Office		
Chief Joshua Lee Waldo	Governor	New	8/25/2017
Bozeman			7/1/2019
Qualifications (if required):	Representative of the fire protection community		
Upper Columbia Basin Conservation Commission			
Mr. Dennis Clairmont	Governor	New	8/1/2017
Pablo			5/9/2021
Qualifications (if required):	Representative of Confederated Salish and Kootenai Tribes		
Ms. Lori Curtis	Governor	New	8/1/2017
Whitefish			5/9/2021
Qualifications (if required):	Representative of conservation districts		

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2017

Appointee	Appointed By	Succeeds	Appointment/End Date
Upper Columbia Basin Conservation Commission Cont.			
Mr. Mike Koopal	Governor	New	8/1/2017
Columbia Falls			5/9/2021
Qualifications (if required): Member-at-large			
Mr. Paul Kusnierz	Governor	New	8/1/2017
Noxon			5/9/2021
Qualifications (if required): Representative of hydropower utility industry			
Upper Columbia Conservation Commission			
Mr. Tom Woolf	Governor	New	8/1/2017
Helena			5/9/2021
Qualifications (if required): Representative of the Invasive Species Council			

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Board of Athletic Trainers		
Mr. Mark Meredith, Bozeman	Governor	10/1/2017
Qualifications (if required): Athletic Trainer employed or retired from a secondary school		
Ms. Shadra Robison, Billings	Governor	10/1/2017
Qualifications (if required): Public Representative		
Ms. Janet Trethewey, Havre	Governor	10/1/2017
Qualifications (if required): Member of public not engaged in or directly connected with practice of athletic training		
Board of Barbers and Cosmetologists		
Ms. Angela Printz, Livingston	Governor	10/1/2017
Qualifications (if required): Cosmetologist		
Mr. Thayne Orton, Florence	Governor	10/1/2017
Qualifications (if required): Barber		
Board of Outfitters		
Mr. Timm Twardoski, Helena	Governor	10/1/2017
Qualifications (if required): Member of the General Public		
Mr. Hugo Tureck, Coffee Creek	Governor	10/1/2017
Qualifications (if required): Sportsperson		
Mr. Grover Bennett Aldrich, Missoula	Governor	10/1/2017
Qualifications (if required): Sportsperson		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Board of Outfitters Cont.		
Mr. John Way, Ennis	Governor	10/1/2017
Qualifications (if required): Outfitter engaged in the fishing and hunting outfitting business		
Board of Speech-Language Pathologists and Audiologists		
Ms. Tina Marie Berg, Lewistown	Governor	12/31/2017
Qualifications (if required): Policy Holder		
Ms. Leah Jacobsen, Great Falls	Governor	12/31/2017
Qualifications (if required): Audiologist		
Building Codes Council		
Mr. Rick Hutchinson, Black Eagle	Governor	10/1/2017
Qualifications (if required): Licensed Electrician selected by the State Electrical Board		
Mr. Mick Wonnacott, Butte	Governor	10/1/2017
Qualifications (if required): Representative from the Building Industry		
Mr. Allen Lorenz, Helena	Governor	10/1/2017
Qualifications (if required): State Fire Marshal		
Mr. Ronald E. Brothers, Hamilton	Governor	10/1/2017
Qualifications (if required): Member of the general public who does not hold public office		
Mr. Ron Bartsch, Montana City	Governor	10/1/2017
Qualifications (if required): Representative of the Home Building Industry		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Building Codes Council Cont.		
Mr. Jason Fitzgerald, Billings	Governor	10/1/2017
Qualifications (if required): Practicing Architect licensed in Montana		
Mr. Robert Risk, Bozeman	Governor	10/1/2017
Qualifications (if required): County, City or Town Inspector		
Mr. Sean Smith, Anaconda	Governor	10/1/2017
Qualifications (if required): Licensed Plumber selected by the Board of Plumbers		
Mr. Josh Wallery, Helena	Governor	10/1/2017
Qualifications (if required): Representative of the Manufactured Housing Industry		
Mr. Jason Douglas Poston, Missoula	Governor	10/1/2017
Qualifications (if required): Licensed Elevator Mechanic		
Mr. Matthew Lemert, Livingston	Governor	10/1/2017
Qualifications (if required): Licensed plumber selected by the Board of Plumbers		
Historical Society Preservation Review Board		
Ms. Carol Bronson, Great Falls	Governor	10/1/2017
Qualifications (if required): Public Representative		
Montana Alfalfa Seed Committee		
Mr. Ernest Johnson, Chinook	Governor	12/1/2017
Qualifications (if required): Alfalfa Seed Grower		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Montana Alfalfa Seed Committee Cont.		
Mr. John Mehling, Hardin	Governor	12/1/2017
Qualifications (if required): Alfalfa Seed Grower and rears alfalfa leaf-cutting bees		
Mr. Cavin Steiger, Forsyth	Governor	12/1/2017
Qualifications (if required): Alfalfa Seed Grower		
Protect Montana Kids Commission		
Ms. Jani McCall, Billings	Governor	10/1/2017
Qualifications (if required): Public Representative		
Mr. Scott Darkenwald, Helena	Governor	10/1/2017
Qualifications (if required): Department of Justice Representative		
Ms. Joyce Funda, Helena	Governor	10/1/2017
Qualifications (if required): CASA or foster parent		
Ms. Ali Bovingdon, Helena	Governor	10/1/2017
Qualifications (if required): Governor's Office Representative		
Ms. Leslie Halligan, Missoula	Governor	10/1/2017
Qualifications (if required): District Court Judge		
Mr. William Hooks, Helena	Governor	10/1/2017
Qualifications (if required): Office of the Public Defender Representative		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Protect Montana Kids Commission Cont.		
Ms. Sarah Corbally, Helena	Governor	10/1/2017
Qualifications (if required): Department of Public Health and Human Services Representative		
Mr. Schylar Baber-Canfield, Butte	Governor	10/1/2017
Qualifications (if required): Organization involved in Child Abuse Representative		
Ms. Ann Lawrence, Kalispell	Governor	10/1/2017
Qualifications (if required): County Attorney		
Mr. Matthew Lowy, Missoula	Governor	10/1/2017
Qualifications (if required): Private Attorney		
Ms. Megan Bailey, Saint Ignatius	Governor	10/1/2017
Qualifications (if required): Tribal Member		
Mr. Bart Klika, Missoula	Governor	10/1/2017
Qualifications (if required): Having research experience		
Dr. Tom Strizich, Helena	Governor	10/1/2017
Qualifications (if required): Practicing Pediatrician		
Ms. Jaci Noonan, Anaconda	Governor	10/1/2017
Qualifications (if required): Public Representative		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
State Rehabilitation Council		
Mr. Michael Woods, Billings Qualifications (if required): Advocacy Community	Governor	10/1/2017
Mr. John Senn, Billings Qualifications (if required): Advocacy Community	Governor	10/1/2017
Mr. Rick Heitz, Kalispell Qualifications (if required): Advocacy Community	Governor	10/1/2017
Ms. Amy Capolupo, Missoula Qualifications (if required): Advocacy Community	Governor	10/1/2017
Ms. Annaliese Gibbs, Billings Qualifications (if required): Vocational Rehabilitation Community	Governor	10/1/2017
Mr. Jim Marks, Helena Qualifications (if required): Vocational Rehabilitation Community	Governor	10/1/2017
Ms. Coreen Louise Faulkner, Missoula Qualifications (if required): Advocacy Community	Governor	10/1/2017
Ms. Tiffany Costa, Billings Qualifications (if required): Advocacy Community	Governor	10/1/2017
Ms. Donna Marie Robnett, Frenchtown Qualifications (if required): Advocacy Community	Governor	10/1/2017

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
State Rehabilitation Council Cont.		
Ms. Sharyl Wells, Browning	Governor	10/1/2017
Qualifications (if required): Section 121 Representative		
Statewide Independent Living Council		
Ms. Mary Olson, Missoula	Governor	12/1/2017
Qualifications (if required): Person with disability not employed by state agency		
Statewide Interoperability Governing Board		
Atty. Gen. Tim Fox, Helena	Governor	10/1/2017
Qualifications (if required): Attorney General or designee		
Mr. Geoff Feiss, Helena	Governor	10/1/2017
Qualifications (if required): Representative of Montana's Telecommunications Industry		
Mr. Kevin Myhre, Lewistown	Governor	10/1/2017
Qualifications (if required): Representative of the Montana League of Cities & Towns		
Sheriff Leo Dutton, Helena	Governor	10/1/2017
Qualifications (if required): Representative of the Montana Sheriffs and Peace Officers Association		
Chief Mike Doto, Butte	Governor	10/1/2017
Qualifications (if required): Representative of the Montana State Volunteer Firefighters Association		
Administrator Delila Bruno, Fort Harrison	Governor	10/1/2017
Qualifications (if required): Representative of the Department of Military Affairs		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Statewide Interoperability Governing Board Cont.		
Mr. Jason Smith, Helena	Governor	10/1/2017
Qualifications (if required): Montana Director of Indian Affairs		
Director Mike Tooley, Helena	Governor	10/1/2017
Qualifications (if required): Montana Department of Transportation Director or designee		
Captain Patrick Lonergan, Bozeman	Governor	10/1/2017
Qualifications (if required): Representative of the Montana Fire Chiefs Association		
Mr. Ron Baldwin, Helena	Governor	10/1/2017
Qualifications (if required): Montana Chief Information Officer or his designee		
Commissioner Joe Briggs, Great Falls	Governor	10/1/2017
Qualifications (if required): Representative of the Montana Association of Counties		
Ms. Siri Smillie, Helena	Governor	10/1/2017
Qualifications (if required): Governor's Office Representative		
Mr. Kevin Box, Whitehall	Governor	10/1/2017
Qualifications (if required): Representative of the Montana Emergency Medical Services Association		
Captain Curt Stinson, Helena	Governor	10/1/2017
Qualifications (if required): Representative of the Montana Association of Chiefs of Police		

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2017 THROUGH DECEMBER 31, 2017

Board/Current Position Holder	Appointed By	Term End
Water & Wastewater Operators' Advisory Council		
Mr. Lorren Schlotfeldt, Havre	Governor	10/16/2017
Qualifications (if required): University Faculty Member		
Ms. Crystal Richards, Billings	Governor	10/16/2017
Qualifications (if required): University Faculty		
Mr. Eleazer Resurreccion, Havre	Governor	10/16/2017
Qualifications (if required): Faculty of a university or college whose major field is related to water supply systems		

MONTANA ADMINISTRATIVE REGISTER

2017 ISSUE NO. 18
SEPTEMBER 22, 2017
PAGES 1536-1716

COREY STAPLETON
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620