

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 438-6122.

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 4.10.101, 4.10.102, 4.10.104,	)	PROPOSED AMENDMENT,
4.10.105, 4.10.106, 4.10.201,	)	ADOPTION, AND REPEAL
4.10.202, 4.10.203, 4.10.204,	)	
4.10.205, 4.10.206, 4.10.207,	)	
4.10.210, 4.10.313, 4.10.314,	)	
4.10.315, 4.10.401, 4.10.403,	)	
4.10.404, 4.10.501, 4.10.502,	)	
4.10.503, 4.10.504, 4.10.1005, and	)	
4.10.1501, the adoption of NEW	)	
RULE I, and the repeal of ARM	)	
4.10.103, 4.10.107, and 4.10.108	)	
pertaining to the Montana Pesticides	)	
Act	)	

TO: All Concerned Persons

1. On August 30, 2024, at 9:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, to consider the proposed amendment, 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 the Department of Agriculture no later than August 27, 2024, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; TDD/Montana Relay Service (406) 444-3144; or e-mail agr@mt.gov.

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

4.10.101 FINANCIAL RESPONSIBILITIES (1) ~~Effective January 2021,~~ Persons applying for a commercial pesticide applicator's license must be covered by liability provide, on forms approved by the department, proof of insurance in the required amount ~~required~~ as follows:

(a) the minimum insurance must be in the amount of \$50,000 for aerial applicators, and \$30,000 for all other applicators; and

(b) the insurance must cover damages caused by the unintentional violations of the Montana Pesticides Act in MCA Title 80, chapters 1 through 4.

(2) Commercial seed treatment ~~and elevator pest control~~ applicators, whether at farm sites or their own business locations, vertebrate pest control applicators using ground applied baits only, public utility, and non-commercial

applicators applying pesticides in or on properties managed by them are exempt from the financial responsibilities required in ARM 4.10.101 and 4.10.102 through 4.10.103.

(3) Demonstration and research pest-control applicators may be exempt from the financial responsibilities required in ARM 4.10.101 and 4.10.102 through 4.10.103 upon appropriate application for exemption duly approved by the department. The department will evaluate each applicant's situation as shown on the waiver application considering particularly the following factors: actual pesticide applications used by the applicant, the use of co-operators, the size of plots, and the hazards and drift potential of pesticides utilized. ~~All applicators must comply with the requirements in ARM 4.10.104 through 4.10.108.~~

~~(3) The department will facilitate a one-year phase-in period starting January 2020 to allow pesticide applicators to begin transitioning to the new requirements before January 2021.~~

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.102 CONDITIONS OF FINANCIAL RESPONSIBILITY (1) The insurance policy must cover the applicator, their operators and all business employees.

(2) The insurance policy must provide coverage for each and every pesticide the applicator may choose to apply.

~~(2)~~(3) The financial responsibility requirement imposed by ARM 4.10.101 must be maintained in full force and effect during each entire licensing period except for seasonal applicators. The licensing period shall be from the date of license issuance through December 31 of that calendar year.

(4) An applicator who applies pesticides seasonally may cancel or put on hold their financial responsibility (in effect, terminating their license) the day after their last pesticide application. In the event of a lapse, suspension, or termination in the means assuring financial responsibility, the applicator's license(s) will automatically terminate, coinciding with the lapse, suspension, or termination of financial responsibility, and the licensee and any employees must immediately cease all applications of pesticides. In the event a previously licensed applicator whose license(s) was terminated by the provisions of this rule desires to have their license reissued for the balance of the calendar year, they must notify the department and demonstrate, to the satisfaction of the department, that they once again meet the financial responsibility requirements of ARM 4.10.101. Upon approval by the department, the applicator's license(s) may be reissued unless some other legal or regulatory cause exists for non-issuance.

(5) The applicator has the duty and responsibility to ensure that the insurance policy obtained to provide financial responsibility is in the minimum amounts as required under ARM 4.10.101 and covers each and every pesticide proposed to be applied during the licensing period.

(6) Nothing in these regulations shall be construed to relieve any person, landowner, or applicator from liability for any damage to the person, lands, or property of another, caused by their use of pesticides even though such use conforms to the rules of the department.

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON : The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.104 JUDGEMENT JUDGMENT OF DAMAGES AND/OR INJURY

(1) A judgement rendered in any court of competent jurisdiction, of this state or any other state, or of the United States, against a licensee or certificate holder, upon a cause of action arising out of any pesticide use, misuse, or attempted use or application, filed with the department; and a written agreement, mutually agreed upon between the licensee and the individual experiencing property damage or bodily injury, as to the fact of damages and the dollar value thereof, duly notarized and filed with the department, are for all purposes within these rules, denominated as ~~judgements~~ judgments.

(2) No licensee nor certificate holder shall permit any ~~judgement~~ judgment against ~~him~~ them for damages or injury arising out of ~~his~~ their pesticide operation to remain unsatisfied for a period of more than ~~thirty~~ (30) calendar days.

(3) Individuals experiencing non-crop vegetative damage, may upon mutual agreement with the licensee, ~~reduced to writing, duly notarized, filed with the department,~~ delay the final determination of the dollar amount of the damage, and ~~judgement~~ judgment thereon, for a period of time, not to exceed one year from the date damage is first observed by the damaged party.

(4) Individuals experiencing crop damage may, upon mutual agreement with the licensee, ~~reduced to writing, duly notarized, filed with the department,~~ delay the final determination of the dollar amount of crop damage for a period of time, not to exceed ~~sixty~~ (60) days following the completion of harvest on the crops and fields allegedly damaged, provided that the licensee and the individual experiencing crop damage provide an estimate to the department of the approximate dollar value of the damages, and if necessary, that the licensee provides evidence of damaged party for the estimated damages and still maintain ~~his~~ their minimum required financial responsibility under ARM 4.10.101.

AUTH: 80-8-105 MCA

IMP: 80-8-214 MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.105 INCIDENT REPORTS AND RECORDS (1) An applicator who through ~~his~~ their own actions or omissions, or the actions or omissions of ~~his~~ their employees, causes or allows any pesticide to escape onto or to be deposited onto the person, lands, or property of another not the person hiring or contracting for ~~his~~ their services, shall be required to file a written report to the department within ~~forty-eight (48)~~ hours of the incident, specifying the location of the incident, the name of the pesticide involved, the type of formulation, the method of application, the name and address of the person for whom the application was being made, and the name and address of the person(s) whose land, person, or property was subjected to the unintentional pesticide application. ~~(In addition, If the unintentional application involves a pesticide is classified as either extremely toxic or highly toxic to people or animals, the applicator or operator shall immediately cease his~~ their application and notify the landowner or operator whose land, person, or property was subjected to unintentional pesticide application and the department, immediately, by the quickest available means, after applying first aid or personal decontamination if appropriate.)

(2) A complete record of all settled and pending claims from the preceding licensing period must be filed when reapplying for an applicator's license. The record shall indicate for each and every incident the names of all parties involved, the location of the incident, the manufacturer and the technical name of the pesticide involved, the type of formulation, the method of application, the intended use, and the target or site, specifying the animals, wildlife, plant and aquatic life, soil, or people subjected to the unintentional pesticide application(s).

(3) For settled claims, report the information required in (2) ~~above~~, together with the dollar amount of the economic loss and the final settlement agreement between all parties.

(a) Applicators failing to file the foregoing reports, or falsifying them in any fashion, ~~shall~~ may be subject to immediate revocation of current licenses and/or ~~shall~~ may not be issued a license until the requirements of this section are fully satisfied.

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.106 REVOCATION OF LICENSE (1) The department ~~may~~ shall revoke the license(s) of any applicator not satisfying the final ~~judgement~~ judgment rendered against or agreed to by ~~him~~ them, within ~~thirty~~ (30) calendar days from the date the ~~judgement~~ judgment is filed with the department or in the same time period established in the ~~judgement~~ judgment. The revocation shall remain in effect and no license shall be issued to the applicator unless and until the ~~judgement~~ judgment is satisfied or until the applicator files with the department ~~his~~ their written direction to ~~his~~ their financial responsibility guarantors to respond in full to the damages specified in the ~~judgement~~ judgment.

(2) In the event the financial responsibility guaranteed is not adequate to satisfy the ~~judgement~~ judgment when fully applied thereto, then, and in that event, the applicator shall apply such additional monies or assets as may be required to fully satisfy the ~~judgement~~ judgment, and the applicator's license ~~shall~~ may not be issued until the ~~judgement~~ judgment has been fully satisfied and the required financial responsibility once again brought up to the amount required of the particular applicator under rule.

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected cost to licensed community: pesticide applicators; no loss or gain to the department.

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS

(1) An individual who by contract or for hire uses or applies pesticides not under the special supervision of a licensed applicator is required to become a licensed commercial pesticide applicator, except as provided for in these rules.

(a) A person must be a minimum of 18 years old in order to purchase or use restricted use pesticides, unless as allowed in ARM 4.10.403.

(b) Each pesticide applicator business location must have a licensed pesticide applicator. Any owner or person who has a financial interest in a pesticide applicator business may appoint a partner or salaried employee to become the licensed pesticide applicator. The owner or person having the financial interest in a pesticide application business shall continue to assume and is financially responsible for all uses and applications of a pesticide. The owner, manager, or licensed applicator of a pesticide applicator business may elect to have some or all of the employees of the business licensed as applicators.

(2) A person must apply for a license on the department's application form. The application must be completed in its entirety, and accompanied by the licensing fee ~~and a completed statement of financial responsibility~~. Applicants submitting

incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.

(3) Nonresident applicants shall be required to submit the license application, ~~and fee, financial responsibility and a completed form provided by the department~~ must designate designating an agent for service of process in the state. The form shall be accompanied by the appropriate fee for filing payable to with the Secretary of State. The service of process shall remain valid until cancelled or modified.

~~(a) A nonresident corporation, which has an effective certificate of process shall appoint its own resident agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the agent or attorney. Service of process for these corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revisions of the list for those employees licensed or to be licensed as pesticide applicators.~~

~~(b) A nonresident individual or partnership may designate the Secretary of State as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the Secretary of State. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individual or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.~~

~~(c) A nonresident corporation which does not have an effective certificate of authority from the Secretary of State to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the Secretary of State as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made on the Secretary of State shall constitute valid service. Service of process for corporations shall apply to all its employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.~~

(4) and (5) remain the same.

(6) Those individuals who cannot be classified as a commercial, public utility, or government pesticide applicator or who cannot be classified as a private farm applicator, but desire the use of restricted-use pesticides, shall be considered to be noncommercial applicators.

(a) The noncommercial applicators desiring to use restricted use pesticides in the state shall be required to meet the same application, examination, qualification, general and specific competency standards, recordkeeping, requalification, and other related pesticide usage and application standards as required of commercial applicators by the Act.

(b) These individuals shall be classified into one of the categories established for commercial applicators.

(c) Certified noncommercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his/her employer or himself/herself.

(d) Noncommercial applicators, whether certified or not, violating the Act or these rules shall be subject to the same penalties and administrative procedures as commercial applicators.

(7) and (8) remain the same.

(9) An commercial, noncommercial, special utility or government applicator not renewing and maintaining ~~his~~ their license and certification within the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license at the beginning of the next qualification period. The applicator may maintain ~~his~~ their qualifications by attending approved requalification programs for a time period not to exceed four years. The applicator will be required to maintain ~~his~~ their records of requalification for submission to the department for relicensing. The department reserves the right to require special examination(s) on new requirements or technology.

(10) remains the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: The expected cost to regulated community is unknown from disallowing commercial application by those under 18, but it is not anticipated to be significant. Federal law already requires this change and Montana adopting them will be the "cause" of any increased cost. The department does not anticipate any additional loss or gain in fees from these changes.

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS (1) and (2) remain the same.

(3) The following classifications are:

~~(a) Agricultural pest control classification includes any applicator using or supervising the use of pesticides in the following subclasses:~~

~~(a)(4)~~ Agricultural plant pest control classification includes any applicator using or supervising the use of pesticides in the production of agricultural crops, including without limiting the foregoing: small grains, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and non-crop agricultural lands.

~~(b)(ii)~~ Agricultural animal pest control classification includes any applicator using or supervising the use of pesticides on animals including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying restricted use pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in a large scale use of restricted pesticide are included in this classification and must be certified-licensed.

~~(c)~~(iii) Agricultural vertebrate pest control classification includes any applicator using or supervising the use of pesticides in the management of vertebrate animals normally wild or feral, including certain predators, rodents, and birds, which may adversely affect man's human health or property or are a nuisance to man humans.

~~(d)~~(b) Forest pest control classification includes any applicator using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

~~(e)~~(c) Ornamental and turf pest control classification includes any applicator using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

~~(f)~~(d) Seed treatment and elevator pest control classification includes any applicator using or supervising the use of pesticides onto seeds, ~~the use of fumigants in seed storage areas or on or in seeds and the use of pesticides in or around the elevator seed storage facilities.~~

~~(g)~~(e) Aquatic pest control classification includes any applicator using or supervising the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in classification (3)(i)(j).

~~(h)~~(f) Right-of-way, rangeland, pasture, and non-crop pest control classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas. This classification includes any applicator using or supervising the use of pesticides to manage weeds or other vegetation on grassland and pastures that are not harvested for forage, and any applicator using or supervising the use of pesticides on non-crop areas to manage weeds or other vegetation.

~~(i)~~(g) Industrial, institutional, structural, and health-related pest control classification includes any applicator using or supervising the use of pesticides in, on, or around food handling and manufacturing establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses, and any other structures and adjacent areas, public or private, and for the protection of stored, processed, or manufactured products.

~~(j)~~(i) School integrated pest management (IPM) control classification includes applicators using or supervising the use of pesticides in the school environment under a "Model School Integrated Pest and Pesticide Management Safety Program," including but not limited to school yards, buildings, playing fields, and other property under the jurisdiction of the school districts.

~~(k)~~(h) Wood product pest control classification includes any applicator using or supervising the use of pesticides for pole framing, silling applications, some home and farm uses, brush on treatments, sapstain control, and uses in non-pressure treatment plants for the protection of wood products.

~~(l)~~(i) Public health pest control classification includes state, federal, or other governmental employees or contracted commercial applicators using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. The jurisdictional health officer, state veterinarian, their duly authorized representatives, and governmental research

personnel are exempt from licensing when applying general use pesticides to experimental areas.

~~(m)(j)~~ Regulatory pest control classification includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of sodium cyanide and sodium fluoroacetate products for predator control unless the individual meets the requirements of ARM 4.10.1204 for sodium cyanide and ARM 4.10.1404 for sodium fluoroacetate. The following subclassifications of government applicators are established to more accurately reflect some government applicator's specific duties and areas of operation:

- (i) mosquito abatement;
- (ii) predator;
- (iii) quarantine;
- (iv) rodent;
- (v) weed; and
- ~~(vi) school IPM; and~~
- ~~(vi)(vii)~~ piscicide.

~~(n)(k)~~ Demonstration and research pest control classification includes:

(i) individuals who, as part of their business or job responsibility, demonstrate to the public the proper use of pesticides and pesticide application techniques or supervise such demonstrations or make or approve recommendations on pesticide product use and/or selection. Such individuals may include extension specialists, county extension agents, government employees, representatives of pesticide manufacturers or related businesses. Not included are individuals licensed as a pesticide dealer or individuals that make recommendations for pesticide products used only for home, yard, lawn, or garden use; and

(ii) individuals conducting field research with pesticides and in doing so, use or supervise the use of pesticides. Such individuals include state, federal, commercial, and other individuals conducting field research on or utilizing pesticides. Demonstration and research applicators shall qualify in one or more of the appropriate classifications in (3)(a) through ~~(t)(i)~~ that best represent their operations or responsibilities.

~~(o)(f)~~ Special utility classification includes applicators using or supervising the use of pesticides in the maintenance of utility rights of way, substations, and pole conditioning or other similar areas.

~~(p)(m)~~ Piscicide classification includes applicators using or supervising the use of pesticides purposefully applied to waters to eliminate fish species as a fishery management tool.

(q) Non-soil fumigation includes applicators who use or supervise the use of restricted use pesticides to fumigate anything other than soil, including fumigant applications made to structures, grain elevators, and rodent burrows. Non-soil fumigant applicators shall qualify in one or more appropriate classifications in (3)(a) through (p).

~~(r)(n)~~ Aerial applicator classification includes applicators that apply pesticides by aircraft, including applications made by drone or unmanned aerial vehicles

(UAVs). Aerial applicators shall qualify in one or more appropriate of the classifications in (3)(a) through (q)(m).

(s) Sodium fluoroacetate (1080 Livestock collars) predator control classification includes all commercially licensed and permitted private farm applicators who use sodium fluoroacetate in a protective collar to control predators. All 1080 Livestock collar applicators must take the written exam and attend training required by ARM 4.10.1204.

(t) Sodium cyanide (M-44) predator control classification includes all commercially licensed and permitted private farm applicators who use sodium cyanide in a mechanical ejection device to control regulated predators. All M-44 applicators must pass the written exam and attend training required by ARM 4.10.1404.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department except for those affected by the classification changes. For them the impact will be under \$100 dollars in fees and the time necessary to get the required training.

4.10.203 COMPETENCY STANDARDS FOR CERTIFICATION OF PESTICIDE APPLICATORS (1) An individual applying for a commercial, public utility, governmental, or noncommercial applicator's license shall be required to pass a written examination prior to issuance of a license.

(a) All of the exam standards required in 40 CFR 171.103(a)(2).

(b)(a) Examinations may be taken at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department.

(c)(b) Any individual applying for a license shall meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(d)(c) The competency of applicants shall be determined by their knowledge and passage of written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department. Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas.

(e)(d) The department may accept the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, all other standards and requirements of the department must be met by the applicant. All out-of-state applicators will be required to take and

pass an examination based on the Montana Pesticide Act and these rules. The scores required are set forth in (3).

(2) remains the same.

(3) The minimum passing score for applicants shall be:

(a) 80% for the core pesticide examination, and 80% for each respective specific examination required.

~~(b) Applicators licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination and/or specific classification examinations must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.~~

(4) remains the same.

(5) Applicators shall be required to requalify for licensing prior to every fifth licensing period.

(a) The department has a staggered four-year requalification time period designated by applicator classification and subclassification. Applicator classifications must requalify by December 31 of the year designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicator requalification must be accomplished by either passing the complete examination series specified in (2) or by earning attending 12 recertification credits, 6 of which must be in-person or live webinar hours of training approved by the department. Courses must be assigned 1 recertification credit per 50 minutes of training and limited to not more than 6 credits per course either six, five, four, three, or two hours. An applicator requalifying for certification by attending pesticide training courses must have written verification of his/her attendance. All the standards for recertification of certified applicators in 40 CFR 171.107 apply.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for recertification. Training course sponsors must petition the department for approval of their courses at least 30 days prior to being held. The petition must include dates, time, location, ~~projected attendance~~, speakers, and a synopsis of their presentations.

(7) remains the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-206, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.204 GENERAL STANDARDS OF COMPETENCY FOR ALL

APPLICATORS (1) All commercial, public utility, and government applicators shall demonstrate by written examination and, as appropriate, performance testing, practical knowledge of the principles and practices of pest control and safe use of

pesticides. The examination shall be based on knowledge and examples of problems and situations appropriate to the applicator's classification or subclassifications and the following areas of competency for which a license or certification-license is desired:

- (a) Label and labeling comprehension:
 - (i) the general format and terminology of pesticide labels and labeling;
 - (ii) the understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
 - (iii) classification of the product, general or restricted;
 - ~~(iv) necessity for use consistent with the label.~~
 - (iv) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;
 - (v) understanding labeling requirements that a certified applicator must be physically present at the site of the application;
 - (vi) understanding labeling requirements for supervising operators working under the direct supervision of a certified applicator;
 - (vii) understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application;
 - (viii) understanding and complying with product-specific notification requirements;
 - (ix) recognizing and understanding the difference between mandatory and advisory labeling language.
- (b) Safety factors including:
 - (i) pesticide toxicity and hazard to ~~man~~ individuals and common exposure routes;
 - (ii) common types and causes of pesticide accidents;
 - (iii) precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
 - (iv) need for and use of protective clothing and equipment;
 - (v) symptoms of pesticide poisonings;
 - (vi) first aid and other procedures to be followed in case of a pesticide accident;
 - (vii) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers-;
 - (viii) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;
 - (ix) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.
- (c) Environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
 - (i) weather and other climatic conditions;
 - (ii) types of terrain, soil, or other substrate;
 - (iii) presence of fish, wildlife, and other non-target organisms;
 - (iv) drainage patterns.

- (d) Pest factors such as:
 - (i) common features of pest organisms and characteristics of damage needed for pest recognition;
 - (ii) recognition of relevant pests;
 - (iii) pest development and biology as it may be relevant to problem identification and control;
 - (iv) verifying that the labeling does not prohibit the use of the product to control the target pest(s).
- (e) Pesticide factors such as:
 - (i) types of pesticides;
 - (ii) types of formulations;
 - (iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
 - (iv) hazards and residues associated with use;
 - (v) factors which influenced effectiveness or lead to such problems as resistance to pesticides;
 - (vi) dilution procedures.
- (f) Equipment factors (relevant to applicator's operation) including:
 - (i) types of equipment and advantages and limitations of each type;
 - (ii) uses, maintenance, and calibration.
- (g) Application technique factors including:
 - (i) methods and procedures used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique of application to use in a given situation;
 - (ii) relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse;
 - (iii) prevention of drift and pesticide loss into the environment.
- (h) State and federal laws, regulations, and rules.
- (i) Responsibilities of supervisors of operators including:
 - (i) understanding and complying with requirements in 40 CFR 171.201 for certified commercial applicators who supervise operators using restricted use pesticides;
 - (ii) the recordkeeping requirements of pesticide safety training for operators who use restricted use pesticides under the direct supervision of a certified applicator;
 - (iii) providing use-specific instructions to operators using restricted use pesticides under the direct supervision of a certified applicator;
 - (iv) explaining pertinent state, tribal, and federal laws and regulations to operators who use restricted use pesticides under the direct supervision of a certified applicator.
- (j) Professionalism factors including:
 - (i) maintaining chemical security for restricted use pesticides;
 - (ii) how to communicate information about pesticide exposures and risks with customers and the public;
 - (iii) appropriate product stewardship for certified applicators.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-206, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION (1) Certified commercial, public utility, government, and noncommercial pesticide applicators shall be examined and qualified with respect to the following practical knowledge standards:

~~(a)~~ ~~Agricultural pest control applicators may be classified into one of three areas:~~

~~(a)(i)~~ Agricultural plant pest control applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury, and community problems resulting from the use of pesticides in agricultural areas.

~~(b)(ii)~~ Agricultural animal pest control applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge concerning specific pesticide toxicity and residue potential is also required since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

~~(c)(iii)~~ Agricultural vertebrate pest control applicators must demonstrate practical knowledge of vertebrates for which they may be using pesticides. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. The applicator must demonstrate a practical knowledge of control and application methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals.

~~(d)(b)~~ Forest pest control applicators shall demonstrate practical knowledge of the types of forest, forest nurseries, and seed production in their state and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge of the relative biotic agents and their vulnerability to the pesticides to be applied is required. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the

consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may be related to meteorological factors and adjacent land use.

~~(e)~~(e) Ornamental and turf pest control applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this classification must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

~~(f)~~(d) Seed treatment ~~and elevator pest control~~ applicators shall demonstrate practical knowledge of the types of seeds that require pesticide protection against pests, and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds. ~~Applicators must demonstrate proper use of grain fumigants to protect seeds, knowledge of the safe handling and application techniques, worker exposure and protection considerations, and reentry standards into fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.~~

~~(g)~~(e) Aquatic pest control applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

~~(h)~~(f) Right-of-way, rangeland, pasture, and non-crop pest control applicators are applicators who apply pesticides and who shall demonstrate practical knowledge of a wide variety of environments since right-of-way, rangeland, pasture, and non-crop sites can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, excessive foliage destruction, and potential effects to livestock and nontarget organisms. Applicators must have the ability to recognize target plants and differentiate them from nontarget plants. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the target application site, and the impact of their application activities in the adjacent areas and communities.

~~(i)~~(g) Industrial, institutional, structural, and health related pest control applicators must demonstrate a practical knowledge of a wide variety of pests and their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat

and exposure of people and pets. Since human exposure includes babies, children, pregnant women, and elderly people and is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this classification. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

~~(j)(i)~~ School integrated pest control management applicators must demonstrate a practical knowledge in the principles of integrated pest management and a knowledge of pesticides registered for use in the school environment, ~~in addition to the knowledge required by applicators in the industrial, institutional, structural, and health-related category.~~

~~(k)(h)~~ Wood product pest control applicators shall demonstrate practical knowledge of the specific wood preservative products used in their operation (creosote, pentachlorophenol, inorganic arsenicals). They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with the consumer awareness program (CAP) ~~[CAP]~~ which will be implemented through the use of Consumer Information Sheets ~~[CIS's]~~ (CIS's) provided to the end users of the products (consuming public).

~~(l)(i)~~ Public health pest control applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved. It is essential that they be known as recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.

~~(m)(j)~~ Regulatory pest control applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

~~(n)(k)~~ Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities

associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they shall meet the specific standards required for classifications in (1)(a) through ~~(1)(g)~~ applicable to their particular activity. Persons conducting field research or method improvement work with restricted use pesticides shall be expected to know the general standards required for classifications in (1)(a) through ~~(1)(j)~~, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration."

~~(o)(4)~~ Special utility ~~pest control~~ applicators shall demonstrate practical knowledge of a wide variety of utility right-of-way environments. They shall demonstrate practical knowledge of problems on runoff, drift and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and soil sterilants, the need for containment of these pesticides within the designated areas, and the impact of their application activities in the adjacent areas. They shall demonstrate practical knowledge of the specific wood preservative products used in their operation. They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.

~~(p)(m)~~ Piscicide ~~pest control~~ applicators shall demonstrate a knowledge of registered piscicides, and safety practices for use, storage and transportation. They shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations, the potential of downstream effects and piscicide decontamination procedures. They must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They must show practical knowledge of water chemistry, pest identification, and the ecology within the aquatic environment. Applicators must also have knowledge of applicable laws and regulation related to introduction of pesticides into state waters, and demonstrate practical knowledge of the principles of limited area application.

(q) Non-soil fumigant applicators shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing non-soil fumigation applications of restricted use pesticides including the following: label and labeling comprehension; safety; selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment; and the importance of proper

application rate, posting, and timing. Applicators must have knowledge of measures used to minimize adverse health effects due to unintended exposure.

~~(r)(n)~~ Aerial applicators shall demonstrate practical knowledge of pest problems and pest control practices associated with performing aerial application of pesticides and meet all the requirements of 40 CFR 171.103(d)(15). They shall demonstrate practical knowledge of labeling requirements and restrictions specific to aerial application of pesticides, how to choose and maintain aerial application equipment, factors to consider before and during an application, methods to minimize off-target pesticide movement, and demonstrate competency in performing an aerial pesticide application laws and regulations for aerial applicator pilots, operation and application safety, preventing pesticide drift, aerial pesticide dispersal systems, calibrating aerial application equipment, and making an aerial pesticide application.

(s) Sodium fluoroacetate (1080 Livestock collars) predator control applicators must demonstrate practical knowledge of predator pests, including recognizing those pests and signs of the presence, their habitats, life cycles, biology, and behaviors as they may be relevant to pest identification and control. Applicators must also demonstrate practical knowledge and understanding of specific requirements for field posting, monitoring, recordkeeping, proper storage of collars, disposal of punctured or leaking collars, disposal of contaminated animal remains, vegetation, soil, and clothing, and reporting of suspected and actual poisoning, mishap, or injury to threatened or endangered species, humans, domesticated animals, or non-target wild animals. They shall demonstrate comprehension of all laws and regulations applicable to the use of sodium fluoroacetate products, including the restrictions on the use of sodium fluoroacetate products ordered by the EPA Administrator. Applicators must also demonstrate practical knowledge and understanding of the specific use restrictions for sodium fluoroacetate in the livestock protection collar, including where and when sodium fluoroacetate products can be used, safe handling and placement of collars, and practical treatment of sodium fluoroacetate poisoning in humans and domestic animals. All 1080 Livestock collar applicators must pass the written exam and attend training required by ARM 4.10.1204.

(t) Sodium cyanide (M-44) predator control applicators must demonstrate practical knowledge of mammalian predator pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as they may be relevant to pest identification and control. They must demonstrate comprehension of all laws and regulations applicable to the use of mechanical ejection devices for sodium cyanide, including the restrictions on the use of sodium cyanide products ordered by the EPA Administrator. M-44 applicators must also demonstrate practical knowledge and understanding of all of the specific use restrictions for sodium cyanide devices, including safe handling and proper placement of the capsules and device, proper use of the antidote kit, notification to medical personnel before use of the device, conditions of and restrictions on when and where devices can be used, requirements to consult U.S. Fish and Wildlife Service maps before use to avoid affecting endangered species, maximum density of devices, provisions for supervising and monitoring applicators, required

information exchange in locations where more than one agency is authorized to place devices, and specific requirements for recordkeeping, monitoring, field posting, proper storage, and disposal of damaged or used sodium cyanide capsules. All M-44 applicators must pass the written exam and attend training required by ARM 4.10.1404.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-206, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.206 INDIVIDUALS REQUIRING A PESTICIDE OPERATOR'S LICENSE

(1) Employees of certified applicators under certain conditions of use for general and restricted use pesticides shall be required to become licensed pesticide operators.

(a) The appropriate provisions of 40 CFR 171.201 shall apply, including but not limited to provisions for training, instructions, use-specific conditions, qualifications, and qualification recordkeeping for operators working under the "direct supervision" of commercial or permitted applicators. A person must be a minimum of 18 years old to purchase or use restricted use pesticides, unless as allowed in ARM 4.10.403.

(b) Only one certified applicator, or licensed operator shall be required for each spraying equipment unit when in actual operation. Application for an operator's license shall be made on a standard application form provided by the department.

(2) through (5) remain the same.

(6) The requirements of 40 CFR 171.201(d) shall apply to the specific content required in operator training programs. The training or examination shall include knowledge of pesticide law and rules, labels and labeling, safety, first aid and toxicology, effect of pesticides, factors affecting pesticide application, equipment calibration, dilution and mixing of pesticides, and recognition of common pests to be controlled. The examination or training for operators must be as specific as possible to their operations and responsibilities. Examinations will be given at the convenience and approval of the department or its authorized representative. The department shall cooperate with individual applicators or groups of applicators in establishing the training materials and examination questions, and may provide assistance to applicators in training applicants for an operator's license. The passing score for the examination must be 80%. Operators who pass the examination may not be required to pass another examination. Operators may renew their license each year by receiving in-service business or government agency training or by attending a training course approved by the department.

(7) remains the same.

AUTH: 80-8-105, MCA
IMP: 80-8-105, 80-8-205, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.207 APPLICATOR RECORDS (1) Commercial, public utility, government, noncommercial applicators and their operators must keep and maintain application records for two years.

(2) Every application record performed either by an applicator or operator must include:

(a) The name and the certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any operator(s) that made the application; ~~of the applicator or operator applying the pesticide;~~

(b) Date of application;

(c) Time of application, including both start and end times;

(d) Location, including the property owner's or lessee's name and address where the pesticide was applied;

(i) The specific application site must be expressed by township, range, and section numbers, local identifiable landmarks, or latitude and longitude coordinates.

(ii) Right-of-way applications may be expressed in general terms of identifiable landmarks.

(iii) Nonagricultural applications may specify the site, building, facility, premises, or other identifiable landmarks.

(e) Equipment used;

(i) If the same piece of equipment is used for all applications, then this equipment may be listed only once. If more than one piece of equipment is utilized, the applicator may assign a number to each piece of equipment and list the equipment once by description and thereafter by number.

(f) The pesticide or pesticides used, including the company name, trade name, and the EPA registration number;

(g) The rate of application, including the amount of formulated product per volume or weight to be applied on a given unit area;

(h) The area treated (number of acres, trees, livestock, square feet or yards, etc.) or the type of treatment for structural, seed treatment, or wood product applications;

(i) The primary pest or pests involved;

(j) The site or crop treated and stage of crop development, if applicable; and

(k) Weather conditions such as wind speed, wind direction, and temperature, if applicable.

(3) Applicators utilizing two or more pesticides in a tank must record all required data for each pesticide in the tank mix.

(4) Applicators must record application information on a daily basis not to exceed 24 hours from the time of the application.

(5) Applicator records must be open to inspection by authorized employees of the department during all business hours. Applicators must submit written copies of their records or any portion of the records when requested in writing by the department.

(6) Seed treat applicators and wood product applicators must maintain records only on items set forth in (2)(a) through (h).

(7) As ruled by opinion of the Montana attorney general (Vol. No. 38, Opinion No. 1), pesticide applicator and dealer records held by the Department of Agriculture are subject to public disclosure unless the department finds that the applicator's or dealer's right to privacy clearly outweighs the public's right to know. Such determination will be considered under department policy on a case by case basis.

(a) Department publication of any information of these records which may disclose operations of selling, production, or use of pesticides by any person is prohibited under 80-8-107, MCA, and confirmed under department interpretation of a letter of explanation to the above-cited opinion from the attorney general.

(8) Applicators, upon written request, must submit to the department records of each application performed with all pesticides, or those specifically named by the department. The records must be submitted within 14 calendar days of the request or as otherwise requested by the department. The request for records may include the records for the complete calendar year. The record must contain all the items listed in (2)(a) through (k), unless not required based on (6).

(a) If no applications of pesticides occurred during the requested time period, applicators must document this to the department.

(9) Private farm applicators are exempt from the requirements of this rule, unless a specific reporting requirement is established in another rule.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.210 PESTICIDE CERTIFICATION AND TRAINING – FEES (1) All fees for services are payable upon purchase or on receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to allowing additional purchases or providing additional services, such as inspections. The fees shall be as follows:

(a) pesticide study manuals: a maximum fee of \$20 ~~45~~ for each study manual plus shipping and handling; and

- (b) pesticide applicator training courses:
- (i) initial pesticide applicator training courses: a maximum fee of \$100 ~~75~~;
- and
- (ii) fall pesticide core and category-specific training courses: a maximum fee of \$50 ~~30~~.

AUTH: 80-8-105(2)(q), 80-8-109, MCA

IMP: 80-8-105(2)(q), 80-8-109, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.313 USE OF RESTRICTED-USE AQUATIC HERBICIDES (1) Only persons certified and holding an aquatic pest control applicator license or permit issued by the department may purchase, or use a restricted-use aquatic herbicide.

(a) To initially qualify, a person shall pass a department aquatic herbicide examination.

(b) To maintain qualifications for certification, all applicators, except private farm applicators, must comply with ARM 4.10.203(5), MCA.

(c) All private farm applicators must attend six hours of department-approved aquatic training, or pass an aquatic herbicide examination to maintain qualifications. The permit issued will conform to the five-year qualification period established for the district in which the private farm applicator resides.

(d) The department may require training to obtain or maintain an aquatic pest control applicator license if significant changes occur in aquatic herbicide use patterns or aquatic vegetation control techniques.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.314 APPLICATION OF RESTRICTED-USE AQUATIC HERBICIDES (1) All certified licensed or permitted aquatic pest control applicators who plan to apply a restricted-use aquatic herbicide shall:

(a) Submit for approval a preseason aquatic vegetation management plan to the department by at least two ~~(2)~~ weeks prior to the first aquatic herbicide application. No applicator shall apply a restricted use aquatic herbicide without

management plan approval by the department. Management plan forms are available upon request from the department. The management plan must contain:

(i) a legible map of the ditch (preferably drawn on a USGS 7.5' topographic map or other appropriately detailed base map) area showing the location of:

(A) all ditch or canal segments, or other surface waters to be treated;

(B) all structures (flumes, siphons, weirs ~~wiers~~, waste gates, etc.) along treated segments;

(C) all state waters within the general area which treated waters parallel, cross, or could potentially contaminate;

(D) all herbicide application points;

(E) all areas where treated water will be discharged;

(ii) proposed application date(s);

(iii) herbicide to be used;

(iv) amount and rate of herbicide to be used;

(v) application techniques, and

(vi) weed(s) to be controlled.

(b) Maintain and update the plan as changes or modifications occur that differ from the original management plan submitted to the department. This management plan will remain on file at the department.

(c) If no changes in the management plan are anticipated, the applicator must still notify the department in writing of their intent to treat. This written notification will serve as that year's plan. A letter of approval from the department will still be required before the application may proceed.

(d) Allow an inspection of the treatment area by the department or its authorized agents prior to approval of the plan and application by the applicator. The department will notify the applicant of its decision for approval once any required inspections are completed. If the applicant desires an inspection of the treatment area, advance notice to the department of at least one (1) week is recommended.

(e) Consult the Montana Department of Fish, Wildlife and Parks prior to applying a restricted-use aquatic herbicide when appropriate.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.315 APPLICATOR RECORDS (1) All applicators, including private farm applicators, must maintain and submit, upon request by the department, a record of each restricted-use aquatic herbicide application.

(a) These records shall include:

(i) name of the applicator and/or operator;
(ii) name of the ditch, canal, or area treated and county where located;
(iii) application point(s) and areas of ditch, canal or other surface waters treated;

(iv) company name, trade name, and the EPA registration number or formulation of the herbicide(s) used;

(v) date of application and amount and rate of herbicide used;

(vi) weeds controlled;

(vii) type of equipment used and method of application.

(b) These records will satisfy reporting requirements for all non-private farm applicators described within ARM 4.10.207(1). The records required in ARM 4.10.315 will satisfy the requirements for applicators subject to ARM 4.10.208(8). Private farm applicators are exempt from the reporting requirements of ARM 4.10.207(8).

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.401 PRIVATE FARM APPLICATOR CERTIFICATION (1) A private farm applicator desiring to use restricted use pesticides is required to apply for a special use permit or certificate on a form approved by the department. Each application form must be completed in its entirety prior to processing by the department.

(a) A private farm applicator must be a minimum of 18 years of age to use or purchase restricted use pesticides unless as allowed in 4.10.403.

(b)(a) Applicants, who have completed the application form, paid the fee, passed the required examination(s) or have attended an approved training course and have taken an ungraded quiz at the conclusion of the course, will be issued a certificate by the department to purchase and use restricted use pesticides. Passage of the required examination(s) or attendance at a training course qualifies applicators for five consecutive years. The applicator's first requalification and recertification date will be based upon the staggered schedule established for the permit district in which the person resides.

(c)(b) The certificate is effective for five years from the date of issuance to December 31 of the fifth year except as provided in (1)(a). Private farm applicators may renew their certification to purchase and use restricted use pesticides by submitting their application and fee to the department.

(d)(c) Training manuals and/or training materials for private farm applicators are approved by the department. If the applicator elects to qualify by examination,

these training manuals and/or training materials serve as the basis for the examination.

(2) A private farm applicator shall be classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and the areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

(3) The following classifications are:

(a) Private farm general permit for agricultural pest control includes any applicator using or supervising the use of restricted use pesticides for agriculture on land owned, rented, or leased by the applicator or their employer.

(i) In order to obtain any of the additional classifications described in (b) through (f), an individual must possess an active private farm general permit for agricultural pest control.

(ii) All of the requirements of 40 CFR 171.105(a) apply to this section.

(b) Private farm aquatic pest control includes any applicators using restricted use pesticides purposefully applied to standing or running water.

(i) The competency standards for private farm aquatic pest control applicators shall be the same as commercial applicators in ARM 4.10.205(1)(g).

(c) Private farm M-44 sodium cyanide predator control includes applicators who use sodium cyanide in a mechanical ejection device to control predators.

(i) The competency standards for private farm M-44 applicators shall be the same as commercial applicators in ARM 4.10.205(1)(t). All M-44 applicators must pass the written exam and attend the training required by ARM 4.10.1404.

(d) Private farm 1080 Livestock collar predator control includes any applicators who use sodium fluoroacetate in a protective collar to control predators.

(i) The competency standards for private farm 1080 Livestock collar predator control applicators shall be the same as commercial applicators in ARM 4.10.205(1)(s). All 1080 Livestock collar applicators must pass the written exam and attend training required by ARM 4.10.1204.

(e) Private farm aerial classification includes any applicators that apply restricted use pesticides by aircraft.

(i) The competency standards for private farm aerial applicators shall be the same as commercial applicators in ARM 4.10.205(1)(r).

(f) Private farm non-soil fumigation classification includes any applicators that apply restricted use pesticides to fumigate anything other than soil.

(i) The competency standards for private farm non-soil fumigation applicators shall be the same as commercial applicators in ARM 4.10.205(1)(q).

(4)(2) The private farm applicator examination or training standards, as a minimum requirement, must include those set forth in 80-8-209(3), MCA.

(5)(3) The private farm applicant passing the examination or attending an approved training course is certified to use restricted use pesticides for the purpose of producing agricultural commodities. The passing examination score is 70%.

~~(6)~~(4) Certified private farm applicators must recertify to use restricted use pesticides. Private farm general permit holders may recertify ~~Recertification may be achieved~~ by passing an examination or by earning six credits of training approved by the department. Recertification may be achieved for the classifications outlined in (3)(b) through (f) by passing an examination or by earning three additional credits of training approved by the department for each respective classification held.

(a) All the standards for recertification of certified applicators in 40 CFR171.107 apply to this section.

(7) Continuing education programs must satisfy the following:

(a) Be approved by the Montana Department of Agriculture.

(b) The Montana Department of Agriculture must ensure that any continuing education course or event, including an online or other distance education course or event relied upon for recertification includes a process to verify applicators' successful completion.

(8) The department will facilitate a one-year phase-in period starting January 1, 2025, to allow pesticide applicators to begin transitioning to the requirements of the 2023 Montana State Certification and Training Plan before January 1, 2026.

(9) The certification period is determined by the county and district the private farm applicator resides in, and the established recertification year for each district. The districts are staggered on a five-year rotation, and the recertification period ends on December 31 of the fifth year. The districts and the counties within are listed below:

(a) DISTRICT I: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders;

(b) DISTRICT II: Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow;

(c) DISTRICT III: Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;

(d) DISTRICT IV: Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, and Wibaux; and

(e) DISTRICT V: Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Mussellshell, Petroleum, Stillwater, Sweet Grass, Wheatland, and Yellowstone.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-209, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.403 CREDENTIALS (1) Certified private farm applicators may request the department to issue credentials for two members of their immediate family or

employees allowing them to purchase and use restricted use pesticides under the applicator's certificate permit and supervision. Individuals receiving credentials must be a minimum of 18 years old except that an immediate family member working under the direct supervision of a private applicator must be at least 16 years old provided the following conditions are met:

(a) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.

(b) The restricted use pesticide is not being applied aerially.

(2) A person in possession of such credentials may only purchase restricted use pesticides for which the private farm applicator is certified and may only use such pesticides upon lands owned, rented, or leased by the private farm applicator.

(3) The appropriate provisions of 40 CFR 171.201 shall apply to this section, including but not limited to provisions for training, instructions, use-specific conditions, and qualifications for credentialed employees or family members working under the direct supervision of certified private farm applicators.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-209, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.404 IMPROPER PURCHASE OR USE (1) No private farm applicator, family member, or employee may use or recommend use of a pesticide in a manner inconsistent with registered labeling, or with any agency or department restrictions that have been placed on the use of that pesticide.

(2) No private farm applicator, family member, or employee may purchase or use a restricted pesticide without either a permit or a credential. All applications made by family members or employees must be under the direct supervision of a private farm applicator.

(3) For the purposes of applying 80-8-209, MCA, the term "vicinity" means using nonrestricted (general use) pesticides on lands immediately adjacent or across a road from lands owned, leased, or rented by the private farm applicator doing the applications.

(4) Except as allowed in 80-8-209, MCA, and (3), a private farm applicator, family member, or employee who applies pesticides for hire or regularly engages in the business of applying pesticides for others must be licensed as a commercial applicator.

AUTH: 80-8-105, 80-8-211, 80-8-306, MCA

IMP: 80-8-105, 80-8-211, 80-8-306, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.501 APPLICATION FOR LICENSE (1) A person applying for a commercial pesticide dealer's license shall make application for the license on a standard application form provided by the department. Each application shall be completed in its entirety and the licensing fee paid prior to processing by the department. Incomplete applications will be returned to the applicant.

(2) Non-resident applicants shall be required to submit the license application, and fee, and must designate an agent for a completed form of service of process in the state with the Secretary of State prior to submitting processing the application to by the department. ~~The form shall be accompanied by the appropriate fee for filing, payable to the Secretary of State.~~ The service of process shall remain valid until cancelled or modified.

~~(3) A non-resident corporation, which has an effective certificate of authority to transact its business in Montana, filing the service of process shall appoint its own resident agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the agent or attorney. Service of process for these corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees, if more than one, the subsequent revisions of the list for those employees licensed or to be licensed as dealers.~~

~~(4) A non-resident individual or partnership may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the secretary of state. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individuals or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide dealers.~~

~~(5) A non-resident corporation which does not have an effective certificate of authority from the secretary of state to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the secretary of state. Service of process for corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide dealers.~~

~~(6)~~(3) Pesticide dealer outlets with a licensed dealer shall be required to list the names and address of all their employee pesticide field ~~men~~ and salesmen employed directly out of the same outlet as the licensed dealer. These employees traveling and transacting pesticide sales in the state shall be required to possess

and carry credentials stating that the employee is transacting business under the name and license number of a licensed dealer. The department will provide the necessary credentials to the licensed dealer for the field ~~men~~ and salesmen listed on the application. Dealers may request additional field ~~men~~ or salesmen credentials for new employees provided that the dealers shall return to the department any credentials for those employees terminated or no longer supervised by the dealer. Dealers and dealer field ~~men~~ or salesmen shall be required upon request to show their license or license credentials to any buyer of a pesticide or to employees of the department.

AUTH: 80-8-105, MCA
IMP: 80-8-105,80-8-207, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.502 RETAIL SALE OF PESTICIDES (1) The retail sale of pesticides shall be limited to products:

- (a) labeled for only home, yard, lawn, and/or garden uses; and
- (b) classified as general use.

(2) Retail sales of pesticides not meeting these limitations shall be considered a violation of the act. All retailers shall maintain for inspectional purposes, shipping, purchase, or invoice records of pesticide products received. These records shall be maintained for two years and must be available for inspection by authorized employees of the department during normal business hours.

AUTH: 80-8-105, MCA
IMP: 80-8-105,80-8-212, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) Licensed pesticide dealers may purchase, sell, offer for sale, or distribute any pesticide classified as general or restricted use registered in that state. Dealers will not be allowed to handle certain restricted pesticides which are registered for use, sale, or distribution by government agencies only.

(2) New applicants for a dealer license must pass a written examination prior to issuance of a license by the department and in accordance with ARM 4.10.203(1)(a), (3)(a), and (4). ~~An applicant not receiving a passing score on the first examination and upon notification of failure, may retake the examination seven days after notification. Applicants failing the second examination and upon notification of failure, may retake the examination 15 days after notification. Applicants failing the third examination shall not be allowed to retake the examination until the next licensing period beginning January 1 the next year. Applicants may be reexamined at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.~~

(3) Competency of applicants by written examination shall be determined by their knowledge of the subjects and materials set forth in the (Pesticide Applicator Certification Core Manual), including future revisions and any other manual, guide, or materials required by the department. Examination questions will be derived from these manuals. Their degree of difficulty will be based upon the degree of importance established by the department for the various subjects. The examination must consist of but not be limited to questions on pesticide legislation; regulations and guidelines; safety and toxicology; disposal; storage and transportation; effects on animals, plants, and environment; fish and wildlife; alternatives to chemicals; pollinating insects; selection of control methods; factors affecting pesticide applications; classification and formulations of insecticides; fungicides, herbicides, and other pesticides and their uses; definitions; and recommendations for use of pesticides. The minimum passing examination score for applicants to be licensed as dealers shall be 80%.

(4) Dealers shall be required to requalify for licensing prior to December 31, 1986, and by the end of every fourth year thereafter. Dealer requalification must be accomplished by either passing a dealer examination or by attending 12 hours of training approved by the department earning 12 recertification credits, 6 of which must be either in-person training or live webinars. ~~Courses must be either six, five, four, three, or two hours of training approved by the department, and assigned 1 recertification credit per 50 minutes of training and limited to not more than 6 credits per course.~~ A dealer attending pesticide training courses must have written verification of his/her attendance.

~~(a) Dealers licensed prior to April 30, 2010 who did not receive a score of 80% or higher on their core pesticide examination must retest or have obtained 12 hours of recertification training approved by the department before April 30, 2011.~~

(5) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for relicensing. Training course sponsors must petition the department for approval of their courses 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and synopsis of their presentations.

(6) The department may require dealers to pass an examination during any licensing period on new pesticide technology.

(7) A dealer, not renewing and maintaining his license and qualification, within the established qualification period shall be required to retake and pass the examination prior to the issuance of a new license at the beginning of the next

qualification period. The dealer may maintain his qualifications by attending approved requalification programs for a time period not to exceed four years. The dealer will be required to maintain his records of requalification for submission to the department for relicensing. The department will not maintain qualification data for persons that have not relicensed. The department reserves the right to require special examination(s) on new requirements or technology.

(8) A licensed dealer changing his employment to another company or business within a licensing period shall be required to submit to the department the license and any employee credentials for cancellation by the department. The dealer, by submission of a written request or application, may request the issuance of a new license. If the dealer paid the license fee, the department will issue the license. If a ~~dealership outlet~~ or company originally employing the dealer paid the license fee, the department shall not reissue the license to the dealer or the dealer's new employer until a new fee is paid. If the company paid for the licensing fee, the department will credit the fee to the company for issuance of another dealer's license by the department within the same licensing period, provided that the license must not be issued until the applicant passes the required written examination or is already a licensed dealer. Licenses and license fees must not be transferable between licensing periods.

(9) A licensed dealer or employees supervised by the dealer shall only sell restricted-use pesticides to other licensed dealers, certified ~~commercial, public utility, or governmental~~ applicators, ~~to noncommercial certified applicators,~~ licensed operators, or to ~~certified farm applicators or their~~ credentialed family members or employees of permitted private farm applicators. The dealer or dealer's employees shall only sell restricted use pesticides labeled for use in the classifications stated on the certified applicator or operator license, private farm applicator permit or credential ~~to a certified applicator the pesticide or pesticides within the group or class of pesticides stated on the license or permit.~~

(10) Dealers are allowed to sell restricted-use pesticides to persons possessing ~~proper identification or~~ credentials issued by the department. These credentials will state that the person is purchasing the pesticide under the name and license or permit number of a certified applicator and that the certified applicator supervises the use of the pesticide by that person. Sale of restricted-use pesticides to any person other than dealers, certified applicators, licensed operators, or persons with departmental credentials is illegal. Such sales to any person ~~may~~ must subject a dealer to immediate revocation of the license.

AUTH: 80-8-105, MCA

IMP: 80-8-105, 80-8-207, 80-8-208, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.504 DEALER RECORDS (1) Pesticide dealers, including pharmacists, veterinarians, and certified pharmacies must maintain shipping, purchase, or invoice records of all pesticide products received. These records must be retained for two years.

(2) Dealers, including pharmacists, veterinarians, and certified pharmacies must maintain a complete record of all restricted use pesticides purchased and sold. These records must be retained for two years.

(3) The sales record of restricted use pesticides must include:

(a) The company name on the label;

(b) The complete trade name;

(c) The EPA registration number, including any applicable emergency exemption or state special local need registration number;

(d) The volume sold;

(e) The license or permit number of the applicator or the dealer purchasing the pesticide;

(f) The expiration date of the license or permit and certification categories of the certified applicator that are relevant to the pesticide sold;

~~(f)(g)~~ The date of sale; and

~~(g)(h)~~ The name of the applicator, dealer, and address of residence or principal place of business of each certified applicator or dealer purchasing the pesticide, or if applicable, of the operator, or of the credentialed employee, or family member purchasing the pesticide.

(4) Upon request of the department, pesticide dealers, including pharmacists, veterinarians, and certified pharmacies selling restricted pesticides, must submit records providing the information in (3).

(a) The records must be submitted within 14 calendar days of the request.

(b) If no restricted use pesticides are sold during the time period requested, this must be documented to the department.

(5) Records required of dealers, pharmacists, veterinarians, and certified pharmacies must be available for inspection by authorized employees of the department during all business hours.

(6) Dealers and retailers selling retail pesticides, as designated in ARM 4.10.502, are exempt from the record keeping and reporting requirements of this rule. Records of retail pesticides must be maintained as required in ARM 4.10.502(2).

AUTH: 80-8-105, 80-8-211, MCA

IMP: 80-8-105, 80-8-211, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.1005 PENALTY DETERMINATION (1) Each violation of the Montana Pesticides Act and/or rules adopted thereunder is considered a separate offense. Each offense is subject to a separate penalty not to exceed \$2,500, with the exception of private farm applicators whose penalty cannot exceed \$500 for the first offense.

(2) The penalty matrixes in this rule establish the penalty for each offense that is a major violation or reoccurrence of a major violation. The values in parentheses establish the penalty for private farm applicators possessing a permit. The gravity of the violation, the degree of care exercised, and the degree of harm to health, environment, agricultural commodities, or livestock may decrease or increase the penalties listed below. The department shall have the option to select the most appropriate penalty and penalty value for each violation.

(3) through (4)(e) remain the same.

(f) use of a pesticide without having obtained the required license or permit:

Commercial, government, public utility or non-commercial applicators or operators or <u>private</u> farm applicators			
General	\$ 500	\$1,500	\$2,500
Restricted	1,000	2,000	2,500
Permitted <u>private</u> farm applicator restricted	250	1,000	2,000

(g) through (k) remain the same.

AUTH: 80-8-105, MCA

IMP: 80-8-306, MCA

REASON: The department believes amending this rule is necessary for the following reasons:

Throughout ARM 4.10.1005, the addition of "private" to "farm applicator" clarifies the type of farm applicator to exclude commercial agricultural applicators, and incorporates the terminology of relevant federal code, 40 CFR 171.105, "Standards for certification of private applicators" while continuing to use the state-specific term of "farm applicator." This amendment provide consistency across the department's pesticide rules.

EXPECTED COST: There is no expected financial gain or loss to the regulated community or the department.

4.10.1501 DEFINITION OF TERMS These definitions apply to all regulations and rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA, unless specified differently by statute or individual rules.

(1) through (21) remain the same.

(22) "Classification of applicator" means the process by which commercial, government, public utility, non-commercial, and private farm applicators are classified by the department according to type of operation, types or classes of pesticides use, or where and how the pesticide is to be used or applied.

(23) through (28) remain the same.

(29) "Credential" means an authorizing document issued to an individual to sell pesticides under the supervision of a licensed dealer; or private farm applicator, family members, or employees allowing them to purchase or use restricted use pesticides under the supervision of the private farm applicator.

(30) through (32) remain the same.

(33) "Direct supervision" means the act or process whereby the use of a pesticide is made by a competent person acting under the verifiable instructions and supervision of a certified applicator, who has provided detailed guidance to the competent person for proper use of the pesticide; who has made provisions for contact in the event he is needed; and who is responsible for the actions of that person who has ensured that a means to immediately communicate with the certified applicator is available to the competent person; and who is responsible for the actions of that person. The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(34) through (40) remain the same.

(41) "Private farm applicator" means a person applying pesticide to his own crops or land. In the case of restricted use pesticides, a person certified as a private farm applicator to use or supervise the use of a restricted use pesticide for purposes of producing any agricultural commodity on lands owned, rented, or leased by ~~him or his~~ their employer.

(42) through (72) remain the same.

(73) "Permit" means a special use document, which may be referred to as a certificate, issued by the department to a private farm applicator to purchase, use, or apply restricted use pesticides.

(74) through (105) remain the same.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: The department believes the rule amendments are necessary. They remove outdated text and bring the rule into alignment with current federal and state practices.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4. The proposed new rule is as follows:

NEW RULE I GRANTING, RENEWING, AND DENYING LICENSES, CERTIFICATES, AND PERMITS (1) No person shall be eligible to receive or renew an applicator license in the state of Montana in the event they have received a criminal or civil penalty under FIFRA Sections 14(a) or 14(b) in any jurisdiction.

(2) In case a license holder receives a penalty under FIFRA Section 14(a) or 14(b) in any other jurisdiction, it is their duty to notify the department within 30 days.

(3) Failure to notify the department may result in ineligibility to hold an applicator license in the state of Montana as well as the forfeiture of any pesticide license held at the time the non-compliance comes to the attention of the department.

AUTH: 80-8-105, MCA
IMP: 80-8-105, MCA

REASON: The department believes that the new rule is necessary to comply with the EPA's new regulations under FIFRA.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

5. The following rules are proposed to be repealed:

4.10.103 APPROVAL, MODIFICATION, AND CANCELLATION OF
FINANCIAL RESPONSIBILITY ELEMENTS

AUTH: 80-8-105 MCA
IMP: 80-8-214 MCA

REASON: The department no longer believes the rule is necessary.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.107 PERSONAL LIABILITY FOR DAMAGES

AUTH: 80-8-105, MCA
IMP: 80-8-214, MCA

REASON: The department no longer believes the rule is necessary.

COST EXPECTED: There is no expected financial gain or loss to the regulated community or the department.

4.10.108 LICENSING PERIOD

AUTH: 80-8-105, MCA
IMP: 80-8-214, MCA

REASON: The department no longer believes the rule is necessary.

COST EXPECTED: There is no expected cost to licensed community: pesticide applicators; no loss or gain to the department.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts Street, Helena, Montana, 59620-0201; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov. Comments must be received no later than October 7, 2024.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.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 amendment, adoption, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christy Clark
Christy Clark
Director
Department of Agriculture

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3729 pertaining to the) PROPOSED AMENDMENT
administration of the Community)
Development Block Grant (CDBG))
Program)

TO: All Concerned Persons

1. On August 29, 2024, at 11:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_kJKq9DIbTrOD8b5PIbd8CA

2. The Department of Commerce will provide 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 Commerce no later than 5:00 p.m., August 27, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov.

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

8.94.3729 INCORPORATION BY REFERENCE OF RULES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – COMMUNITY AND PUBLIC FACILITIES PROJECTS APPLICATION AND GUIDELINES (1) The Department of Commerce adopts and incorporates by reference the Community and Public Facilities Application and Guidelines as rules for the administration of the Community Development Block Grant (CDBG) Program (~~July 2022~~ July 2024).
(2) remains the same
(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on Community MT's web site at <https://comdev.mt.gov/Programs/CDBG/Facilities/ApplicationForms> commerce.mt.gov/Housing/Community/Community-Development-Block-Grant-Program/Public-and-Community-Facilities.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule to incorporate the City of Bozeman to the entitlement section as HUD has designated the City of Bozeman as "entitlement" this upcoming federal fiscal year. Being an entitlement now limits Bozeman's ability to utilize state CDBG funding.

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 the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., September 6, 2024.

5. The Office of Legal Affairs, Department of Commerce, 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. Written requests may be mailed or delivered to the contact listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Semmens

John Semmens
Rule Reviewer

/s/ Mandy Rambo

Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to the) PROPOSED ADOPTION
administration of the Agritourism)
Grants Program)

TO: All Concerned Persons

1. On August 29, 2024, at 10:00 a.m., the Department of Commerce (department) will hold a public hearing via zoom to consider the proposed adoption of the above-stated rule.

Video:

https://mt-gov.zoom.us/webinar/register/WN_OFRGPLheRLaFglQKm7qmtQ

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this process or need an alternative accessible format of this notice. If you require an accommodation, please contact the department by 5:00 p.m. on August 27, 2024, to advise us of the nature of the accommodation you are requesting. Please contact the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES
GOVERNING THE GUIDELINES FOR THE AGRITOURISM GRANTS PROGRAM

(1) The department adopts and incorporates by reference Program Guidelines, Application and Grant Administration for the Agritourism Grants Program with the most current version being posted on the Tourism Grant Program website (guidelines), as rules governing how the department will administer the program.

(2) The guidelines address the following:

- (a) introduction;
- (b) definitions;
- (c) eligible applicants;
- (d) eligible uses of funds;
- (e) ineligible uses of funds;
- (f) application process;
- (g) application review process and ranking criteria; and
- (h) award process and grant administration.

(3) Copies of the guidelines may be obtained from the department's Destination MT, 301 South Park Avenue, P.O. Box 200501, Helena, Montana,

59620-0501, or on its web site at <https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/>.

AUTH: 90-1-122, MCA

IMP: 90-1-122, MCA

REASON: The proposed new rule is necessary to implement and administer the Agritourism Grants Program in accordance with SB 540, which was enacted by the 2023 Montana Legislature.

Section 1 of SB 540 authorizes the department to provide funding to eligible applicants to support agritourism.

The department proposes adopting NEW RULE I, which incorporates by reference the guidelines. The proposed guidelines can be reviewed on the department's web site at <https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/>. Interested persons may comment on the guidelines in accordance with this notice.

Adopting the guidelines is necessary to provide public notice on how the department plans to administer the Agritourism Grants Program in compliance with SB 540.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0533; telephone (406) 841-2596; fax (406) 841-2871; TDD (406) 841-2702; or e-mail DOCAminstrativerules@mt.gov, and must be received no later than 5:00 p.m., September 6, 2024.

5. The department's Office of Legal Affairs will 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. Written requests may be mailed or delivered to the contact person in paragraph 4 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 of SB 540, Representative Daniel Zolnikov, was contacted on July 30, 2024, by e-mail at Daniel.Zolnikov@legmt.gov.

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

/s/ John Semmens
JOHN SEMMENS
Rule Reviewer

/s/ Mandy Rambo
MANDY RAMBO
Deputy Director
Department of Commerce

Certified to the Secretary of State July 30, 2024.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	AMENDED NOTICE OF PUBLIC
Rules I through III and the	)	HEARING ON PROPOSED
amendment of ARM 10.7.106A,	)	ADOPTION AND AMENDMENT
10.10.301, 10.10.301B, 10.10.301C,	)	
10.10.301D, 10.16.3818, and	)	
10.20.106 pertaining to school	)	
finance	)	

TO: All Concerned Persons

1. On July 5, 2024, the Office of Public Instruction (OPI) published MAR Notice No. 10-7-124 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1501 of the 2024 Montana Administrative Register, Issue Number 13.

2. A public hearing began on July 29, 2024, but technical difficulties prevented any members of the public from participating in the hearing via Zoom. Accordingly, the public hearing was continued and will reconvene on August 30, 2024, at 10:00 a.m., at the OPI building at 1300 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. Remote participation via the Zoom meeting platform will be available during the hearing. Join the Zoom Meeting at <https://mt-gov.zoom.us/j/89117314325?pwd=SPWX6Qwc1RZ9Kn1X3nGeYzkNMhwlc1>

Meeting ID: 891 1731 4325

Password: 008074

Dial by Telephone

+1 646 558 8656

Meeting ID: 891 1731 4325

Password: 008074

Find your local number: <https://mt-gov.zoom.us/j/89117314325?pwd=SPWX6Qwc1RZ9Kn1X3nGeYzkNMhwlc1>

3. OPI 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 OPI no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact the OPI ADA Coordinator, 1300 11th Avenue, Helena, Montana, 59601; telephone (406) 444-3161; fax (406) 444-2893; or e-mail opipersonnel@mt.gov.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Richard E. Wootton, Office of Public Instruction, 1300 11th Avenue,

Helena, Montana, 59601; telephone (406) 444-0715; fax (406) 444-2893; or e-mail opipubliccomment@mt.gov, and must be received no later than 5:00 p.m., August 30, 2024.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

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

Certified to the Secretary of State July 30, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through VIII and the repeal	)	PROPOSED ADOPTION AND
of ARM 10.54.8510, 10.54.8511,	)	REPEAL
10.54.8512, 10.54.8513, 10.54.8520,	)	
10.54.8521, 10.54.8522, 10.54.8523,	)	
10.54.8530, 10.54.8531, 10.54.8532,	)	
10.54.8533, 10.54.8540, 10.54.8541,	)	
10.54.8542, 10.54.8543, 10.54.8550,	)	
10.54.8551, 10.54.8552, 10.54.8553,	)	
10.54.8560, 10.54.8561, 10.54.8562,	)	
10.54.8563, 10.54.8570, 10.54.8571,	)	
10.54.8572, 10.54.8573, 10.54.8580,	)	
10.54.8581, 10.54.8582, 10.54.8583,	)	
10.54.8590, 10.54.8591, 10.54.8592,	)	
10.54.8593, 10.54.8607, 10.54.8608,	)	
10.54.8609, 10.54.8610, 10.54.8611,	)	
10.54.8612, 10.54.8613, 10.54.8614,	)	
10.54.8615, 10.54.8616, 10.54.8617,	)	
and 10.54.8618 pertaining to World	)	
Language Content Standards	)	

TO: All Concerned Persons

1. On September 4, 2024, at 9:00 a.m., the Board of Public Education (board) will hold a virtual public hearing to consider the proposed adoption and repeal of the above-stated rules. Interested parties may attend the hearing electronically at the following zoom link: <https://mt-gov.zoom.us/j/82401688081>.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-0302; or email bpe@mt.gov.

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

NEW RULE I WORLD LANGUAGE CONTENT STANDARD 1 – COMMUNICATION (1) Communicate effectively in more than one language in order to function in a variety of situations and for multiple purposes.

(a) Interpersonal communication: learners interact and negotiate meaning in spoken, signed, or written conversations to share:

(i) information;

- (ii) reactions;
- (iii) feelings; and
- (iv) opinions.
- (b) Interpretive communication: when learners hear, read, or view a variety of topics in the target language they can:
 - (i) understand a variety of topics;
 - (ii) interpret a variety of topics; and
 - (iii) analyze a variety of topics.
- (c) Presentational communication: learners present information, concepts, and ideas pertaining to a variety of topics using appropriate media and adapting to various audiences of listeners, readers, or viewers in order to:
 - (i) inform;
 - (ii) explain;
 - (iii) persuade; and
 - (iv) narrate.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE II WORLD LANGUAGE CONTENT STANDARD 2 – CULTURES

- (1) Interact with cultural competence and understanding.
 - (a) Relating cultural practices to perspectives: learners use the language to investigate, explain, and reflect on the relationship between the practices and perspectives of the cultures studied, and, where appropriate, the cultures of Montana Indigenous Tribes; and
 - (b) Relating cultural products to perspectives: learners use the language to investigate, explain, and reflect on the relationship between the products and perspectives of the cultures studied, and, where appropriate, the cultures of Montana Indigenous Tribes.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE III WORLD LANGUAGE CONTENT STANDARD 3 – CONNECTIONS (1) Connect with other disciplines and acquire information and diverse perspectives, including Montana Tribes, in order to use the language to function in academic and career-related situations.

- (a) Making connections: learners build, reinforce, and expand their knowledge of other disciplines while using the language to develop critical thinking and solve problems creatively; and
- (b) Acquiring information and diverse perspectives: learners access and evaluate information and diverse perspectives that are available through studying the language and its cultures.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE IV WORLD LANGUAGE CONTENT STANDARD 4 –

COMPARISONS (1) Develop insight into the nature of language and culture to interact with cultural competence, with a particular emphasis on Montana Indigenous cultures.

(a) Language comparisons: learners use the language to investigate, explain, and reflect on the nature of language through comparisons of the language studied, their own language, and, when appropriate, Montana Indigenous languages; and

(b) Cultural comparisons: learners use the language to investigate, explain, and reflect on the concept of culture through comparisons between the cultures, their own way of life, and Montana Indigenous culture's history, diversity, and sovereignty.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE V WORLD LANGUAGE CONTENT STANDARD 5 –

COMMUNITIES (1) Communicate and interact with cultural competence in order to participate in multilingual communities at home and around the world.

(a) School, local, and global communities: learners use the language, both within and beyond the classroom, to interact and collaborate with their local, state, and global communities, including Montana Indigenous nations.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VI WORLD LANGUAGES PERFORMANCE DESCRIPTORS AT

THE NOVICE LEVEL (1) At the novice level for the interpersonal mode of communication, a language learner expresses oneself in conversations on very familiar topics using a variety of words, phrases, simple sentences, and questions that have been highly practiced and memorized. A learner:

(a) can ask highly predictable and formulaic questions and respond to such questions by listing, naming, and identifying;

(b) may show emerging evidence of the ability to engage in simple conversation;

(c) is able to function in some personally relevant contexts on topics that relate to basic biographical information;

(d) may show emerging evidence of the ability to communicate in highly practiced contexts related to oneself and one's immediate environment;

(e) understands and produces highly practiced words and phrases and an occasional sentence. A learner is able to ask formulaic or memorized questions;

(f) can usually comprehend highly practiced and basic messages when supported by visual or contextual clues, redundancy or restatement, and when the message contains familiar structures;

(g) can control memorized language sufficiently to be appropriate to the context and understood by those accustomed to dealing with language learners, however at times with difficulty;

(h) is able to understand and produce a number of high-frequency words, highly practiced expressions, and formulaic questions;

(i) may use some or all of the following strategies to maintain communication:

(i) imitate modeled words;

(ii) use facial expressions and gestures;

(iii) repeat words;

(iv) resort to first language;

(v) ask for repetition; and

(vi) indicate lack of understanding; and

(j) may use culturally appropriate gestures and formulaic expressions in highly practiced applications. A learner may show awareness of the most obvious cultural differences or prohibitions, but may often miss cues indicating miscommunication.

(2) At the novice level for the interpretive mode of communication, a language learner understands words, phrases, and formulaic language that have been practiced and memorized to get the meaning of the main idea from simple, highly predictable oral or written texts, with strong visual support. A learner:

(a) comprehends meaning through recognition of key words and phrases;

(b) may show emerging evidence of the ability to make inferences based on background and prior knowledge;

(c) comprehends texts with highly predictable, familiar contexts (those related to personal background, prior knowledge, or experiences);

(d) derives meaning when authentic texts (listening, reading, or viewing) are supported by visuals or when the topic is very familiar;

(e) comprehends texts ranging in length from lists, to phrases, to simple sentences, often with graphically organized information;

(f) primarily relies on vocabulary to derive meaning from texts;

(g) may derive meaning by recognizing structural patterns that have been used in familiar and some new contexts;

(h) comprehends some, but not all of the time, highly predictable vocabulary, a limited number of words related to familiar topics, and formulaic expressions;

(i) may use some or all of the following strategies to comprehend texts:

(i) skim and scan;

(ii) rely on visual support and background knowledge;

(iii) predict meaning based on context, prior knowledge, and experience;

(iv) for alphabetic languages:

(A) rely on recognition of cognates;

(B) may recognize word family roots, prefixes, and suffixes; and

(j) uses own culture to derive meaning from texts that are heard, read, or viewed.

(3) At the novice level for the presentational mode of communication, a language learner communicates information on very familiar topics using a variety of words, phrases, and sentences that have been practiced and memorized. A learner:

- (a) presents simple, basic information on very familiar topics by producing words, lists, notes, and formulaic language using highly practiced language;
 - (b) may show emerging evidence of the ability to express one's own thoughts and preferences;
 - (c) creates messages in some personally relevant contexts on topics that relate to basic biographical information;
 - (d) may show emerging evidence of the ability to create messages in highly practiced contexts related to oneself and their immediate environment;
 - (e) produces words and phrases and highly practiced sentences or formulaic questions;
 - (f) produces memorized language that is appropriate to the context. Limited language control may require a sympathetic audience to be understood;
 - (g) with practice, polish, or editing, may show emerging evidence of intermediate-level language control;
 - (h) produces a number of high-frequency words and formulaic expressions.
- A learner is able to use a limited variety of vocabulary on familiar topics;
- (i) may use some or all of the following strategies to communicate:
 - (i) rely on a practiced format;
 - (ii) use facial expressions and gestures;
 - (iii) repeat words;
 - (iv) resort to first language;
 - (v) use graphic organizers to present information;
 - (vi) rely on multiple drafts and practice sessions with feedback;
 - (vii) support presentational speaking with visuals and notes; and
 - (viii) support presentational writing with visuals or prompts; and
 - (j) may use some memorized culturally appropriate gestures, formulaic expressions, and basic writing conventions.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VII WORLD LANGUAGES PERFORMANCE DESCRIPTORS
AT THE INTERMEDIATE LEVEL (1) At the intermediate level for the interpersonal mode of communication, a language learner expresses oneself and participates in conversations on familiar topics using sentences and series of sentences. A learner handles short social interactions in everyday situations by asking and answering a variety of questions. A learner can communicate about oneself, others, and everyday life. A learner:

- (a) can communicate by understanding and creating personal meaning;
- (b) can understand, ask, and answer a variety of questions;
- (c) consistently is able to initiate, maintain, and end a conversation to satisfy basic needs or to handle a simple transaction;
- (d) may show emerging evidence of the ability to communicate about more than the "here and now";
- (e) is able to communicate in contexts relevant to oneself and others, and one's immediate environment;

(f) may show emerging evidence of the ability to communicate in contexts of occasionally unfamiliar topics;

(g) is able to understand and produce discrete sentences, strings of sentences, and some connected sentences. A learner is able to ask questions to initiate and sustain conversations;

(h) understands straightforward language that contains mostly familiar structures;

(i) has control of language sufficient to be understood by those accustomed to dealing with language learners;

(j) communicates using high-frequency and personalized vocabulary within familiar themes or topics;

(k) uses some of the following strategies to maintain communication, but not all of the time and inconsistently:

(i) ask questions;

(ii) ask for clarification;

(iii) self-correct or restate when not understood; and

(iv) circumlocute; and

(l) recognizes and uses some culturally appropriate vocabulary, expressions, and gestures when participating in everyday interactions. A learner recognizes that differences exist in cultural behaviors and perspectives and can conform in familiar situations.

(2) At the intermediate level for the interpretive mode of communication, a language learner understands main ideas and some supporting details on familiar topics from a variety of texts. A learner:

(a) comprehends main ideas and identifies some supporting details;

(b) may show emerging evidence of the ability to make inferences by identifying key details from the text;

(c) comprehends information related to basic personal and social needs and relevant to one's immediate environment such as oneself and everyday life, school, community, and particular interests;

(d) comprehends simple stories, routine correspondence, short descriptive texts, or other selections within familiar contexts;

(e) generally comprehends connected sentences and most paragraph-like discourse;

(f) comprehends information-rich texts with highly predictable order;

(g) has sufficient control of language (vocabulary, structures, conventions of spoken and written language, etc.) to understand fully and with ease short, non-complex texts on familiar topics. A learner has limited control of language to understand some more complex texts;

(h) may derive meaning by:

(i) comparing target language structures with those of their native language; and

(ii) recognizing parallels in structure between new and familiar language;

(i) comprehends high-frequency vocabulary related to everyday topics and high-frequency idiomatic expressions;

(j) uses some or all of the following strategies to comprehend texts:

(i) skim and scan;

- (ii) use visual support and background knowledge;
 - (iii) predict meaning based on context, prior knowledge, or experience;
 - (iv) use context clues; and
 - (v) recognize word family roots, prefixes, and suffixes;
 - (k) for non-alphabetic languages, recognizes radicals; and
 - (l) generally relies heavily on knowledge of own culture with increasing knowledge of the target culture(s) to interpret texts that are heard, read, or viewed.
- (3) At the intermediate level for the presentational mode of communication, a language learner communicates information and expresses one's own thoughts about familiar topics using sentences and series of sentences. A learner:
- (a) expresses one's own thoughts and presents information and personal preferences on familiar topics by creating with language primarily in present time;
 - (b) may show emerging evidence of the ability to tell or retell a story and provide additional description;
 - (c) creates messages in contexts relevant to oneself and others, and one's immediate environment;
 - (d) may show emerging evidence of the ability to create messages on general interest and work-related topics;
 - (e) produces sentences, series of sentences, and some connected sentences;
 - (f) understands that control of language is sufficient to be understood by audiences accustomed to language produced by language learners;
 - (g) with practice, polish, or editing, may show emerging evidence of advanced-level language control;
 - (h) produces vocabulary on a variety of everyday topics, topics of personal interest, and topics that have been studied;
 - (i) may use some or all of the following strategies to communicate and maintain audience interest:
 - (i) show an increasing awareness of errors and able to self-correct or edit;
 - (ii) use phrases, imagery, or content;
 - (iii) simplify;
 - (iv) use known language to compensate for missing vocabulary;
 - (v) use graphic organizer; and
 - (vi) use reference resources as appropriate; and
 - (j) uses some culturally appropriate vocabulary, expressions, and gestures.
- A learner reflects some knowledge of cultural differences related to written and spoken communication.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VIII WORLD LANGUAGES PERFORMANCE DESCRIPTORS
AT THE ADVANCED LEVEL (1) At the advanced level for the interpersonal mode

of communication, a language learner expresses oneself fully to maintain conversations on familiar topics and new concrete social, academic, and work-related topics. A learner can communicate in paragraph-length conversations about events with detail and organization. A learner confidently handles situations with an unexpected complication. A learner shares point of view in discussions. A learner:

(a) can communicate with ease and confidence by understanding and producing narrations and descriptions in all major time frames and deal efficiently with a situation with an unexpected turn of events;

(b) may show emerging evidence of the ability to participate in discussions about issues beyond the concrete;

(c) functions fully and effectively in contexts both personal and general;

(d) understands that content areas include topics of personal and general interest (community, national, and international events) and work-related topics and areas of special competence;

(e) may show emerging evidence of the ability to communicate in more abstract content areas;

(f) is able to understand and produce discourse in full oral paragraphs that are organized, cohesive, and detailed. A learner is able to ask questions to probe beyond basic details;

(g) understands that language control is sufficient to interact efficiently and effectively with those unaccustomed to dealing with language learners;

(h) understands that consistent control of basic high-frequency structures facilitates comprehension and production;

(i) comprehends and produces a broad range of vocabulary related to school, employment, topics of personal interest, and generic vocabulary related to current events and matters of public and community interest;

(j) uses a range of strategies to maintain communication:

(i) request clarification;

(ii) repeat;

(iii) restate;

(iv) rephrase; and

(v) circumlocute; and

(k) understands and uses cultural knowledge to conform linguistically and behaviorally in many social and work-related interactions. A learner shows conscious awareness of significant cultural differences and attempts to adjust accordingly.

(2) At the advanced level for the interpretive mode of communication, a learner understands main ideas and supporting details on familiar and some new, concrete topics from a variety of more complex texts that have a clear, organized structure. A learner:

(a) comprehends the main idea and supporting details of narrative, descriptive, and straightforward persuasive texts;

(b) makes inferences and derives meaning from context and linguistic features;

(c) comprehends texts pertaining to real-world topics of general interest relevant to personal, social, work-related, community, national, and international contexts;

(d) comprehends paragraph discourse such as that found in stories, straightforward literary works, personal and work-related correspondence, written reports or instructions, oral presentations (news), anecdotes, descriptive texts, and other texts dealing with topics of a concrete nature;

(e) demonstrates sufficient control of language (vocabulary, structures, conventions of spoken and written language, etc.) to understand fully and with ease more complex and descriptive texts with connected language and cohesive devices;

(f) derives meaning by:

(i) understanding sequencing, time frames, and chronology; and

(ii) classifying words or concepts according to word order or grammatical use;

(g) comprehends generic and some specific vocabulary and structures, specialized and precise vocabulary on topics related to one's experience, and an expanding number of idiomatic expressions;

(h) comprehends fully the intent of the message adapting strategies for one's own purposes and uses some or all of the following strategies:

(i) skim and scan;

(ii) use visual support and background knowledge;

(iii) predict meaning based on context, prior knowledge, or experience;

(iv) use context clues;

(v) use linguistic knowledge;

(vi) identify the organizing principle of the text;

(vii) create inferences; and

(viii) differentiate main ideas from supporting details in order to verify; and

(i) uses knowledge of cultural differences between one's own culture and target culture(s) and increases knowledge of the target culture(s) to interpret texts that are heard, read, or viewed.

(3) At the advanced level for the presentational mode of communication, a learner communicates information and expresses oneself with detail and organization on familiar and some new concrete topics using paragraphs. A learner:

(a) produces narrations and descriptions in all major time frames on familiar and some unfamiliar topics;

(b) may show emerging evidence of the ability to provide a well-supported argument, including detailed evidence in support of a point of view;

(c) creates messages fully and effectively in contexts both personal and general;

(d) demonstrates that content areas include topics of personal and general interest (community, national, and international events), work-related topics, and areas of special competence;

(e) may show emerging evidence of the ability to create messages in more abstract content areas;

(f) produces full paragraphs that are organized and detailed;

(g) demonstrates that control of high-frequency structures is sufficient to be understood by audiences not accustomed to language of language learners;

- (h) with practice, polish, or editing, shows evidence of advanced-level control of grammar and syntax;
- (i) produces a broad range of vocabulary related to topics of personal, public, and community interest, and some specific vocabulary related to areas of study or expertise;
- (j) may use some or all of the following strategies to communicate and maintain audience interest:
 - (i) demonstrate conscious efforts at self-editing and correction;
 - (ii) elaborate and clarify;
 - (iii) provide examples, synonyms, or antonyms;
 - (iv) use cohesion, chronology, and details to explain or narrate fully; and
 - (v) circumlocute; and
- (k) uses cultural knowledge appropriate to the presentational context and increasingly reflective or authentic cultural practices and perspectives.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101 MCA

IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-3-106, 20-7-101, MCA

4. The Board of Public Education proposes to repeal the following rules:

10.54.8510 WORLD LANGUAGES CONTENT STANDARD 1

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8511 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 1 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8512 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 1 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8513 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 1 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8520 WORLD LANGUAGES CONTENT STANDARD 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8521 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 2 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8522 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 2 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8523 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 2 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8530 WORLD LANGUAGES CONTENT STANDARD 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8531 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 3 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8532 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 3 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8533 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 3 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8540 WORLD LANGUAGES CONTENT STANDARD 4

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8541 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 4 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8542 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 4 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8543 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 4 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8550 WORLD LANGUAGES CONTENT STANDARD 5

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8551 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 5 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8552 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 5 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8553 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 5 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8560 WORLD LANGUAGES CONTENT STANDARD 6

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8561 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 6 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8562 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 6 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8563 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 6 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8570 WORLD LANGUAGES CONTENT STANDARD 7

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8571 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 7 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8572 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 7 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8573 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 7 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8580 WORLD LANGUAGES CONTENT STANDARD 8

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8581 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 8 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8582 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 8 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8583 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 8 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8590 WORLD LANGUAGES CONTENT STANDARD 9

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8591 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 9 FOR END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8592 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 9 FOR END OF BENCHMARK 2

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8593 BENCHMARK FOR WORLD LANGUAGES CONTENT
STANDARD 9 FOR END OF BENCHMARK 3

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8607 ADVANCED WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 1

AUTH: 20-2-114, MCA
IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8608 PROFICIENT WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 1

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8609 NEARING PROFICIENCY WORLD LANGUAGES
PERFORMANCE STANDARDS FOR THE END OF BENCHMARK 1

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8610 NOVICE WORLD LANGUAGES PERFORMANCE STANDARDS
FOR THE END OF BENCHMARK 1

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8611 ADVANCED WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8612 PROFICIENT WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8613 NEARING PROFICIENCY WORLD LANGUAGES
PERFORMANCE STANDARDS FOR THE END OF BENCHMARK 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8614 NOVICE WORLD LANGUAGES PERFORMANCE STANDARDS
FOR THE END OF BENCHMARK 2

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8615 ADVANCED WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 3

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8616 PROFICIENT WORLD LANGUAGES PERFORMANCE
STANDARDS FOR THE END OF BENCHMARK 3

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8617 NEARING PROFICIENCY WORLD LANGUAGES
PERFORMANCE STANDARDS FOR THE END OF BENCHMARK 3

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.8618 NOVICE WORLD LANGUAGES PERFORMANCE STANDARDS
FOR THE END OF BENCHMARK 3

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

REASON: By authority of 20-7-101, MCA, the standards of accreditation for all schools are adopted by the board upon the recommendation of the Superintendent of Public Instruction. The board considers recommendations for revision of the policies at any time it deems necessary and conducts a comprehensive review of standards of accreditation policies on a regular cycle to ensure that such policies are meeting the needs of the state. There have been numerous revisions over the last decade, but the last comprehensive review was in 2013.

The Office of Public Instruction proposes these amendments to the Montana World Languages Content Standards because these standards had not been updated in more than 24 years. The proposed standards reflect the most current research and development on how students learn languages. In addition, the Superintendent of Public Instruction seeks to improve the standards to provide simplicity, practicality, and clarity. The proposal also includes moving the World Language Content Standards from ARM Title 10, chapter 54 to chapter 53 to align with the classification and rule location of other Montana content standards.

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: McCall Flynn, Executive Director, 46 N. Last Chance Gulch, Suite 2B; P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-0302; or email bpe@mt.gov, and must be received no later than 5:00 p.m., September 6, 2024.

6. McCall Flynn, executive director, has been designated to preside over and conduct this hearing.

7. The board 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, email, 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 email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State July 30, 2024.

BEFORE THE MONTANA ARTS COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 10.111.201 and the repeal of	)	AMENDMENT AND REPEAL
ARM 10.111.601 and 10.111.611	)	
pertaining to model rules and grant	)	NO PUBLIC HEARING
eligibility and conditions	)	CONTEMPLATED

TO: All Concerned Persons

1. The Montana Arts Council proposes to amend and repeal the above-stated rules.

2. The Montana Arts Council 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 Montana Arts Council no later than 10:00 a.m. on September 6, 2024, to advise us of the nature of the accommodation that you need. Please contact Kristin Burgoyne, Montana Arts Council, P.O. Box 20221, Helena, MT, 59620; telephone (406) 444-6449; fax (406) 444-6548; TDD/Montana Relay Service 711; or email kburgoyne@mt.gov.

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

10.111.201 INCORPORATION ADOPTION OF MODEL RULES ~~(1) The Chairperson, acting as statutory executive officer of the Montana Arts Council in concert with the executive committee of the Montana Arts Council, adopted the Attorney General's Model Rules of Administrative Procedure on December 29, 1972.~~
(1) The Montana Arts Council adopts the Attorney General's Model Rules of Administrative Procedure.
(2) The model rules are found at ARM Title 1, chapter 3, subchapter 2.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

REASONABLE NECESSITY: This revision modernizes the language of the adoption of model rules.

4. The Montana Arts Council proposes to repeal the following rules:

10.111.601 ELIGIBILITY FOR GRANTS

AUTH: 22-2-102, MCA

IMP: 22-2-102, MCA

REASONABLE NECESSITY: The legislature has not granted the Montana Arts Council the authority to adopt rules addressing grant eligibility. Accordingly, this rule is being repealed.

10.111.611 GRANT CONDITIONS

AUTH: 22-2-102, MCA

IMP: 22-2-102, MCA

REASONABLE NECESSITY: The legislature has not granted the Montana Arts Council the authority to adopt rules addressing grant conditions. Accordingly, this rule is being repealed.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Kristin Burgoyne, Montana Arts Council, P.O. Box 202201, Helena, Montana, 59620; telephone (406) 444-6449 or email kburgoyne@mt.gov, and must be received no later than 5:00 p.m., September 6, 2024.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kristin Burgoyne at the above address no later than 5:00 p.m., September 6, 2024.

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 20 persons based on the estimated number of grant applications received in a year.

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.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 Montana Arts Council has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Michelle Dietrich
Michelle Dietrich
Rule Reviewer

/s/ Kristin Han Burgoyne
Kristin Han Burgoyne
Deputy Director
Montana Arts Council

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.13.402 pertaining to the	)	AMENDMENT
Aeronautical Grant and Loan	)	
Program	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 9, 2024, the Department of Transportation proposes to amend the above-stated rule.

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 the Department of Transportation no later than 5:00 p.m., August 30, 2024, to advise us of the nature of the accommodation that you need. Please contact Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana 59620-1001; telephone (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov.

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

18.13.402 DEFINITIONS (1) through (3) remain the same.

~~(4) "Pavement preservation grant" means a grant awarded by the board with highest priority to primary commercial service airports for the specific purpose of maintaining and preserving those pavements utilized by air carrier operations.~~

(5) remains the same but is renumbered (4).

AUTH: 67-2-102, MCA

IMP: 67-1-301, 67-1-304, MCA

REASON: The rule amendment is necessary to remove the reference to the pavement preservation grant as HB 661 (2019) repealed this program. Other rules addressing the pavement preservation grant were repealed in 2019.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Aliselina Strong, Department of Transportation, P.O. Box 201001, Helena, Montana 59620-1001; telephone (406) 444-9415; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail astrong@mt.gov, and must be received no later than 5:00 p.m., September 6, 2024.

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 Aliselina Strong at the above address no later than 5:00 p.m., September 6, 2024.

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 11 persons based on the approximately 115 eligible airport applicants.

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

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

10. The special notice requirements of 2-4-303, MCA, have been fulfilled. On July 30, 2024, written contact with Transportation Interim Committee staff members was made by email.

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

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

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Christopher Dorrington
Christopher Dorrington
Director
Department of Transportation

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.30.102, 24.30.1302, and	)	PROPOSED AMENDMENT,
24.30.1311, the adoption of NEW	)	ADOPTION, AND REPEAL
RULES I and II, and the repeal of	)	
ARM 24.30.104, 24.30.2501,	)	
24.30.2503, 24.30.2507, 24.30.2521,	)	
24.30.2541, 24.30.2542, 24.30.2551,	)	
24.30.2553, 24.30.2554, and	)	
24.30.2558 pertaining to industrial and	)	
workplace safety	)	

TO: All Concerned Persons

1. On September 4, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81513876481>

Meeting ID: 815 1387 6481, Passcode: 123473

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 815 1387 6481, Passcode: 123473

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 August 28, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC
SECTOR EMPLOYMENT (1) ~~Section 50-71-114, MCA, of the Montana~~
~~Occupational Safety and Health Act provides that the Department of Labor and~~
~~Industry may adopt, amend, repeal, and enforce rules for the prevention of accidents~~
~~to be known as "safety codes" in every employment and place of employment,~~
~~including the repair and maintenance of such places of employment to render them~~
~~safe. The federal Occupational Safety and Health Act of 1970 does not include~~
~~safety standards coverage for employees or political subdivisions of this state. It is~~
~~the intent of this rule that public sector employees and political subdivisions of this~~
~~state shall be protected to the greatest extent possible by the same safety standards~~

~~for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting~~ adopts by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the federal Occupational Safety and Health Act of 1970. ~~The department has determined, with the assent of the Secretary of State, that publication of the rules would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

(2) As used in the rules adopted by reference in (3) and (4)(a), unless the context clearly requires otherwise, the following definitions apply:

(a) and (b) remain the same.

~~(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral, or written.~~

~~(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.~~

(e) remains the same, but is renumbered (c).

(f) ~~(d)~~ "Injury or illness" means an abnormal condition or disorder has the meaning provided in 39-71-119, MCA.

~~(i) An injury includes cases such as, but not limited to, a cut, fracture, sprain, or amputation.~~

~~(ii) An illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.~~

(3) The Department of Labor and Industry adopts ~~a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations (CFR), as of July 1, 2018:~~

(a) and (b) remain the same.

(4) The Department of Labor and Industry adopts ~~reporting requirements related to occupational safety and health for every place of employment conducted by a public sector employer.~~

~~(a) The reporting requirements adopted by reference are the following occupational safety and health reporting requirements found in the Code of Federal Regulations, as of July 1, 2018:~~

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

~~(b) (e)~~ For the purposes of reporting fatalities, hospitalizations, amputations, and loss of an eye pursuant to 29 CFR 1904.39, the employer ~~is to~~ shall contact the Montana Department of Labor and Industry safety bureau by: department directly using the department's website or by phone.

~~(i) electronic submission to the reporting application at the safety bureau's public web site at <http://erd.dli.mt.gov/safety-health>; or~~

~~(ii) telephone at 1-844-669-5461 (toll free).~~

~~(5) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards and reporting requirements adopted by this rule and printed in the Code of Federal Regulations, Title 29, as of July 1, 2018, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Occupational Safety and Health Act apply to the administration of the provisions of the safety code and reporting requirements adopted by this rule.~~

~~(6) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety code adopted in (3). The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".~~

(5) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: 50-71-114, MCA

IMP: 50-71-112, 50-71-114, 50-71-115, 50-71-117, 50-71-118, MCA

REASON: The proposed amendments to (1) are necessary because the language is duplicative of 50-71-114 and 50-71-116, MCA, describing the purpose of the Montana Occupational Safety and Health Act, and it is unnecessary to repeat statements of public policy in administrative rule. The definitions for "employer" and "employee" are proposed for repeal because they are duplicative of the statutory definitions in 50-71-112, MCA. The department proposes adopting the definition of "injury or illness" from the workers' compensation statutes, 39-7-1-119, MCA, to provide clarification and consistency between statutory and administrative definitions. Section (5) is proposed for repeal because it is unnecessary to explain the process and effect of adopting federal codes by reference in the department's rule; adoption by reference in an administrative rule is expressly allowed by 2-4-307, MCA. Section (6) is proposed for repeal because it is unnecessary to provide guidance for citations in an administrative rule. Formatting for citations is often determined by the specific academic field, industry, publication, or the court, tribunal, or jurisdiction for which a person is writing. New (5) is necessary because it provides a simple means of accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. It is necessary to amend the implementing statutes to include the requirements for maintenance of records under 50-71-117, MCA.

24.30.1302 COAL MINING CODE (1) As used in the rules adopted in (2) ~~below~~, unless the context clearly requires otherwise, the following definitions apply:
(a) through(g) remain the same.

(h) "Secretary" means the administrator of the Employment Relations Standards Division of the Department of Labor and Industry.

(2) The Department of Labor and Industry adopts ~~under 50-73-103, MCA,~~ coal mine safety standards to protect employees who work in coal mines in this state. ~~The following standards are adopted by reference to certain safety and health rules and standards that have been adopted by the federal government and are the~~ coal mine safety standards found in the Code of Federal Regulations (CFR), Title 30, revised as of July 1, 2006:

(a) through (j) remain the same.

~~(3) All sections adopted and referred to above are binding on every employer who is covered by the Montana Coal Mining Code even though the sections are not separately printed in a separate state pamphlet and are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The sections referred to above that are contained in the Code of Federal Regulations referred to above are considered under this rule as the printed form of the safety rules and standards adopted under this rule, and must be used by the Department of Labor and Industry and all employers, employees, and other persons when referring to the provisions of the safety rules and standards adopted in this rule. All the provisions, remedies, and penalties found in the Montana Coal Mining Code (50-73-101 through 50-73-418, MCA) apply to the administration of the provisions of the safety rules and standards adopted in this rule. A copy of the rules adopted by reference are available in printed form by contacting the Montana Department of Labor and Industry, Employment Relations Division, Safety Bureau, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

~~(4) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety rules and standards adopted in (2) above. The federal number is to be preceded by the term (4). Thus, when section 70.100 of the Code of Federal Regulations pertaining to dust standards is to be referred to or cited, the correct cite would be "subsection (4) 70.100 of section 24.30.1302 ARM" or "ARM 24.30.1302(4) 70.100".~~

(3) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: ~~50-71-304~~ 50-73-103, MCA

IMP: 50-73-103, MCA

REASON: The proposed amendments to (2) are necessary because they simplify language and remove unnecessary statutory references. Section (3) is proposed for repeal because it is unnecessary to explain the process and effect of adopting federal codes by reference in the department's rule; adoption by reference in an administrative rule is expressly allowed by 2-4-307, MCA. Section (4) is proposed for repeal because it is unnecessary to provide guidance for citations in an administrative rule. Formatting for citations is often determined by the specific academic field, industry, publication, or the court, tribunal, or jurisdiction for which a person is writing. New (3) is necessary because it provides a simple means of

accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. There is reasonable necessity to correct the authorizing statute to the specific provision that allows the department to make rules regarding safety in coal mines, 50-73-103, MCA, rather than the now-repealed statute, 50-71-301, MCA.

24.30.1311 INCORPORATION BY REFERENCE OF RULES REGARDING
EMPLOYEE HEALTH AND SAFETY IN MINES OTHER THAN COAL MINES

(1) remains the same.

~~(2) The regulations incorporated by reference in (1) relate to the following:~~

~~(a) training and retraining of miners engaged in shell dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines;~~

~~(b) hazard communication (HAZCOM);~~

~~(c) training and retraining of miners;~~

~~(d) mine rescue teams;~~

~~(e) notification, investigation, reports and records of accidents, injuries, illnesses, employment and production in mines;~~

~~(f) safety and health standards--surface metal and nonmetal mines;~~

~~(g) safety and health standards--underground metal and nonmetal mines;~~

~~(h) health standards for metal and nonmetal mines; and~~

~~(i) occupational noise exposure.~~

~~(3) Copies of the regulations incorporated by reference in (1) may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

(2) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: ~~50-71-301, 50-71-311, 50-71-114, 50-72-102, 50-72-103, MCA~~

IMP: ~~50-71-301, 50-71-311, 50-71-312~~ 50-72-101, 50-72-102, MCA

REASON: The proposed amendments to (2) are necessary because it is unnecessary to further summarize the content of materials that are adopted by reference when the catchphrase or "title" of the rule provides the general subject matter of the regulations that are adopted by reference. New (2) is necessary because it provides a simple means of accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. There is a reasonable necessity to update the implementing and authorizing statutes because 50-71-301, 50-71-311, and 50-71-312, MCA, are now repealed.

4. The proposed new rules are as follows:

NEW RULE I NOTICE TO EMPLOYEES (1) The employer shall post and maintain notices informing employees of the protections and obligations provided for

in the Montana Occupational Safety and Health Act. Notices are available by contacting the department and on the department's website.

(2) If an employer receives a citation, the employer shall immediately post an unedited and legible copy of the citation in a prominent place where it will be seen by all affected employees. The citation, and all related materials, shall remain posted for 30 days or until all abatement action has been approved by the department, whichever period is longer.

(3) If employees do not work in a central location, the employer shall disseminate the notices described in (1) and (2) to all affected employees, consistent with typical business practices for disseminating information.

AUTH: 50-71-114, MCA

IMP: 50-71-118, 50-71-119, 50-71-123, MCA

REASON: The proposed new rule is necessary because it contains the sections of ARM 24.30.104, that are not duplicative of statute, including the specific requirements for employers to provide notice to employees of safety provisions and notice to employees of citations. NEW RULE I also addresses remote workplaces and flexibility in employer/employee communications due to modern technology.

NEW RULE II EMPLOYERS WITH MORE THAN FIVE EMPLOYEES – SAFETY PROGRAM – SAFETY COMMITTEE (1) To determine if an employer must have a safety program because the employer has more than five employees, the employer shall count all fulltime, part-time, regular, temporary, leased, and seasonal workers under the employer's direction and control. This rule applies whenever there are more than five employees and continues unless or until the number of employees is less than six for three consecutive months.

(2) If an employer is a party to a collective bargaining agreement that provides for the establishment and operation of a safety committee, the terms of the collective bargaining agreement shall govern the operation of the safety committee, notwithstanding any other provisions of these rules.

(3) Federal law prohibits domination of a safety committee by management. A safety committee must be composed of representatives of both employees and management.

(4) A safety committee shall meet at least twice per year.

(5) The employer shall maintain records of the safety program for three years, including employee participation in any aspect of the safety program.

(6) The department shall not grant waivers of a safety program's safety committee requirement for any employer under any workers' compensation plan pursuant to 39-71-1505, MCA.

AUTH: 39-71-1505, MCA

IMP: 39-71-1505, MCA

REASON: The proposed new rule is necessary because it condenses the requirements for a workplace safety program that are not merely duplications of statute or "recommendations" from the rules proposed for repeal below. Specifically,

the proposed new rule includes the following transferred sections: how to count employees from ARM 24.30.2541(1), including "fulltime and part-time employees" to the list; the requirements for a safety committee in a workplace with a collective bargaining agreement from ARM 24.30.2542(1); the requirement that the employer not dominate the safety committee from ARM 24.30.2542(3); the requirements for frequent safety committee meetings from ARM 24.30.2542(4)(a); and, an employer's duty to maintain records of the safety program from ARM 24.30.2521(1)(f).

New (6) is also necessary because the department is granted permissive authority to adopt rules to allow waiver of the employer's requirement for a safety committee under 39-71-1505(3), MCA; however, the department proposes repeal of the rules allowing waiver of the safety committee requirement below, ARM 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2553, for several reasons. First, there are currently no employers that have a waiver of their safety committee requirement under these rules, and the department rarely receives requests from employers to waive the safety committee requirement. In the last two years, approximately five employers have contacted the department to inquire about waiver of the safety committee requirement. Second, all five employers that inquired about waiver of their safety committee requirement were private employers, and the department does not have jurisdiction under the Montana Safety Culture Act to inspect and enforce workplace safety laws for private employers. It is impractical for the department to maintain rules requiring review of the safety program for a private employer, with the purpose of waiving the safety committee requirement, when the department has no inspection or enforcement authority over the actual safety practices of that private employer. Third, a private employer's workers' compensation insurer is responsible for requiring a workplace safety program; an "insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage[.]" under 39-71-1507(4), MCA. The insurer shall also provide safety consultation services under 39-71-1506, MCA. Finally, the practical effect of this rule change is to require every employer that must have a safety program to also have a safety committee, and the department believes that safety committees are an important part of furthering the purpose of the Montana Safety Culture Act. The department believes that the proposed rule change is practical and in furtherance of workplace safety for the department, insurers, all employers, all employees, and the public.

5. The rules proposed to be repealed are as follows:

24.30.104 INSPECTIONS AND CITATIONS

AUTH: 50-71-114, MCA

IMP: 50-71-118, 50-71-119, 50-71-123, MCA

REASON: The proposed repeal is necessary because it is duplicative of statute. Section (1) is duplicative of 50-71-116, MCA, regarding the duties of public employers regarding employee safety. Subsections (1)(b) and (1)(c) are duplicative

of 50-71-117 and 50-71-118, MCA, regarding inspections, reports, and procedures for safety violations. To the extent that this rule does not duplicate statute and provides specific requirements for employers to provide notice to employees of safety provisions in (1)(a) and notice to employees of citations in (1)(d), those provisions are transferred to proposed NEW RULE I.

24.30.2501 PURPOSE

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is entirely duplicative of the statute describing the purpose of the Montana Safety Culture Act, 39-71-1502, MCA.

24.30.2503 DEFINITIONS

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is unnecessary to repeat statutory definitions in administrative rule. The authorizing and implementing statutes for this rule are part of the Montana's Workers' Compensation Act under Title 39, chapter 71, MCA, thus the statutory definitions are already applicable to these rules.

24.30.2507 STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF THE SAFETY CULTURE ACT

AUTH: 53-6-145 MCA
IMP: 53-6-145, MCA

REASON: The proposed repeal is necessary because the Montana Safety Culture Act falls within the Workers' Compensation statutes, personal assistants are already addressed ARM 24.29.711, and ARM 24.29.711 is substantively identical to ARM 24.30.2507.

24.30.2521 EACH EMPLOYER TO HAVE EDUCATION-BASED SAFETY PROGRAM

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is duplicative of 39-71-1505, MCA. To the extent the rule does not repeat statutory language, the rule merely provides "recommendations" for an employer's safety program, and not actual requirements for the program. The department believes the long list of recommendations is confusing for employers and such recommendations are not

"reasonably necessary to effectuate the purpose of the statute," as required by 2-4-305(6)(b), MCA. The department asserts that the statute as written provides adequate guidance for an employer's required safety program, and the statute also acknowledges the different needs of different industries. The provision that an employer must retain documentation of safety programs for three years in (1)(f) is transferred to proposed NEW RULE II.

24.30.2541 EMPLOYERS WITH MORE THAN FIVE EMPLOYEES TO HAVE COMPREHENSIVE AND EFFECTIVE SAFETY PROGRAM

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is duplicative of 39-71-1502, and 39-71-1505, MCA. The rule also largely contains "recommendations" for employers, and such recommendations are not "reasonably necessary to effectuate the purpose of the statute," as required by 2-4-305(6)(b), MCA. To the extent the rule does not have repeat statutory language or include "recommendations," section (1) regarding counting employees is transferred to proposed NEW RULE II.

24.30.2542 SAFETY COMMITTEE REQUIRED FOR EVERY EMPLOYER WITH MORE THAN FIVE EMPLOYEES

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because (2) and (5) are largely duplicative of 39-71-1502, MCA. The rule is also duplicative of 39-71-1505, MCA, regarding safety program and safety committee requirements. To the extent the rule does not repeat statutory language, provisions of (1) regarding collective bargaining agreements, (3) regarding employer domination of safety committees, and (4)(a) regarding frequency of safety committee meetings are transferred to proposed NEW RULE II.

24.30.2551 AVERAGE LOST WORKDAY INCIDENCE RATE FOR OCCUPATIONAL INJURIES AND ILLNESSES

AUTH: 39-71-1505 MCA
IMP: 39-71-1505 MCA

REASON: The proposed repeals of ARM 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2558 are necessary because the department shall no longer grant waivers of the safety committee requirement pursuant to 39-71-1505(3), MCA, as noted in the reason statement to NEW RULE II(6).

24.30.2553 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR INDIVIDUAL PLAN NO. 1 SELF-INSURERS

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

24.30.2554 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR
GROUP PLAN NO. 1 SELF-INSURERS

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

24.30.2558 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR
PLAN NO. 2 AND PLAN NO. 3 EMPLOYERS

AUTH: 39-71-1505, MCA
IMP: 39-71-1505, MCA

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 6, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728m Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.

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 38.5.1909 pertaining to the) PROPOSED AMENDMENT
Creation of a Legally Enforceable)
Obligation)

TO: All Concerned Persons

1. On September 11, 2024, at 9:00 a.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 rule. The hearing will be livestreamed at <https://psc.mt.gov/livestream>. Parties wishing to participate in the hearing remotely must contact the department at 1-800-646-6150, by 3:00 p.m. on September 10, 2024, to receive the necessary call-in information for the hearing.

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 the Department of Public Service Regulation no later than 9:00 a.m. on September 10, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P. O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov.

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

38.5.1909 CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

(1) For a proposed, qualifying facility that has not achieved commercial operation, a A legally enforceable obligation is created when a qualifying facility has demonstrated, based on objective and reasonable criteria, commercial viability and a financial commitment to construct its facility. A qualifying facility has demonstrated commercial viability and a financial commitment when:

(a) It has obtained qualifying facility status from FERC pursuant to the certification procedures in 18 CFR part 292;

(b) It has provided to the utility the following:

(i) a description of the location of the project;

(ii) an estimate of the energy production for the project, produced through industry-accepted engineering methods, that includes the kilowatt-hours or megawatt-hours to be produced by the qualifying facility for each month and year of the entire term of the qualifying facility's anticipated power purchase agreement;

(iii) an interconnection application, including any application fees;

(iv) a power purchase agreement executed written statement by the qualifying facility committing to sell output from the qualifying facility to the utility over

a proposed term of a power purchase agreement and stating the proposed term for the proposed power purchase agreement and the proposed avoided cost rate; and

(v) a deposit, paid in full, to cover the estimated costs for a system impact or facilities study;

(c) It has taken meaningful steps to obtain site control adequate to commence construction of the project at the proposed location and operate the facility, throughout the term of the contract;

(d) It has submitted applications, including filing fees, to obtain all necessary permits, licenses, and approvals necessary to construct and operate the facility, and has provided copies of the same to the utility; and

(e) If the qualifying facility seeks payment for an avoided cost of capacity, it has requested to be studied for interconnection as a network resource.

(2) For an existing qualifying facility that has achieved commercial operation, a legally enforceable obligation is created when the qualifying facility has, no more than three years prior to the start of a new power purchase agreement, provided to the utility documentation that includes the following:

(a) documents indicating qualifying facility status obtained pursuant to the certification procedures in 18 CFR part 292;

(b) an updated estimate of the energy production for the project, produced through industry-accepted engineering methods, that includes the kilowatt-hours or megawatt-hours to be produced by the qualifying facility for each month and year of the entire term of the qualifying facility's new power purchase agreement;

(c) a written statement committing to sell output from the qualifying facility to the utility through a new power purchase agreement and stating the term for the proposed power purchase agreement and the proposed avoided cost rate;

(d) a written statement attesting that the qualifying facility will continue to exercise site control adequate to operate the facility throughout the proposed term of the new power purchase agreement, or describing the actions the qualifying facility has taken for continued site control for the term of the new power purchase agreement; and

(e) a written statement attesting that the qualifying facility will maintain all necessary permitting and zoning approvals for the term of the new power purchase agreement, or a description of any actions the qualifying facility has taken to obtain all necessary permitting and zoning approvals applicable for the term of the new power purchase agreement.

AUTH: 69-3-103, 69-3-604, MCA

IMP: 69-3-102, 69-3-604, MCA

REASON: The department proposes to amend ARM 38.5.1909 to create standards through which an existing, operational qualifying facility can obtain a new legally enforceable obligation. As currently written, this rule requires qualifying facilities to demonstrate financial commitment and commercial viability to form a legally enforceable obligation. Existing qualifying facilities have already demonstrated financial commitment and commercial viability, and as a result, the current rule does not provide meaningful guidance to utilities and existing qualifying facilities about the formation of legally enforceable obligations.

To guide the creation of new legally enforceable obligations for existing qualifying facilities, it is reasonably necessary to adopt the new standards described in (2) of the proposed rule. The documentation required in (2) is reasonably necessary to allow utilities to plan for future energy and capacity provided by existing qualifying facilities.

The department also proposes to amend ARM 38.5.1909(1)(b)(iv) to mirror the written statement required in the new (2)(c). The practice of requiring a qualifying facility to unilaterally prepare a complete power purchase agreement is not the most productive starting point for a complex agreement with a utility. While the exercise tends to demonstrate the qualifying facility has carefully considered the terms it is willing to agree to, a negotiated power purchase agreement typically involves concessions by both parties. For purposes of forming a legally enforceable obligation, it is reasonably necessary for a qualifying facility to demonstrate financial commitment and commercial viability for a certain avoided cost rate and term, but the remaining terms and conditions of a power purchase agreement are not 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 the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov; and must be received no later than 5:00 p.m. on September 12, 2024. Please reference Docket No. 2024.01.011 when submitting a comment.

5. A commissioner or a duly appointed presiding officer shall preside over and conduct this hearing.

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. The department's programs are: electric utilities, providers and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers, rail carriers; and administrative procedures. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; e-mail

pschelp@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 Secretary of State's web site at rules.mt.gov.

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

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

/s/ Amanda S. Webster

Amanda S. Webster
Rule Reviewer

/s/ James Brown

James Brown
President
Public Service Commission

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 42.31.2101, 42.31.2104,	)	AMENDMENT
42.31.2121, 42.31.2122, 42.31.2131,	)	
42.31.2132, and 42.31.2133	)	NO PUBLIC HEARING
pertaining to the revision of the	)	CONTEMPLATED
contractor's gross receipts tax	)	

TO: All Concerned Persons

1. The Department of Revenue proposes to amend the above-stated rules.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later 5:00p.m. on August 16, 2024, to advise us of the nature of the accommodation you need. Please contact Kassie Hawbaker, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-0365; fax (406) 444-3696; or e-mail kassie.hawbaker@mt.gov.

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

42.31.2101 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) A "public contractor" is anyone who submits a proposal to or enters into a contract with a governmental agency or department for the construction or reconstruction of any public work, the cost of such construction or reconstruction being greater than ~~\$5,000~~ 80,000. The term "public contractor" includes subcontractors.

(2) "Public construction work," includes any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever. This rule applies to all contracts exceeding ~~\$5,000~~ 80,000 whether or not such contracts require performance of service, maintenance, repair, or any other type of work in addition to, or as part of, the work as stated above.

AUTH: 15-50-301, MCA

IMP: 15-50-101, MCA

42.31.2104 CONTRACTOR'S RETURN REQUIRED FOR PUBLIC WORKS PROJECTS (1) Public works contracts performed during the calendar year showing the ~~4%~~ one percent tax credit withheld during the current tax year must be filed with

the department ~~as required by 15-50-301, MCA~~. For purposes of this filing, the department will accept the following, as applicable:

- (a) Schedule C, attached to the individual income tax return, ~~as required by 15-30-142, MCA~~;
 - (b) Schedule C attached to the corporation license tax return, ~~as required by 15-31-111, MCA~~; and
 - (c) personal property refund request ~~f~~Form PG-4 CGR-3 and, if necessary, an additional schedule form PG-3, ~~as required by 15-50-207, MCA~~ supporting documentation.
- ~~(2) Failure to provide these schedules will result in a fine as stated in 15-50-301, MCA.~~

AUTH: 15-50-301, MCA

IMP: 15-50-301, MCA

42.31.2121 CONTRACT AWARD REPORT BY AGENCY (1) Whenever a contract for the performance of public construction or reconstruction is awarded by any governmental agency, or departments thereof or any contractor subletting a contract, the awarding agencies, departments or contractors must complete and file with the department a contract award report (~~f~~Form PG-1 CGR-1) which must contain the following information:

- (a) name of the governmental agency, department within that agency, or awarding contractor awarding the contract;
- (b) contract number, location and general description of construction to be performed, and the date the contract or subcontract, whichever the case may be, was awarded;
- (c) name and address of the contractor or subcontractor awarded the contract;
- (d) total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;
- (e) date when the construction is to be completed; and
- (f) date when the increments of the contract costs are to be paid the contractor or subcontractor, the amounts of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job.

(2) The above information must be transmitted to the department within ten days from the date that the contract is awarded.

AUTH: 15-50-301, MCA

IMP: 15-50-101, 15-50-205, 15-50-206, MCA

42.31.2122 GROSS RECEIPTS WITHHOLDING BY AGENCY (1) The governmental agencies that have awarded a contract for the performance of public construction or reconstruction works and are making payment for the satisfactory performance of said contract, or any increment thereof, must withhold ~~4%~~ one percent of the amount due and transmit such amount withheld to the department

along with a gross receipts withholding report (Form PC-2 CGR-2) which must contain the following:

- (a) governmental agency that awarded the contract and is making payment;
 - (b) contract number, location and general description of construction to be performed, and the date contract was awarded;
 - (c) name and address of the contractor to whose account the 4% one percent payment is to be credited;
 - (d) total sum due the contractor, including amounts to be withheld until completion of the contract;
 - (e) total sum due the contractor less any amount to be withheld until completion of the contract by including the 4% one percent withholding;
 - (f) net amount paid the contractor at time of reporting; and
 - (g) amount transmitted to the department at time of reporting.
- (2) The withholding agent or agency must in all cases issue a receipt to the contractor for all monies withheld under Title 15, chapter 50, MCA.

AUTH: 15-50-301, MCA

IMP: 15-50-101, 15-50-205, 15-50-206, MCA

42.31.2131 CONTRACT AWARD REPORT BY CONTRACTOR AWARDED CONTRACT (1) Whenever a contract for the performance of public construction or reconstruction works is awarded by the federal government or by any agencies or when a contractor sublets a contract, the contractor awarded the contract must complete and file with the department a contract award report (Form PC-4 CGR-1) which must contain the following information:

- (a) name of the governmental agency or prime contractor awarding the contract;
 - (b) contract number, location and general description of construction to be performed;
 - (c) name and address of the contractor or subcontractor awarded the contract;
 - (d) total value in money, credits, or other valuable consideration specified in the contract, that is to be paid for the completion of the contract;
 - (e) date when the construction is to be completed; and
 - (f) date when the increments of the contract costs are to be paid the contractor or subcontractor, the amount of such payments, and the percentage of the increment withheld from each payment to insure satisfactory completion of the job.
- (2) The above information must be transmitted to the department within ten days from the date that the contract is awarded.

AUTH: 15-50-301, MCA

IMP: 15-50-101, 15-50-205, 15-50-206, MCA

42.31.2132 GROSS RECEIPTS PAYMENT BY CONTRACTOR (1) If 4% one percent of the gross receipts is not withheld by the contracting governmental agency or awarding contractor, the contractor must make payment of such amounts

to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor. Payment by the contractor must be accompanied by a completed gross receipts withholding report (~~f~~Form PC-2 CGR-2).

(2) In the case where the state of Montana, counties, cities, or any agencies and awarding contractors thereof, fail to withhold the gross receipts fees, the contractor must pay ~~4%~~ one percent of the gross receipts received by the contractor.

(3) In all cases where the federal government or any agency is the sole governmental agency awarding the contract, payment must be made by the contractor to the department in an amount equal to ~~4%~~ one percent of the gross receipts received by the contractor as payment for work performed by the contractor. The payment of such amount to the department is the duty of the contractor without any specific request or notice, relative to a particular payment, that such payment must be made to the department.

AUTH: 15-50-301, MCA

IMP: 15-50-101, 15-50-205, 15-50-206, MCA

42.31.2133 ADDITIONAL REPORT AND WITHHOLDING REQUIREMENTS IN CASE OF SUBLET CONTRACT (1) Whenever a contract for the performance of public construction or reconstruction has been awarded by any governmental agency, including the federal government, and a contractor sublets a contract in connection with such construction or reconstruction, the contractor awarding the subcontract must complete and file with the department of revenue a contract award report (~~f~~Form PC-4 CGR-1) which must contain the information specified in ARM 42.31.2131.

(2) Any contractor subletting a contract is also required to withhold ~~4%~~ one percent of the amount due ~~his~~ to the subcontractor but will not transmit such amount to the department. ~~He~~ The contractor will complete the gross receipts withholding report (~~f~~Form PC-2 CGR-2) checking the box marked "Subcontractor Allocation." The amount withheld (~~amount shown on line 8 on form PC-2~~) will then be credited to the subcontractor and deducted from the original ~~4%~~ one percent which was withheld from the prime contractor. For failure to file the allocation report within the required 30-day period, provided for in ARM 42.31.2132, a penalty of ~~10%~~ percent of the tax withheld from the subcontractor shall be due from the prime contractor.

AUTH: 15-1-301, MCA

IMP: 15-50-101, 15-50-205, 15-50-206, MCA

REASONABLE NECESSITY: Senate Bill 253 (2023) (SB 253) was enacted by the 68th Montana Legislature and increased the amount of the exemption from \$5,000 to \$80,000 in the definition of "public contractor" in 15-50-101, MCA. The department proposes to amend ARM 42.31.2101 to align with SB 253.

The department also proposes to amend ARM 42.31.2104, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, and 42.31.2133 to remove outdated cross references and update form names.

The department proposes to strike (2) from ARM 42.31.2104, which is not a regular practice of the department.

The department proposes to amend ARM 42.31.2104, 42.31.2122, 42.31.2132, and 42.31.2133 to replace "1%" with "one percent, " which is consistent in style with other department rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Kassie Hawbaker, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-0365; fax (406) 444-3696; or e-mail kassie.hawbaker@mt.gov and must be received no later than 5:00 p.m., September 10, 2024.

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 Kassie Hawbaker, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-0365; fax (406) 444-3696; or e-mail kassie.hawbaker@mt.gov and must be received no later than 5:00 p.m., September 10, 2024.

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. The department estimates the number of those directly affected by this rule action to be 8,970 persons based on the number of CGR accounts in the department's GenTax system. The number of hearing requests necessary for the department to conduct a public hearing shall be 25, which is less than 10 percent of the number of persons affected.

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, email, 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 different mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this notice is available through the Secretary of State's web site at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Greg Hertz, was contacted by email on November 20, 2023, and July 18, 2024.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.20.105 pertaining to the) PROPOSED AMENDMENT
valuation of condominiums or)
townhomes)

TO: All Concerned Persons

1. On September 4, 2024, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 16, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.20.105 VALUATION OF CONDOMINIUMS/OR TOWNHOMES (1) ~~It is the intention of the department to employ~~ The department will apply an appraisal methodology for condominiums or ~~and townhouse/townhomes,~~ (as defined in 70-23-102, MCA), ~~which is consistent in accordance with 15-8-111 and 15-8-511, MCA.~~ The terms "townhouse" and "townhome" are interchangeable and, therefore, ~~reference to one term incorporates the other term.~~ The methodology which must provide for a separate assessment of each condominium/ or townhome unit, ~~and allocation of the percentage interest of common elements must meet the market value standard. The methodology must include the consideration, use, and where applicable, the reconciliation of the cost approach, the sales comparison approach, and the income approach to valuation using accepted appraisal treatises and manuals. This rule relates solely to the administration of revenue laws, and nothing in this rule should be construed to affect the legal requirements of any other purpose.~~

(2) ~~The department will employ the following appraisal and assessment methodology for condominiums/townhomes, except for condominiums/townhomes situated on qualified tax-exempt community land trust property, as set forth in (6), and time-share condominiums, as set forth in (7).~~

(a) ~~The preferred approach for the appraisal of residential condominium/townhome units is~~ The sales comparison approach; is used where

~~when comparable sales are available. and T~~the common elements of residential condominiums/townhomes are inherent ~~included~~ in the individual unit values ~~when the sales comparison approach is employed.~~ When comparable sales are not available, the cost approach must be used. ~~In that instance, the condominium/townhome declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, should be used to allocate the value. Allocation of value for each condominium/townhome unit will be determined by multiplying the percentage, expressed as a decimal, by the appraised value of the entire condominium/townhome project or by adding the individual unit cost to the individual unit's allocation of those elements deemed common. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach to value is determined and allocated as specified in this subsection.~~

~~(b) (3) The preferred income approach for the appraisal of is used to value commercial condominium units is the income approach where when reliable condominium income and expense data are is available. and T~~the common elements of ~~income-producing commercial~~ condominiums are inherent ~~included~~ in the individual unit values ~~when the income approach is employed.~~ When reliable income and expense data ~~are is~~ not available, the cost approach ~~must or sales comparison approach may~~ be used. ~~In that instance, the condominium declaration's percentage of ownership interest required by 15-8-511, 70-23-301, and 70-23-403, MCA, should be used to allocate the value. Allocation of value for each condominium/townhome unit will be determined by multiplying the percentage, expressed as a decimal, by the appraised value of the entire condominium/townhome project. The common elements are deemed to be inherent in the individual unit's declaration percentage when the cost approach to value is determined and allocated as specified in this subsection.~~

~~(4) When the cost approach is used to value residential and commercial condominiums, the department will value each unit individually and allocate the value of common area elements to the units based on the percentage of undivided interest in the condominium declaration, as required by 15-8-111(5)(c), MCA.~~

~~(5) When the cost approach is used to value townhomes with common area elements, the department will value each unit individually and allocate the value of common area elements to the units based on the percentage of undivided interest in the recorded townhome declaration, if one was filed.~~

~~(6) The total appraised value of time-share condominiums in a complex will be calculated and assessed to the owner of record (i.e., the time-share association).~~

~~(3) (7) Unit owners seeking conversion from a classification change from condominium property type to a townhome property type will require changing must change the legal ownership of the land for the entire complex, on which the unit is located. Therefore, all unit owners of the complex shall acknowledge, consent, and attest to the validity of the property type and the classification change must be ratified by the unit owners in accordance with the unit ownership association entity's governing documents.~~

~~(4) (a) The unit ownership association or unit owner's designated entity must file an application for a property type change on a form available from the local department office submit a Request for Townhome Classification form located at~~

<http://www.mtrevenue.gov> on or before January 1 of the year for which the property change is sought classification change is requested. Applications received after January 1 will be considered for the following tax year. ~~For tax year 2012 only, the deadline is October 1.~~

~~(5) (b) In addition to the Request for Townhome Classification form, T~~the department requires the following additional information before changing a property type classification from a condominium to a townhome:

~~(a) (i) a description of the size in square footage or acreage of land associated with each townhome unit;~~

~~(b) (ii) the amount of remaining square footage or acreage of land associated with each townhome unit; and~~

~~(iii) signed copies of all resolutions, meeting minutes, or other entity governance documents that evidence unit owner ratification of the classification change.~~

~~(c) if a designated entity, documentation authorizing the designated entity to represent the unit owners; and~~

~~(d) signatures of all unit owners of the complex in which the property type change is located.~~

~~(6) The department will appraise and assess condominiums/townhomes situated on qualified tax-exempt community land trust property using the cost approach method. The cost approach method is appropriate in this situation because it utilizes national cost service manuals and does not factor in the land.~~

~~(7) The department will employ the following appraisal and assessment methodology for time-share condominiums.~~

~~(a) The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in rule. The use of accepted techniques or methods means the consideration, use, and where applicable, the reconciliation of the cost approach, the sales comparison approach, and the income approach to valuation.~~

~~(b) Any units in a condominium project that are not owned and operated as time-share condominium units will be valued pursuant to the methodology set forth in (2)(a) or (b).~~

~~(c) The total appraised value for all time-share condominium units comprising a condominium project will be calculated and assessed to the owner of record (time-share association). Thereafter, it will be incumbent upon the association to allocate its total tax liability among the various parties having interest in the time-share condominiums.~~

AUTH: 15-1-201, MCA

IMP: 15-7-103, 15-8-111, 15-8-511, 70-23-102, 70-23-103, 70-23-301, 70-23-403, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.105 for the primary purpose of implementing House Bill 685 (2023) (HB 685). HB 685 amended 15-8-111(5)(c), MCA, and changes how the department values residential and commercial condominiums and townhomes when the cost approach to value is used.

The prior version of 15-8-111(5)(c), MCA, required the department to value individual residential and commercial condominium and townhome units based on a percentage of the total condominium complex's appraised value. Under HB 685 amendments to 15-8-111(5), MCA, the department now values residential and commercial condominiums on an individual basis and allocates the value of the common area elements to the units based on the percentage of undivided interest in the condominium declaration. The department proposes new (4) and (5) as a necessary reiteration of the valuation requirement into the rule.

The department also notes that ARM 42.20.105 was originally written, and subsequently amended, in a manner that was not clear and concise which caused occasional procedural confusion about its subject matter. Therefore, in addition to the legislative implementation of HB 685, the department proposes numerous amendments to simplify the rule; remove unnecessary words, phrases, and obsolete dates; update form submission references and deadlines; and clarify department procedures and/or requirements. The foregoing reflects the continuation of the department's work to advance Governor Gianforte's Red Tape Relief Initiative. Finally, rule section renumbering is proposed, as necessary, to reflect the proposals in this rulemaking.

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., September 11, 2024.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of House Bill 685, Representative Bertoglio was contacted by email on July 16, 2024 and on July 26, 2024.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.20.173 and 42.20.740 and	)	PROPOSED AMENDMENT AND
the repeal of ARM 42.20.745	)	REPEAL
pertaining to the implementation of	)	
Senate Bill 3 (2023), revising forest	)	
land taxation laws, revising and	)	
clarifying Form AB-26 processes, and	)	
revising and clarifying forest land	)	
natural disaster property tax	)	
assistance processes	)	

TO: All Concerned Persons

1. On September 4, 2024, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on August 16, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. The Montana Legislature enacted Senate Bill 3 (2023) (SB 3) which revised forest land taxation laws and the six-year valuation cycle described in 15-6-143, MCA, to a two-year valuation cycle beginning in 2025.

The department proposes to amend ARM 42.20.173 to remove references to the former six-year valuation cycle for class ten forest land and repeal ARM 42.20.745 since SB 3 obviated the need for phase-in value calculations and value before reappraisal (VBR).

The department also proposes to amend ARM 42.20.740 to reflect updated business practices and development of a Natural Disaster Application Form (application) - adopted in 2022 - for property owners to apply for forest land natural disaster property tax assistance. The application contains updated guidance for forest land destroyed by fire, disease, insect infestation, or other natural disaster and replaces the Request for Informal Classification and Appraisal Review (Form AB-26) in these specific circumstances.

While this general statement of reasonable necessity covers the basis for the proposed rule amendments and repeal, it is supplemented below to explain rule-specific proposals.

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

42.20.173 STATUTORY DEADLINES FOR CLASS THREE, FOUR, OR TEN PROPERTY TAXPAYER REQUESTS FOR INFORMAL CLASSIFICATION AND APPRAISAL REVIEWS, FORM AB-26; AND RELATED DEADLINES (1) ~~The valuation cycles for class three, four, and ten property are provided in 15-7-111, MCA. The department will accept Requests for Informal Classification and Appraisal Reviews, Form AB-26, for both years of the two-year valuation cycle for class three and four property and for all six years of the valuation cycle for class ten property. All taxable property within class three, four, or ten must be revalued every two years, as required by 15-7-111, MCA.~~

(2) A Class three, and four, or ten property taxpayers (taxpayer) dissatisfied with the department's appraised value of their property may submit a Request for Informal Classification and Appraisal Review, Form AB-26 (Form AB-26), one time per valuation cycle which is available at <http://www.mtrevenue.gov> or through a department field office. To be considered for both years of the two-year valuation cycle, the Form AB-26 must be submitted to the local a department field office within 30 days from the date on the classification and appraisal notice for any valuation adjustments to be considered for both years of the valuation cycle.

(3) ~~If taxpayers of class three and four property a taxpayer misses the 30-day deadline in (2), they may object to the department's appraised value of their property for the second year of the valuation cycle only by submitting a completed Form AB-26 by June 1 of the second year.~~

(a) A Form AB-26 submitted to the department after June 1 of the second year of the valuation cycle is untimely and the taxpayer's next opportunity to submit a Form AB-26 will be the following year after they receive the classification and appraisal notice for the next two-year valuation cycle.

(b) Any valuation adjustments under the circumstances under (3) apply only to the second year of the valuation cycle.

~~(4) Class ten property taxpayers dissatisfied with the department's appraised value of their property may submit a Form AB-26 one time per valuation cycle. To be considered for all years of the six-year valuation cycle, the Form AB-26 must be submitted to the local department field office within 30 days from the date on the classification and appraisal notice.~~

~~(5) If taxpayers of class ten property miss the 30-day deadline in (4), they may object to the department's appraised value of their property for any remaining years of the six-year valuation cycle by submitting a completed Form AB-26 by June 1 of any subsequent year of the valuation cycle.~~

(6) (4) As provided in 15-7-102, MCA, property a taxpayers may also request an informal review by checking a box found on their classification and appraisal notice and returning the request to the department. For this purpose, the department has incorporated the check box request into a detachable coupon ticket

on the classification and appraisal notice. Upon receipt of the taxpayer's returned ~~coupon ticket~~, the department will mail a Form AB-26 to the taxpayer with a cover letter stating the Form AB-26 must be postmarked or hand-delivered to the department within 15 business days of the date on the letter or within 30 days of the date shown on the taxpayer's classification and appraisal notice, whichever is later.

~~(7) (5) There will be~~ are no retroactive adjustments to the ~~taxable~~ appraised value for prior years. ~~Any adjustments to taxable value will be applied in the tax year for which the Form AB-26 was timely filed and for the remaining year(s) of the valuation cycle. If the property taxpayer submits a Form AB-26 after June 1 of the last year of the valuation cycle, their request shall be deemed untimely with the department.~~

~~(8) (6) Taxpayers may file a~~ A taxpayer may submit a Form AB-26 as described in (2) and (3) in any year of a valuation cycle, but only one time once during the valuation cycle, unless a new classification and appraisal notice is generated due to a change in property ownership, classification, ~~or value~~ valuation, or the addition or subtraction of personal property affixed to the land, as provided in 15-7-102, MCA. The ~~T~~taxpayers will then have has 30 days from the date on the new classification and appraisal notice to submit a ~~completed~~ Form AB-26.

~~(9) (7) During the informal review process, the department staff may attempt to contact the property owner~~ a taxpayer by telephone, email, and/or a property site visit to schedule an appointment or request additional documentation. If attempts to contact the ~~property owner~~ taxpayer are unsuccessful, the department staff will send a written request to the taxpayer, ~~who will then have~~ must respond within 15 business days from the date on the letter ~~to respond~~. If the taxpayer does not ~~contact the department~~ respond within the ~~allowed 15 business days~~ prescribed time, the department will deny the Form AB-26 and ~~send a determination letter to~~ notify the taxpayer in writing.

AUTH: 15-1-201, MCA

IMP: 15-7-102, ~~15-7-110~~, 15-7-111, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend the title of ARM 42.20.173 to clarify department procedures and/or requirements as well as revising grammar and phrasing of the rule for improved understanding of the subject matter.

The department proposes to amend (2) to include the department website, through which forms are primarily accessed, in addition to referencing the local department field office. The department proposes to amend former (8), proposed (6) to include a necessary cross reference to 15-7-102, MCA, for attribution of the conditions which would require the department to generate another classification and appraisal notice within the two-year valuation cycle.

Based on the department's proposed amendments, it will be necessary for the department to renumber rule sections.

Lastly, the department strikes 15-7-110, MCA, from the implementing citations because it is unrelated to the rule.

42.20.740 FOREST LAND NATURAL DISASTER REDUCTION – GENERAL PRINCIPLES PROPERTY TAX ASSISTANCE (1) ~~Forest lands with trees, as defined in 15-44-102, MCA, which is destroyed by fire, disease, insect infestation, or other~~ natural disaster ~~are~~ is eligible for a 50 percent reduction in assessed value for 20 tax years beginning the first full tax year following the natural disaster in accordance with 15-44-104, MCA. The affected forest land must have been classified as forest land under 15-6-143, MCA, and had ten percent or greater stocking prior to the natural disaster, and less than ten percent stocking of live trees after the natural disaster.

(2) The property owner must submit ~~the natural disaster reduction request to the department on a Request for Informal Classification and Appraisal Review, Form AB-26 a~~ Natural Disaster Application (application) located at <http://www.mtrevenue.gov>.

(a) ~~A Form AB-26~~ For an application that is submitted in the tax year the natural disaster occurred or during the first full tax year following the natural disaster, and the department approves the reduction ~~is approved~~, the property owner will receive the 50 percent reduction in assessed value for 20 tax years .

(b) ~~A Form AB-26~~ For an application that is submitted in any subsequent year after the first full year following the natural disaster, and the department approves the reduction ~~is approved~~, the property owner will receive the 50 percent reduction for the year the ~~Form AB-26~~ application was submitted and the remaining years of the 20-tax year reduction period.

~~(3) The following information must be included on the Form AB-26:~~

~~(a) property owner's name, current mailing address, and phone number;~~

~~(b) date of application;~~

~~(c) legal description of the property where the natural disaster occurred;~~

~~(d) type of natural disaster;~~

~~(e) approximate size of forest land affected by the natural disaster;~~

~~(f) date the natural disaster occurred; and~~

~~(g) description of the damage to the timber stocking on the forest land affected by the natural disaster.~~

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-7-102, 15-44-101, 15-44-102, 15-44-103, 15-44-104, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.20.740 to update the rule's catchphrase to make it specific to forest land natural disaster property tax assistance. The department also proposes cross references in (1) to 15-44-102 and 15-44-104, MCA, respectively, to the statutory definition of "forest land" and deference to the statute describing natural disasters involving forest land. The department proposes minor amendments in (2) to "tax year" instead of "year" for internal consistency and consistent with 15-44-104, MCA.

The department proposes to remove (3) because the text is unnecessary - as it corresponds to the Form AB-26 - and updated information is now provided in the instructions for the department's application (described above).

5. The department proposes to repeal the following rule:

42.20.745 FOREST LAND VALUE CHANGE PROCESS

AUTH: 15-1-201, 15-44-105, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: As described in the department's general statement of reasonable necessity, the department proposes to repeal ARM 42.20.745 as the phase-in value calculations and value before reappraisal (VBR) text is obsolete with the passage of SB 3. However, some of the content in ARM 42.20.745(1) regarding the reasons for forest land productivity value changes (i.e., updates from the Geographic Information System or fluctuations in agricultural land use due to typical farming practices) will be proposed for incorporation into the department's Forest Land Classification and Valuation Manual (Manual), adopted and incorporated by reference in ARM 42.18.121, through an upcoming rulemaking in Fall 2024.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., September 11, 2024.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of Senate Bill 3, Senator Cuffe, was contacted by email on July 16, 2024, and on July 26, 2024.

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

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 30, 2024.

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

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULE I pertaining to a Registration	)	AMENDMENT
Exemption for Investment Advisors to	)	
Private Funds and the amendment of	)	
ARM 6.10.501 pertaining to	)	
Examinations	)	

TO: All Concerned Persons

1. On June 21, 2024, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-289 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1405 of the 2024 Montana Administrative Register, Issue Number 12.

2. On July 17, 2024, a public hearing was held in-person and electronically to consider the rulemaking.

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

COMMENT #1: At the public hearing, CSI received supportive comments from a Montana-based business generally highlighting how proposed NEW RULE I will aid in capital formation and access to capital for Montana-based entrepreneurs with appropriate protections for investors under a scheme of regulation similar to other states.

RESPONSE #1: CSI thanks the proponent for their participation in the rulemaking process and for recognizing how NEW RULE I can facilitate the promotion of capital formation in Montana.

4. CSI has adopted NEW RULE I (6.10.309) as proposed.

5. CSI has amended ARM 6.10.501 as proposed.

6. The effective date of this rulemaking is August 10, 2024.

/s/ Kirsten Madsen

Kirsten Madsen
Rule Reviewer

/s/ Mary Belcher

Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State on July 30, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.56.101, 10.56.102, and)
10.56.105 pertaining to Assessment)
Standards)

TO: All Concerned Persons

1. On April 12, 2024, the Board of Public Education (board) published MAR No. 10-56-286 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 662 of the 2024 Montana Administrative Register, Issue Number 7.

2. The board has amended the following rules as proposed: ARM 10.56.101, 10.56.102, and 10.56.105.

3. No comments or testimony were received.

4. The rules amended in this notice are effective August 10, 2024.

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State July 30, 2024.

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

In the matter of the adoption of an	)	NOTICE OF ADOPTION OF
emergency rule closing the Bitterroot	)	EMERGENCY RULE
River from Chief Looking Glass	)	
Fishing Access Site to its confluence	)	
with the Clark Fork River in Missoula	)	
County	)	

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Bitterroot River from Chief Looking Glass Fishing Access Site to its confluence with the Clark Fork River in Missoula County:

(a) Following the storm yesterday evening, there are multiple power lines in the Bitterroot River leading to concerns for energized water. The department is closing the river pursuant to the request of the Missoula County Emergency Coordinator. It is unknown at this time how long the closure will be necessary, and the closure shall remain in effect until the department determines that recreation can safely reopen.

(b) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 15 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8071; or e-mail c.bell@mt.gov.

3. The emergency rule notice is effective July 25, 2024.

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

RULE 1 BITTERROOT RIVER CLOSURE (1) The Bitterroot River segment subject to this rule is located in Missoula County.

(2) The Bitterroot River is closed to any recreation from the Chief Looking Glass Fishing Access Site to its confluence with the Clark Fork River in Missoula County.

(3) The river closure implemented by this rule will be in effect from 12:00 p.m., Thursday, July 25, 2024, until the powerlines have been removed from the river and repaired, and the department determines that the river segment is again safe for recreational activities.

(4) Signs closing the above-referenced portion of the Bitterroot River to recreational activities will be removed when this rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail c.bell@mt.gov. Any comments must be received no later than September 9, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on July 25, 2024.

/s/ Dustin Temple
Dustin Temple
Director
Department Fish, Wildlife and Parks

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

Certified to the Secretary of State July 25, 2024.

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

In the matter of the adoption of an	)	NOTICE OF ADOPTION OF
emergency rule closing the Clark	)	EMERGENCY RULE
Fork River from the Milltown State	)	
Park to the Petty Creek Fishing	)	
Access Site in Missoula County	)	

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Clark Fork River from the Milltown State Park to the Petty Creek Fishing Access Site in Missoula County:

(a) Following the storm yesterday evening, there are multiple power lines in the Clark Fork River leading to concerns for energized water. The department is closing the river pursuant to the request of the Missoula County Emergency Coordinator. It is unknown at this time how long the closure will be necessary, and the closure shall remain in effect until the department determines that recreation can safely reopen.

(b) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 15 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8071; or e-mail c.bell@mt.gov.

3. The emergency rule notice is effective July 25, 2024.

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

RULE 1 CLARK FORK RIVER CLOSURE (1) The Clark Fork River segment subject to this rule is located in Missoula County.

(2) The Clark Fork River is closed to any recreation between Milltown State Park and the Petty Creek Fishing Access Site in Missoula County.

(3) The river closure implemented by this rule will be in effect from 12:00 p.m., Thursday, July 25, 2024, until the powerlines have been removed from the

river and repaired, and the department determines that the river segment is again safe for recreational activities.

(4) Signs closing the above-referenced portion of the Clark Fork River to recreational activities will be removed when this rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail c.bell@mt.gov. Any comments must be received no later than September 9, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on July 25, 2024.

/s/ Dustin Temple

Dustin Temple

Director

Department Fish, Wildlife and Parks

/s/ Jaime MacNaughton

Jaime MacNaughton

Rule Reviewer

Certified to the Secretary of State July 25, 2024.

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

In the matter of the adoption of an	)	NOTICE OF ADOPTION OF
emergency rule closing the Stillwater	)	EMERGENCY RULE
River from the Absaroka Fishing	)	
Access Site to the Jeffrey's Landing	)	
Fishing Access Site in Stillwater	)	
County	)	

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Stillwater River to any floating recreation from the Absaroka Fishing Access Site to the Jeffrey's Landing Fishing Access Site in Stillwater County:

(a) Construction activities on the final North Stillwater Road project are being conducted in early August, with portions of those construction activities occurring adjacent to and within the portion of the Stillwater River between the two above-referenced fishing access sites.

(b) The heavy construction activity occurring adjacent to and within the Stillwater River creates a risk of injury or death to any persons floating on the Stillwater River in that area, rendering the above-referenced stretch of river unsafe for floating activities by recreationists.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 15 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 23, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8071; or e-mail cbell@mt.gov.

3. The emergency rule notice is effective July 31, 2024.

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

RULE 1 STILLWATER RIVER EMERGENCY CLOSURE (1) The Stillwater River segment subject to this rule is located in Stillwater County.

(2) The Stillwater River is closed to any floating recreation between the Absaroka Fishing Access Site and the Jeffrey's Landing Fishing Access Site in Stillwater County.

(3) This rule does not implement a closure of either the Absaroka Fishing Access Site or the Jeffrey's Landing site, but only limits access for floating recreation between the two locations referenced above.

(4) The river closure implemented by this rule will be in effect from 5:00 a.m., Thursday, August 1, 2024 to 6:00 p.m., Thursday, August 8, 2024, or until the heavy construction activity forming the basis for the river closure is completed and the department determines that the river segment is again safe for floating recreation activities.

(5) Signs closing the above-referenced portion of the Stillwater River to floating activities will be removed when this rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 9, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on July 31, 2024.

/s/ Quentin Kujala
Quentin Kujala
Chief of Conservation Policy
Department of Fish, Wildlife and Parks

/s/ Jeffrey Hindoien
Jeffrey Hindoien
Rule Reviewer

Certified to the Secretary of State July 31, 2024.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.101.413, 24.121.301,	)	ADOPTION, AND REPEAL
24.121.403, 24.121.407, 24.121.410,	)	
24.121.412, 24.121.604, 24.121.605,	)	
24.121.606, 24.121.607, 24.121.610,	)	
24.121.611, 24.121.805, 24.121.807,	)	
24.121.808, 24.121.1103,	)	
24.121.1105, 24.121.1501,	)	
24.121.1509, 24.121.1511,	)	
24.121.1517, 24.121.1522, and	)	
24.121.1523, the adoption of NEW	)	
RULES I through V, and the repeal of	)	
ARM 24.121.405, 24.121.601,	)	
24.121.602, 24.121.603, 24.121.608,	)	
24.121.612, 24.121.801, 24.121.803,	)	
24.121.806, 24.121.809, 24.121.1101,	)	
24.121.1301, 24.121.1302,	)	
24.121.1505, 24.121.1507,	)	
24.121.1513, 24.121.1514,	)	
24.121.1515, 24.121.1519,	)	
24.121.1521, 24.121.2101, and	)	
24.121.2301 pertaining to the Board of	)	
Barbers and Cosmetologists	)	

TO: All Concerned Persons

1. On June 7, 2024, the Board of Barbers and Cosmetologists (agency) published MAR Notice No. 24-121-18 regarding the public hearing on the proposed changes to the above-stated rules, at page 1292 of the 2024 Montana Administrative Register, Issue No. 11.

2. On June 27, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters supported many of the proposed changes to eliminate redundancy in statutes and rules.

RESPONSE 1: The board appreciates all comments received in the rulemaking process.

COMMENT 2: Several commenters opposed amending ARM 24.121.301(3) and stated the board should retain the limitation of using chemical compounds in a defined scope of practice. Commenters opined that the change was not adequately explained.

RESPONSE 2: The board is striking "under a defined scope of practice" and replacing it with the specific limitation for use of chemical compounds for esthetics services to align with 37-31-101(14), MCA. The board believes the change provides more clarity and is proceeding as proposed.

COMMENT 3: Several commenters suggested the board further amend ARM 24.121.301(3) "chemical compounds" to add that the term does not include fillers and Botox.

RESPONSE 3: The board did not propose any changes to the list of acceptable chemical compounds and believes the rule language is appropriate as proposed. Licensees' scopes of practice remain unchanged and limited to noninvasive procedures.

COMMENT 4: Several commenters opposed the elimination of dermaplaning from Montana's esthetics scope of practice to align with regulations in 18 other states. The commenters suggested the board maintain a definition of "dermaplaning" such as is used in California.

RESPONSE 4: The board is not eliminating any esthetics practice, nor altering the estheticians' and cosmetologists' scopes of practice which remain limited to noninvasive procedures as defined in ARM 24.121.301. Because of wide variation in terminology between and among regulatory entities, the board is amending the rules to clarify the actual practices that are allowed under Montana esthetician and cosmetologist licenses and will no longer assign specific terms or examples of such practices. The board addresses questions and complaints regarding scope of practice by analyzing the actual practice in the specific circumstance, regardless of what the practice may be called, or which implements and equipment are utilized.

COMMENT 5: Several commenters opposed the striking of "dermabrasion" and "dermaplane" from ARM 24.121.301 and requested the board either retain them or amend the unprofessional conduct rule to specifically prohibit the provision of these defined services by estheticians.

RESPONSE 5: See RESPONSE 4. Additionally, all board licensees have scopes of practice limited to noninvasive procedures per ARM 24.121.604(2).

COMMENT 6: Several commenters stated they have no issues with the proposed changes to "direct supervision" in ARM 24.121.603.

RESPONSE 6: The board appreciates all comments received in the rulemaking process.

COMMENT 7: Several commenters opposed adding ARM 24.121.604(4) to allow practical distance learning. The commenters stated that distance learning cannot replace or replicate the hands-on experience of practical demonstration and live feedback and correction, where physical movement and practice contribute to learning objectives.

RESPONSE 7: The board has allowed for two-way, interactive, and real time practical distance learning since March 2020 with no detrimental effects on practice or increase in complaints. The board is now adding the language to rule for clarity.

COMMENT 8: Several commenters opposed amending the definition of "exfoliation" at ARM 24.121.301(7).

RESPONSE 8: See RESPONSE 4.

COMMENT 9: Several commenters opposed the amendments to the definition of "microdermabrasion" at ARM 24.121.301(10).

RESPONSE 9: See RESPONSE 4.

COMMENT 10: Several commenters opposed the amendments to "noninvasive" at ARM 24.121.301(13) and requested the board retain the rule's current language as "practical and effective." The commenters provided an alternate definition as well.

RESPONSE 10: See RESPONSE 4.

COMMENT 11: Several commenters opposed striking the definition of "very superficial" at ARM 24.121.301(39).

RESPONSE 11: See RESPONSE 4. Because the board is amending the definition of "noninvasive" as used within the definition of microdermabrasion, the board concluded it is not necessary to retain the "very superficial" definition.

COMMENT 12: Several commenters suggested the board add a definition for "chemical exfoliation" as the term is used in ARM 24.121.1517.

RESPONSE 12: The board is unable to accommodate this addition in a final notice of adoption as it exceeds the scope of the proposed changes. The board may consider the suggestion in a future rulemaking.

COMMENT 13: Several commenters suggested amending the definition of "exfoliation" at ARM 24.121.301(7) to add "mechanical or chemical" exfoliation.

RESPONSE 13: See RESPONSE 12.

COMMENT 14: Several commenters suggested the board retain the prohibition on modified or medical machines in ARM 24.121.1509(3) regarding estheticians' acceptable equipment.

RESPONSE 14: The rule's language is clear that only microdermabrasion machines specifically manufactured for esthetics' services are allowed. There is no need to provide specific prohibitions. Licensees with microdermabrasion endorsements utilizing any machine manufactured for esthetics purposes remain limited to noninvasive procedures as defined in ARM 24.121.301.

COMMENT 15: Several commenters asked the board to hold estheticians to the same standard as physicians and amend NEW RULE II to require schools to keep a log of student competency with lasers and procedures and submit it to the board.

RESPONSE 15: The board is unable to accommodate this addition of new equipment monitoring or new curriculum requirements in a final notice of adoption as it is beyond the scope of the proposed changes. The requirements in NEW RULE II are not new, but rather relocated from ARM 24.121.803 which is proposed for repeal. Additionally, the board did not propose any changes to the minimum esthetics curriculum requirements in ARM 24.121.807. The board may consider the suggestion in a future rulemaking.

COMMENT 16: Several commenters asked the board to amend ARM 24.121.1522 on blood exposure to address a needlestick if the patient tests positive for HIV.

RESPONSE 16: Licensees under this board are not healthcare professionals, do not have patients, and do not test for HIV or have access to HIV test results from medical professionals when providing services to clients at salons, shops, or schools. The blood exposure procedure is consistent with procedures required by other states that license these professions.

4. The agency has amended ARM 24.101.413, 24.121.301, 24.121.403, 24.121.407, 24.121.410, 24.121.412, 24.121.604, 24.121.605, 24.121.606, 24.121.607, 24.121.610, 24.121.611, 24.121.805, 24.121.807, 24.121.808, 24.121.1103, 24.121.1105, 24.121.1501, 24.121.1509, 24.121.1511, 24.121.1517, 24.121.1522, and 24.121.1523, as proposed.

5. The agency has adopted NEW RULE I (24.121.418), NEW RULE II (24.121.818), NEW RULE III (24.121.2110), NEW RULE IV (24.121.2310), and NEW RULE V (24.121.425), as proposed.

6. The agency has repealed ARM 24.121.405, 24.121.601, 24.121.602, 24.121.603, 24.121.608, 24.121.612, 24.121.801, 24.121.803, 24.121.806, 24.121.809, 24.121.1101, 24.121.1301, 24.121.1302, 24.121.1505, 24.121.1507, 24.121.1513, 24.121.1514, 24.121.1515, 24.121.1519, 24.121.1521, 24.121.2101, and 24.121.2301, as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
PAULA EVANS,
PRESIDING OFFICER

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.147.504 and 24.147.507 and) REPEAL
the repeal of ARM 24.147.509)
pertaining to the Board of Funeral)
Service)

TO: All Concerned Persons

1. On April 12, 2024, Board of Funeral Service (board) published MAR Notice No. 24-147-41 regarding the public hearing on the proposed changes to the above-stated rules, at page 697 of the 2024 Montana Administrative Register, Issue No. 7.

2. On May 7, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Several commenters were in support of the proposed rules.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

4. The agency has amended ARM 24.147.504 and 24.147.507 as proposed.

5. The agency has repealed ARM 24.147.509 as proposed.

BOARD OF FUNERAL SERVICE
JAMES AXELSON, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.301.1001, 24.301.1003, and) REPEAL
24.301.1007 and the repeal of ARM)
24.301.1006 pertaining to)
underground facilities)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-301-418 regarding the public hearing on the proposed changes to the above-stated rules, at page 1432 of the 2024 Montana Administrative Register, Issue No. 12.

2. On July 11, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.301.1001, 24.301.1003, and 24.301.1007 as proposed.

4. The agency has repealed ARM 24.301.1006 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.

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

In the matter of the amendment of	)	NOTICE OF ADOPTION AND
ARM 37.27.902, 37.86.4401,	)	AMENDMENT
37.87.102, 37.87.702, 37.88.101,	)	
37.89.201, 37.106.1902,	)	
37.106.1936, 37.106.1956 and the	)	
adoption of NEW RULE I pertaining	)	
to Clinical Mental Health Licensure	)	
Candidate Medicaid Service	)	
Reimbursement	)	

TO: All Concerned Persons

1. On February 23, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1043 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 311 of the 2024 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 37.27.902, 37.86.4401, 37.87.102, 37.88.101, 37.89.201, 37.106.1936, and 37.106.1956.

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

NEW RULE I (37.85.213) IN-TRAINING MENTAL HEALTH
PROFESSIONAL SERVICES BILLING MEDICAID (1) through (2)(c) remain as proposed.

(i) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(ii) through (iv) remain as proposed.

(3) The provider's practice setting must:

(a) ~~provide crisis services, medication management, and outpatient mental health services;~~

(b) provide outpatient mental health services;

(c) provide crisis telephone services that comply with the following requirements:

(i) the service is available 24 hours a day, seven days a week;

(ii) an answering service or unlicensed employees may answer calls and transfer calls to individuals trained to respond to crisis calls;

(iii) written policies and procedures that include:

(A) training requirements for individuals responding to crisis calls;

(B) a policy requiring a mental health professional to be on-site for consultation and backup for unlicensed individuals receiving crisis calls; and

(C) utilization of community resources.

~~(b)(d)~~ employ or contract with a licensed health care professional who is licensed to prescribe medication for mental health/behavioral health disorders;

~~(c)(e)~~ employ or contract with the licensed mental health professional who is approved by the candidate's licensing board to serve as supervisor to the candidate; and

~~(d)(f)~~ have at least one licensed mental health professional on-site or available for face-to-face supervision of the candidate when the supervisor is not available.

(4) The supervisor must provide face-to-face supervision of the licensure candidate in accordance with the licensure board's approved supervision plan and as needed. ~~The provider and supervisor may not charge the candidate for supervision.~~ The designated supervisor must be a supervisor of record with the candidate's licensing board and have assumed responsibility for the candidate's continued training and for services provided by the candidate.

~~(5) The candidate must be an employee of the provider. The provider is not permitted to contract for in-training mental health professional services.~~

~~(6)(5)~~ The provider must provide professional liability insurance for the candidate's professional services.

~~(7)(6)~~ An in-training mental health professional may not engage in independent practice.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.702 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) and (2) remains as proposed.

(3) "In-training mental health professional services" refers to services provided by a candidate for licensure who:

(a) has completed all academic requirements for licensure as a psychological resident (as defined in ARM 24.189.301(8)), licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(b) through (11) remain as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (18) remain as proposed.

(a) a physician, clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, or professional counselor licensed to practice in Montana;

(b) through (33) remain as proposed.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-204, 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: The department received multiple comments in support of the rule amendments and NEW RULE I.

RESPONSE #1: The department thanks commenters for this feedback and believes the updated rules will expand the availability of mental health professional services to Medicaid members.

COMMENT #2: The department received multiple comments referring to the Department of Labor and Industry (DLI) Board of Behavioral Health's recent rule amendments for clinical mental health in-training licensure candidate services. The comments requested the department ensure coordination with the Board of Behavioral Health's rules. Some comments specifically noted that the Board of Behavioral Health has standards for supervision and requested that these requirements be referenced in this rulemaking. Additionally, several comments were received noting that the Board of Behavioral Health does not use the term "in-training" in their rules and commenters requested that the department use common language.

RESPONSE #2: DLI and DPHHS have different duties and responsibilities with respect to the topic of this rulemaking. DLI is responsible for licensing and establishing standards for behavioral health professionals, including supervision standards. The department is responsible for establishing the circumstances when the Medicaid program will reimburse for certain health care services. The rules proposed by the department do not conflict with rules proposed by DLI. Regarding terminology, the department notes that DLI uses different terms to refer to in-training professionals, depending on the particular license. For uniformity and simplicity, DPHHS has proposed using one term to refer to in-training mental health professionals across relevant licensures. The department has defined "in-training mental health professional" in NEW RULE I(2)(b) and "in-training mental health professional services" in NEW RULE I(2)(c). Within these definitions, the department ensures compatibility with the Board of Behavioral Health rules through reference to ARM Title 24, chapter 189 or 219.

COMMENT #3: The department received multiple comments regarding the use of the term "social worker" along with the suggestion that "licensed clinical social worker" should be used instead.

RESPONSE #3: The department has reviewed the language in question and confirmed the term "social worker" is inconsistent with the language used elsewhere in the rulemaking. Based on these comments, the department will change the term "social worker" to "licensed clinical social worker" in this rule notice. To ensure consistency in terminology, the department will make the same change in other rules relating to the Children's Mental Health Bureau in future rule notices.

COMMENT #4: The department received multiple comments regarding NEW RULE I's proposal to prohibit a supervisor from charging a candidate for supervision. Commenters requested this language be removed because paying for clinical supervision of in-training licensure candidates is standard practice and prohibiting it will result in a financial loss for providers.

RESPONSE #4: In response to these comments, the department will remove proposed language that would have prohibited charging a fee for supervision of in-training licensure candidates.

COMMENT #5: The department received multiple comments regarding New Rule I stating that an in-training mental health professional may not engage in independent practice. The commenters requested this language be removed as some commercial insurances and private-pay clients reimburse in-training mental health professionals for independent practice and this language prohibits that practice.

RESPONSE #5: The department notes that the language in question is limited to Medicaid reimbursement and does not restrict an in-training mental health professional in independent practice providing non-Medicaid funded services from billing private insurance. Accordingly, the department declines to make the suggested change.

COMMENT #6: The department received multiple comments requesting clarification on whether this rulemaking applies to addiction counselors and/or addiction counseling settings.

RESPONSE #6: Addiction counseling licensure candidates are not included in this rulemaking because they are not a provider type listed in this rulemaking notice. In-training mental health professionals providing services to individuals with a substance use disorder (SUD) must have SUD within their scope of practice under their license. Addiction counseling settings would need to meet the requirement set forth in NEW RULE I.

COMMENT #7: The department received one comment regarding NEW RULE I's requirement that a provider's practice setting must provide crisis services, medication management, and outpatient mental health services. The commenter requested the department consider changing "and" to "or."

RESPONSE #7: The standard proposed in this rulemaking notice is in line with requirements for mental health centers. The rulemaking notice removed the

requirement for the provider to provide community-based psychiatric rehabilitation services and chemical dependency services. However, the department believes that maintaining all three requirements listed in the new rule will support comprehensive and quality treatment of Montana Medicaid members. Accordingly, the department declines to make the suggested change.

COMMENT #8: The department received one comment requesting that the language used in this rulemaking makes providing services easier for rural providers.

RESPONSE #8: The department believes these rules will expand the availability of mental health professional services available to Medicaid beneficiaries in all locations.

COMMENT #9: The department received one comment requesting clarification on whether the requirement that the provider's practice setting provide crisis services is similar to the requirement for mental health centers, and whether the new rule will require documentation and reporting to the Office of Inspector General for critical incidents. Additionally, the commenter asked whether the requirement is for 24/7 crisis response services or if the 988 Suicide and Crisis Lifeline may be used to fulfill this requirement, noting that operation of a 24/7 crisis line is expensive and may lead to staff burnout.

RESPONSE #9: NEW RULE I provides that the provider's practice setting must provide crisis services, which includes crisis telephone services. The department has added clarifying language to NEW RULE I to address this comment and to ensure that the requirement for crisis services in NEW RULE I is in conformity with requirements for mental health centers, which are required to have crisis telephone services.

COMMENT #10: The department received one comment requesting clarification on the requirement for the provider's practice setting to require medication management. Specifically, the commenter asked if this requirement is for psychiatric medication management, MAT/MOUD, or all types of medication. The commenter also asked if medication management services may be subcontracted. Further, the commenter asked if the department would allow for the use of APRN services rather than the requirement for a psychiatrist, and if the allowable use of an APRN rather than a psychiatrist medical director would be extended to licensed mental health centers.

RESPONSE #10: The department notes that the new rule states the provider's practice setting may employ or contract with a licensed health care professional and that the professionals must be licensed to prescribe medication for mental health/behavioral health disorders. Licensed health care professionals are defined in ARM 37.106.1902(16): "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the DLI.

COMMENT #11: The department received one comment requesting clarification on the impact of this rulemaking on Indian health, tribal health, and urban Indian health.

RESPONSE #11: Indian Health Service, Tribal 638, FQHC, and urban Indian organizations can currently be reimbursed for in-training mental health professionals. With the adoption of NEW RULE I, the criteria set forth in the new rule must be met to continue reimbursement from Medicaid.

COMMENT #12: The department received one comment requesting clarification on the reference to the Integrated Behavioral Health (IBH) model in the statement of reasonable necessity. The commenter noted that the use of IBH language is confusing and may lead to inappropriate coding and audit risks for the provider's practice setting.

RESPONSE #12: To be reimbursed the provider may only bill procedure codes for which they are already eligible to bill which will ensure proper coding and eliminate audit risks.

COMMENT #13: The department received two comments regarding the requirement in NEW RULE I that the candidate must be an employee of the provider and the provider is not permitted to contract for in-training mental health professional services. One commenter noted that many candidates work for multiple groups and expressed concern that this requirement stifles the candidate's ability to practice. One commenter commented on allowing for contracted work to require the in-training mental health professional be responsible for their own malpractice coverage.

RESPONSE #13: In response to these comments, the department has removed this requirement in the final adopted rule. Specifically, the department removed NEW RULE I(5), as originally proposed. By removing this language, the department has removed the requirement that the candidate must be an employee of the provider.

COMMENT #14: The department received one comment stating that some groups offer pro-bono in-training licensure candidate services and asking if these services may be retroactively billed to Medicaid.

RESPONSE #14: The department intends this rulemaking to be retroactively effective to January 1, 2024. Claims for services may be billed to Medicaid within 365 days from the date of service, provided that the date of service is on or after that date.

COMMENT #15: The department received one comment regarding ARM 37.27.902 expressing concern that this rulemaking will serve as a barrier for Medicaid members to receive needed services in a timely manner.

RESPONSE #15: The proposed rulemaking would expand the practice settings that can be reimbursed for in-training mental health professional services provided to Medicaid members. Expanding reimbursable service locations for behavioral health services will increase access to services in Montana.

COMMENT #16: The department received one comment regarding the format of the proposed amendment to ARM 37.86.4401, stating the department inadvertently struck (8)(a).

RESPONSE #16: The department did not propose striking (8)(a). The proposed amendment to ARM 37.86.4401 reads "(a) through (h) remain the same" and continues to (i).

COMMENT #17: The department received one comment on ARM 37.106.1902 thanking the department for adding the licensed marriage and family therapist provider type.

RESPONSE #17: The department appreciates the feedback and believes the inclusion of licensed marriage and family therapist licensure candidates will expand the availability of mental health professional services available to Medicaid beneficiaries.

COMMENT #18: The department received one comment noting that the commenter did not receive notice of this rulemaking from the department.

RESPONSE #18: 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 must make a written request that includes the name, email, 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 email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406)444-9744; or email hhsadminrules@mt.gov.

5. These rule adoptions and amendments are to be retroactively effective to January 1, 2024.

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

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 30, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.79.201, 37.82.102,)
37.82.701, 37.86.202, 37.86.3402,)
and 37.86.3405 pertaining to 12-)
month postpartum continuous)
eligibility for Medicaid and HMK)

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1057 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1032 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rules as proposed: ARM 37.79.201, 37.82.102, 37.82.701, and 37.86.3402.

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:

37.86.202 MID-LEVEL PRACTITIONER SERVICES, DEFINITIONS For the purpose of these rules, the following definitions will apply:

(1) through (11) remain as proposed.

(12) "Postpartum services" means services rendered to a woman during the 12-month postpartum period ~~following the delivery~~ after pregnancy ends for any health conditions or complications that are pregnancy-related.

(13) through (16) remain as proposed.

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

IMP: 53-6-101, MCA

37.86.3405 TARGETED CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, COVERAGE (1) and (2) remain as proposed.

(3) Two post-partum reassessments must occur after ~~delivery~~ the end of pregnancy and prior to the last day of the month in which the 12-month postpartum period ~~following delivery ends~~ occurs.

(4) remains as proposed.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 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 expressed support and appreciation for this rulemaking.

RESPONSE #1: The department appreciates the commenter's support.

COMMENT #2: A commenter expressed concern on ARM 37.86.202 and 37.86.3405 regarding the use of "following delivery" and the phrase not accounting for those who experience stillbirth or miscarriage, although they would be eligible for services. The commenter suggested using the phrase "after pregnancy ends."

RESPONSE #2: The department has reviewed the questioned language and agrees that the language in ARM 37.86.202 and 37.86.3405 should be revised as suggested.

5. The department intends to apply these rule amendments retroactively to July 1, 2023.

/s/ Brenda K. Elias

Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 30, 2024.

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

In the matter of the repeal of ARM)
37.49.601 and 37.49.602 pertaining)
to IV-E foster care services)

NOTICE OF REPEAL

TO: All Concerned Persons

1. On April 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1058 pertaining to the proposed repeal of the above-stated rules at page 872 of the 2024 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

/s/ Mark Prichard
Mark Prichard
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 30, 2024.

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 37.86.801, 37.86.802 and)
37.86.805 pertaining to hearing aid)
services)

TO: All Concerned Persons

1. On June 7, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1062 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1342 of the 2024 Montana Administrative Register, Issue Number 11.

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

3. No comments or testimony were received.

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

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 30, 2024.

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 37.12.401 and 37.57.301)
pertaining to laboratory analyses and)
newborn screening)

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1071 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1054 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rules as proposed: ARM 37.12.401 and 37.57.301.

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: The department received three comments relating to this proposed rulemaking. The commenters expressed support for the proposed rules and appreciation for the department's efforts in adding the X-ALD test to Montana's newborn screening panel. The commenters all noted the importance of early detection of X-ALD in order to provide timely treatment and better outcomes for affected newborns.

RESPONSE #1: The department thanks each of the commenters for their support of the proposed rules.

4. These rule amendments are effective September 1, 2024.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 30, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- 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
- 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.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2024. This table includes notices in which those rules adopted during the period February 9 through July 26, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2024, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

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| 2-12-646 | Local Government Public Meeting Recordings, p. 781, 1574 |
| 2-59-642 | Definitions - Out-of-State State-Chartered Bank or National Bank Seeking to Exercise Fiduciary Powers in Montana - Out-of-State Nonbank Trust Companies Seeking to Exercise Fiduciary Powers in Montana - Fiduciary Foreign Trust Companies, p. 490, 1058 |
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