

# MONTANA ADMINISTRATIVE REGISTER

2018 ISSUE NO. 2  
JANUARY 26, 2018  
PAGES 124-229



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 2

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9000.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the regulation of privately insured credit unions ) NOTICE OF PROPOSED  
ADOPTION  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On March 17, 2018, the Department of Administration proposes to adopt the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on February 21, 2018, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

NEW RULE I PRIVATE SHARE INSURANCE (1) All Montana state-chartered credit unions insured by a private share insurance plan pursuant to 32-3-611, MCA, are regulated the same as Montana state-chartered credit unions insured under the provisions of Title II of the Federal Credit Union Act.

AUTH: 32-3-201, MCA  
IMP: 32-3-611, MCA

STATEMENT OF REASONABLE NECESSITY: The Commissioner of Insurance has recently approved a private credit share insurance plan for credit unions. Because private credit share insurance is now available in Montana, NEW RULE I is necessary to provide consistency between regulation of state-chartered credit unions insured by private credit share insurance and regulation of state-chartered credit unions insured by the National Credit Union Administration. In both cases, the credit unions must be regulated pursuant to the provisions of Title II of the Federal Credit Union Act as required in 32-3-611, MCA. Having a common set of standards for all state-chartered credit unions in Montana will ensure consistent regulation, avoid equal protection concerns, and simplify compliance, because the credit unions are already familiar with the requirements of the Federal Credit Union Act.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov). Written comments must be received no later than 5:00 p.m., February 28, 2018.

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 the person listed in 4 above no later than 5:00 p.m., February 28, 2018.

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 one person based on the nine state-chartered credit unions.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

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

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

10. The department has determined that under 2-4-111, MCA, the proposed adoption will not significantly and directly impact small businesses.

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

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

Certified to the Secretary of State January 16, 2018

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I and repeal of ARM ) PROPOSED ADOPTION AND  
4.13.1001A pertaining to the Montana ) REPEAL  
State Grain Laboratory fee schedule )

TO: All Concerned Persons

1. On February 20, 2018, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

NEW RULE I GRAIN FEE SCHEDULE (1) Effective Date: The effective date of this rule is March 30, 2018.

(2) General Provisions: These General provisions applying to all sections of this rule are as follows:

(a) Service Hours: Normal office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. All other hours and holidays will be considered overtime.

(b) Sampling Hours: Sampling hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. An applicant must place service requests with the inspection office by 10:00 a.m. during regular hours for same day inspection/sampling services. All requests for sampling services to be performed outside of normal business hours must be received by 2:00 p.m. of the preceding business day. Sampling services requested to be performed outside of normal office hours, including holidays, will be charged overtime.

(c) Regular Hourly Rate: The regular hourly rate for travel time and stand-by fee is \$40 per hour per individual assessed in half-hour intervals with a minimum of two hours charged.

(d) Overtime and Holiday Hourly Rate: Overtime and holiday hourly rate is \$60 per hour per individual assessed in half-hour intervals. A minimum four-hour charge will be assessed except when before or for a continuation of a regular work day, then actual overtime hours will be charged.



(e) Holidays: Holidays are as adopted in 1-1-216, MCA. (e.g., New Year's Day, Martin Luther King Jr. Day, President's Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and State Election Day.)

(f) Mileage and Travel Fees: Mileage, travel time, and travel expenses are as follows:

(i) Mileage Fee: Mileage charges shall be assessed per 2-18-501, MCA for State employees which is equal to the United State Internal Revenue Service (IRS) mileage allotment. Any change to the mileage rate is effective when the IRS changes their standard mileage rate. The mileage charges will be prorated where possible.

(ii) Hourly and Overtime Rate: For each trip requested, the applicant will be charged at the regular hourly rate, except when work is conducted while in overtime status or on holidays. Work conducted while in overtime status or on holidays will be charged at the overtime rate, prorated where possible.

(iii) Travel Expenses: Travel expenses (as defined by Montana Operations Manual Travel Policy with Rates) including but not limited to per diem, lodging, and mileage will be assessed to the applicant in addition to other fees and charges.

(iv) Staffing: Montana State Grain Laboratory will determine the number of personnel to properly provide the service requested. To assure personal safety, Montana State Grain Lab may suspend sampling services due to inclement weather conditions as well as sampling rail cars at night with insufficient lighting, or other potentially hazardous conditions.

(v) Observation: In order to provide official services, Montana State Grain Lab must be physically able to observe elevator personnel sampling and/or sealing a railcar.

(3) Miscellaneous Fees:

(a) Copies of certificates, per certified copy.....\$2.50

(b) Fax charge, per transmission.....\$3.00

(c) In case of a data entry or typographical error, a corrected certificate will be issued without a fee.

(4) Postage: Actual postage or delivery service charges will be added to sampling and other fees.

(5) Special Requests: Requests for services not covered by this rule will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable.

(6) Priority Service: The priority service fee shall be \$10 per submitted sample in addition to the fees set forth in this rule. Submitted priority samples shall be done within 48 hours or less, on a first arrival basis. Priority service includes electronic report. Priority service will be suspended if backlog of regular samples exceeds two weeks. If priority service is suspended, all submitted sample fees will be assessed at the appropriate rate.

(7) Payment of Fees and Charges: All department fees and charges for services rendered are due within thirty days of the statement date. Finance charges of \$25 per month shall accrue on any balance owed after thirty days of the statement date. If the department does not receive payment within thirty days, services may

be withheld until the delinquent account is paid; or cash payment for the subsequent services may be required.

(8) Retests/Reinspections: will cost the same as the original test/inspection.

(9) Export Documentation Request: Processing and handling fee for sample preparation and export documentation.....\$7.50 per request

(10) United States Grain Standards Act (USGSA) Fees for official services under the United States Grain Standards Act (USGSA) as amended.

(a) Effective Date: The effective date of this rule is March 30, 2018.

(b) General Provisions: General provisions applying to all sections of this rule are as follows:

(c) Official Lot Inspection: Official lot inspection sampling with grade, on bulk, boxcar, hopper car, or truck/trailer, per request, sampling and grade only:

(i) Level One: Level one official sampling service when the State Grain Laboratory furnishes the sampling crew.....\$25.00 per unit

(ii) Level Two: Level two official sampling service when the State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling and seal samples for delivery to the State Grain Laboratory.....\$18.00 per unit

(iii) Sampling Only: Sampling only (does not include grade) on bulk, boxcar, hopper car or truck/trailer, per request, (all grains).....\$15.00 per unit

(A) Additional Probes (in addition to original sampling charges).....\$15.00 per unit

(iv) Stowage Examination: Stowage examination.....\$8.00 per unit

(v) Sealing Railcars: (Metal Seals) DT or Probe Railcars per Seal, Additional Labor and hourly charges may apply.....\$1.25 per seal  
Supervise Elevator Personnel applying seals (recording seals on certificate).....\$4.00 per unit

(vi) The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction. In excess of one hour, the hourly rate applies.

(d) Submitted Sample Inspection: inspection includes DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects).

(i) Submitted Canola Samples .....\$16.00 per sample

(ii) Submitted Spring Wheat (includes DHV testing).....\$13.00 per sample

(iii) Submitted (other USGSA sample) .....\$10.00 per sample

(e) Laboratory Analyses Fee:

(i) Protein Test: Near Infrared Transmittance (NIRT) on wheat, barley, and corn.....\$6.00 per sample

(ii) Single Factor Determination: Factor only determination .....\$7.00

(iii) Additional: Additional statements, factors, or results as requested by the applicant including the absence of particular allergens in visible form .....\$3.00 each

(iv) Malting Barley Analysis: Malting barley analysis includes actual percent of plump barley, skinned and broken kernels, and thin barley, per request  
.....\$5.00 per sample

- (v) Vomitoxin: vomitoxin (DON) per quantitative analysis test .....\$30.00 per sample
- (vi) Aflatoxin: aflatoxin per quantitative analysis test .....\$30.00 per sample
- (vii) Composite Sample Preparation (per sample, in composite).....\$1.25 per sample
- (viii) Composite Sample Preparation (per sample, if requested after grade).....\$2.75 per sample
- (ix) Return shipping and handling post grading (not to exceed \$30/month).....\$3.00 per sample
- (f) Official Commercial Services performed under the USGSA:
  - (i) Official commercial inspection services and fees may be negotiated on a case-by-case basis.
- (11) Pulse and Processed Commodity Fee Schedule under the Agricultural Marketing Act (AMA):
  - (a) Effective Date: The effective date of this rule is March 30, 2018.
  - (b) General Provisions: General provisions applying to all sections of this rule are as follows, including hourly rate, overtime and holiday rates.
  - (c) Fees for official services provided under the Agricultural Marketing Act of 1946 (AMA) as amended:
    - (d) Sampling Fees: Sampling fees for grade or phytosanitary certification:
      - (i) Bulk Samples: Bulk samples from boxcars, hopper cars, truck/trailers.....\$15.00 per unit
      - (A) Additional probes (in addition to original sampling charges).....\$15.00 per unit
      - (ii) Sealing: Metal Seals  
DT or Probe per Seal; Additional Labor and hourly charges may apply.....\$1.25 per seal  
Supervise elevator personnel applying seals (recording seals on certificate).....\$4.00 per unit  
The Montana State Grain Laboratory is not responsible for the seals after Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.
      - (iii) Bagged Lots: bagged lots or totes.....Hourly Rate
    - (e) Inspection Fee:
      - (i) Grade Only: grade only per lot or submitted sample: field run.....\$24.00 per sample
      - (ii) Grade Only: grade only per lot or submitted sample: other than field run.....\$20.00 per sample
      - (iii) Single Factor Determination: one factor only determination.....\$7.00
      - (iv) Additional: additional statements, factors, or results as requested by the applicant.....\$3.00 per factor
      - (f) Composite Sample Preparation (per sample in composite).....\$1.25 per sample
      - (i) Composite Sample Preparation (per sample, if requested after grade).....\$2.75 per sample
      - (ii) Seed Count per Ounce.....\$5.00 per ounce

- (iii) Return shipping and handling post grading (not to exceed \$30/month).....\$3.00 per sample
- (g) Laboratory Analysis Fee:
  - (i) Falling Number Determinations: falling number determination for wheat.....\$14.00 per sample
- (12) Fees for laboratory services not performed under the USGSA or AMA: Commodities inspected under Montana Standards
  - (a) General Provisions: general provisions applying to all sections of this rule are as follows:
    - (b) Lot Inspection: Lot inspection sampling with grade for bulk, boxcar, hopper car or truck-trailer, per request, sampling and grade only:
      - (i) Level One: Sampling service fee when the Montana State Grain Laboratory furnishes the sampling crew.....\$25.00 per sample
      - (ii) Level Two: Sampling service fee when the Montana State Grain Laboratory furnishes a licensed sampler to write identification tickets, supervise elevator employees while sampling, and seal samples for delivery to the Montana State Grain Laboratory.....\$18.00 per sample
      - (iii) Lot reinspection based on file sample.....all regular fees assessed
      - (iv) Sampling Only: sampling only (does not include grade)—bulk, boxcar, hopper car or truck/trailer, per request (all grains).....\$15.00 per sample
    - (A) Additional Probes (in addition to original sampling charges).....\$15.00 per unit
    - (B) Sealing: Metal Seals:  
DT or Prober per Seal; Additional Labor and Hourly Charges may apply.....\$1.25 per sample  
Supervise Elevator Personnel applying seals (recording seals on certificate).....\$4.00 per unit  
The Montana State Grain Laboratory is not responsible for the seals after the Montana State Grain Laboratory personnel leave the applicant's property. It is the applicant's responsibility to confirm that all seals have been applied by Montana State Grain Laboratory personnel to their satisfaction.
    - (v) Stowage Examination: Stowage examination.....\$8.00 per unit
    - (vi) After First Hour.....Hourly rate applies
  - (c) Submitted Sample Inspection: Submitted sample inspection includes DKT (damaged kernels total) identified, FM (foreign matter) identified, SHBN (shrunken and broken kernels), and DEF (total defects).
    - (i) Submitted Sample: Submitted Montana specialty crop grades (unless specifically listed) per sample.....\$10.00 per sample
    - (ii) Non Official Single Factor Determination.....\$7.00 per factor
    - (iii) Additional: Additional statements, factors, or results as requested.....\$3.00 per factor
  - (d) Submitted Buckwheat Grades:
    - (i) Processed Buckwheat Sample.....\$14.00 per sample
    - (ii) Field Run Buckwheat Sample.....\$15.00 per sample
  - (e) Hulless or Hulless Waxy Barley:
    - (i) Submitted hulless or hulless waxy barley.....\$14.00 per sample
  - (f) Laboratory Analysis Fee:

(i) Protein Test: non-official NIRT (e.g., Khorasan).....	\$6.00 per sample
(ii) Malting Barley Germination: Malting barley: germination 72-hour blotter.....	\$10.00 per determination
(iii) Non-Official Falling Number: Falling number determination on commodities other than wheat (e.g. Khorasan).....	\$14.00 per determination
(iv) Vomitoxin: Vomitoxin (DON) per quantitative analysis test.....	\$30.00 per sample
(v) Aflatoxin: Aflatoxin per quantitative analysis test.....	\$30.00 per sample
(vi) Composite Sample Preparation (per sample in composite).....	\$1.25 per sample
(vii) Composite Sample Preparation (per sample, if requested after grade).....	\$2.75 per sample
(viii) Return shipping and handling post grading (not to exceed \$30/month).....	\$3.00 per sample

AUTH: 80-4-403, 80-4-721, MCA

IMP: 80-4-721, MCA

REASON: The formatting changes are necessary to create greater consistency between the federal listing of the various fees, the state rules, and the required placards. The changes to the falling numbers and pulse related fees are required to more accurately reflect the time it takes to perform the tests. The late fee is to encourage timely payment. The new fees for return postage and sealing of rail cars reflect the MT State Grain Laboratory's requirement to recoup cost. The formatting change has no economic impact. The lab needs to recover more of its costs to be consistent with federal regulations of a Federal Grain Inspection Service (FGIS) facility and to deal with diminishing check-off dollar support.

4. The department proposes to repeal the following rule:

4.13.1001A GRAIN FEE SCHEDULE

AUTH: 80-4-403, 80-4-721, MCA

IMP: 80-4-721, MCA

REASON: The MT State Grain Laboratory's new fees are necessary in order to recover more of its costs and to be consistent with the federal regulations of a FGIS facility. The new fees and impacts include: Attaching Official Seals to Rail Carts (found at NEW RULE I(10)(c)(v), (11)(d)(ii), and (12)(b)(iv)(B)). \$6-10/car, depending on the number of openings, is anticipated to generate an additional \$24,000 of revenue per year. A late fee system (found at NEW RULE I(7)) for accounts due after 30 days is priced at \$25 and allows for the discontinuation of service. The department anticipates less than \$200 in revenue from this new fee.

Fees for services are being requested by the industry in such a way that costs to perform have increased. Bulk samples will now be additional probes and will cost \$15 as they are no cheaper to perform than the original probe. Bulk sampling and

sampling only services will increase by \$5 to reflect the correct cost of the services. Composite samples will now increase in cost from \$1.25 to \$5 to reflect the cost of performing them. Single factor test will increase by \$4 to reflect the total time spent on them in the lab. The lab will now attempt to recover the cost of postage on returned sampling with a \$3 fee that is capped at \$30 per month. These fee increases are estimated to generate an additional \$22,000 of revenue.

Increases to tests caused by changes in federal standards (pulse wrinkles) (found at NEW RULE I(11)) will increase pulse testing by roughly \$5 per sample. A more accurate cost for the time/machine costs for falling numbers will cost an additional \$3 per test. These also request the nationwide industry standards. They are anticipated to generate an additional \$75,700 per year.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., March 2, 2018.

6. Cort Jensen, Department of Agriculture, 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 6 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 adoption and repeal of the above-referenced rules will significantly and directly impact small businesses.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State January 16, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 4.12.607, 4.12.608, and ) PROPOSED AMENDMENT  
4.12.609 pertaining to Fertilizer )  
Regulations )

TO: All Concerned Persons

1. On February 22, 2018, at 10:30 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

4.12.607 INVESTIGATIONAL ALLOWANCES AND OVERALL INDEX  
VALUE (1) A commercial fertilizer shall be deemed deficient if the analysis of nutrient is below the guarantee by an amount exceeding the values in the following schedule, or if the overall index value of the fertilizer is below 98%.

Guarantee Percent	Nitrogen (N)	Available Phosphate (P <sub>2</sub> O <sub>5</sub> )	Soluble Potash (K <sub>2</sub> O)
Investigational Allowance, percent			
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.70 <u>65</u>
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08

22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

(a) through (2) remain the same.

AUTH: 80-10-301, MCA

IMP: 80-10-206, MCA

Reason: The edit in ARM 4.12.607 is simply housekeeping.

4.12.608 QUARTERLY REPORTS BI-ANNUAL INSPECTION FEE STATEMENT AND FEE ASSESSMENTS (1) ~~The~~ Each in-state manufacturer, the registrant, or the and out-of-state supplier is responsible for paying the assessment fees for all commercial fertilizers and/or soil amendments distributed for agricultural use in this state. The party responsible for supplying the product into the state shall pay the assessment fees and file a quarterly bi-annual statement on or before the 30th calendar day after the end of each quarter reporting period. The quarterly statement must specify the number of tons of each commercial fertilizer and/or soil amendment distributed in this state during ~~the past quarter~~ each 6-month period, and to whom it was distributed. A quarterly bi-annual statement is required even if no sales or distributions occurred in a particular quarter period. Specialty fertilizers, soil amendments not for agricultural use, and unmanipulated manures are exempt from the quarterly assessment fee and a quarterly bi-annual report is not required by persons distributing only these products.

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

(c) inspection fee of 10 cents per ton for agricultural soil amendments distributed when 50 tons or more are distributed during the quarter reporting period; and

(d) educational assessment of 75 cents per ton for all fertilizers, excluding specialty fertilizers and soil amendments, in addition to the inspection fees.

(3) In the event the responsible party fails to file the quarterly bi-annual report within 60 days after the end of the filing period, the department may initiate proceedings to revoke registration of the responsible party's registered fertilizer(s). The failure to file ~~a quarterly~~ the bi-annual report shall be evidence of fraudulent or deceptive practice in the evasion of these rules.

(4) remains the same.

AUTH: 80-10-207, MCA

IMP: 80-10-103, MCA

REASON: The reporting period updates in ARM 4.12.608 are to align rule with statutory amendments related to HB 131 during the 2017 legislative session. The



changes related to "soil amendments for agriculture use" are to clarify current department practices.

4.12.609 SEMIANNUAL REPORTS TONNAGE STATEMENT (1) Each person who distributes commercial fertilizers and/or soil amendments (~~except specialty fertilizers and unmanipulated manures~~) to nonlicensed end users shall file semiannual statements for the periods ending June 30 and December 31, setting forth the number of net tons of each commercial fertilizer and/or soil amendment (~~except specialty fertilizers and unmanipulated manures~~), received during the six-month period ~~and the amount of the ending inventory~~. Specialty fertilizers, soil amendments not for agricultural use, and unmanipulated manures are exempt from the semiannual report and the report is not required by persons distributing only these products. The reports shall be filed with the department, on forms approved by the department, on or before the 30th calendar day of the month following the close of each six-month period. A separate semiannual statement is required for each licensed location. A semiannual statement is required even if no sales or distributions occurred within a six-month period.

(2) remains the same.

AUTH: 80-10-301, MCA

IMP: 80-10-207, 80-10-211, MCA

REASON: These changes are to clarify current department practices.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., March 2, 2018.

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

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on January 16, 2018.

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

/s/ Cort Jensen

Cort Jensen  
Rule Reviewer

/s/ Ben Thomas

Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State January 16, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 4.12.218, 4.12.219, 4.12.402, ) PROPOSED AMENDMENT  
and 4.12.406 pertaining to feed and )  
pet food regulations )

TO: All Concerned Persons

1. On February 22, 2018, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on February 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

4.12.218 INSPECTION FEE (1) ~~The manufacturer or registrant of a commercial feed, except pet foods and specialty pet foods, shall pay to the department an inspection fee of 15 cents per ton on all commercial feeds, including custom mixed feeds, except pet foods and specialty pet foods distributed in this state.~~ The supplier, manufacturer, or guarantor of a commercial feed, except pet foods and specialty pet foods, shall pay to the department an inspection fee of 18 cents per ton on all commercial feeds, including custom mixed feeds, except pet foods and specialty pet foods distributed in this state.

AUTH: 80-9-206, MCA

IMP: 80-9-206, MCA

REASON: This section in rule is simply being updated to be consistent with statute.

4.12.219 ADOPTION OF MODEL FEED AND PET FOOD REGULATIONS

(1) ~~The Montana department of agriculture hereby adopts and incorporates by reference the model feed regulations and model pet food as published in the 2000 official publication of the association of American feed control officials (AAFCO). The model feed regulations are found on pages 85 through 101 and the model pet food regulations are found on pages 113 through 122 of the official AAFCO publication. A copy of the AAFCO model rules may be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 or~~

~~the entire official publication may be obtained through AAFCO. The director of the Montana department of agriculture or designee shall be the official recognized throughout the model regulations.~~ The Montana Department of Agriculture adopts and incorporates by reference the model regulations and the model pet food and specialty pet food regulations under the model bill, as well as the feed terms and ingredient definitions as published in the 2018 official publication of the Association of American Feed Control Officials (AAFCO). A copy of the AAFCO model regulations or terms and ingredients may be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 or the entire official publication may be obtained through AAFCO. The director of the Montana Department of Agriculture or designee shall be the official recognized throughout the model regulations.

AUTH: 80-9-103, 80-9-204, MCA

IMP: 80-9-101, 80-9-202, 80-9-203, 80-9-204, MCA

REASON: The department's last reference and adoption of AAFCO regulations occurred in the year 2000 and did not include the terms and definitions. This rule amendment updates the reference and includes the terms and definitions.

4.12.402 PENALTIES (1) and (2) remain the same.

~~(a) This section will be applied effective July 1, 2002.~~

AUTH: 80-9-103, 80-9-303, MCA

IMP: 80-9-303, MCA

REASON: The effective date is in the past and is no longer necessary.

4.12.406 ANALYTICAL ACTION LEVELS (1) through (4) remain the same.

(5) Action levels are as follows:

Determination	Analytical Variances (AV%)	Deviation allowed below a minimum guaranteed claim	Deviation allowed above a maximum guaranteed claim
Moisture	12	*	1 AV's
<u>Ash</u>	<u>45/x + 3</u>	*	<u>2 AV's</u>
Crude protein	20/x + 2	2 AV's	*
<u>Lysine</u>	<u>20</u>	<u>40%</u>	*
<u>Methionine</u>		<u>40%</u>	*
NPN equiv	80/x + 3	*	2 AV's
Crude fat	10	2 AV's	*
Crude fiber	30/x + 6	2 AV's**	2 AV's
Calcium	10	2 AV's	2 AV's

Phosphorus	3/x + 8	2 AV's	*
Salt	15/x + 9	2 AV'S	2 AV's
Magnesium	20	35%	*
<u>Manganese</u>	<u>30</u>	<u>45%</u>	<u>*</u>
Potassium	15	25%	*
Sodium	20	30%	30%
Selenium	25	40%	*
Zinc	20	35%	*
Iron	25	40%	
Iodine	40	45%	*
Copper	<del>30</del> <u>25</u>	40%	*
Vitamin A	30	45%	*

x = % guarantee

\* no action level established

\*\* applies only to rabbit feeds

~~(6) This rule will be effective July 1, 2002.~~

AUTH: 80-9-103, 80-9-204, MCA

IMP: 80-9-303, MCA

REASON: The analytical variances (AV) for these analytes did not exist when AVs and Action Levels (AL) were adopted in 2002. The addition of these AVs allows the department to establish ALs for these analytes and adds more clarity for enforcement. The AV for copper is being updated to match AAFCO. The effective date is in the past and no longer necessary.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., March 2, 2018.

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

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

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on January 16, 2018.

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

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State January 16, 2018.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.1601, 6.6.1605, 6.6.1607,	)	PROPOSED AMENDMENT AND
6.6.1608, 6.6.1610, 6.6.1611, and	)	REPEAL
6.6.1613 and the repeal of 6.6.1602,	)	
6.6.1603, 6.6.1604, 6.6.1606,	)	
6.6.1609, 6.6.1612, 6.6.1614,	)	
6.6.1615, and 6.6.1616, relating to	)	
licensing of public adjusters	)	

TO: All Concerned Persons

1. On February 15, 2018, at 9:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in basement floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed 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 February 6, 2018, 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](mailto:rbidon@mt.gov).

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

6.6.1601 PURPOSE (1) remains the same.

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(1)(c), 33-17-301, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute. Subsection (1)(c) of the statute no longer exists, but 33-17-102, MCA otherwise continues to be the correct implementing statute. The proposal also inserts an additional implementing statute, which more directly governs adjuster (including public adjuster) qualifications and examination.

6.6.1605 SEPARATE LICENSES (1) Separate licenses ~~shall be~~ are required for independent adjusters and public adjusters. No person ~~shall~~ may be concurrently licensed both as an independent adjuster and a public adjuster.

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), 33-17-303, MCA

REASON: The CSI proposes to amend this rule to conform its language to accepted rule drafting formulations; these changes are non-substantive. Additionally, the proposal amends the implementation statute 33-17-102(1)(c), MCA reference for the reasons stated above under ARM 6.6.1601. Finally, the proposal also inserts an additional implementing statute, which more directly addresses the duty of loyalty prohibiting dual adjuster licensure.

6.6.1607 SCOPE OF EXAMINATION (1) remains the same.

~~(2) The commissioner shall prepare and make available to applicants a manual of instructions specifying in general terms the subjects which may be covered in any examination for such a license.~~

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), 33-17-301, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute for the reasons stated above under ARM 6.6.1601. The proposal also inserts a new implementing statute; this amendment is necessary because 33-17-301, MCA sets forth the examination requirement, and this rule addresses the scope of such examinations. Finally, the proposal strikes (2). The CSI currently provides applicants an outline of the examination, but otherwise does not offer pre-licensing education. The rule unnecessarily prescribes a single method of preparing applicants for examination, when other methods may be more efficient and advantageous to applicants.

6.6.1608 EXAMINATIONS--FORM--TIME (1) ~~The answers of the applicant to any such examination shall be written by the applicant under the supervision of the division of insurance. Any such written examination may be supplemented by oral examination at the commissioner's discretion.~~

~~(2) The examination shall be given at such times and places within this state as the commissioner deems necessary to serve the convenience of both the commissioner and applicants.~~

(3) remains the same but is renumbered (2).

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), 33-17-301, MCA

REASON: The CSI proposes to amend this rule because it no longer reflects the realities of examination of regulated individuals. Examinations are now administered electronically by a third-party testing firm at designated testing sites. The CSI also proposes to amend the implementing statutes for the reasons stated above under ARM 6.6.1607.



6.6.1610 THE COMMISSIONER SHALL COLLECT IN ADVANCE THE FEES FOR A PUBLIC ADJUSTER'S LICENSE (1) The commissioner shall collect in advance the fees as for an adjuster's license listed in 33-2-708, MCA.

AUTH: 33-1-313, 33-17-301, MCA  
IMP: 33-2-708, MCA

REASON: The CSI proposes to amend this rule to strike superfluous language inadvertently included in the previous iteration of the rule. This change does not affect the meaning of the rule.

6.6.1611 PUBLIC ADJUSTER'S BOND (1) Prior to the issuance of a license as a public adjuster, the applicant ~~therefor~~ shall file with the commissioner a surety bond in favor of the people of Montana in the amount of \$5,000, executed by a surety company authorized to do business in the state ~~in the amount of \$5,000~~. ~~The total aggregate liability on the bond may be limited to the payment of \$5,000.~~ The bond shall be conditioned on the accounting of the adjuster to any insured whose claim ~~he~~ the adjuster is handling for moneys or any other settlement in connection with the claim.

(2) remains the same.

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(4)(c), 33-17-302, MCA

REASON: The CSI proposes to amend this rule to correct the citation to the implementing statute 33-17-102, MCA for the reasons stated above under ARM 6.6.1601. The proposal also inserts an additional implementing statute, which more directly governs adjuster (including public adjuster) qualifications and examination. Also, the proposal adds a second implementing statute addressing public adjuster bonding. Finally, the proposal amends the text to make it more readable, strike redundant language and render the rule gender neutral.

6.6.1613 POWERS CONFERRED BY THE PUBLIC ADJUSTER'S LICENSE  
(1) ~~A public adjuster has authority under his license only to investigate and report to his principal.~~ Public adjusters shall adjust first party physical damage claims only.

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(4)(c), MCA

REASON: The CSI proposes to amend this rule because it conflicts with the powers conferred upon a public adjuster by statute. Specifically, 33-17-102(1)(a), MCA states that an adjuster (including a public adjuster) "investigates and negotiates the settlement of claims." As a result, the language of the rule unnecessarily restricts the abilities of public adjusters. Additionally, the CSI proposes to correct the citation to the implementing statute for the reasons stated above under ARM 6.6.1601.

4. The CSI proposes to repeal the following rules:

6.6.1602 DEFINITIONS

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it is superfluous. Specifically, the rule provides a definition of "public adjuster," when one is already codified in 33-17-102, MCA. Additionally, the restriction of public adjuster activity to first-party physical damage claims is also stated in ARM 6.6.1613.

6.6.1603 LICENSE REQUIRED -- PENALTY

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because the rule substantively restates 33-17-1004, MCA, regarding the prohibition on unlicensed activity.

6.6.1604 QUALIFICATIONS FOR A PUBLIC ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it essentially restates 33-17-301, MCA, and ARM 6.6.1611. Additionally, the rule refers to an examination requirement in ARM 6.6.1609; the applicable examination requirement is actually found in 33-17-301(2), MCA.

6.6.1606 EXAMINATION FOR PUBLIC ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the examination requirement of 33-17-301, MCA. Additionally, the rule cites ARM 6.6.1616, which this proposal would repeal if adopted.

6.6.1609 THE COMMISSIONER SHALL PRESCRIBE THE FORM OF THE ADJUSTER'S LICENSE

AUTH: 33-1-313, 33-17-102, MCA

IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it is unnecessary to the regulation of public adjusters. The first sentence references information that must

be included in a license document, but that information is no longer contained in 33-17-301, MCA. Additionally, as issuer of the public adjuster license pursuant to 33-17-301(1), MCA, the CSI already has the ability to ensure the licensing document makes clear the person is licensed as a public adjuster.

6.6.1612 PLACE OF BUSINESS

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the requirements of 33-1-301, MCA.

6.6.1614 DENIAL, SUSPENSION OR REVOCATION OF LICENSE

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the CSI's authority under 33-17-1001, MCA.

6.6.1615 PROCEDURE FOR REFUSAL, SUSPENSION OR REVOCATION

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it restates the procedural requirements of statutes applicable to licensure actions.

6.6.1616 NONRESIDENT PUBLIC ADJUSTERS

AUTH: 33-1-313, 33-17-102, MCA  
IMP: 33-17-102(1)(c), MCA

REASON: The CSI proposes to repeal this rule because it no longer reflects the licensing requirements applicable to nonresident public adjusters. For example, 33-1-301, MCA, provides for licensure even if the applicant's resident state does not license public adjusters. The statute already provides an adequate framework for licensure of nonresident public adjusters.

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: Michael A. Kakuk, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail MKakuk@mt.gov, and must be received no later than 5:00 p.m., February 23, 2018.

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

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/> 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.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal 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 on January 16, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I and amendment of ARM	)	ADOPTION AND AMENDMENT
18.15.101 and 18.15.603, pertaining	)	
to Motor Fuels Tax Collection and	)	NO PUBLIC HEARING
IFTA	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 25, 2018, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on February 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Marie Stark, Department of Transportation, Collections Section, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7274; fax (406) 444-5411; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail mestark@mt.gov.

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

NEW RULE I NOTICES - REVIEW - HEARING (1) The department shall issue a notice to a taxpayer as follows:

- (a) an assessment notice, stating an amount owed to the department;
- (b) notice of intent to revoke or suspend, stating any violation of fuel tax or International Registration Plan statutes or rules;
- (c) notice of license cancellation; or
- (d) notice of refund reduction.

(2) The notice shall advise the taxpayer of the right to request review of or hearing on any notice.

(3) Notices are sent via U.S. mail or email to the taxpayer address on file with the department.

(4) An assessment notice in an amount exceeding \$500, is sent via certified mail to the taxpayer's address on file with the department.

(5) If the taxpayer agrees with the notice, the matter is resolved upon compliance with, or acceptance of, the terms set forth in the notice.

(6) If the taxpayer disagrees with the notice, the taxpayer must submit a written request to the department for informal review or formal hearing within 30 days of receipt of the notice, as follows:

(a) A taxpayer may request an informal review by completing the informal review request form on the department's website.

(b) A taxpayer may request a formal hearing by written request.

(c) The request for review or hearing must be postmarked or received electronically within 30 days of the date of receipt of the notice. An extension to the deadline may be granted if both parties agree.

(d) Failure to respond within 30 days is an admission the debt in the assessment notice is due and owing, or the department determination in the notice is accepted.

(7) Informal review consists of pertinent department staff reviewing the taxpayer's request, information provided, and applicable laws and rules and making a recommendation to the appropriate department administrator. The administrator shall issue a written agency decision, which shall be mailed to the taxpayer, as follows:

(a) If the department concurs with the taxpayer, the matter is resolved by withdrawing or revising the notice.

(b) If the department disagrees with the taxpayer, the agency decision shall explain the reasons for the agency decision, in writing, and notify the taxpayer of the right to request a formal hearing. The agency decision may include an assessment for any balance owing. All agency decisions will be sent to the taxpayer through certified mail.

(c) A written request for formal hearing after informal review must be submitted to the department within 30 days of receipt of the agency decision. The taxpayer forfeits the right to a formal hearing if the taxpayer fails to submit a written request for formal hearing within the 30-day period.

(8) A formal hearing consists of a contested case proceeding under the Montana Administrative Procedure Act. After hearing or settlement, a final agency decision is issued, which may include an assessment if a balance is owing. All final agency decisions will be sent to the taxpayer through certified mail.

AUTH: 15-70-104, MCA

IMP: 15-70-417, MCA

REASON: New Rule I is necessary to establish a notice and hearing procedure for assessments actions and other license and permit enforcement actions. The proposed new rule will advise taxpayers of the available due process to contest or settle any notice issued by the department, including informal reviews and contested case rights under the Montana Administrative Procedure Act.

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

18.15.101 DEFINITIONS The following definitions apply in this chapter:

(1) through (12) remain the same.

(13) "Informal review" means a review by department staff to consider information and make a recommendation for disposition of an assessment or other notice to the appropriate agency administrator.

(14) "Notice" means a notice provided to the taxpayer as follows:

(a) "assessment notice" means a notice of an amount owed to the department, which may include, but is not limited to, a notice of refund reduction,

notice of audit findings, tax debt, fine, penalty or interest assessment, or similar action;

(b) "notice of intent to revoke a license" means a violation of motor fuel tax or International Registration Plan statutes or rules administered by the department;

(c) "notice of cancellation" means a notice provided to a distributor, IRP, IFTA, or other department fuel tax licensee of the department's intent to cancel the license;

(d) "notice of refund reduction" means a notice stating a taxpayer's refund will be reduced from the claimed amount.

(13) through (20) remain the same but are renumbered (15) through (22).

AUTH: 15-70-104, 15-70-115, 15-70-522, MCA

IMP: 15-70-403, 15-70-419, 15-70-426, 15-70-430, 15-70-455, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, MCA

REASON: The proposed amendments to the definitions are necessary to define terms used in New Rule I which were not previously defined.

18.15.603 IFTA LICENSE BOND REQUIREMENT (1) International Fuel Tax Agreement (IFTA) licensees, or others as determined by the department, will be required to post a bond equivalent to twice the licensees' estimated quarterly tax liability but not less than \$500, in the event of non-compliance with the filing of a fuel tax return(s) and payment of fuel tax liability. IFTA licensees, or others as determined by the department, who fail to file a fuel tax return(s) and pay fuel tax liability must post a bond equivalent to twice the licensee's estimated quarterly tax liability, but not less than \$500. The bond can may be a surety, a certificate of deposit, or cash.

(2) Non-compliance that triggers the requirement for a A licensee to must post a bond is as follows for non-compliance events including:

(a) remains the same.

(b) non-payment or late payment of the tax liability of an IFTA quarterly tax return two or more times in a four-quarter period; or

(c) remains the same.

(3) The bond dollar amount of the bond will be is increased by \$500 for each additional non-compliance infraction.

(4) The requirement for a bond will be removed and the bond released after three years if there has been timely compliance for those three years. The bond requirement is removed and the bond released after three years if the licensee has timely complied with all applicable statutes and rules for those three years.

(5) The department, in its sole discretion, may waive the bond requirement if it is determined that the late filing or the nonpayment was not in the control of the licensee.

(6) Failure to post a required bond within 14 days of issuance of an IFTA bond requirement notice may result in revocation of the IFTA license.

AUTH: 15-70-104, MCA

IMP: 15-70-121, MCA

REASON: The proposed amendments are necessary to state the bond requirements for IFTA licensees, as well as the penalties which will be levied by the department for failure to follow the bond requirements. The bond requirements are allowed under the IFTA licensing agreement.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Marie Stark, Department of Transportation, Collections Section, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7274; fax (406) 444-5411; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail [mestark@mt.gov](mailto:mestark@mt.gov), and must be received no later than 5:00 p.m., February 23, 2018.

6. If persons who are directly affected by the proposed action[s] 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 Marie Stark at the above address no later than 5:00 p.m., February 23, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 148 persons based on 1450 IFTA licensees and the 36 dyed fuel citation recipients for 2017.

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

9. An electronic copy of this proposal notice is available through the Department of Transportation's web site at [www.mdt.mt.gov](http://www.mdt.mt.gov).

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



12. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Pat Wise  
Pat Wise  
Deputy Director  
Department of Transportation

Certified to the Secretary of State January 16, 2018.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.11.204, 24.11.445,	)	PROPOSED AMENDMENT
24.11.451, 24.11.452A, 24.11.454A,	)	
24.11.457, 24.11.459, 24.11.485,	)	
24.11.487, 24.11.490, 24.11.2205,	)	
24.11.2501, and 24.11.2715	)	
pertaining to unemployment	)	
insurance	)	

TO: All Concerned Persons

1. On February 15, 2018, at 9:00 a.m., a public hearing will be held in the Lewis Room, basement of the Walt Sullivan Building, 1315 Lockey Ave, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 12, 2018, to advise us of the nature of the accommodation that you need. Please contact Boris Karasch, Unemployment Insurance, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624; telephone (406) 444-2646; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 444-2993; or BKarasch2@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As required by 2-4-314, MCA, the Unemployment Insurance Division (division) of the department periodically reviews its administrative rules. The following rules are proposed for amendment to update and clarify various terms and procedures related to unemployment insurance benefit claims. The division handles approximately 130,000 unemployment insurance claims a year. The division monitors how the rules are applied and interpreted by agency staff, claimants, employers, and the various adjudicatory bodies that rule on disputed claims. The division concludes that the proposed amendments are reasonably necessary to improve the efficient and timely processing of claims, and to improve the understanding of employers, workers, and adjudicators, regarding the provisions of the rules. The division further concludes that enough rules needing amendment have accumulated to justify rulemaking at this time. This general statement of reasonable necessity applies to all of the following rules. Additional statements of reasonable necessity are provided following specific rules where appropriate.

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

24.11.204 DEFINITIONS In addition to the terms defined in 39-51-201 through 39-51-205, and 39-51-1121, MCA, the following definitions apply to this chapter, unless context or a particular rule provides otherwise:

(1) through (24) remain the same.

(25) "Job attached" means a claimant is able and available ~~for full-time work~~ and has a definite or approximate date of hire or recall to insured work at 30 or more hours per week, ~~and is either:~~

~~(a) not employed but has a definite or approximate date of hire or recall to insured work at 30 or more hours per week; or~~

~~(b) employed in insured work on a part-time basis, but has a reasonable expectation that the work will become full-time.~~

(26) remains the same.

(27) "Leave of absence" means a cessation of work due to reasons other than an on-the-job injury, requested by the worker and approved by the employer, with an understanding the worker will be returning to work for the employer.

~~(27)~~ (28) "Leaving work," as used in 39-51-2302, MCA, means:

(a) remains the same.

(b) a cessation of employment initiated by the worker, which resulted from the worker's absence from work without an employer-approved leave of absence for:

(i) ~~seven~~ five or more consecutive work days due to a physical or mental condition, which prevented the worker from performing the essential functions of the job ~~with or without a reasonable accommodation;~~ or

(ii) remains the same.

(28) through (46) remain the same but are renumbered (29) through (47).

~~(47)~~ (48) "Temporary layoff" means a suspension of the work relationship between an employer and a worker initiated by the employer due only to a lack of work for the worker to perform and where the employer intends to recall the worker at such time as work becomes available, except for separations from temporary work as defined in ARM 24.11.454A.

(48) through (53) remain the same but are renumbered (49) through (54).

(55) "Valid notice" means a formal, unconditional, specific communication between an individual worker and an employer or authorized agent of an employer that provides notice of the date a worker intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate a worker from employment.

(54) through (63) remain the same but are renumbered (56) through (65).

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

IMP: 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, Ch. 51, parts 21 through 25, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: There is reasonable necessity to amend the definitions to update and clarify the definitions for the unemployment insurance administrative rules. There is reasonable necessity to define two new terms that are being added to other rules that are being amended. Further, there is reasonable necessity to update the definition section to clarify language and use consistent terminology throughout the unemployment insurance administrative rules.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM (1) through (1)(b)(ii) remain the same.

(iii) reports hours of work equal to or greater than the claimant's established customary hours hours typically worked; or

(iv) through (4) remain the same.

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

IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: There is reasonable necessity to amend ARM 24.11.445 to clarify and update the rule to match the department's new payment application system.

24.11.451 SIX-WEEK RULE (1) remains the same.

~~(a) when the claimant separates from both full-time and part-time employment in insured work, the department shall adjudicate only the separation from full-time employment; and~~

~~(b) when the claimant separates from insured work with the same employer more than once, the department shall adjudicate only the last separation involving that employer.~~

(a) when the claimant separated from insured work with the same employer more than once, the department shall adjudicate only the last separation involving that employer;

(b) when the claimant is being paid their regular wages during an administrative leave; or

(c) where ARM 24.11.454A applies due to a valid notice.

(2) remains the same.

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

IMP: 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASON: There is reasonable necessity to amend ARM 24.11.451 to clarify claimants are not penalized when they were forced to resign from a part-time job due to a lay-off from a full-time job. The proposed changes seek to clarify the rule. The existing version of the rule could lead to problems at the department's office of administrative hearings regarding identification of the separation that is at issue.

24.11.452A ELIGIBILITY FOR BENEFITS (1) through (7) remain the same.

(8) Except as provided in (a), an eligibility decision for a discharge or a claimant leaving work is effective the week of the last date of work.

(a) If the separating action occurs after the last date of work but prior to the next regularly scheduled shift, the separation is effective the latter of:

(i) the week of the separating act;

(ii) the week the claim was filed or reactivated; or

(iii) the week payment request is filed.

(b) Effective dates of separation decisions concerning valid notice are determined under ARM 24.11.454A.

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

IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: There is reasonable necessity to amend ARM 24.11.452A to add (8) which clarifies when an eligibility decision takes effect. Employers and claimants have apparently been confused with the current rule, which has led to confusion about what issues are to be resolved.

24.11.454A LEAVING OR DISCHARGE FROM WORK ~~(1) "Valid notice" means a formal, unconditional, specific communication between an individual worker and an employer or authorized agent of an employer that provides notice of the date a worker intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate a worker from employment.~~

~~(2) Separation from employment occurs on the last day worked by an employee.~~

~~(3) through (5) remain the same but are renumbered (1) through (3).~~

(4) When a worker and an employer agree to temporary employment, the department shall consider the worker to have been laid off due to lack of work when:

(a) the worker completes the assigned work;

(b) a previously agreed upon verbal or written contract ends;

(c) the employer no longer has the same work available to the worker; or

(d) the worker has been hired by a client company of the employer as a result of a verbal or written employment agreement.

~~(6) When a worker agrees to accept employment of limited duration as specified by the employer or by a written employment contract, the department shall consider the worker to have been laid off due to a lack of work at the end of the duration agreed upon and the last day worked.~~

~~(7) When an employer agrees to employ a worker for a limited duration as specified by the worker or by a written employment contract, the department shall consider the worker to have voluntarily left work only when the worker has refused an offer by the employer to continue the same work beyond the limited duration. In the absence of a valid offer by the employer to continue the same work, the department shall consider the worker to have been laid off due to a lack of work on the last day worked.~~

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

IMP: 39-51-2302, 39-51-2303, MCA

REASON: There is reasonable necessity to amend ARM 24.11.454A to move (1), "valid notice," to the definitions rule for clarity. The proposed amendments seek to clarify when a worker is considered to be laid off. These clarifications are necessary because employers have been confused about when a temporary employee was laid off, and the department's treatment of the separation.

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) and (1)(a) remain the same.

- (b) the claimant left work that the department determines to ~~be~~ have become unsuitable pursuant to ARM 24.11.485; or
- (c) and (2) remain the same.

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

IMP: 39-51-2302, 39-51-2304, 39-51-2307, MCA

REASON: There is reasonable necessity to amend ARM 24.11.457 in light of the provisions of ARM 24.11.485(3). The department has recently noticed that on occasion, a worker accepts a new, more demanding job which turns out to be beyond the worker's ability to perform. Such a job is not "suitable work," and the department concludes that a worker should not lose benefits because of having accepted an unsuitable job. The rule clarifies that the department may make an after-the-fact determination of the unsuitability of that new job.

24.11.459 ADMINISTRATIVE PENALTY (1) through (2)(a)(i) remain the same.

(ii) the claimant, or the claimant's agent, knew ~~or should have known~~ that the statement or representation was false; and

(iii) through (3)(a) remain the same.

(i) the claimant, or the claimant's agent, had knowledge of ~~or should have had knowledge of~~ the fact in question;

(ii) and (iii) remain the same.

(iv) the claimant, or the claimant's agent, knew ~~or should have known~~ that the fact in question was required to be disclosed to the department for the proper administration of the claim.

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

(b) for each week relative to which a claimant has been determined to have made a false statement or representation, as provided in (2), or failed to disclose a material fact, as provided in (3), involving a separation from work, ~~43~~ six weeks of disqualification are imposed; ~~and~~

(c) an additional ~~four~~ eight weeks of disqualification are imposed for each determination, redetermination, or decision, dated within three years of the date of the department's determination under ~~(4)~~(a) or (b), that imposed a disqualification for any number of weeks pursuant to 39-51-3201(1)(a), MCA; ~~and~~

(d) any weeks of disqualification imposed as provided in (a) and/or (b) must be imposed for each determination and served consecutively, not concurrently.

(5) remains the same.

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

IMP: 39-51-3201, MCA

REASON: There is reasonable necessity to amend ARM 24.11.459 to create more uniform administrative penalties and uniform application of justice between pay card fraud cases and separation fraud cases. The Unemployment Insurance Appeals Board has recently reversed several cases, finding the administrative penalty for separation fraud cases was disproportionately high compared to pay card fraud

cases. The proposed changes are further necessary to bring the knowing requirement of pay card and separation fraud into line with 39-51-3201, MCA.

24.11.485 SUITABLE WORK (1) and (2) remain the same.

(3) To determine whether ~~employment constitutes suitable work~~ a claimant is seeking, or has been offered, suitable work, the department shall consider factors including, but not limited to:

(a) through (f)(ii) remain the same.

(iii) suitable work corresponds with the ~~customary hours of work~~ hours typically worked for similar work in the locality or the hours worked by claimant worked during the base period;

(iv) through (4) remain the same.

(a) claimant has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam; or

(b) claimant has submitted to the department an individualized determination of work unsuitability due to claimant's physical or mental disability, certified and signed by a health care provider; ~~or,~~

~~(c) employer has unreasonably altered hours, terms of employment, working conditions, or claimant's wage by reducing the wage by 20 percent or more, as described by ARM 24.11.457.~~

(5) remains the same.

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

IMP: 39-51-2101, 39-51-2112, 39-51-2115, 39-51-2304, MCA

REASON: There is reasonable necessity to amend ARM 24.11.485 to clarify when a claimant can leave work with good cause because of changed circumstances. The proposed changes are necessary because hearing officers, unemployment insurance staff, and claimants appear to be confused or otherwise misunderstand what constitutes "good cause attributable to employment." There is reasonable necessity to remove (4)(c) from the rule because the subject is already addressed by ARM 24.11.457.

24.11.487 CUSTOMARY HOURS TYPICALLY WORKED (1) ~~The department shall determine the customary hours of work per week for each claimant during the base period of the claim. Customary hours may be established by:~~

~~(a) contractual agreement between the employer and the claimant;~~

~~(b) verbal or written statement by the employer to the claimant at the time of hire or as modified by the employer during the period of employment; or~~

~~(c) a department determination according to the following calculations:~~

~~(i) for claimants willing or required to seek and accept full-time work, the department shall add the hours worked during each week of work in the base period for all employers and divide by the number of weeks of work in the base period;~~

~~(ii) for claimants authorized to seek part-time work, the department shall add the hours worked during each week of part-time work in the base period for all~~

~~employers and divide by the number of weeks of part-time work in the base period; and~~

~~(iii) when the computation results in a fraction or portion of a whole number, the department shall round down the result to the lower whole number to determine claimant's customary hours of work.~~

~~(2) (1)~~ When a claimant files for a week of benefits and reports hours of work equal to or greater than claimant's ~~customary hours~~ hours typically worked, the department shall determine that no unemployment exists and pay no benefits for the week.

(3) remains the same but is renumbered (2).

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

IMP: 39-51-2101, 39-51-2115, MCA

REASON: There is reasonable necessity to amend ARM 24.11.487 to clarify the rule. The department has concluded that the proposed changes more accurately reflect the statute. Furthermore, the proposed changes simplify the way in which hours typically worked are determined.

24.11.490 LEAVE OF ABSENCE (1) remains the same.

~~(2) When a A separation from employment as defined in ARM 24.11.204 occurs during an employer-approved leave of absence or after the agreed return date, the department shall determine the reasons for the separation based on evidence provided by the claimant, the employer, and other sources when either the claimant or the employer determines the claimant is not returning to work for the employer. The separation may be a lay-off if the claimant offers to return to work and no suitable work is available. The department's determination dictates whether an otherwise qualified claimant is eligible for benefits.~~

~~(3) When a worker does not return to work upon the agreed return date, the department shall determine whether the claimant voluntarily left work or was discharged from employment. If discharged from employment, the department shall determine whether the discharge occurred for misconduct.~~

~~(4) When a worker returns to work upon the agreed return date or offers to return to work during an employer-approved leave of absence, whichever occurs first, and finds suitable work is not available, the department shall determine whether the claimant is eligible for benefits due to a temporary or permanent lay-off.~~

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

IMP: 39-51-2112, MCA

REASON: There is reasonable necessity to amend ARM 24.11.490 in order to coordinate with the proposed amendments to ARM 24.11.204 and ARM 24.11.454A. The definition of the term "leave of absence" is being removed from ARM 24.11.490 and added to the definitions rule, ARM 24.11.204, and the rule is being re-phrased to better explain how circumstances related to leaving work may affect benefit entitlement.



24.11.2205 EXPERIENCE-RATING RECORD TRANSFER (1) When a new business entity is formed and it acquires assets, employees, business, organization, or trade from another employer, the new business entity is classified as a successor employer. The procedures for transferring an employer's experience-rating record are described in 39-51-1219, MCA. For purposes of this rule, predecessor employer and successor employer are used in the same manner and have the same meaning as those terms have in 39-51-1219, MCA.

(2) remains the same.

(3) An experience-rating record is automatically transferred from the predecessor employer to the successor employer if ~~the ownership, management, or control of the successor entity is substantially the same as the predecessor entity~~ both employers are under substantially common ownership, management, or control. ~~Such a~~ An experience-rating record includes the amount of contributions paid, benefits charged, and taxable wages reported. ~~For purposes of transferring the experience-rating, "substantially the same" means at least 50 percent of the successor entity is owned, managed, or controlled by the same persons or entities who owned, managed, or controlled the predecessor entity.~~

(a) Substantially common ownership, management, or control is present when a person serves in any of the following positions for both the predecessor and successor:

(i) sole proprietor (includes spouse, children, and parents of sole proprietor);

(ii) partner of a partnership;

(iii) member of a limited liability company;

(iv) chief executive officer;

(v) chief financial officer;

(vi) any corporate officer;

(vii) any shareholder owning, directly or indirectly, more than 50 percent of a corporation's stock; or

(viii) board members.

(4) remains the same.

(5) A transfer of the experience-rating record between a professional employer organization and its client is not allowed unless the client and the professional employer organization have common ownership, management, or control.

AUTH: 39-8-201, 39-51-301, 39-51-302, MCA

IMP: 39-8-201, 39-51-1219, MCA

REASON: There is reasonable necessity to amend ARM 24.11.2205 to clarify the concept of "substantial common ownership" because the previous definition was too broad, and led to confusion and misinterpretations of the rule by employers and department staff.

24.11.2501 WAGES (1) through (1)(d) remain the same.

(e) the cash value of all other types of non-cash payments is the market value of the item or service received;

(e) through (h) remain the same but are renumbered (f) through (i).

(2) and (3) remain the same.

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

IMP: 39-51-201, 39-51-1103, MCA

REASON: There is reasonable necessity to amend ARM 24.11.2501 because the previous version of the rule leaves out non-cash payments. The proposed changes clarify what may constitute wages and include market value of the item or service. In addition, there is reasonable necessity to update the implementation citation to better reflect the statutes being implemented by the rule.

24.11.2715 DUE DATE AND APPLICATION OF TAXES (1) and (1)(a) remain the same.

~~(b) administrative fund tax;~~

~~(c) interest; then~~

~~(d) penalty.~~

(b) special administrative assessment under 39-51-404(3), MCA;

(c) special administrative assessment under 39-51-404(5), MCA;

(d) penalties assessed under 39-51-1301, MCA, for failure to file reports or make payments in a timely manner;

(e) interest; and then

(f) miscellaneous penalties.

(2) remains the same.

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

IMP: 39-51-1103, 39-51-1110, MCA

REASON: There is reasonable necessity to amend ARM 24.11.2715 to clarify and update the rule to match the department's new payment application system programing.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Boris Karasch, Unemployment Insurance, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624; telephone (406) 444-2646; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 444-2993; or BKarasch2@mt.gov., and must be received no later than 5:00 p.m., February 23, 2018.

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

mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State January 16, 2018.

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

In the matter of the adoption of New     ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to employer         ) PROPOSED ADOPTION  
apprenticeship tax credit             )

TO: All Concerned Persons

1. On February 16, 2018, at 1:30 p.m., the Department of Labor and Industry will hold a public hearing in the Lewis Room, basement of the Walt Sullivan Building, 1315 Lockey Avenue in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Labor and Industry no later than 5:00 p.m. on February 12, 2018, to advise us of the nature of the accommodation that you need. Please contact Jenny Harris, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-7895; fax (406) 444-3037; Montana Relay Service \*711; or e-mail JHarris@mt.gov.

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

NEW RULE I EMPLOYER APPRENTICESHIP TAX CREDIT (1) An employer may submit an application to the department to claim the apprenticeship tax credit after an apprentice has completed the state apprenticeship and training program's probationary period or after the apprentice has worked for six months, whichever is earlier. An application must be for an active apprentice registered with the state apprenticeship and training program.

(2) The department may approve the credit for an apprentice for a total of up to 5 years, upon verification by the the state apprenticeship and training program that the apprentice has timely progressed towards completion of the requirements called for in the apprenticeship agreement.

(3) If an apprentice works for more than one employer in a calendar year, the primary employer will be approved for the credit. A primary employer is the employer who has provided at least 51% of the registered program's training hours for that apprentice or has paid the majority of wages to the apprentice during their apprenticeship period.

(4) Any employer claiming the tax credit for a veteran apprentice shall obtain and keep a record of documentary proof that the apprentice is a veteran. The employer is responsible for obtaining that proof. The employer shall represent to the department whether an apprentice is a veteran for purposes of applying for the credit.

(5) The department will issue letters of approval or denial of the tax credit to the employer in the month of December. The department will forward a list of all approved credits to the Department of Revenue, including information on which employers are entitled to a credit for employment of a veteran.

AUTH: 39-6-101, 39-6-109, MCA

IMP: 39-6-109, MCA

REASON: There is reasonable necessity for the department to adopt New Rule I to implement House Bill 308, Chapter 380, Laws of 2017. The department will review applications to claim the credit from employers. The rule proposes to clarify which employer will be entitled to the credit if an apprentice works for more than one employer. The department will also require the employer to verify whether a particular apprentice qualifies as a veteran or not.

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: Jenny Harris, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; fax (406) 444-3037; or e-mail JHarris@mt.gov, and must be received no later than 5:00 p.m., February 23, 2018.

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

6. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on December 21, 2017.

7. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will significantly and directly impact small businesses. Information regarding the small business impact is on file with the department.

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

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ GALEN HOLLENBAUGH

Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 16, 2018.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 38.5.2501, 38.5.2527, and ) PROPOSED AMENDMENT  
38.5.2528, pertaining to small water )  
utility rules )

TO: All Concerned Persons

1. On March 13, 2018, at 1:30 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 5:00 p.m. on March 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail rhonda.simmons@mt.gov.

3. The rules as proposed to be amended by one of the two proposed alternatives provide as follows, new matter underlined, deleted matter interlined:

Rule Amendment Option 1:

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to ~~establish or propose~~ changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) ~~adoption of the commission-approved standard rate tariff to establish rates as~~ filing a rate application in accordance with the minimum filing requirements described in ARM 38.5.2528; or

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529.

(2) A small water or sewer utility is not required to ~~establish or change its rates using~~ elect either of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the two simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2527, as proposed in option one, will allow the commission to consider minimum filing requirements for a rate application which is described in ARM 38.5.2528. In the current rule, minimum filing requirements are very limited and not spelled out in detail.

38.5.2528 STANDARD RATE TARIFF OPTIONAL MINIMUM FILING REQUIREMENTS FOR SMALL WATER AND SEWER UTILITIES (1) A small water or sewer utility may ~~establish its rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. The standard rate tariff forms to be submitted for commission approval by the utility are available from the commission upon request or by obtaining them from the commission's web site at [www.psc.mt.gov](http://www.psc.mt.gov).~~ (2) The standard rates for small water and sewer utilities that choose to establish rates using this simplified regulatory option are:

- (a) ~~a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~
- (b) ~~a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~
- (c) ~~a flat charge of \$30 per connection per month for a small sewer utility.~~

(3) ~~Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.~~ (4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq. request simplified regulatory treatment by filing a rate application that contains, at a minimum, the following information:

- (a) the full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number, and email) of the individuals representing the utility before the commission;
- (b) a detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;
- (c) the total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;
- (d) the total number of potential water service connections and meters and potential sewer service connections and meters;



(e) the number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) the current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) the rate proposed for each type of service;

(h) the date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) the original cost of utility plant in service, an accounting of any capital improvements made, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts;

(j) two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

(k) a list of any revenue generated during the two years referenced in (j) from sources other than the rates charged to customers, including the source and amount of revenues;

(l) a list of each transaction that occurred with an affiliate or related party during the two years referenced in (j) involving more than \$750, the amount paid, the service(s) provided, and counterparty;

(m) the job title, job description, average hours worked per week, and average compensation of each utility employee;

(n) a copy of the most recent annual report filed with the commission; and

(o) an affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

(52) A small water or sewer utility that intends to ~~adopt the standard rates~~ file a rate application that meets these minimum filing requirements must notify the ~~commission and every customer in writing of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption~~ upon filing its rate application.

(63) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the ~~standard~~ proposed rates, provide information that shows the typical bill impact of the ~~application of the standard proposed~~ rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.

(74) The ~~commission notification~~ rate application must include the ~~standard proposed rates in tariff form~~, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its ~~commission notification rate application~~ a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(85) The commission will ~~act on the request to adopt the standard rate tariff~~ determine whether a rate application requesting simplified regulatory treatment

satisfies the minimum filing requirements in (1)(a) through (o) no later than 45 days after it is received by the commission. If the commission determines, following an opportunity for interested persons to submit comments, that the rate application satisfies the minimum filing requirements in (1)(a) through (o), then it will allow discovery pursuant to ARM 38.2.3301 and set a deadline for additional comments and requests for further process. If no party files comments or requests further process, then the proposed rates may be implemented following approval by the commission. If the commission determines that a rate application fails to satisfy the minimum filing requirements in (1)(a) through (o), then it will identify the specific minimum filing requirements that the utility failed to satisfy, and dismiss the rate application without prejudice.

~~(9) The standard rate tariff adopted by a small water or sewer utility expires three years after its effective date, unless the commission approves an extension. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.~~

~~(406) The commission may deny the adoption of the standard rate tariff by a small water or sewer utility a rate application requesting simplified regulatory treatment if the utility has been operating pursuant to commission-approved rates and the commission determines, based on comments or requests for further process, that it would be unjust and unreasonable to approve adoption of the standard rate tariff for allow simplified regulatory treatment or approve the rates proposed by the utility. If the commission denies a rate application requesting simplified rate treatment, then it may request that parties attend a prehearing conference pursuant to ARM 38.2.2701 and confer regarding voluntary settlement pursuant to ARM 38.2.3001.~~

~~(447) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.~~

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2528, as proposed in option one, will remove the standard rate process and replace it with a utility rate application. The rule sets out the minimum filing requirements for that rate application. The minimum filing requirements will help ensure that the commission and interested persons have sufficient information to review during the rate application process. The rule also sets out the process followed to review that filing for completeness and how it will be processed following a complete application being received by the commission.

Rule Amendment Option 2:

38.5.2501 GENERAL RULES FOR PRIVATELY OWNED WATER UTILITIES (1) and (2) remain the same

(3) All privately owned water utilities must have commission-approved tariffs filed with the commission, pursuant to Title 69, MCA, and its corresponding administrative rules, including penalties as provided by statute. The commission will prioritize supervision of management and rate regulation of privately owned water utilities based upon complaints received from consumers.

AUTH: 69-3-102, MCA  
IMP: 69-3-102, MCA

REASON: Amendment of ARM 38.5.2501 is proposed as part of option two to allow the commission to consider including in the rule a prioritization of rate regulation and supervision based on consumer complaints. The commission has limited resources and is considering whether the rule should clarify that the commission may prioritize regulatory oversight based on consumer complaints.

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) ~~Two~~ Three simplified regulatory treatment options are available to a small water or sewer utility that allow it to ~~establish or~~ propose changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) filing a rate application for the adoption of the commission-approved standard rate tariff to establish rates as in accordance with the minimum filing requirements described in ARM 38.5.2528; or

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529; or;

(c) filing a rate application requesting adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average and/or monthly wastewater average for populations less than 500.

(2) A small water or sewer utility is not required to ~~establish or change its rates using~~ elect any of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the ~~two~~ three simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

(5) The commission may find good cause to waive any privately owned water utility rules, if the utility successfully petitions the commission for a waiver of rules pursuant to ARM 38.2.305.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA  
IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2527, as proposed in option two, will allow the commission to consider minimum filing requirements for a standard rate application which is described in ARM 38.5.2528. In the current rule, minimum filing requirements are very limited and not spelled out in detail. The commission has learned through the implementation of the current rules that additional utility information should be submitted with a rate application. Amendment of this rule will establish minimum filing requirements for a standard rate application which will be beneficial to both the commission and any interested persons who review the information. Amendment of the rule also adds one additional option for the simplified regulatory process. A utility can also request approval to charge rates consistent with the Department of Natural Resources and Conservation's most recent water and sewer rate study. The rule also indicates that a utility can request waiver of these rules with good cause shown.

38.5.2528 STANDARD RATE TARIFF (1) A small water or sewer utility may file an application to establish its initial commission-approved standard rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. If the utility has previously had rates on file with the commission it is not eligible for initial standard rates. The standard rate application and tariff forms to be submitted for commission approval by the utility review are available from the commission upon request or by obtaining them from the commission's web site at [www.psc.mt.gov](http://www.psc.mt.gov). The rate application shall contain, at a minimum, the following information:

(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;

(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;

(d) The total number of potential water service connections and meters and potential sewer service connections and meters;

(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) The rates proposed for each type of service;

(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

(j) A list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;

(k) A list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;

(l) A copy of the most recent annual report filed with the commission;

(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations; and

(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

(2) The standard rates for small water and sewer utilities that ~~choose~~ apply to establish rates using this simplified regulatory option are:

(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;

(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;

(c) a flat charge of \$30 per connection per month for a small sewer utility.

(3) Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.

~~(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq.~~

~~(5) (4) A small water or sewer utility that intends files an application to adopt the standard rates must notify the commission and every customer in writing of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption within ten days of filing its application with the commission.~~

~~(6) (5) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the standard proposed rates, provide information that shows the typical bill impact of the application of the standard proposed rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.~~

~~(7) (6) The commission notification rate application must include the proposed standard rates in tariff form, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its commission notification rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.~~

~~(8) (7) The commission will act on the request to adopt the standard rate tariff no later than 45 days after it is received by the commission determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (n) no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements it will notice it to the public for comment or protest. If~~

either the Montana Consumer Counsel or 20 percent of the utility's customers protest the application, the commission will make a decision on the application following any additional process established by the commission.

(98) The A standard rate tariff adopted by a small water or sewer utility application approved by the commission expires three calendar years after its initial effective date, unless the commission approves an extension. Extensions will only be granted in limited circumstances. The three-year calendar time period begins at the time the commission grants any portion of the standard rate, even if the rate is implemented in phases. Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., a rate application for the adoption of the Montana Department of Natural Resources and Conservation's average rates, or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.

(109) ~~The commission may deny the adoption of the standard rate tariff by will not grant standard rates to a small water or sewer utility if the utility that has been operating pursuant to commission-approved rates and the commission determines it would be unjust and unreasonable to approve adoption of the standard rate tariff for the utility previously.~~ The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest, that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.

(10) A small water or sewer utility's standard rate tariff may be revoked if the utility is not in compliance with the Commission's annual report requirement.

(11) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2528, as proposed in option two, will retain the standard rate process but require minimum filing requirements for that rate application. The minimum filing requirements will help ensure that the commission and interested persons have sufficient information to review. Option two shortens the list of minimum filing requirements from option one to help reduce the regulatory burden for utilities establishing their initial commission rates. The rule clarifies that only utilities that do not have rates on file with the commission can take advantage of the standard rate process. The rule also clarifies that the standard rate will only be approved by the commission for up to three calendar years and the timeframe begins to run once any approval of a rate is made by the commission. The rule also

sets out the process followed to review that filing for completeness and how it will be processed following a complete application being received by the commission.

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: Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail rhonda.simmons@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses. The small businesses that will be affected significantly and directly are the small water and sewer utilities that are subject to department jurisdiction. These small utility businesses will benefit from amendment of the proposed rules because the amended rules update the simplified regulatory options that will reduce the burden and cost of the ratemaking process when compared to filing rate cases under existing department rules. Past rate cases before the department involving small water and sewer utilities have resulted in rate case expenses for the utilities (that were passed through to ratepayers) of up to \$30,000. The majority of the rate case expense in those cases was the cost of hiring legal and financial professionals in order for the utilities to present their cases. If the proposed rules are amended and if a small water or sewer utility takes advantage of the new regulatory options, it may not be necessary for the utility to engage professional services to support the ratemaking process. The department is unaware of any significant and direct adverse impacts that amendment of the proposed rules will have on other small businesses.

/s/ JUSTIN KRASKE

Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON

Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State January 16, 2018.



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 23.2.301 pertaining to the )  
affidavit of indigence and statement )  
of inability to pay court costs and fees )

TO: All Concerned Persons

1. On October 13, 2017, the Department of Justice published MAR Notice No. 23-2-248 pertaining to the proposed amendment of the above-stated rule at page 1724 of the 2017 Montana Administrative Register, Issue Number 19.

2. Based on comments received regarding the proposed rule amendment, the department has made several changes to the form. Following is the form as revised from the proposal notice and as amended:

23.2.301 STATEMENT OF INABILITY TO PAY COURT COSTS AND FEES

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail Address (optional)

☐ Petitioner/Plaintiff ☐ Respondent/Defendant

☐ MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

☐ IN THE JUSTICE COURT OF \_\_\_\_\_ COUNTY, STATE OF MONTANA

☐ IN THE MUNICIPAL OR CITY COURT OF \_\_\_\_\_, MONTANA

\_\_\_\_\_  
Petitioner / Plaintiff,

and

\_\_\_\_\_  
Respondent / Defendant.

**Case No:** \_\_\_\_\_  
(leave blank, the clerk will write in)

Statement of Inability to Pay Court  
Costs and Fees

I have a good cause of action or defense but am unable to pay filing or other court fees. I request the court waive the costs and fees. I provide the following information.

My full legal name is: \_\_\_\_\_. I was born in this month \_\_\_\_\_ and this year \_\_\_\_\_.

☐ I am represented by an entity that provides free legal services to low-income persons.

**Or**

☐ I am represented by a volunteer/pro bono attorney, and am financially eligible for free legal services. (*Attach a certificate of eligibility from legal aid organization to this form.*)

**Or**

☐ I receive one or more of these benefits: (*Check the box for each benefit you receive.*)

☐ SNAP    ☐ TANF    ☐ SSI    ☐ Medicaid    ☐ WIC    ☐ LIEAP

**If you checked any one of the three boxes above, skip to the end of this form, and sign the declaration on page 3. You don't need to fill out the remainder of the form.**

If you did not check a box above, you may still qualify for a fee waiver. Please continue to fill out pages 2 and 3 of this form so the court has the information it needs to decide if you qualify for the fee waiver.

**I. INCOME** (*Complete this Section to the best of your ability.*)

What do you do for work? \_\_\_\_\_ Who is your employer? \_\_\_\_\_

What is your household's annual income, before taxes? \_\_\_\_\_ How many people are in your household? \_\_\_\_\_ (*The tables below will help you answer these questions, if you are not sure what to put in the blanks.*)

If you are unemployed, when were you last employed (Month, Year)? \_\_\_\_\_ Your job? \_\_\_\_\_

**Are you married?** ☐ Yes ☐ No ☐ Separated ☐ Getting Divorced **NOTE:** If you are not married, if you and your spouse are separated, or if one of you is filing for dissolution of marriage, you do not need to provide your spouse's income below.

Fill in the chart below with the income received by you, and by your spouse, if applicable. Put a "0" in each blank if you or your spouse don't receive the income listed.

Income Sources	Amount YOU receive per month before taxes	Amount YOUR SPOUSE receives per month before taxes
Employment	\$	\$
Retirement/Pension	\$	\$
Workers' Compensation	\$	\$
Social Security	\$	\$
Unemployment	\$	\$
Government Benefits	\$	\$
Child Support Received	\$	\$
A person or agency pays my rent or other monthly expenses and the amount is: _____	\$	\$
Other Income—e.g., rental income, stocks, investments, etc.—describe: _____	\$	\$
<b>Total here:</b>	\$	\$

**What is your household size?** How many persons, if any, depend on you financially? If none, then write "N/A" below. Attach another page if needed and check here to tell the court you attached another page: ☐

Dependents (Initials Only)	Age	Relationship to You
1.		
2.		
3.		
4.		
5.		

**II. ASSETS** *(Complete this Section to the best of your ability.)*

**What property do you and your spouse own?** Include your spouse's property if you are married and not separated and not filing for dissolution. Fill in the chart below, for each item that you could sell for \$600 or more. If you don't own an item listed, write "N/A" in the "Value" column for that item. *"Value" means the total amount the item or items (if you have more than one in a certain category) would sell for, minus the amount you still owe on the item (if anything).*

Asset	Value
Cash (This includes the money in your savings and checking accounts)	\$
Vehicle 1: provide year, make and model _____	\$
Vehicle 2: provide year, make and model _____	\$
Home where you live now	\$
Real estate or other homes/mobile homes (Not including the home you are living in now)	\$
Recreational vehicle(s), such as snowmobile, ATV, camper/RV, boat, motorcycle, etc.	\$
Guns or other collections	\$
Other Item(s) worth more than \$600—describe: _____	\$

**III. DEBTS AND EXTRAORDINARY EXPENSES** *(Complete this Section to the best of your ability.)*

**What bills do you and your spouse pay each month?** Fill in the chart below.

Monthly Expenses	Value
Housing Expense: Mortgage or Rent	\$
General Household Expenses: Utilities, Phone/Internet/Cable, etc.	\$

Insurance Expenses, Healthcare Costs and/or Medical Debt(s)	\$
Childcare Expenses	\$
Other Extraordinary Expenses: e.g., Collection actions, Student Loans—describe: _____	\$

**IV. ADDITIONAL INFORMATION** (*This Section is optional.*)

If you have additional information, including extraordinary expenses, that you want the court to consider about your inability to pay court costs, write that information under your signature below or attach an extra page. Check here if you attached another page: ☐

**V. DECLARATION** (*This Section is Required.*)

**I declare under penalty of perjury and under the laws of the State of Montana that the information in this document is true and correct. I understand that it is a crime to give false information in this document.**

Date: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

YOUR Signature: \_\_\_\_\_

*Court Use Only*

- ☐ MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY  
☐ IN THE JUSTICE COURT OF \_\_\_\_\_ COUNTY, STATE OF MONTANA  
☐ IN THE MUNICIPAL OR CITY COURT OF \_\_\_\_\_, MONTANA

_____, Petitioner / Plaintiff,  and _____, Respondent / Defendant.	<b>Case No:</b> _____ (leave blank, the clerk will write in)  Order Regarding Statement of Inability to Pay Court Costs
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***Warning! Read carefully the section checked below.  
It is a court order.***

☐ Waiver of court costs is **Granted**. Declarant shall proceed without payment of court fees or costs.

☐ Temporary Waiver of court costs is **Granted**. Declarant may file without payment of court fees or costs, but the Court may determine at a later time that the declarant has the ability to pay all fees or costs and will require declarant to do so.

☐ Temporary Waiver of fees is **Granted**. Declarant may file without payment of court fees or costs, but must appear before the Court at \_\_\_\_\_ a.m/p.m. on the \_\_\_\_\_ day of \_\_\_\_\_ and show cause why the declarant lacks the ability to pay all fees or costs.

***Warning! If this third box is checked, you must come to court on the date ordered above. If you don't come, the judge will deny your request to waive court costs, and you will have to pay the court costs.***

☐ Waiver of Fees and costs is **Denied**. Waiver is denied based on the following:

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Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Presiding Judge

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: Two district court judges commented that the waiver form should be simplified and focus on the applicant's household income in relation to the size of the applicant's household. A subcommittee of the Access to Justice Commission provided suggested changes to shorten and simplify the waiver form in response to the district judges' comments. Two other district court judges suggested keeping the expenses section.

RESPONSE 1: The waiver form was amended from the proposed version to address these comments. The automatic qualification options are consolidated into the first section. The income section is consolidated and shortened, and begins by asking for annual household income "before taxes" and then for the number of

people in the household. The form still asks for a list of assets, as contemplated by 25-10-404(4), MCA, but the expenses section is shortened.

COMMENT 2: A district court judge commented that the form should not require birth dates or social security numbers for privacy reasons.

RESPONSE 2: The waiver form does not require social security numbers and only requires the applicant's year and month of birth, not the full birth date.

MATTHEW COCHENOUR

Matthew Cochenour  
Rule Reviewer

/s/ TIMOTHY C. FOX

Timothy C. Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State January 16, 2018.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 24.17.127, pertaining to                )  
prevailing wage rates for public works    )  
projects   )

TO: All Concerned Persons

1. On November 9, 2017, the Department of Labor and Industry published MAR Notice No. 24-17-327 regarding the public hearing on the amendment of the above-stated rule on page 2009 of the 2017 Montana Administrative Register, Issue No. 21.

2. On December 1, 2017, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

COMMENT 1: Ronald Worth, Business Representative, Carpenters Local 82, requested review of the wage for the Carpenter classification in district 1 of the building construction services publication.

RESPONSE 1: The department has reviewed the proposed wage rate for the Carpenter classification in district 1 of the building construction services publication. The wage rate that was proposed was appropriately set via Administrative Rules of Montana (ARM) 24.17.119(3)(b).

COMMENT 2: James Wood, Business Representative, IBEW Local 44, requested review of the wage for the Lineman classification in the heavy construction services publication.

RESPONSE 2: The department has reviewed the wage rate for the Linemen classification in the heavy construction services publication. Upon review, the department determined that it incorrectly input the collectively bargained rate when making the calculation pursuant to ARM 24.17.120(3)(a)(ii). The correct rate is identified in paragraph 5.

COMMENT 3: James Stark, Business Representative, IUPAT 1922, requested that all surface preparation be classified as painters work.

RESPONSE 3: The department has reviewed the request. To be in compliance on prevailing wage projects, the department has historically applied painter as the



proper classification for all surface preparation for paint. To prevent confusion in regards to sandblasting preparation on painted surfaces, the department discovered through email correspondence on December 1, 2017, that Kim Rickard, Business Manager, LIUNA 1686, concurs that sandblasting mentioned in the Laborer Group 3 classification excludes all surface preparation work for paint. A clarification identified as "Duties Include" has been added to the painters classification in the building and heavy publications, and is identified in paragraphs 4 and 5. For purposes of clarification, "This group includes but is not limited to" part of the Construction Laborers Group 3 classification has been amended in the building and heavy publications, and is identified in paragraphs 4 and 5.

**COMMENT 4:** Various individuals and entities submitted additional data or documents for inclusion in the rate setting process during the comment period.

**RESPONSE 4:** The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraphs 5 and 6.

4. The rule is amended as proposed. Two of the publications that are incorporated by reference contain certain changes, as shown in paragraphs 5 and 6.

5. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2018" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

**Painters**

Duties Include:

All surface preparation for paint.

**Construction Laborers Group 3**

**This group includes but is not limited to:**

Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker) Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster (excluding all surface preparation work for paint); Sod Cutter-Power and Tamper.

**Heating and Air Conditioning**

	<b>Wage</b>	<b>Benefit</b>
District 1	<del>\$26.54</del> 28.51	<del>\$10.19</del> 17.91

**Sheet Metal Workers**

	<b>Wage</b>	<b>Benefit</b>
District 1	<del>\$26.70</del> <u>28.51</u>	<del>\$13.84</del> <u>17.91</u>
District 2	<del>\$25.90</del> <u>28.51</u>	\$17.91

6. The following rates in the "Montana Prevailing Wage Rates for Heavy Construction Services 2018" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

**Line Construction - Lineman**

	<b>Wage</b>	<b>Benefit</b>
	<del>\$45.53</del> <u>\$44.41</u>	\$15.54

**Painters**

Duties Include:

All surface preparation for paint.

**Construction Laborers Group 3**

**This group includes but is not limited to:**

Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzlemán; Jackhammer (Pavement Breaker) Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster (excluding all surface preparation work for paint); Sod Cutter-Power and Tamper.

7. The wage rate publications adopted by this notice apply to public works contracts put out for bid on or after January 27, 2017.

/s/ Mark Cadwallader  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ Galen Hollenbaugh  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 16, 2018.

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

In the matter of the repeal of ARM	)	NOTICE OF REPEAL
24.159.1006 and 24.159.1206	)	
pertaining to direct supervision and	)	
standards related to the practical	)	
nurse's and registered nurse's role in	)	
cosmetic procedures	)	

TO: All Concerned Persons

1. On August 4, 2017, the Board of Nursing (board) published MAR Notice No. 24-159-84 regarding the public hearing on the proposed repeal of the above-stated rules, at page 1232 of the 2017 Montana Administrative Register, Issue No. 15.

2. On August 25, 2017, a public hearing was held on the proposed repeal 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: Several commenters opposed the repeal of ARM 24.159.1006 and 24.159.1206, stating that repealing these rules will allow LPNs and RNs to perform surgical procedures, not just nonsurgical medical procedures, without the direct supervision of more highly trained healthcare providers. The commenters were concerned that such action would jeopardize the quality of patient care in Montana.

RESPONSE 1: The rule repeal does not change the scope of practice for nurses in cosmetic medical procedures. Specifically, the rule repeal does not allow LPNs or RNs to perform surgical procedures in a way that conflicts with the general rules of the board. Further, nothing in this repeal implies that it is proper to have a facility that is operating in violation of the Board of Medical Examiners rules. Therefore, any procedure that required direct supervision under the general board rules still currently requires direct supervision. Nor does the repeal change the requirement that any medical procedure must be ordered by a qualified prescriber after an examination, who must exercise proper supervision of that procedure. Removing the laundry list of cosmetic-type procedures a nurse may perform under direct supervision does not mean that nurses may perform procedures without direct supervision at facilities that are in violation of the Board of Nursing or Board of Medical Examiners rules. Rather, nurses must continue to follow supervision and delegation rules applicable to nurses in all practice settings.

The board has formed a committee to meet with other boards and interested parties to further clarify the requirements for supervision in facility settings that are not in a licensed medical facility that are set up as for-profit businesses.

COMMENT 2: Numerous commenters opposed the repeal of ARM 24.159.1006 and 24.159.1206, encouraging the board instead to amend the rules to require direct supervision of RNs and LPNs for all ablative procedures. The commenters discussed several specific cosmetic procedures and how the procedures could adversely affect patients. They asserted that RNs, LPNs, and APRNs do not have sufficient education or experience to perform these procedures. Some commenters argued that only physicians are appropriately trained to evaluate a patient's needs and current condition, and select an appropriate course of treatment and follow-up care in these situations.

RESPONSE 2: As stated above, the broadly applicable supervision and delegation nursing rules accomplish the goal of requiring nurses to only perform procedures without direct supervision if permitted.

COMMENT 3: Several commenters questioned the validity of the board's finding that repealing ARM 24.159.1006 and 24.159.1206 would result in a 30% increase in revenues for small medical spas, expressing concern that the board's analysis assumes these repeals will result in rampant proliferation of elective procedures in an unsafe environment.

RESPONSE 3: Although repealing these rules may result in increased revenues for small businesses, the board concluded that the repeals neither alter the scope of practice of nurses assisting with cosmetic medical procedures, nor change the requirement that a qualified prescriber must oversee all medical procedures in compliance with the Board of Nursing and Board of Medical Examiners rules. The board further notes that the small business impact statement is not binding and does not mean that nurses can practice without direct supervision when required.

COMMENT 4: Several commenters requested the board retain ARM 24.159.1006 and 24.159.1206, and expressed concern that the board may be conferring authority to practice medicine, surgery, or a combination of medicine or surgery in violation of 37-8-103(2), MCA.

RESPONSE 4: Repealing ARM 24.159.1006 and 24.159.1206 does not violate 37-8-103(2), MCA, because licensees remain subject to the current statutes and rules, including 37-1-103, MCA. Repealing these rules may bring the board further into compliance with statutory limitations by removing rules that arguably confer upon nurses the ability to perform medical or surgical procedures without a supervisor determining, on a case-by-case basis, whether the nurse is appropriately supervised, and whether the nurse has the appropriate training and experience necessary to perform such procedures safely.

COMMENT 5: Several commenters expressed concern that the board's repeal of ARM 24.159.1006 and 24.159.1206 came at the request of a single medical spa owner and not for reasons of protecting the public.

RESPONSE 5: Although a medical spa owner initially approached the board to discuss amending ARM 24.159.1006 and 24.159.1206, the board independently determined to repeal these rules. The board first reviewed this issue at its April 12, 2017, full board meeting and referred the issue to a subcommittee of the board, which met on May 10, 2017. After the subcommittee determined to repeal these rules, the issue was again brought to the full board at its July 12, 2017 meeting. At this meeting, the full board considered the subcommittee's recommendation, and determined to propose the rule repeals. All meetings were open to the public, and the board encouraged input from all interested parties.

COMMENT 6: One commenter supported the repeal of ARM 24.159.1006 and 24.159.1206, stating the rules are outdated in today's health care environment. The commenter stated that repealing the rules will not impact patient safety because all nurses are still required to maintain the correct knowledge, skills, and abilities to perform any ordered procedure.

RESPONSE 6: The board has determined to repeal the rules, but is clarifying by response to this comment that the repeal does not mean direct supervision is not required for procedures where a qualified prescriber determines direct supervision is required, and does not mean a facility where the practice of medicine occurs can be operated in violation of the Board of Medical Examiners rules.

4. The board has repealed ARM 24.159.1006 and 24.159.1206 exactly as proposed.

BOARD OF NURSING  
N. GREG KOHN, PRESIDENT

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

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

Certified to the Secretary of State January 16, 2018.

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.86.1806 pertaining to        )  
updating durable medical equipment        )  
rules to reflect a sole-source provider        )  
for the purchase of breast pumps        )

TO: All Concerned Persons

1. On June 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-797 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 773 of the 2017 Montana Administrative Register, Issue Number 11. On November 24, 2017, the Department of Public Health and Human Services published an Extension of Comment Period on Proposed Amendment at page 2140 of the 2017 Montana Administrative Register, Issue Number 22.

2. The department has amended the above-stated rule 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: A commenter expressed concerns about a single-source contract eliminating all other suppliers and wanted to know how one supplier will be able to solve Montana's access issues.

RESPONSE #1: The department requires the winning bidder to meet certain specifications including delivery. Specifically, the bidder must be able to deliver the item within five days from receipt of the order. Prescribers who determine that a member needs the item sooner may opt to use a local durable medical equipment (DME) supplier to provide a rental. The department determined the combination of that approach ensures member access.

COMMENT #2: A commenter recommended the department use a different approach by allowing purchases and setting an acceptable fee for breast pumps, then all enrolled DME providers can participate.

RESPONSE #2: The department determined the competitive bid process would ensure member access at an acceptable rate of reimbursement.

COMMENT #3: Commenters expressed concern regarding those providers who supply breast-pump rentals and how this proposed rule will affect their breast-pump rentals in the future.

RESPONSE #3: Having a single source provider will not affect the current breast-pump rental process for Montana Medicaid. The requirements for breast-pump rentals will stay the same. The single source provider who is awarded the contract will be providing hospital grade double electric breast pumps for purchase.

COMMENT #4: Commenters expressed their concerns about the sole-source contract being awarded to an out-of-state bidder. Commenters recommended that the department rethink the decision made and support a Montana business rather than an out-of-state business to keep tax-payer dollars in the State of Montana.

RESPONSE #4: All suppliers had an opportunity to bid. The competitive bid process consisted of the State's Request for Proposal (RFP) with requirements and scope of services specifically outlined. The proposals were individually reviewed and scored. The contract was awarded based on the qualifications of the bidder and the ability to meet all requirements.

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

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

Certified to the Secretary of State January 16, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.51.102, 37.51.306,	)	REPEAL
37.95.102, 37.95.140, 37.95.160,	)	
37.95.184, and the repeal of ARM	)	
37.51.307 pertaining to revisions in	)	
immunization requirements for	)	
attendance in child care facilities and	)	
in foster homes	)	

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-814 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2022 of the 2017 Montana Administrative Register, Issue Number 21.

2. The department has amended the following rules as proposed: ARM 37.51.102, 37.95.102, 37.95.160, 37.95.184. The department has repealed ARM 37.51.307 as proposed.

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

37.51.306 YOUTH FOSTER HOMES: IMMUNIZATION REQUIREMENTS

(1) All children residing in the foster home other than the foster child shall be immunized against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis, tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B according to the following schedule:

Total Immunizations Required, By Age

<u>Age</u>	<u>Number Doses - Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine



	2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 3 doses of Hep B vaccine *4 doses of PCV vaccine
By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By <del>44</del> <u>12</u> years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(\*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) through (7) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-735, MCA

37.95.140 IMMUNIZATION (1) Before a child may attend a Montana day care facility, that facility must be provided with the documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (7):

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 3 doses of Hep B vaccine *4 doses of PCV vaccine

By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By 44 <u>12</u> years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(\*) varies depending on vaccine type used or the ACIP catch up schedule.

(2) through (11) remain as proposed.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

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

COMMENT #1: One commenter stated that the department should change the age requirement from "By 11 years of age" to "By 12 years of age" in immunizations required in both Youth Foster Home and Child Care.

RESPONSE#1: The department agrees with the comment. ARM 37.51.306(1) and 37.95.140(1) have been further amended to reflect this change.

COMMENT #2: One commenter requested that the rotavirus vaccine be added to the required immunizations to attend daycare, unless there is a medical contraindication.

RESPONSE #2: Rotavirus is not commonly required for childcare settings with only 5 of 50 states mandating its use (data from the Immunization Action Coalition). Related rules in Montana prohibit children with a diarrheal illness from attending daycare. While we know spread is possible before and after the presence of symptoms, reported outbreaks related to this condition in child care setting have been rare in Montana.

COMMENT #3: One commenter commented that the number of booster doses required for vaccines such as DTaP and polio, are less than the recommended number of vaccines by the ACIP.

RESPONSE #3: The department looked closely at the current and proposed rule for DTaP and polio. The rule requires that children have 4 doses of DTaP and 3 doses of polio by 19 months. A booster dose of each vaccine is then required by age 6. This aligns with the ACIP's routine and catch-up schedules.

COMMENT #4: One commenter requested that the public school system and DPHHS should have the same recommendations in reference to an MMR vaccine that was administered a few days prior to the first birthday.

RESPONSE #4: ARM 37.114.702 does recognize the ACIP recommendation allowing a 4 day "grace" period for selected vaccines and does align with the child care rule. The rule states: "Vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks."

5. These rule amendments and repeal are effective June 1, 2018.

/s/ Nicholas Domitrovich  
Nicholas Domitrovich  
Rule Reviewer

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

Certified to the Secretary of State January 16, 2018

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

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 37.40.422 pertaining to direct        )  
care wage effective dates                 )

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-818 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2034 of the 2017 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to January 1, 2018. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Geralyn Driscoll  
Geraldyn Driscoll, Attorney  
Rule Reviewer

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

Certified to the Secretary of State January 16, 2018.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

### Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

### Use of the Administrative Rules of Montana (ARM):

- |                  |   |
|------------------|---|
| Known<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2017. This table includes those rules adopted during the period June 30, 2017, through September 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 September 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 or 2018 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
New Rules	Public Safety Answering Point Certification, Funding, and Monitoring, p. 2363
2.2.101	Procedural Rules, p. 1
2.21.3703	and other rules - Recruitment and Selection Policy, p. 1309, 90
2.21.6608	and other rules - Employee Records Management Policy, p. 1316, 1443, 92
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
2.59.1738	Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 7

#### (Public Employees' Retirement Board)

2.43.1306	and other rules - Actuarial Rates and Assumptions - Service Purchases, p. 818, 1515
2.43.3501	and other rule - Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document and the State of

- Montana Public Employee Deferred Compensation (457) Plan Document, p. 4  
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

(Montana Lottery Commission)

- 2.63.1201 Prizes, p. 388, 782

AGRICULTURE, Department of, Title 4

- New Rule Pesticides, p. 1322, 1950  
New Rules Mediation Services, p. 1926, 2431  
4.6.301 and other rules - Montana Cherry Research and Market Development Program, p. 2379  
4.6.401 and other rules - Montana Pulse Crop Committee, p. 2373  
4.10.201 and other rules - Pesticide Housekeeping Changes, p. 2261, 626, 1948  
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## 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 December 2017 appear. Potential vacancies from February 1, 2018 through April 30, 2018, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 1, 2018.

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 DECEMBER 2017**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Medical Examiners</b>			
Mr. C.E. Abramson	Governor	Erickson	12/1/2017
Missoula			9/1/2021
Qualifications (if required): Member of the general public who is not a medical practitioner			
Mrs. Ana Diaz	Governor	Reappointed	12/1/2017
Billings			9/1/2021
Qualifications (if required): Member of the general public who is not a medical practitioner			
Ms. Christine Emerson	Governor	Bollinger	12/1/2017
Helena			9/1/2021
Qualifications (if required): Licensed Nutritionist			
Dr. James Wesley Guyer	Governor	Spanjian	12/1/2017
Billings			9/1/2021
Qualifications (if required): Doctor of Medicine (MD)			
Ms. Tammy Louise Scott	Governor	Reappointed	12/1/2017
Missoula			9/1/2021
Qualifications (if required): Licensed Physician Assistant			

**EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2017**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Outfitters</b>			
Mr. Kerry Fee	Governor	Aldrich	12/1/2017
Livingston			10/1/2020
Qualifications (if required): Sports person			
Representative Julie E. French	Governor	Twardoski	12/1/2017
Scobey			10/1/2020
Qualifications (if required): Member of the general public			
Mr. Matthew Allen Greenmore	Governor	Cunningham	12/1/2017
Twin Bridges			10/1/2018
Qualifications (if required): Outfitter licensed to provide fishing services but not hunting services			
Mr. Hugo Tureck	Governor	Reappointed	12/1/2017
Coffee Creek			10/1/2020
Qualifications (if required): Sports person			
Mr. John Way	Governor	Reappointed	12/1/2017
Ennis			10/1/2020
Qualifications (if required): Outfitter licensed to provide fishing and hunting services			



**EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2017**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Alfalfa Seed Committee</b>			
Mr. Ernest Johnson	Governor	Reappointed	12/1/2017
Chinook			12/1/2020
Qualifications (if required): Actively engaged in the growing of alfalfa seed within the state			
Mr. John Mehling	Governor	Reappointed	12/1/2017
Hardin			12/1/2020
Qualifications (if required): Alfalfa Seed Grower and rears alfalfa leaf-cutting bees			
Mr. Cavin Steiger	Governor	Reappointed	12/1/2017
Forsyth			12/1/2020
Qualifications (if required): Alfalfa seed grower			
<b>Montana Information Security Advisory Council</b>			
Mr. Earl Campbell	Governor	New	12/1/2017
Billings			6/30/2019
Qualifications (if required): Law Enforcement Representative and is an addition to the Council			
Mr. Justin van Almelo	Governor	New	12/1/2017
Bozeman			6/30/2019
Qualifications (if required): University Representative and is an addition to the Council			

**EXECUTIVE BRANCH APPOINTEES FOR DECEMBER 2017**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Information Security Advisory Council</b>			
Mr. Paul Kozlowitz	Governor	New	12/1/2017
Missoula			6/30/2019
Qualifications (if required): K-12 Representative and is an addition to the Council			

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Architects and Landscape Architects</b> Mr. Dale S. Nelson, Ronan Qualifications (if required): Licensed Architect	Governor	4/1/2018
<b>Board of Dentistry</b> Dr. Dale R. Chamberlain, Lewistown Qualifications (if required): Dentist	Governor	4/1/2018
Ms. Diane Klemann, Billings Qualifications (if required): Dental Hygienist	Governor	4/1/2018
<b>Board of Pardons and Parole</b> Commissioner Michael McGinley, Dillon Qualifications (if required): Public Representative	Governor	4/1/2018
Mrs. Sheena Wilson, Helena Qualifications (if required): Retired Public Employee	Governor	4/1/2018
<b>Board of Public Education</b> Representative Lila V. Taylor-Evans, Busby Qualifications (if required): Resident of District 2 and a Republican	Governor	2/1/2018
Mr. Jesse Miles Barnhart, Broadus Qualifications (if required): District 2 Republican	Governor	2/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Regents</b> Mr. Major Robinson, Billings Qualifications (if required): District 2 Representative	Governor	2/1/2018
<b>Board of Regents of Higher Education</b> Mr. Casey Lozar, Helena Qualifications (if required): District 2 Democrat	Governor	2/1/2018
<b>Capitol Complex Advisory Council</b> Dr. Aimee R. Ameline, Great Falls Qualifications (if required): Dentist	Governor	3/29/2018
<b>Commission on Practice of the Supreme Court</b> Ms. Tracy Axelberg, Kalispell Qualifications (if required): None Stated	Elected	4/1/2018
Mr. Daniel McLean, Helena Qualifications (if required): None Stated	Elected	4/1/2018
<b>Family Support Services Advisory Council</b> Mr. David Munson, Helena Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Danielle McCarthy, Helena Qualifications (if required): Agency Representative OPI Part B	Governor	4/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Family Support Services Advisory Council Cont.</b>		
Representative Jean Price, Great Falls Qualifications (if required): State Legislator	Governor	4/1/2018
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): Speech Language Therapists Association Representative	Governor	4/1/2018
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Parent Representative At-Large	Governor	4/1/2018
Ms. Ryane Holzwarth, Laurel Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Jody Jones, Ronan Qualifications (if required): Head Start Representative	Governor	4/1/2018
Dr. Christine Lux, Bozeman Qualifications (if required): Personnel Preparation Representative	Governor	4/1/2018
Ms. Chelsie Guilford, Billings Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Meaghan Kolar, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Rebecca Bogden-Richards, Great Falls Qualifications (if required): Public Awareness and Education Organization Representative	Governor	4/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Family Support Services Advisory Council Cont.</b>		
Ms. Catherine Murphy, Helena Qualifications (if required): Agency Representative DPHHS Developmental Disabilities Program	Governor	4/1/2018
Ms. Latosha Vavak, Columbus Qualifications (if required): Parent Representative Region 3	Governor	4/1/2018
Ms. Amber Bell, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Hollin Marie Buck, Missoula Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Melanie Ruth Bush, Great Falls Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Patty Butler, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Dianna Frick, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Sarah Odette Goldsmith, Great Falls Qualifications (if required): Parent Representative Region 2	Governor	4/1/2018
Ms. Kari Ann Hoover, Shelby Qualifications (if required): Provider of Part C Services	Governor	4/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Family Support Services Advisory Council Cont.</b>		
Ms. Kari Ann Hoscheid, Anaconda Qualifications (if required): Special Education	Governor	4/1/2018
Ms. Cathy Jury, Arlee Qualifications (if required): Representative for the Montana School for the Deaf and Blind	Governor	4/1/2018
Ms. Tari Nyland, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
<b>Governor's Council on Healthcare Innovation</b>		
Ms. Cindy Stergar, Butte Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Mary Dalton, Helena Qualifications (if required): Government Official	Governor	4/1/2018
Mr. Todd Lovshin, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018
Mr. L. Jace Killsback, Lame Deer Qualifications (if required): American Indian health representative	Governor	4/1/2018
Ms. Maria Clemons, Libby Qualifications (if required): Healthcare providers	Governor	4/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Governor's Council on Healthcare Innovation Cont.</b>		
Mr. Jonathan Weisul, Missoula Qualifications (if required): Public and private payers	Governor	4/1/2018
Dr. Bill Gallea, Helena Qualifications (if required): Healthcare providers	Governor	4/1/2018
Dr. Janice Gomersall, Missoula Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Matt Kuntz, Helena Qualifications (if required): Consumer	Governor	4/1/2018
Mr. Eric Arzubi, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. John Felton, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Lenette Kosovich, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Michael Vlases, Bozeman Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Aaron Wernham, Bozeman Qualifications (if required): Healthcare providers	Governor	4/1/2018



**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Governor's Council on Healthcare Innovation Cont.</b>		
Dr. Monica Berner, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018
Ms. LeeAnn Bruised Head, Missoula Qualifications (if required): American Indian health representative	Governor	4/1/2018
Ms. Marilyn Bartlett, Helena Qualifications (if required): Government Official	Governor	4/1/2018
Ms. Sydney Blair, Great Falls Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Annie Browne, Great Falls Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Dorothy Dupree, Billings Qualifications (if required): American Indian health representative	Governor	4/1/2018
Mr. John McNeece, Anaconda Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Larry Robert Turney, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018
Ms. Susan Witte, Helena Qualifications (if required): Government Official	Governor	4/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Arts Council</b>		
Ms. Arlene Parisot, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Corwin Clairmont, Ronan Qualifications (if required): Public Representative	Governor	2/2/2018
Ms. Karen Bohlinger, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Thomas Cordingley, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Jason Pyette, Havre Qualifications (if required): Public Representative	Governor	2/2/2018
<b>Potato Commodity Advisory Committee</b>		
Mr. Tim Lake, Polson Qualifications (if required): Potato Producer	Governor	3/1/2018
Mr. Jack Meyer, Manhattan Qualifications (if required): Potato Producer	Governor	3/1/2018
<b>Temporary Assistance for Needy Families</b>		
Ms. Arlene Templer, Pablo Qualifications (if required): Representative of CSKT Tribal Employment Program	Director	3/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Temporary Assistance for Needy Families Cont.</b>		
Representative Mary M. Caferro, Helena Qualifications (if required): Public Representative and former TANF Parent	Director	3/1/2018
Ms. Heather O'Loughlin, Helena Qualifications (if required): Representative of a statewide research organization	Director	3/1/2018
Ms. Pamela Carlson, Helena Qualifications (if required): Representative of TANF WoRC Consortium	Director	3/1/2018
Mr. Patrick Sweeney, Billings Qualifications (if required): Representative of past TANF Recipient	Director	3/1/2018
Ms. Lorianne Burhop, Missoula Qualifications (if required): Representative of a statewide food program	Director	3/1/2018
Ms. Lucinda Burns, Lame Deer Qualifications (if required): None Stated	Director	3/1/2018
Ms. Barbara Burton, Helena Qualifications (if required): Representative of a youth related advocacy organization	Director	3/1/2018
Ms. Erin Irvine, Ronan Qualifications (if required): Public Representative/single mother and current college student	Director	3/1/2018
Ms. Veronica Moldenhauer, Great Falls Qualifications (if required): Representative of an early childhood education organization	Director	3/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Temporary Assistance for Needy Families Cont.</b>		
Ms. Jaymie Sheldahl, Helena Qualifications (if required): Representing Head Start	Director	3/1/2018
Ms. Karen Vanni, Great Falls Qualifications (if required): Representative of a nonprofit organization working with low income clients	Director	3/1/2018
Ms. Pam Watson, Helena Qualifications (if required): Representing Montana Department of Labor and Industry	Director	3/1/2018
Ms. Kelsen Young, Helena Qualifications (if required): Representative of a statewide advocacy program	Director	3/1/2018
<b>Youth Justice Council</b>		
Sheriff Craig Anderson, Glendive Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Commissioner Laura Obert, Townsend Qualifications (if required): Local Government and Board of Crime Control Member	Governor	3/1/2018
Mr. Tim Brurud, Havre Qualifications (if required): Private Non-Profit	Governor	3/1/2018
Judge Mary Jane Knisely, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council Cont.</b>		
Mr. Randy Shipman, Dillon Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018
Mr. Dave Bailon, Kalispell Qualifications (if required): Volunteer who works with Delinquents or Potential Delinquents	Governor	3/1/2018
Mr. Peter Ohman, Bozeman Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018
Mr. Braeden Quinn, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Geri Small, Lame Deer Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Tara French, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018
Ms. Marilyn Helen King, Bozeman Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Haley Cox, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Abigail Helland, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018

**EXECUTIVE BRANCH VACANCIES – FEBRUARY 1, 2018 THROUGH APRIL 30, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Youth Justice Council Cont.</b>		
Ms. Isabel Hamilton, Missoula	Governor	3/1/2018
Qualifications (if required): Under the age of 24		
Ms. Kristina Lucero, Missoula	Governor	3/1/2018
Qualifications (if required): Competence in addressing problems related to school violence and vandalism		

MONTANA ADMINISTRATIVE  
REGISTER

2018 ISSUE NO. 2  
JANUARY 26, 2018  
PAGES 124-229

**COREY STAPLETON**  
SECRETARY OF STATE

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