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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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-2055.

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

| | | |
|--|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 6.6.304, 6.6.311, 6.6.312, |) | AMENDMENT |
| 6.6.313, replacement of life |) | |
| insurance; 6.6.608, Medicare Select; |) | NO PUBLIC HEARING |
| 6.6.712, life insurance illustrations; |) | CONTEMPLATED |
| 6.6.1006, funeral insurance; |) | |
| 6.6.2202, title insurance; 6.6.2403, |) | |
| group coordination of benefits; |) | |
| 6.6.3001, 6.6.3007, loss cost advisory |) | |
| rate filings; 6.6.3401, hazardous |) | |
| financial conditions; 6.6.3501, |) | |
| 6.6.3515, 6.6.3520, audited reports |) | |
| and annual statements; 6.6.3715, |) | |
| holding company systems; 6.6.4603 |) | |
| guaranty association; 6.6.6501, |) | |
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| 6.6.6505, 6.6.6508, 6.6.6509, |) | |
| actuarial opinions; 6.6.6805, |) | |
| 6.6.6820, captive insurers; 6.6.7101, |) | |
| 6.6.7102 mortality tables; and |) | |
| 6.6.8504 and 6.6.8505, viatical |) | |
| settlement agreements |) | |

TO: All Concerned Persons

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

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.304 EXEMPTIONS (1)(a) through (1)(i) remain the same.
 (j) structured settlements.
 (2) remains the same.

AUTH: 33-1-313, MCA

IMP: 33-18-204, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error. ARM 6.6.304 is adopted from Section 1 of the National Association of Insurance Commissioners (NAIC) Life Insurance and Annuities Replacement Model Regulation. Subsection (1)(j) refers to "structure settlements"; the model regulation confirms this is intended to refer to "structured settlements."

6.6.311 DUTIES OF ALL INSURERS THAT USE PRODUCERS (1)(a) through (1)(b)(iii) remain the same.

(iv) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by (1)(a)(v) ~~of this rule~~; and

(v) through (h) remain the same.

AUTH: 33-1-313, MCA

IMP: ~~33-19-204~~ 33-18-204, MCA

REASON: The CSI proposes to amend this rule to eliminate surplusage and correct a reference to the implementing statute. The language "of this rule" in (1)(b)(iv) is unnecessary, as the reference contained in that subsection is self-evident. Additionally, the implementing statute is incorrectly referenced as 33-19-204, MCA; this statute has been repealed and was inapplicable to the content of this rule. The applicable implementing statute is 33-18-204, MCA, which refers to replacement of insurance policies; this is confirmed by the fact that other rules in this subchapter correctly reference this implementing statute.

6.6.312 SEVERABILITY (1) remains the same.

AUTH: 33-1-313, MCA

IMP: ~~33-19-204~~ 33-18-204, MCA

REASON: The CSI proposes to amend this rule to correct a reference to the implementing statute, for the reasons described above regarding ARM 6.6.311.

6.6.313 SAMPLE FORMS (1) The State Auditor's Office adopts and incorporates by reference Appendix A, B, and C, which are set forth in the National Association of Insurance Commissioners' (NAIC) Life Insurance and Annuities Replacement Model Regulation, adopted July 2000. Copies of appendices A, B, and C are available for public inspection at the ~~office of the Commissioner of Insurance~~ Office of the Montana State Auditor, 840 Helena Avenue, Helena, MT 59601. Copies of these appendices may be obtained by writing to the State Auditor's Office, Legal Department, 840 Helena Avenue, Helena, MT 59601. Persons obtaining a copy of these appendices must pay the cost of providing such copies.

AUTH: 33-1-313, MCA

IMP: ~~33-19-204~~ 33-18-204, MCA

REASON: The CSI proposes to amend this rule to correct a reference to the implementing statute, for the reasons described above regarding ARM 6.6.311. It also proposes to update the title of the office at which documents may be inspected, to reflect the CSI's current naming convention.

6.6.608 DISCLOSURE REQUIREMENTS (1)(a) through (1)(b) remain the same.

(c) a description of the restricted network provisions, including payments for coinsurance and deductibles, when providers other than network providers are utilized, ~~except.~~ Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;

(d) through (g) remain the same.

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

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

REASON: The CSI proposes to amend this rule to correct a typographical error affecting the meaning of the statute. ARM 6.6.608 is adopted from Section 10 of the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. The proposed change is necessary to conform to the NAIC model. In its current form the typographical error results in a run-on sentence altering the meaning of the rule.

6.6.712 STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS (1) A supplemental illustration may be provided so long as:

(a) it is appended to, accompanied by, or preceded by a basic illustration that complies with this subchapter;

~~(i)(b)~~ (i)(c) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

~~(ii)(c)~~ (ii)(d) it contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and

~~(iii)(d)~~ (iii)(e) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) remains the same.

AUTH: 33-20-150, MCA

IMP: 33-18-202, 33-20-150, MCA

REASON: The CSI proposes to amend this rule to correct an error in the formatting of subsection ordering. In its current form, the rule establishes (a) without subsequent subheadings of the same format (i.e., no (b), etc.). ARM 6.6.712 is adopted from Section 8 of the NAIC Life Insurance Illustrations Model Regulation. The proposed change conforms to the NAIC model and makes the requirements for supplemental illustrations more clear.

6.6.1006 LICENSING OF SPECIALIZED FUNERAL INSURANCE PRODUCERS (1) through (4) remain the same.

(5) If the Board of Funeral Service, provided for in 2-15-1743, MCA, suspends, revokes, or terminates the license of a funeral director, undertaker, mortician, or mortuary, the specialized funeral insurance producer license and any appointments will automatically terminate. The funeral director, undertaker, mortician, or mortuary must notify the commissioner within ten days after a suspension, revocation, or license termination by the Board of Funeral Service.

AUTH: 33-1-313, 33-20-1503, MCA

IMP: 33-17-201, 33-17-211, 33-17-212, 33-17-213, 33-17-214, 33-17-219, 33-17-220, 33-17-231, 33-17-236, 33-17-401, 33-17-405, 33-17-406, 33-17-407, 33-17-409, 33-17-411, 33-17-1001, 33-17-1002, 33-17-1003, 33-17-1004, 33-17-1005, 33-17-1101, 33-17-1102, 33-17-1103, 33-17-1203, 33-17-1205, 33-20-1501, 33-20-1502, MCA

REASON: The CSI proposes this amendment to correct a typographical error. From its context, it is apparent the intent of the rule is to ensure timely notification of a change in a party's licensing status with the Board of Funeral Service. The amendment makes clear notification must occur no more than ten days following such a change.

6.6.2202 ESCROW, CLOSING, OR SETTLEMENT SERVICES (1) through (4) remain the same.

(5) If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows:

"We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request that the transaction be closed by some other escrow agent."

(6) through (15) remain the same.

AUTH: 33-1-313, MCA

IMP: 33-25-201, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error. The current version of the rule omits a closing quotation mark from the required disclosure, the end of which is apparent from the plain language of the rule.

6.6.2403 DEFINITIONS As used in these rules, these words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Allowable expense," ~~means a necessary, reasonable, and customary item of expense for health care if the item of expense is covered at least in part under any of the plans involved, unless a statute requires a different definition,~~ except as set forth in (a) through (g), or where a statute requires a different definition, means any health care expense, including coinsurance or copayments, and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person:

(a) through (14) remain the same.

AUTH: 33-1-313, MCA

IMP: 33-15-304, 33-18-201, 33-22-225, 33-22-226, 33-22-502, MCA

REASON: The CSI proposes to amend this rule to correct typographical errors. ARM 6.6.2403 is adopted from Section 3 of the NAIC Coordination of Benefits Model Regulation. When this rule was last amended, the drafter inadvertently merged the past definition of "allowable expense" with the current definition, resulting in confusing language that does not conform to the NAIC model. The proposed changes bring the definition into conformity with the current NAIC model, as intended during the prior rule amendment.

6.6.3001 PURPOSE AND SCOPE (1) remains the same.

(2) These rules apply to the kinds and lines of insurance to which Title 33, chapter 16, MCA applies, as indicated ~~described~~ in 33-16-103, MCA, and to insurers and rating organizations making filings under 33-16-203, MCA, except they do not apply to workers' compensation insurance.

AUTH: 33-1-313, MCA

IMP: 33-16-201, 33-16-202, 33-16-203, MCA

REASON: The CSI proposes to amend this rule to clarify the reference to the lines of insurance to which the rule is intended to apply. Section 33-16-103, MCA, is an applicability statute that both identifies the lines to which Title 33, chapter 16, MCA applies, and identifies excluded lines. Thus, the statute "describes" two groups of insurance, rendering ARM 6.6.3001(2) ambiguous. This rule implements Title 33, chapter 16, MCA, indicating this rule was intended to apply to the same lines of insurance to which that chapter applies. The CSI proposes to amend the rule to reflect that fact.

6.6.3007 EXISTING RATES AND DEVIATIONS REMAIN IN EFFECT UNTIL DISAPPROVED, REPLACED, OR MODIFIED (1) Nothing in ~~[these rules]~~ this subchapter requires rating organizations or their participating insurers to immediately refile rates in effect. Any participating insurer of a rating organization may continue to use all rates and deviations in effect until such rates are disapproved or until the insurer makes its own filing to change its rates, either by making an independent

filing or by filing a reference filing adoption form adopting the rating organization's prospective loss costs, or the insurer's modification of them.

AUTH: 33-1-313, MCA

IMP: 33-16-201, 33-16-202, 33-16-203, MCA

REASON: The CSI proposes to amend this rule to eliminate form language inadvertently included in the original drafting of the rule. Subchapter 30 is the only subchapter addressing loss cost advisory rate filings. Thus it is apparent from the context that this rule is intended to refer to the subchapter as a whole.

6.6.3401 STANDARDS FOR EVALUATING FINANCIAL CONDITION OF REGULATED COMPANIES (1) through (1)(n) remain the same.

(o) whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~and~~

(p) through (r) remain the same.

(s) whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; and

(t) remains the same.

AUTH: 33-1-313, 33-2-1517, 33-28-206, MCA

IMP: 33-1-401, 33-2-1321, 33-2-1517, 33-28-108, 33-28-109, 33-28-207, 33-30-102, 33-30-105, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error. In its current form the rule places "and" at the end of a subsection other than the penultimate subsection. The proposed amendment corrects this error.

6.6.3501 DEFINITIONS For the purposes of this subchapter, the following terms shall have the following meanings:

(1) through (8) remain the same.

(9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in ARM 6.6.3504(2)(b) through 6.6.3504(3), and includes those policies and procedures that:

(a) through (13) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error; namely, a misplaced comma. The amendment does not affect the meaning of the rule.

6.6.3515 REQUIREMENTS FOR AUDIT COMMITTEES (1) and (2) remain the same.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to ~~ARM 6.6.3415(6)~~, and ARM 6.6.3501(3) and 6.6.3515(6).

(4) through (10) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-2-701, 33-2-1517, 33-4-313, 33-5-413, MCA

REASON: The CSI proposes to amend this rule to correct an inaccurate reference to another administrative rule. Section 3 refers to ARM 6.6.3415(6) in the context of election of membership of an audit committee. ARM 6.6.3415 does not exist. However, ARM 6.6.3515(6) addresses election of membership of the audit committee; it is apparent from the context that this is the intended reference.

6.6.3520 EXEMPTIONS AND EFFECTIVE DATES (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of these rules if the commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption, such insurer may make a written request for a hearing on its application for an exemption. Such hearing shall be held in accordance with ~~33-2-701~~ 33-1-701, MCA.

(2) through (7) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA

IMP: 33-1-701, ~~33-2-701~~, 33-2-1517, 33-4-313, 33-5-413, MCA

REASON: The CSI proposes to amend this rule to correct an inaccurate reference to a statute. The rule currently references 33-2-701, MCA, in reference to conducting a hearing regarding an application for exemption from certain administrative rules. That statute does not address hearing procedure. However, 33-1-701, MCA, is the generally applicable statute regarding hearings held by the CSI. It is apparent from the context that this is the intended statutory reference, and the amendment corrects the inaccurate reference to 33-2-701, MCA.

6.6.3715 EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS

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

(i) the amounts, dates, and forms of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the preceding year;

(ii) through (2) remain the same.

AUTH: 33-1-313, 33-2-1517, MCA
IMP: 33-2-1114, 33-2-1516, MCA

REASON: The CSI proposes to amend this rule to correct a typographical error. The rule currently omits an apostrophe from the word "insurers." The context in which the term is used makes clear that "insurers" is intended in its possessive form. Additionally, the rule governs an individual insurer's dividends and other distributions; thus, the reference to "insurers" is intended in the singular. The rule is proposed to be amended to reflect this.

6.6.4603 APPENDIX "A" - FORM AND CONTENT OF NOTICE (1) The form and content of the summary notice and disclosure document adopted in ARM 6.6.4601, and referred to as "Appendix A" are as follows:

(a) **NOTICE OF
PROTECTION PROVIDED BY
MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

This notice provides a **brief summary** of the Montana Life and Health Insurance Guaranty Association (the Association) and the protection it provides for policyholders. This safety net was created under Montana law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity or health insurance company becomes financially unable to meet its obligations and is taken over by its Insurance Department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Montana law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are:

- Life Insurance
 - \$300,000 in death benefits
 - \$100,000 in cash surrender or withdrawal values
- Health Insurance
 - \$500,000 in hospital, medical and surgical insurance benefits
 - \$300,000 in disability income insurance benefits
 - \$300,000 in long-term care insurance benefits
 - \$100,000 in other types of health insurance benefits
- Annuities
 - \$250,000 in withdrawal and cash values

The maximum amount of protection is \$300,000 in benefits with respect to any one life regardless of the number of policies or contracts, except with respect to hospital, medical, and surgical insurance benefits.

Note: Certain policies and contracts may not be covered or fully covered.

For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Montana law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association's web site at www.mtlifeqa.org or contact:

| | |
|---|---|
| Montana Life and Health Insurance Guaranty Association PO Box 9518247 Oconomowoc, WI 53066-0951 <u>Missoula, MT 59807</u> 877-678-1048 or administrator@mtlifeqa.org | Montana Department of Insurance State Auditor's Office Office of the Montana State Auditor Commissioner of Securities and Insurance 840 Helena Ave. Helena, MT 59601 406-444-2040 |
|---|---|

Insurance companies and agents are not allowed by Montana law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage.

If there is any inconsistency between this notice and Montana law, then Montana law will control.

AUTH: 33-1-313, 33-10-210, MCA
IMP: 33-10-210, MCA

REASON: The CSI proposes to amend this rule to correct formatting and update contact information. First, while included in a list of three insurance types, "Life Insurance" is the only one of the three types not preceded by a bullet. Second, the address of the Montana Life and Health Insurance Guaranty Association has changed since this rule was previously amended. Finally, the CSI has modified its naming convention since that time. The rule is proposed to be amended to make these updates.

6.6.6501 PURPOSE (1) The purpose of these rules is to prescribe:

- (a) guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with ~~33-2-521(4), (5)~~ 33-2-407(5) and (6) and 33-7-118(2), MCA, and for memoranda in support thereof;
- (b) and (c) remain the same.

AUTH: 33-1-313, ~~33-2-521~~ 33-2-407, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537,~~

33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411, MCA

REASON: The CSI proposes to amend ARM 6.6.6501, 6.6.6502, 6.6.6503, 6.6.6504, 6.6.6505, 6.6.6508, and 6.6.6509 to account for the fact that numerous applicable statutes formerly located in Title 33, chapter 2, part 5, MCA have been renumbered to Title 33, chapter 2, part 4, MCA. This resulted in both in-rule citation updates, as well as amendments to referenced authorizing and implementing statutes. The proposed amendments also update subsection references within 33-2-407, MCA, to reflect that since the rules' adoption a subsection has been added to the statute which impacted the subsection numbering. Finally, ARM 6.6.6508(1)(e)(iii) is proposed to be amended to insert the word "as," which does not affect the meaning of the rule and was omitted inadvertently.

6.6.6502 AUTHORITY (1) These rules are issued pursuant to the authority vested in the Commissioner of Insurance of the state of Montana under ~~33-2-521~~33-2-407, MCA. These rules will take effect for annual statements for the year 2009.

AUTH: 33-1-313, ~~33-2-521~~ 33-2-407, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411, MCA~~

6.6.6503 SCOPE (1) through (3) remain the same.

AUTH: 33-1-313, ~~33-2-521~~ 33-2-407, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411, MCA~~

6.6.6504 DEFINITIONS (1) through (3) remain the same.

(4) "Appointed actuary" means any individual who is appointed or retained in accordance with the requirements set forth in ARM 6.6.6505(3) to provide the actuarial opinion and supporting memorandum as required by ~~33-2-521(4), (5)~~ 33-2-407(5) and (6), and 33-7-118(2), MCA.

(5) through (8) remain the same.

AUTH: 33-1-313, ~~33-2-521~~ 33-2-407, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411, MCA~~

6.6.6505 GENERAL REQUIREMENTS (1) through (4) remain the same.

(5) Liabilities to be covered by the actuarial opinion are as follows:

(a) Under authority of ~~33-2-521(4), (5)~~ 33-2-407(5) and (6), and 33-7-118(2), MCA, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, Part 1 and equivalent items in the separate account statement or statements.

(b) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in ~~33-2-525, 33-2-526 and 33-2-537~~ 33-2-411, 33-2-412, and 33-2-417, MCA, the company shall establish such additional reserve.

(c) remains the same.

AUTH: 33-1-313, ~~33-2-524~~ 33-2-407, MCA

IMP: ~~33-1-313, 33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411~~, MCA

6.6.6508 STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS (1) through (1)(e)(ii) remain the same.

(iii) if the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release; or

(iv) through (5) remain the same.

(6) Under ~~33-2-524~~ 33-2-407, MCA, the commissioner has broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of (2)(f)(iii), the commissioner may make one or more of the following additional approaches available to the opining actuary:

(a) through (d) remain the same.

AUTH: 33-1-313, ~~33-2-524~~ 33-2-407, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411~~, MCA

6.6.6509 DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS AND REGULATORY ASSET ADEQUACY ISSUES SUMMARY (1) In accordance with ~~33-2-521(4), (5)~~ 33-2-407(5) and (6), and 33-7-118(2), MCA, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an ARM 6.6.6508 opinion. The memorandum shall be made available for examination by the commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(a) through (c) remain the same.

(d) In accordance with ~~33-2-521(4)~~ 33-2-407(5), MCA, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in (3)(a) through (3)(f). The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) through (7) remain the same.

AUTH: 33-1-313, ~~33-2-524~~ 33-2-407, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-532, 33-2-533, 33-2-534, 33-2-535, 33-2-537, 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, 33-7-118, 33-7-411~~, MCA

6.6.6805 PERMITTED REINSURANCE (1) through (10) remain the same.

AUTH: 33-2-121, ~~33-2-217~~, 33-28-102, 33-28-206, MCA

IMP: 33-28-203, MCA

REASON: The CSI proposes to amend this rule because it currently cites as an authorizing statute 33-2-217, MCA, which is not an existing statute. The rule cites three other statutes providing sufficient authority for the rule's existence.

6.6.6820 REVOCATION OF THE COMPANY'S LICENSE (1) The commissioner may revoke the license of a company in accordance with ~~33-28-108~~ 33-28-109, MCA, including, but not limited to, the following reasons:

(a) through (2) remain the same.

AUTH: 33-28-206, MCA

IMP: 33-28-109, MCA

REASON: The CSI proposes to amend this rule to correct a typographic citation error. The rule currently provides for revocation "in accordance with 33-28-108, MCA." As is correctly stated later in the rule, the statute governing revocation of a captive insurance company is 33-28-109, MCA, and this amendment reflects that fact.

6.6.7101 AUTHORITY (1) This subchapter's rules are promulgated by the Commissioner of Insurance pursuant to ~~33-2-523~~ 33-2-409, MCA, and ARM 6.6.6707.

AUTH: 33-1-313, MCA

IMP: ~~33-2-523~~ 33-2-409, MCA

REASON: The CSI proposes to change this rule to reflect the renumbering of 33-2-523, MCA. That statute is now codified as 33-2-409, MCA, effective in 2015. Both

the substantive reference to the statute and the reference to it as an implementing statute are proposed to be updated.

6.6.7102 PURPOSE (1) The purpose of this subchapter's rules is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with ~~33-2-523~~ 33-2-409, MCA, and ARM 6.6.6707.

AUTH: 33-1-313, MCA
IMP: ~~33-2-523~~ 33-2-409, MCA

REASON: The CSI proposes to change this rule to reflect the renumbering of 33-2-523, MCA, as stated above under ARM 6.6.7101.

6.6.8504 FORMS AND MATERIALS FILINGS, APPROVALS, AND REVISIONS (1) and (2) remain the same.

(3) If a viator, prior to ~~effectuating~~ effectuating a viatical settlement, requests any changes to a contract form previously approved by the commissioner, the provider shall file a letter with the commissioner requesting a deviation from the standard contract form. The letter must provide:

(a) through (4) remain the same.

AUTH: 33-20-1315, MCA
IMP: 33-1-501, 33-20-1308, 33-20-1311, MCA

REASON: The CSI proposes to amend this rule to correct the misspelling of the word "effectuated."

6.6.8505 DISCLOSURE (1) remains the same.

(2) The disclosure document must contain the following language; :

(a) "all medical, financial, or personal information ~~solicited~~ solicited or obtained by a viatical settlement provider or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members is confidential."

(3) and (4) remain the same.

AUTH: 33-20-1315, MCA
IMP: 33-20-1311, MCA

REASON: The CSI proposes to amend this rule to change the semicolon in (2) to a colon for clarity and to correct the misspelling of the word "solicited" in (2)(a).

4. Concerned persons may submit their data, views, or arguments in writing to: Michael Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael Kakuk at the above address no later than 5:00 p.m., September 1, 2017.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 44 persons based on the membership of the Montana Life and Health Guaranty Association. Almost all of the rule changes are non-substantive and have no impact on any party, but are necessary for the CSI to satisfy its requirements for periodic review of administrative rules. However, the amendment to ARM 6.6.4603 may result in a change to disclosure documentation sent to insureds, and thus may impact the Association and its members who are responsible for providing the disclosures.

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

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

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

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

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State July 24, 2017.

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

| | | |
|-------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 6.2.101, 6.2.120, and 6.2.121 |) | PROPOSED AMENDMENT, |
| pertaining to agency rulemaking and |) | REPEAL, AND TRANSFER AND |
| contested case procedures; the |) | AMENDMENT |
| repeal of ARM 6.2.103, 6.2.104, |) | |
| 6.2.107, 6.2.123, and 6.2.124 |) | |
| pertaining to agency contested case |) | |
| procedures; and the transfer and |) | |
| amendment of ARM 6.6.4401 through |) | |
| 6.6.4404 pertaining to agency debt |) | |
| collection practices |) | |

TO: All Concerned Persons

1. On August 24, 2017 at 9:00 a.m., the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), will hold a public hearing in the second floor conference room, at the Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed amendment, repeal, and transfer and amendment of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on August 14, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.2.101 INCORPORATION OF ATTORNEY GENERAL'S MODEL PROCEDURAL RULES BY THE INSURANCE DEPARTMENT (1) The insurance department ~~of the state auditor's office~~ has adopted the Attorney General's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through ~~1.3.234~~ 1.3.233 with the exceptions enumerated in this chapter.

(2) The insurance department has adopted the Secretary of State's Model Organizational and Procedural Rules by reference to such rules as stated in ARM 1.3.301 through 1.3.313.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The department proposes to amend this rule because it refers to a rule that does not exist. Specifically, the rule incorporates by reference ARM 1.3.234 of the Attorney General's Model Procedural Rules. The amendment corrects this reference to a nonexistent rule. The amendment also eliminates an unnecessary reference to the State Auditor's Office, as the agency is already adequately identified as the Insurance Department.

The amendment also adopts by reference the Secretary of State's Model Organizational and Procedural rules. The majority of these rules were previously located in ARM Title 1, chapter 3, subchapter 2, and so had been adopted under the prior iteration of this rule; this amendment accounts for those rules' subsequent transfer to subchapter 3. It also adopts by amendment two additional model rules adopted under subchapter 3 following the transfer.

6.2.120 INCORPORATION OF ATTORNEY GENERAL'S MODEL PROCEDURAL RULES BY THE SECURITIES DEPARTMENT (1) The securities department of ~~the State Auditor's Office~~ has adopted the Attorney General's Model Procedural Rules by reference to such rules as stated in ARM 1.3.101 through ~~1.3.234~~ 1.3.233 with the exceptions enumerated in this chapter.

(2) The securities department has adopted the Secretary of State's Model Organizational and Procedural Rules by reference to such rules as stated in ARM 1.3.301 through 1.3.313.

AUTH: 30-10-107, MCA

IMP: 2-4-201, 30-10-107, MCA

REASON: The CSI proposes to amend this rule because it refers to a rule that does not exist. Specifically, the rule incorporates by reference ARM 1.3.234 of the Attorney General's Model Procedural Rules. The amendment corrects this reference to a nonexistent rule. The amendment also eliminates an unnecessary reference to the State Auditor's Office, as the agency is already adequately identified as the Securities Department.

The amendment also adopts by reference the Secretary of State's Model Organizational and Procedural rules. The majority of these rules were previously located in ARM Title 1, chapter 3, subchapter 2, and so had been adopted under the prior iteration of this rule; this amendment accounts for those rules' subsequent transfer to subchapter 3. It also adopts by amendment two additional model rules adopted under subchapter 3 following the transfer. Finally, the amendment adds 2-4-201, MCA as an implementing statute as it is this statute requiring the agency to adopt rules of practice.

6.2.121 ORDERS (1) All orders issued pursuant to the Securities Act of Montana shall be signed by the Securities Commissioner or a designee of the Securities Commissioner. ~~In the absence of the Securities Commissioner, the Deputy Securities Commissioner shall sign such orders.~~

AUTH: 30-10-107, MCA
IMP: 30-10-107, MCA

REASON: The CSI proposes to amend this rule to allow for greater flexibility in the signing of orders and for consistency with statute. At times, neither the Securities Commissioner nor the Deputy Securities Commissioner is available to sign orders, some of which are time sensitive. However, other senior staff authorized by the Securities Commissioner may be available to fulfill this duty. Additionally, the rule currently conflicts with 2-15-602, MCA, which expressly authorizes the Deputy State Auditor to perform the duties of the Securities Commissioner in his or her absence. Therefore, the proposed amendment is also necessary in order to conform the rule to existing law.

4. The CSI proposes to repeal the following rules:

6.2.103 RULEMAKING, NOTICE on page 6-9 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. The CSI is simultaneously proposing to adopt the Secretary of State Model Organizational and Procedural Rules. These include ARM 1.3.309, addressing rulemaking proposal notices. That rule, and 2-4-302, MCA, adequately set forth the circumstances in which a public hearing is required, and duplicate much of the substance of ARM 6.2.103. As a result, ARM 6.2.103 will be rendered superfluous in the event the proposal to incorporate by reference ARM 1.3.309 is adopted.

6.2.104 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD on page 6-9 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. In significant part, the rule substantively restates portions of 2-4-102 and 2-4-601, MCA, as well as ARM 1.3.212, which the CSI has adopted by reference through ARM 6.2.101 and 6.2.120. The remaining portion, pertaining to timing of a hearing under 33-1-701, MCA, is inaccurate as the statute was updated during the 2015 legislative session, and now follows the timing requirements under MAPA. Therefore, the rule is superfluous and no longer accurately reflects Montana law.

6.2.107 CONTESTED CASES, FINAL ORDERS on page 6-10 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 2-4-201, MCA

REASON: The CSI proposes to repeal this rule because it is no longer necessary to the operation of the agency. The rule sets forth required contents of a final decision or order adverse to a party in a contested case. However, 2-4-623, MCA, already provides extensive guidance on the required contents of such an order; the rule restates requirements in the statute, and in one instance contradicts it. Additionally, ARM 1.3.224, which the department has adopted by reference through ARM 6.2.101 and 6.2.120, includes a sample form final order providing the agency with sufficient guidance. Finally, (1)(c) through (e) contain significant grammatical and syntactical errors, do not have logical placement within the subsection in which they are located, and unnecessarily define basic legal principles.

6.2.123 HEARINGS -- FINAL ORDER on page 6-15 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA
IMP: 30-10-201, 30-10-207, 30-10-305, MCA

REASON: The CSI proposes to repeal this rule as it unnecessarily restricts the authority of the hearing examiner. The rule establishes fixed deadlines for certain briefing schedules and the issuance of a final order in matters involving cease and desist orders and licensing actions. While the apparent intent of the rule is to provide for an expedited process in these cases, by establishing immovable deadlines it hampers the ability of the hearing examiner to respond to the circumstances of the specific case. For example, in some cases the parties may agree that the matter should be resolved more quickly, or conversely that additional time is needed to fully brief the matter. Additionally, the rule potentially allows insufficient time for the parties to file exceptions and present briefs and oral argument to the final decision maker pursuant to 2-4-621, MCA. The repeal will allow the hearing examiner to regulate the course of the proceedings as contemplated under 2-4-611, MCA.

6.2.124 JUDICIAL REVIEW on page 6-16 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA
IMP: 30-10-308, MCA

REASON: The CSI proposes to repeal this rule because it both restates and conflicts with MAPA. Section 30-10-308, MCA and this rule both provide that appeals of final orders under the Securities Act of Montana are subject to Title 2, chapter 4, part 7 of MAPA. Section 2-4-702, MCA advises of the procedure for obtaining judicial review in greater detail than this rule. Additionally, the rule conflicts

with 2-4-702, MCA in that the two provide for different timeframes within which an appeal may be taken.

5. The CSI proposes to transfer and amend the following rules:

| | | |
|------------------------------|------------|--------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4401 | 6.2.201 | <u>PURPOSE AND SCOPE</u> |
| (1) and (2) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule in order to locate it in a chapter applicable to both the Securities and Insurance Departments. The rule pertains to the debt collection practices applicable to both departments, but is currently located solely in the Insurance Department chapter. The amendment is necessary to correctly reference the implemented statute; it appears that a typographic error resulted in an inaccurate statutory citation when the rule was initially adopted.

| | | |
|----------------------------------|------------|--------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4402 | 6.2.202 | <u>DEFINITIONS</u> |
| (1) through (4) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

| | | |
|------------------------------|------------|---|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4403 | 6.2.203 | <u>REFERRAL FOR RECOVERY AND OFFSET</u> |
| (1) and (2) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

| | | |
|----------------------------------|------------|---------------------------|
| <u>OLD</u> | <u>NEW</u> | |
| 6.6.4404 | 6.2.204 | <u>UNCOLLECTIBLE DEBT</u> |
| (1) through (3) remain the same. | | |

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110 ~~17-3-110~~, MCA

REASON: The CSI proposes to transfer this rule for the reasons stated above regarding ARM 6.6.4401.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail MKakuk@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

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

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

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State July 24, 2017.

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

| | | |
|--|---|---------------------------|
| In the matter of the repeal of ARM |) | NOTICE OF PROPOSED REPEAL |
| 6.6.101, 6.6.102, 6.6.104, and |) | |
| 6.6.105 pertaining to insurance |) | NO PUBLIC HEARING |
| producer licensing and ARM |) | CONTEMPLATED |
| 6.6.4301, 6.6.4302, and 6.6.4303 |) | |
| pertaining to electronic filing of the |) | |
| appointment and termination of |) | |
| insurance producers |) | |

TO: All Concerned Persons

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

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

3. The CSI proposes to repeal the following rules:

6.6.101 LICENSING—GENERAL CHARACTER AND CONDUCT REQUIREMENTS

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

REASON: The CSI proposes to repeal this rule because it restates requirements already found in statute. Section 33-17-211(1)(f), MCA, requires an insurance producer applicant to be "competent, trustworthy, and of good reputation." Section 33-17-1001, MCA, sets forth specific grounds for action on a producer license. These grounds effectively encompass the requirements in this rule.

6.6.102 FAMILIARITY WITH CODE AND RULES

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

REASON: The CSI proposes to repeal this rule because it restates requirements already found in statute. Section 33-17-211(1)(g), MCA, requires a producer applicant to be reasonably familiar with applicable portions of the Insurance Code.

The rule also cites as an example of applicable law outdated statutory language previously found in 33-17-1004, MCA. While (2) sets forth a requirement of familiarity with administrative rules that is not expressly located in statute, this requirement is substantively covered by other statutory provisions. For example, 33-17-1001(1)(c), MCA, permits licensing action for failure to comply with an administrative rule, and 33-17-1001(1)(f), MCA, permits licensing action for a demonstration of incompetence by the producer.

6.6.104 APPLICANTS FOR TEMPORARY AGENT'S LICENSE—TIME PERIOD FOR PASSING EXAMINATION

AUTH: 33-1-313, MCA
IMP: 33-17-212, MCA

REASON: The CSI proposes to repeal this rule because it unnecessarily restricts the statutory latitude of the agency regarding temporary licensing of life insurance producers. The rule requires such a producer to complete the licensing examination within 30 days of issuance of the temporary license. Section 33-17-216, MCA, permits the CSI to issue a temporary license "for a period of not over 90 days," with an extension available at the CSI's discretion.

6.6.105 APPLICANTS FOR AGENT'S OR SOLICITOR'S LICENSE—TIME PERIOD FOR PASSING EXAMINATION

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

REASON: The CSI proposes to repeal this rule because it applies a more restrictive examination timing requirement than found in statute and does not reflect the current practicalities of licensing application processes. Section 33-17-211(1)(d), MCA, requires that an applicant to have passed the applicable examination within 12 months of application, whereas the rule requires examination within six months of application. Additionally, licensing application process is almost entirely electronic, and through that process applicants complete the examination prior to submitting their applications. The change has essentially no substantive effect on producers.

6.6.4301 DEFINITIONS

AUTH: 33-1-313, 33-2-709, 33-17-236, MCA
IMP: 33-2-708, 33-17-236, 33-17-237, MCA

6.6.4302 ALLOWABLE METHODS OF ELECTRONIC FILING

AUTH: 33-1-313, 33-2-709, 33-17-236, MCA
IMP: 33-2-708, 33-17-236, 33-17-237, MCA

6.6.4303 PROCEDURES FOR ELECTRONIC FILING OF APPOINTMENTS

AUTH: 33-1-313, 33-2-709, 33-17-236, MCA
IMP: 33-2-708, 33-17-236, 33-17-237, MCA

REASON: The CSI proposes to repeal ARM 6.6.4301, 6.6.4302, and 6.6.4303 because the rules are outdated and do not reflect the current electronic appointment application process. The rules require submission of data using archaic methods not used in offices today. The change has no substantive effect on producers as the process outlined in rule is not utilized by any producer.

4. Concerned persons may submit data, views, or arguments in writing to: Michael A. Kakuk, Attorney, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-0385; fax (406) 444-3497; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m., September 1, 2017.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 8,740 persons based upon the number of licensed insurance producers in Montana.

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

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules could significantly and directly impact some small businesses.

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

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State July 24, 2017.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.13.310, 10.13.313, and) PROPOSED AMENDMENT
10.13.409 pertaining to traffic)
education)

TO: All Concerned Persons

1. On August 31, 2017, at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on August 23, 2017, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

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

10.13.310 TRAFFIC EDUCATION TEACHERS (1) through (2)(d)(i) remain the same.

(ii) any conviction for driving under the influence of alcohol or drugs (DUI) under 61-8-401, 61-8-406, ~~or 61-8-410~~, 61-8-411, or 61-8-465, MCA, within the preceding 36 months, or any conviction for a violation of a substantially similar offense from any other jurisdiction within the preceding 36 months;

(iii) through (6) remain the same.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

10.13.313 LEARNER LICENSE (1) All students enrolled in the traffic education program and receiving behind-the-wheel instruction shall have in their immediate possession a valid Montana traffic education permit, a valid Montana ~~traffic education learner license, a valid Montana instruction permit~~ or a valid Montana driver license as prescribed in Title 61, chapter 5 of the Montana Code Annotated (MCA).

(a) remains the same.

(b) A ~~traffic education learner license (TELL)~~ is authorized and prescribed in 61-5-106(2) MCA. ~~It allows a student to practice driving only with~~ A driver with a learner license must be supervised from the front passenger seat of the motor vehicle by a

licensed parent or other legal guardian, or a qualified traffic education teacher, or some other licensed adult driver with permission of the parent or other legal guardian. ~~It does not allow the student to practice driving with any other licensed driver.~~ This license can only may be obtained while the student is successfully participating in, or has successfully completed, a state-approved traffic education program.

(2) A ~~TELL~~ learner license may be obtained:

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

(iii) the student successfully completes an eye exam and written knowledge test through the CDTP school district as authorized by the Department of Justice, Motor Vehicle Division. The ~~permit~~ learner license is valid for one year from the date of successful completion of the written exam; and

(iv) the respective CDTP school district personnel places the student's name on the "Student List" form (TE04) with an indication of a waiver for the knowledge test, and transmits the student list, along with the "Certification" form (TE03) signed by the appropriate school district personnel to the local driver license exam office within three days of issuance of the ~~TELL~~ learner license to the student.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

10.13.409 TRAFFIC EDUCATION CONTENT STANDARD 8 AND BENCHMARKS - DRIVING EXPERIENCE (1) To satisfy the requirements of traffic education content standard 8, a student must acquire behind-the-wheel driving experience under the ~~direction~~ supervision of a Montana-approved driver education teacher. Under Montana Graduated Driver License regulations (61-5-132, MCA), students are required to obtain additional driving experience under the ~~direction~~ supervision, from the front passenger seat of the motor vehicle, of a parent, or other legal guardian, or some other adult with permission of the parent or other legal guardian, with a valid driver's license.

(2) and (2)(a) remain the same.

(b) acquire additional behind-the-wheel driving experience with their parent, or other legal guardian's, or some other authorized adult's assistance in a variety of driving situations (i.e., night, adverse weather, gravel road, etc.).

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

4. Statement of Reasonable Necessity: The Superintendent has determined that it is reasonable and necessary to amend these rules to be consistent with new language adopted by the 2017 Legislature under HB 144 and to clarify the supervision requirements. The addition of the statutes to ARM 10.13.310 is made at the recommendation of the Department of Justice.

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: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail

bemarlow@mt.gov, and must be received no later than 5:00 p.m., September 5, 2017.

6. Kyle A. Moen, Chief Legal Counsel for the Superintendent of Public Instruction, has been designated to preside over and conduct this hearing.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply. Representative Zach Brown, sponsor of HB 144 (2017 Legislative Session), was sent by e-mail a copy of a preliminary draft of the proposed amendments on June 28, 2017.

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

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

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State July 24, 2017.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I; the amendment of ARM 23.13.101, 23.13.102, 23.13.201, 23.13.203, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.212, 23.13.214, 23.13.215, 23.13.301, 23.13.302, 23.13.702, 23.13.703, 23.13.704, 23.13.705, 23.13.713, 23.13.714, 23.13.719, 23.13.720, and 23.13.721; and the repeal of ARM 23.13.213 pertaining to the certification of public safety officers) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 5, 2017, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Room 214 of the Karl Ohs Building at the Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The POST 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 POST Council no later than 4:00 p.m. on August 29, 2017, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

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

NEW RULE I REQUIREMENTS FOR SWAT PRIMARY COURSE CREDIT

(1) To receive POST approval for a SWAT primary course, a course must meet the following requirements:

(a) the course must be a minimum of 40 hours in length and be approved pursuant to ARM 23.13.301 and 23.13.304 and must contain a minimum of the following:

- (i) team communication, team make-up;
- (ii) confrontation management to include preplanning, immediate action, planning, execution, post execution;

(iii) weapons, munitions, and equipment to include live fire, close quarter defense, crisis negotiations, intelligence gathering/ground reconnaissance, preplanning tactics, walk through, breaching techniques;

(iv) team movement and interior tactics to include approach, position, entry, search, static, dynamic, halls, stairs;

(v) open air/mobile assault, downed officer citizen rescue, chemical agents/diversionary device/less lethal, practical exercises, and legal issues.

(2) The director will review applications and approve or deny POST credit pursuant to these rules, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(3) Upon approval by the director, the course will be reflected on the attending officers' POST training transcripts unless the council takes further action.

AUTH: 2-15-2029, MCA

IMP: 44-4-403, MCA

REASON: The council has statutory authority to establish training standards for public safety officers. This rule is reasonably necessary to set minimum proficiency standards for SWAT training. Proficient SWAT training is an important element of officer training, promoting both efficiency in the enforcement of the law and safety for the public. The rule establishes standards for SWAT training courses provided for officers by their hiring agencies. The council proposes to adopt these standards at this time at the request of several law enforcement agencies in Montana that wish to advance the level of training and professionalism of their officers.

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

23.13.101 ORGANIZATION AND GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS (1) remains the same.

(2) POST will maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders must be available for public inspection on request, except confidential information which is protected from disclosure by federal or state law. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

AUTH: 2-15-2029, MCA

IMP: 2-4-201, 2-4-623, 2-15-2029, 44-4-403, MCA

REASON: The 2015 Legislature designated POST a criminal justice agency for the purpose of receiving confidential criminal justice information. The amendment of this rule is necessary to ensure that POST complies with the Montana Criminal Justice Information Act. This rule clarifies that POST's rulings remain available for public inspection subject to the limitations on criminal justice agencies.

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (3) remain the same.

(4) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.

(4) through (16) remain the same but are renumbered (5) through (17).

(18) "POST certified instructor" means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to these rules, and may apply for and receive approval for POST training credit pursuant to these rules, for trainings the officer conducts.

(17) through (19) remain the same but are renumbered (19) through (21).

(20)(22) "Revocation" means the permanent cancellation by the director or council of a public safety officer's POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(21) and (22) remain the same but are renumbered (23) and (24).

(25) "Substance abuse" means the use of illegal drugs, other illegal substances, or legally acquired drugs in a manner that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health or safety of the public or a fellow officer.

(23) remains the same but is renumbered (26).

AUTH: 2-15-2029, 44-4-402, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: The amendments to this rule provide clarity regarding several terms which the POST Council has used in its rules. The addition of the term "conviction" is necessary because POST, in its discretion, has decided that in the context of its jurisdiction a definition that differs from the one provided in 46-1-202, MCA is needed to meet the public interest and protect the public. Specifically, POST has observed that an officer who pleaded guilty to an offense under the definition of "conviction" found in Title 46, MCA, is eligible to have the charge dismissed after successful completion of probation if the court decides to defer imposition of sentence. When the offense is one that can trigger POST disciplinary action, POST finds that consideration of the offense even if dismissed following a deferred imposition of sentence can protect the public interests in some cases. The proposed rule will allow the council to take these dismissed charges into account for disciplinary purposes if the officer pleads guilty, even if the officer successfully completes probation and the charge is dismissed. The addition of "POST certified instructor" is necessary to effectuate the changes made in the proposed amendments to ARM 23.13.212. Those amendments delete existing language providing for discipline-specific instructor certificates and clarify who may apply for credit for a training course. The addition of "substance abuse" is necessary to clarify the meaning of the term as used in the proposed amendments to ARM 23.13.702(2)(c). It is a new term and requires a specific definition to provide fairness for officers whose conduct brings them before POST in an action to deny, suspend, or revoke a certificate.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) through (2)(c) remain the same.

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary or a crime involving unlawful sexual conduct;

(e) be of good moral character as determined by a thorough background check;

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

~~(i) (j) take an oath containing the code of ethics and abide by the code of ethics contained in ARM 23.13.203; and~~

(j) remains the same but is renumbered (k).

(3) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of ~~(2)(i) and (2)(j) and (2)(k)~~. The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy ~~(2)(i) and (2)(j) and (2)(k)~~. Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: The Montana POST Council recognizes the need for public safety officers in Montana to be held to the highest standard. These amendments provide that all public safety officers must be of good moral character, which is currently only required of peace officers in 7-32-303, MCA. The proposed amendment, by including the requirements for good moral character in this rule which is applicable to all public safety officers, extends this requirement to all public safety officers under POST's jurisdiction. These amendments also remove the requirement that the code of ethics be administered as an oath, due to constitutional concerns which were raised in the 2017 Legislature that the only lawful oath of office for public officers is the one found in Article III, section 3 of the Montana Constitution.

23.13.203 CODE OF ETHICS (1) All public safety officers who have been hired or employed by any agency or entity in Montana, or who have been certified by POST, or who have attended an MLEA basic class must ~~be administered an oath regarding~~ abide by the code of ethics contained herein.

~~(2) The procedure for administration of the code of ethics is as follows:~~

~~(a) each officer will attest to this code of ethics and the oath shall be administered by the officer's employing authority, or by the MLEA administrator or designee, or by the POST director or POST staff;~~

~~(b) the officer and the individual administering the oath will sign the public safety code of ethics; and~~

~~(c) at least one copy will be retained by the officer or the officer's employing authority and will be made available for inspection by POST staff at any reasonable time.~~

~~(3)(2)~~ All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule, ~~even if it was not previously administered to them as an oath.~~ Continued employment as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for suspension, sanction, or revocation of any POST certificate.

~~(4)(3)~~ The ~~oath of the public safety officers'~~ code of ethics is:

(a) through (i) remain the same.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 7-32-303, 44-4-403, MCA

REASON: These amendments remove the requirement that the code of ethics be administered as an oath, due to constitutional concerns which were raised in the 2017 Legislature. See explanation of amendments to ARM 23.13.201.

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) and (2) remain the same.

(3) All public safety officers must ~~subscribe to~~ abide by the code of ethics as prescribed in ARM 23.13.203. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

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

(c) maintain the continuing education and training requirements set forth by the council and ARM 23.13.201(2)(j)(k).

(6) and (7) remain the same.

(8) In calculating the training hours for an intermediate, advanced, or supervisory certificate, military training will be accepted hour for hour. The application must be accompanied by only with a written explanation of that describes the training and states specifically how the training relates to and assists the public safety officer with the public safety officer's current position, duties and responsibilities, civilian law enforcement and other supporting documents requested by the director. A description of the training alone is not sufficient.

(9) In calculating the training hours for an intermediate, advanced, or supervisory certificate, college education will be credited for individual class work only. Credit will be given using the formula of ten hours for one semester credit hour and six hours for one quarter credit hour, ~~and.~~ The application must be accompanied by a written explanation of that describes the course and states specifically how the higher education course relates to and assists the public safety officer with the public safety officer's current position, duties and responsibilities, work and other supporting documents including a transcript requested by the director.

(10) remains the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: The amendments to this rule are necessary to clarify the existing rule and inform public safety officers of the type of information required by POST if a public safety officer wishes to obtain POST credit for military training or college courses. The rule change reflects current POST policy, provides clear notice to applicants, and gives current policy the force of law. These amendments also remove the requirement that the code of ethics be administered as an oath, due to constitutional concerns which were raised in the 2017 Legislature. See explanation of amendments to ARM 23.13.201.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) POST will issue basic certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) public safety communications officer;
- (e) coroner; and
- (f) reserve officer.

~~(1)~~(2) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) Public safety officers hired after ~~the effective date of this regulation August 1, 2008,~~ must have completed:

(i) and (ii) remain the same.

(b) Public safety officers hired before ~~the effective date of this regulation August 1, 2008,~~ must have:

(i) through (d) remain the same.

(e) The council may grant a one-time extension to the one year time requirement for public safety officers upon the written application of the ~~public safety officer and the officer's~~ appointing authority ~~of the officer~~. The application must explain the circumstance(s) that make(s) the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) through (f) remain the same.

(g) If the last date of employment as a public safety officer is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency course administered by the academy. If the public safety officer fails the basic equivalency course, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within 36 months of the last date of employment one year of the public safety officer's most recent appointment.

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

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: The amendments to this rule are necessary to provide clarity regarding the certificates the council issues and what a public safety officer must do to meet the basic requirements based upon when the officer was appointed. The amendments identify the disciplines in which a basic certificate will be issued, information that is absent from the existing rule. The amendments delete the reference to "POST approved" training because POST's administrative rules provide for officers to use a portion of in service training, which is not POST-approved, toward certification. The substitution of a specific date in place of the term "effective date of this regulation" provides necessary clarity in light of the fact that this rule has been amended multiple times, creating ambiguity as to which effective date is the proper reference. The date provided is the original effective date of the first iteration of this rule. Finally, the changing timeframe in proposed (2)(g) is intended to promote consistency with 7-32-303, MCA, which states that an officer has one year to attend a basic academy.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) POST will issue intermediate certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer; and
- (d) public safety communications officer.

~~(1)~~(2) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and ~~is~~ be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) remains the same.

(c) must have four years of discipline-specific experience and 200 combined job-related ~~POST-approved~~ training hours as provided for in these rules.

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

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: The amendments to ARM 23.13.207, 23.13.208, 23.13.209, 23.13.210, and 23.13.211 identify the disciplines in which certificates will be issued, information that is absent from the existing rules. The amendments delete the reference to "POST approved" training because POST's administrative rules provide for officers to use a portion of in-service training, which is not POST-approved, toward certification.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) POST will issue advanced certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer; and
- (d) public safety communications officer.

~~(1)~~(2) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the advanced certificate:

- (a) must possess the discipline-specific intermediate certificate; and
 - (b) must have eight years' of discipline-specific experience and 400 combined job-related POST-approved training hours as provided for in these rules.
- (2) remains the same but is renumbered (3).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See explanation with respect to ARM 23.13.207.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) POST will issue supervisory certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer; and
- (d) public safety communications officer.

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

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See explanation with respect to ARM 23.13.207.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) POST will issue command certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer; and
- (d) public safety communications officer.

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

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See explanation with respect to ARM 23.13.207.

23.13.211 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADMINISTRATIVE CERTIFICATE (1) POST will issue administrative certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer; and
- (d) public safety communications officer.

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

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See explanation with respect to ARM 23.13.207.

23.13.212 INSTRUCTOR CERTIFICATION REQUIREMENTS (1) Instructor certificates are not discipline-specific and POST may issue an instructor certificate to any public safety officer who meets the qualifications in these rules.

~~(1)(2) Persons~~ A public safety officer providing POST approved training courses ~~and employed by public safety agencies~~ must be certified by the council as an instructor.

~~(2)(3) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline.~~ To qualify as an primary instructor, the person officer shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) remains the same.

~~(b) education or training in the specific field, subject matter, or academic discipline to be taught~~ an active POST basic certificate in the officer's current discipline;

~~(c) must have successfully completed a 40-hour minimum instructor development course or equivalent approved by the director; an endorsement from the applicant's agency head; and~~

(d) successful completion of a POST-approved instructor development course. Effective [the effective date of this rule], all instructor development courses must be a minimum of 40 hours in length and must include a minimum of the following:

(i) 12 hours of curriculum design;

(ii) 8 hours of adult learning theories;

(iii) 8 hours of foundation skills for trainers;

(iv) 8 hours of training preparation and delivery; and

(v) 4 hours of context of training.

~~(d) must have an endorsement from the applicant's agency head to deliver a specific lesson plan pertaining to a discipline; and~~

~~(e) must submit the specific lesson plan that is at least two hours in length, and which includes performance objectives, instructional strategies, and complete course content.~~

~~(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:~~

~~(a) must possess a primary instructor certificate;~~

~~(b) must successfully complete a minimum 40 hour curriculum design and development course or equivalent approved by the council;~~

~~(c) must have an endorsement from the POST director, or designee, attesting to the applicant's competencies; and~~

~~(d) must have endorsement from applicant's agency head.~~

~~(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the person shall apply to the council on a form approved by the council, and shall meet the following requirements:~~

~~(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent;~~

~~(b) must have endorsement from the POST director or designee and agency administrator; and~~

~~(c) meet all of the requirements necessary to qualify as a master instructor as required by (3).~~

~~(5) The council will certify approved primary and master instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor will be listed in an official register of the council, and for each primary and master instructor, each subject that instructor is certified to teach will be noted in the register.~~

~~(6) Initial primary and master instructor certificates shall be issued for a period of 24 months. At the end of the initial time period, certificates may be renewed for an additional 24 months, providing the instructor has remained current in the applicable discipline. This may be accomplished through continuing education and by actively instructing the course(s).~~

~~(7)(4) After four years of continuous certification, all instructors may be recertified for a four-year period Instructor certificates in any discipline issued prior to [the effective date of this rule] and any instructor certificate issued after [the effective date of this rule] may be renewed every four years.~~

~~(8)(5) The council or the director may deny applications for instructor certification for failure to satisfy the required qualifications. The council or the director may recall, suspend, or revoke primary and master instructor certificates at any time for good cause to ensure the quality of the training programs. ~~In addition, any primary and master instructor who has not instructed during a certification period shall be required to reapply for original certification.~~~~

~~(9) remains the same but is renumbered (6).~~

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: These amendments are necessary to simplify and clarify the application and approval process for POST-certified instructors. This rule provides clear and concise standards for the instructor development course required of POST-certified instructors. POST has determined, in its discretion, that issuance of discipline-specific instructor certificates is too cumbersome and burdensome on both applicants for certification and the POST's staff. These amendments provide for a

single instructor certificate that allows the certified person to instruct in any discipline, as long as the other requirements for conduct of training courses are met. Existing provisions governing instructor training are deleted, and more streamlined procedures added. The reference to "director" in (5) reflects existing practice.

23.13.214 EMPLOYMENT AND TRAINING OF RESERVE OFFICERS

(1) through (3) remain the same.

(4) Upon notice of the reserve officer's qualification, made by the reserve officer's agency head to the director on a form approved by the council, POST will issue a reserve officer basic certificate to the reserve officer.

AUTH: 2-15-2029, MCA

IMP: 7-32-214, 44-4-401, 44-4-403, MCA

REASON: These amendments clarify that a reserve officer's appointing authority must notify POST of the officer's qualification for a reserve basic certificate. POST has not previously provided by rule for certification of reserve officers, despite the fact that such officers meet the definition of "public safety officer" in MCA 44-4-401(2). The amendments explain the criteria for issuance of a certificate to a reserve officer. The amendments are necessary to provide fairness for reserve officers who claim entitlement to certification.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) and (1)(a) remain the same.

(b) designate a POST-certified agency firearms instructor to document annual firearms proficiency, ~~which must include:~~ The instructor must have attended a minimum 40-hour firearms instructor course or its equivalent, which includes the following topics:

- (i) firearms safety;
- (ii) role of the instructor;
- (iii) civil and criminal liability exposure;
- (iv) instructional techniques for firearms instructors;
- (v) operation of the firing line;
- (vi) range preparation;
- (vii) handgun;
- (viii) disabled officer techniques; and
- (ix) low light shooting techniques.

- ~~(i) date of qualification;~~
- ~~(ii) identification of the officer;~~
- ~~(iii) firearm manufacture and model;~~
- ~~(iv) results of qualifying; and~~
- ~~(v) course of fire used.~~

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records, which must include:

- (i) date of qualification;
- (ii) identification of the officer;
- (iii) firearm manufacture and model;

- (iv) results of qualifying; and
 - (v) course of fire used.
- (2) through (4) remain the same.

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: With the changes POST has made to its instructor rule, these changes are necessary to clarify who may perform firearms qualifications for public safety officers and the training required to perform that function.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) and (2) remain the same.

(3) To receive POST training credit, ~~employing agencies or any person or entity a POST-certified instructor~~ seeking course credit for ~~POST-certified public safety officers~~ must have an active POST certificate that is not suspended or on probation and must submit to the director:

- (a) an application for accreditation;
- (b) instructor certification or training record and an instructor biography an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;
- (c) material showing course content, including a an agenda, syllabus and/or lesson plan and student handouts; and
- (d) a copy of the course advertisement.

(4) To receive POST training credit, any other person or entity seeking course credit for a public safety officer or officers must submit to the director:

- (a) an application for accreditation;
 - (b) an instructor certification or training record and an instructor biography;
 - (c) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and
 - (d) a copy of the course advertisement.
- (4) remains the same but is renumbered (5).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: See explanation with regard to ARM 23.13.215. These amendments state clearly what a POST-certified instructor or other instructor must submit to POST in order to receive POST training credit for a course. These amendments address issues that have arisen in which persons have sought approval for training in situations that are not clearly covered by the existing rule. The amendments are necessary to eliminate ambiguity and promote fairness for persons seeking course approval.

23.13.302 REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE IN POST APPROVED COURSES (1) remains the same.

(2) ~~Each trainee shall be required to attend all sessions of any training course in which they are enrolled, except for absences approved by the course coordinator. No trainee shall may receive credits for a training course if absences exceed 10% of the total hours for the course.~~

(3) remains the same.

(4) A POST-certified instructor will not receive training credit for any training in which the POST-certified instructor provides instruction.

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

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: The Montana POST Council has not recognized any training credit for an instructor who is teaching a course. These amendments are necessary to bring POST's rules in line with its current practice and promote fairness to instructors. In addition, the amendments are necessary to establish attendance requirements for public safety officers who wish to obtain POST credit for a training.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The executive director or the council will consider any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification.

(2) The grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) and (b) remain the same.

~~(c) the unlawful use of or addiction to any controlled substances or other drug(s) that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable treatment;~~

(c) engaging in substance abuse as defined in these rules;

(d) through (i) remain the same.

(j) failure to meet the minimum standards for appointment or continued employment as a public safety or peace officer set forth in these rules or Montana law;

(k) through (o) remain the same.

(3) It is a defense to an allegation of substance abuse, as defined in these rules, if the officer shows by a preponderance of the evidence that the officer's substance abuse could be eliminated or overcome by reasonable treatment.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: These amendments recognize the council and director's authority to deny an application for POST certification and provide clarity and consistency with language in other rules. The existing rules are unclear with respect to how the use of drugs or other legal or illegal substances may provide grounds for POST

discipline. By providing a clear definition of "substance abuse" in the proposed amendment to ARM 23.13.102 and then incorporating that definition in this rule, POST provides notice to certified officers of conduct that may lead to discipline before POST. In addition to providing notice, this rule also provides the officer with a defense when facing a substance abuse allegation.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) remains the same.

(2) Any allegation made against a public safety officer that states potential grounds for sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.

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

(c) A person ~~or entity~~ making an allegation is ~~encouraged to~~ must use the allegation form available from POST staff or submit an allegation in substantially similar format.

(d) An employing authority or the Montana Law Enforcement Academy may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.

(6) and (7) remain the same.

(8) After an allegation is made by or filed with the director, the director, contested case counsel for POST, ~~the POST compliance officer and investigator,~~ or other POST staff or designees will investigate the complaint.

(9) through (9)(c) remain the same.

(d) issue the appropriate denial, sanction, suspension, or revocation of a certificate;

(e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) remains the same.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation ~~and suspension~~ pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST.

(11) remains the same.

AUTH: 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: By statute, POST has the authority to deny an application for certification or to impose discipline on a certified officer. These amendments provide clarity to persons wishing to submit an allegation to POST in regards to the format they should use. They also delete a reference to a position of employment that no longer exists on the POST staff. The position of "compliance officer and investigator" has been reclassified and redesignated.

23.13.704 REQUESTS FOR A FORMAL CONTESTED CASE HEARING UNDER MAPA FOLLOWING SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION BY THE DIRECTOR (1) Any person aggrieved by a decision of the director or a decision of the council, other than a decision by the director to deny, sanction, suspend, or revoke a certificate, that is not a final decision following a contested case hearing, as provided in 2-4-623, MCA, may request a contested case hearing before the council by following the procedures set forth in Title 2, chapter 4, part 6, MCA.

(2) If the director denies, sanctions, suspends, or revokes an officer's POST certification pursuant to ARM 23.13.703(9) and the officer receives a notice of agency action, then the officer has the right to request a formal contested case proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

(a) The proceedings and hearing can only be initiated by a request from the officer whose certificate was denied, sanctioned, suspended, or revoked, and not by any other person or entity.

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

AUTH: 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: The amendments to ARM 23.13.704, 23.13.707, 23.13.713, 23.13.714, 23.13.720, 23.13.721 are necessary to clarify that any aggrieved party may request a contested case hearing under MAPA. POST makes decisions on matters that do not involve denial, suspension, or revocation of a certificate. The existing rules regarding contested cases refer only to denials, suspensions, or revocation. These rule amendments broaden the contested case rules to provide due process to persons who may be aggrieved by a POST decision in a non-disciplinary matter.

23.13.705 FORMAL MAPA CONTESTED CASE PROCEEDINGS (1) A contested case involves a determination by POST that affects the rights or responsibilities of the petitioner or respondent.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer or other aggrieved person has requested a hearing.

(3) ~~Formal proceedings for suspension or revocation~~ Contested case proceedings before the council are subject to MAPA, in addition to, where applicable, the Montana Rules of Civil Procedure, the Montana Uniform District Court Rules, the Montana Rules of Evidence, the Montana Rules of Professional Conduct, the Montana Code of Judicial Conduct, and these rules.

(4) ~~A~~ In cases under ARM 23.13.704(2), the respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) remains the same.

(6) In cases under ARM 23.13.704(2), ~~C~~contested case counsel for POST will represent ~~POST~~ the director during the proceedings.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, Title 2, ch. 4, pt. 6, 2-15-2029, 44-4-403, MCA

REASON: See explanation of amendments to ARM 23.13.704.

23.13.713 CONTESTED CASES – HEARING EXAMINERS (1) and (2) remain the same.

(3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer or other party with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.

(4) through (6) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See explanation of amendments to ARM 23.13.704.

23.13.714 CONTESTED CASE HEARING (1) and (2) remain the same.

~~(3) At the contested case hearing, the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action.~~

~~(4) The director may be represented by contested case counsel during the contested case process.~~

~~(5)~~ (3) The hearing examiner must ensure that the petitioner or respondent and counsel for POST are afforded the opportunity to respond and present evidence and argument on all issues involved.

~~(6) Absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:~~

~~(a) opening statements by both parties;~~

~~(b) presentation of evidence by the respondent;~~

~~(c) cross examination by POST;~~

~~(d) presentation of evidence by POST;~~

~~(e) cross examination by the respondent; and~~

~~(f) rebuttal testimony.~~

(7) through (10) remain the same but are renumbered (4) through (7).

(8) At the contested case hearing under ARM 23.13.704(2):

(a) the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the denial, sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action;

(b) the director will be represented by contested case counsel during the contested case process; and

(c) absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:

(i) opening statements by both parties;

(ii) presentation of evidence by the respondent;

(iii) cross examination by POST;

(iv) presentation of evidence by POST;

(v) cross examination by the respondent; and

(vi) rebuttal testimony.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, 2-4-202, 2-4-611, 2-4-612, 44-4-403, MCA

REASON: See explanation of amendments to ARM 23.13.704.

23.13.719 DECISION AND ORDER, STAYS (1) through (5) remain the same.

(6) If a certificate was denied, revoked, or suspended by the director before the hearing, the certificate will remain denied, revoked, or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the denial, suspension, or revocation for good cause shown.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: An earlier amendment adds denials of a public safety officer's certificate as a possible sanction. The amendments to this rule are necessary to clarify that POST's contested case jurisdiction extends to denials of certification.

23.13.720 CONTESTED CASES, SETTLEMENT OR STIPULATION AND PROCESS FOR REVIEW BY THE POST COUNCIL (1) If, in the course of the MAPA contested case proceeding, the parties reach a stipulated agreement or settlement, the parties must:

(a) put the agreement into writing, signed by the petitioner or respondent, as applicable, ~~or the respondent's legal representative~~ and the director;

(b) and (2) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA
IMP: 44-4-403, MCA

REASON: See explanation of amendments to ARM 23.13.704.

23.13.721 APPEALS (1) A ~~respondent~~ party, other than the council, adversely affected by a final POST Council decision rendered after a contested case proceeding, may appeal to the Montana Board of Crime Control pursuant to ARM 23.14.1004 and 44-4-403(3), MCA. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review pursuant to 2-4-702, MCA.

(2) The council may appeal to the Board of Crime Control under the conditions provided in Title 2, chapter 4, part 6, MCA.

AUTH: 2-15-2029, MCA
IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: See explanation of amendments to ARM 23.13.704.

5. The department proposes to repeal the following rule:

23.13.213 REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: The designated incident command certificate is no longer necessary for the Montana POST Council as POST no longer recognizes federal officers for certification. Montana public safety officers who participate in incident command do so through federal agencies. The rule therefore applies to a practice that does not exist.

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: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., September 18, 2017.

7. Chris D. Tweeten, Attorney at Law, 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. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State July 24, 2017.

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

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

TO: All Concerned Persons

1. On August 25, 2017, at 1:30 p.m., a public hearing will be held in the basement conference room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: On April 12, 2017, the board formed a subcommittee to review ARM 24.159.1006 and 24.159.1206 per a request from a Billings medical spa owner. The subcommittee met on May 10, 2017, and recommended the board repeal the rules.

The board determined it is reasonably necessary to repeal these two administrative rules to align with current industry standards and current rules. These rules are the only board rules addressing specific types of procedures that LPNs and RNs perform and the only ones with a requirement for direct supervision by a physician or an APRN to be on the premises at the time the procedures are performed. No other board rules have this specificity for supervision or detail in description of allowable techniques.

To perform these cosmetic procedures, an RN or LPN would need an order from a prescriber to access the medications named. In any setting or type of intervention a nurse performs, the nurse is held accountable per ARM 24.159.2301(2) to have the proper knowledge, skills, and abilities and to report unsafe patient care. This is also reflected in ARM 24.159.1005 Standards Related to the Practical Nurse's Responsibilities as a Member of the Health Team and ARM 24.159.1205 Standards Related to the Registered Nurse's Responsibilities as a Member of the Nursing Profession.

Owners of outpatient medical spa facilities that provide cosmetic procedures to patients, under the current rule, were required to have a physician or APRN on-site whenever RNs or LPNs performed these procedures. RNs and LPNs are held accountable for any interventions performed and in many settings are not required to have direct on-site supervision for patient safety.

4. The board proposes to repeal the following rules:

24.159.1006 STANDARDS RELATED TO THE PRACTICAL NURSE'S
ROLE IN COSMETIC PROCEDURES

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-102, MCA

24.159.1206 STANDARDS RELATED TO THE REGISTERED NURSE'S
ROLE IN COSMETIC PROCEDURES

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-102, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.159.1006 and 24.159.1206 will significantly and directly impact small businesses.

The group of small businesses likely affected are independently owned and operated medical spas, dermatology clinics, and outpatient settings that offer cosmetic procedures and have fewer than 50 full-time employees. The probable significant direct effect is an estimated 30% increase in revenues for small medical spas when there is no need for on-site supervision by APRNs or physicians of qualified LPNs or RNs when providing these procedures. The board does not know of any potential adverse effects to small businesses due to the repeal of these rules.

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

10. L'Joy Griebenow has been designated to preside over and conduct this hearing.

BOARD OF NURSING
N. GREG KOHN, PRESIDENT

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

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

Certified to the Secretary of State July 24, 2017.

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

In the matter of the amendment of)
ARM 24.174.401 fee schedule,)
24.174.602 internship requirements,)
and 24.174.605 foreign intern)
requirements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2017, at 10:00 a.m., a public hearing will be held in the small conference room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; or dlibsdpba@mt.gov (board's e-mail).

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

| | |
|--|------------------------------|
| <u>24.174.401 FEE SCHEDULE</u> | |
| (1) Application for licensure transfer | \$ 300 <u>180</u> |
| (2) Original registration for pharmacist | 120 <u>70</u> |
| (3) Pharmacist annual renewal fee | 110 <u>65</u> |
| (4) and (5) remain the same. | |
| (6) Certified pharmacy original certification (includes original, change in location, and change in ownership) | 400 <u>240</u> |
| (7) Certified pharmacy annual renewal fee | 250 <u>150</u> |
| (8) Family planning limited pharmacy facility, certified pharmacy license, (original and renewal) | 75 <u>45</u> |
| (9) Intern registration | 80 <u>50</u> |
| (10) and (11) remain the same. | |
| (12) Utilization plan approval fee | 200 <u>75</u> |
| (13) Annual utilization plan renewal fee | 400 <u>75</u> |
| (14) Pharmacy technician and technician-in-training registration fee | 60 <u>35</u> |
| (15) Pharmacy technician renewal fee | 50 <u>30</u> |
| (16) Wholesale drug distributor license | 400 <u>240</u> |

| | |
|--|----------------|
| (17) Annual wholesale drug distributor renewal | 400 <u>240</u> |
| (18) Out-of-state mail service pharmacy/telepharmacy initial license | 400 <u>240</u> |
| (19) Out-of-state mail service pharmacy/telepharmacy renewal | 400 <u>240</u> |
| (20) remains the same. | |
| (21) Inactive pharmacist annual renewal fee | 25 <u>15</u> |
| (22) Outpatient center for surgical services (original or renewal) | 75 <u>45</u> |
| (23) Additional standardized fees are specified in ARM 24.101.403. | |

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA

IMP: 37-1-134, 37-7-201, 37-7-302, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 50-32-314, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reduce fee revenue collected from licensees. The board is required to comply with statutory requirements that the board's cash balance not exceed twice the annual appropriation amount, as outlined in 17-2-302 and 17-2-303, MCA. The board is proposing to reduce individual and facility license application and renewal fees by 40% and the technician utilization plan endorsement application and renewal fees to \$75 to comply with allowable cash by the end of fiscal year (FY) 19.

The board and the department have been aware of the excess cash balance since FY 13 when the cash balance was reduced by abating individual and facility renewal fees by 50%, pursuant to ARM 24.174.404. Additionally, renewal fees were abated in FY 13, 15, 16, and FY 17. However, the reduction in the excess cash balance has not been realized to the extent the board and the department expected, largely due to the increase in facility applications over the past several years. Additionally, the total number of board licensees has increased from 3,711 in 2012 to 6,265 in 2017.

The projected FY 18 budget and appropriated spending authority for the board is \$942,022. With the proposed fee reductions, the projected ending cash balance for FY 18 is expected to be \$2,010,502, which will exceed the allowable cash balance of \$1,884,044 (two times the appropriated amount). With the proposed fee changes, the board expects to come into compliance by the end of FY 19 with a cash balance of approximately \$1,863,000. If projected budget and allowable cash balances are not realized, or if the cash balance appears to be decreasing too much, the board will consider further amendments to the fees, including fees that are not changing now.

The board estimates that the proposed fee reductions will affect 6,250 licensees and 1,000 applicants and result in a \$475,000 decrease in annual revenue.

24.174.602 INTERNSHIP REQUIREMENTS (1) through (10) remain the same.

(11) An intern registration may be issued to a student who:

(a) is currently enrolled in an accredited pharmacy program ~~at any time after they have completed 30 days of study;~~

(b) has submitted a completed application to the board; ~~and~~

- (c) has paid the required fee; and
 - (d) has completed at least one day of the accredited pharmacy program.
- (12) through (14) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule regarding qualifications for pharmacist intern licenses. Currently, applicants must complete 30 days of an accredited pharmacy program to obtain an intern license. The board agrees with the University of Montana Skaggs School of Pharmacy (school) that issuing these licenses earlier will help facilitate opportunities for student pharmacists to provide direct patient care sooner, with corresponding oversight by pharmacist preceptors.

Additionally, incoming students will soon be required to start immunization education and training procedures in the summer prior to beginning pharmacy school. The board concluded this will help ensure students are ready for patient care opportunities and further mitigates the need for waiting 30 days for a pharmacist intern license. Student pharmacists who have already completed immunization training and certification at the time of application can submit the immunization certificate and have the immunization endorsement included at the time the board issues the individual pharmacist intern license.

The board reviewed intern licensing requirements from other states and determined most states do not have a 30-day requirement and issue intern licenses at the start of the pharmacy program. To ensure that a current student is enrolled in an accredited pharmacy program, the board decided that intern licenses may be issued after completion of at least one day of class.

24.174.605 FOREIGN INTERN REQUIREMENTS (1) A graduate of a foreign school of pharmacy seeking licensure to practice as a pharmacy intern in the state of Montana shall:

~~(a) take the Foreign Pharmacy Graduate Equivalency Exam (FPGEE);~~
(a) submit proof of a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification from the National Association of Boards of Pharmacy (NABP),
which includes the following:

~~(b) (i) take the Test of Spoken English (TSE); and one of the following:~~
~~(i) (ii) take the computer-based Test of English as a Foreign Language (TOEFL); and~~

~~(ii) take the paper-based TOEFL; or~~

~~(iii) take the internet-based TOEFL;~~

(iii) Foreign Pharmacy Graduate Equivalency Exam (FPGEE);

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

(2) through (4) remain the same.

AUTH: 37-1-131, 37-7-201, MCA
IMP: 37-7-201, MCA

REASON: The board is amending this rule to align with requirements for pharmacist foreign graduates in ARM 24.174.501. The board expects that any pharmacist foreign graduate applying as an intern to complete internship hours in Montana meets the same requirements as a pharmacist foreign graduate applying for pharmacist licensure. Further, the board concluded that these amendments will improve transparency in licensure qualifications and the overall application process when foreign graduate intern licensees apply for pharmacist licensure.

Following the amendments, applicants will need to submit proof of the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification. The certificate requires completing already required examinations, but applicants must also meet passing standards set forth by the requirements of the FPGEC Certification.

The board has issued few foreign graduate intern licenses in the past several years but determined it is reasonably necessary to amend this rule to ensure consistency with existing pharmacist foreign graduate licensing requirements.

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 the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to dlibsdpba@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to dlibsdpba@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.174.401, 24.174.602, and 24.174.605 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; facsimile (406) 841-2344; or to dlibsdpba@mt.gov.

9. Marcie Bough, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
STARLA BLANK, RPh
PRESIDENT

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

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

Certified to the Secretary of State July 24, 2017.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.189.301, 24.189.401,) PROPOSED AMENDMENT AND
24.189.601, 24.189.633, and) ADOPTION
24.189.2104 and the adoption of)
NEW RULES I through XII pertaining)
to behavior analysts and assistant)
behavior analysts licensure,)
continuing education, and)
unprofessional conduct)

TO: All Concerned Persons

1. On August 25, 2017, at 9:00 a.m., a public hearing will be held in the basement conference room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists (board) no later than 5:00 p.m., on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibspsy@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2017 Montana Legislature enacted Chapter 425, Laws of 2017 (Senate Bill 193), an act creating licensure and regulation for certain behavior analysts, providing definitions and exceptions to licensure, establishing autonomy for behavior analysts and supervision of assistant behavior analysts, and providing rulemaking authority for the board to implement the bill. The bill was signed by the Governor on May 22, 2017, and will become effective on October 1, 2017.

Therefore, the board is amending the rules throughout to update processes and correct terminology in compliance with the 2017 statutory changes and to further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.189.301 DEFINITIONS (1) "APA" means the American Psychological Association.

(2) "BACB" means the Behavior Analyst Certification Board, a nonprofit corporation whose credentialing programs for behavior analysts and assistant behavior analysts are accredited by the National Commission for Certifying Agencies.

(3) "Behavior technician" means a supervisee primarily responsible for the direct implementation of behavior analytic services. The behavior technician does not design intervention or assessment plans.

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

(5) "NCCA" means the National Commission for Certifying Agencies.

(2) and (3) remain the same but are renumbered (6) and (7).

AUTH: 37-1-131, 37-17-202, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-17-101, 37-17-302, Chap. 425, section 3, L. of 2017, Chap. 425, section 4, L. of 2017, Chap. 425, section 5, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

| | |
|--|-----------|
| (a) <u>Psychologist</u> application fee | \$175 |
| (b) <u>Psychologist</u> active license renewal fee | 600 |
| (c) remains the same. | |
| (d) <u>Psychologist</u> supervision proposal approval | 25 |
| (e) <u>Psychologist</u> temporary permit application fee | 100 |
| (f) <u>Behavior analyst</u> application fee | 600 |
| <u>(g) Behavior analyst initial supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised</u> | <u>50</u> |
| (h) <u>Assistant behavior analyst</u> application fee | 250 |
| (i) <u>Behavior analyst</u> active license renewal fee | 600 |
| <u>(j) Behavior analyst renewal supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised</u> | <u>25</u> |
| (k) <u>Assistant behavior analyst</u> active license renewal fee | 200 |
| (2) remains the same. | |

AUTH: 37-1-134, 37-17-202, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, Chap. 425, section 4, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

REASON: The board determined it is reasonably necessary to amend this rule and set fees to further implement Senate Bill 193. The bill requires the board to set license fees for behavior analysts and assistant behavior analysts that adequately fund the costs of implementing the new statutory provisions. The legislation requires the board to license and regulate behavior analysts and assistant behavior analysts and the proposed fees will enable the board to meet this mandate.

The board is setting application/licensing fees for each type of licensure contemplated by the legislation to cover the expenses for the initial license processing of an estimated 17 applicants. The annual renewal fees will be charged beginning in fiscal year 2019. It is estimated that the new fees will affect

approximately 22 individuals and result in approximately \$10,000 of board revenue for fiscal year 2018 and approximately \$12,200 in annual revenue thereafter.

24.189.601 PSYCHOLOGIST APPLICATION PROCEDURES

(1) Applications for licensure of a psychologist, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) and (b) remain the same.

(c) Applicants will be notified ~~in writing~~ of any deficiencies in their applications. ~~If the requested information is not received by the board to remedy such deficiencies within six months of the date of the written notice, the application shall be deemed to have been withdrawn.~~

(d) and (e) remain the same.

(2) A completed psychologist application file consists of the following:

(a) through (f) remain the same.

(g) if applicable, the ~~Association of State and Provincial Psychology Boards~~ board-approved evaluator's recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: With the passage of Senate Bill 193, the board is proposing new rules in this notice regarding application procedures, temporary permits, and continuing education that apply to behavior analysts and assistant behavior analysts. The board is amending ARM 24.189.601, 24.189.633, and 24.189.2104 to clarify that these existing rules apply to psychologist licensees, not the new licensure types. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority.

24.189.633 TEMPORARY PERMIT (1) An A psychologist applicant requesting a temporary permit must submit to the board:

(a) through (d) remain the same.

(2) An A psychologist applicant for licensure may be issued a temporary permit if the applicant:

(a) through (11) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-17-202~~, MCA

IMP: 37-1-131, 37-1-305, MCA

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education for psychologists may be chosen from (a) through (e). No more than 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).

(a) through (e) remain the same.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

5. The proposed new rules are as follows:

NEW RULE I BEHAVIOR ANALYST APPLICATION PROCEDURES

(1) Applications for licensure of a behavior analyst, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) Applicants will be notified of any deficiencies in their applications.

(b) An application must be completed for final board review no more than 12 months after the board receives it or it will expire and a new application and fee will be required.

(2) An applicant for a behavior analyst license must submit:

(a) a completed application on a form prescribed by the department;

(b) the application fee(s) specified in ARM 24.189.401;

(c) verification of all professional licenses currently or previously held in another state on a form prescribed by the department;

(d) a completed criminal background check;

(e) proof of current certification as a behavior analyst by the BACB; and

(f) a minimum of three completed reference forms from individuals familiar with the quality of the applicant's education and work experience and attesting to the applicant's good moral character as follows:

(i) two from licensed behavior analysts; and

(ii) one from a licensed psychologist.

(3) The agency fee for processing the criminal background check will be provided directly to that agency. The results of the criminal background check are to be provided directly from the agency to the board.

(4) The board will consider the acceptability of the professional experience presented by the applicant for consideration in keeping with [NEW RULE IV].

AUTH: 37-1-131, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, Chap. 425, section 4, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a behavior analyst or assistant behavior analyst.

(2) Relevant military training, service, or education must be completed by an

applicant while a member of:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a behavior analyst or assistant behavior analyst corresponding to the licensure type for which applicant is applying. Satisfactory evidence includes:

- (a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-145, Chap. 425, section 7, L. of 2017, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The statutory changes became effective on April 26, 2013, and are codified at 37-1-145, MCA. Senate Bill 193 provided the board with rulemaking authority to recognize commensurate military experience as a qualification in licensure. It is reasonably necessary for the board to adopt NEW RULE II to further implement 37-1-145, MCA, and Senate Bill 193 regarding behavior analysts and assistant behavior analysts.

NEW RULE III ASSISTANT BEHAVIOR ANALYST APPLICATION

PROCEDURES (1) Applications for licensure of an assistant behavior analyst, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) Applicants will be notified of any deficiencies in their applications.

(b) An application must be completed for final board review no more than 12 months after the board receives it or it will expire and a new application and fee will be required.

(2) An applicant for an assistant behavior analyst license must submit:

(a) a completed application on a form prescribed by the department;

(b) the application fee(s) specified in ARM 24.189.401;

(c) verification of all professional licenses currently or previously held in another state on a form prescribed by the department;

- (d) a completed criminal background check;
- (e) proof of current certification as an assistant behavior analyst by the BACB;
- (f) proof of current supervision by a licensed behavior analyst; and
- (g) a minimum of three completed reference forms from individuals familiar with the quality of the applicant's education and work experience and attesting to the applicant's good moral character as follows:
 - (i) two from licensed behavior analysts; and
 - (ii) one from a licensed psychologist.

AUTH: 37-1-131, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE IV BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

- (1) Upon licensure application, behavior analyst applicants shall provide proof, together with the form prescribed by the department, reflecting 100 hours of supervised experience beyond those hours required by the BACB.
- (2) Each behavior analyst applicant certified by the BACB on or before December 31, 2017, shall be granted one year in which to provide proof to the board demonstrating the applicant has met the experience requirements of this rule.
- (3) A behavior analyst may not supervise:
 - (a) more than one student intern if the analyst is also supervising a behavior technician or an assistant behavior analyst; or
 - (b) more than three student interns if the analyst is not also supervising a behavior technician or an assistant behavior analyst.
- (4) A behavior analyst shall report to the board all student interns, behavior technicians, and assistant behavior analysts within three business days of commencement of supervision of each student intern, behavior technician, or assistant behavior analyst.
- (5) A supervising behavior analyst may provide the following types of supervision to a student intern, behavior technician, or assistant behavior analyst:
 - (a) direct supervision;
 - (b) on-site supervision; or
 - (c) general or remote supervision.
- (6) The supervising behavior analyst shall consider the location, nature, and setting of the practice and the experience of the student intern, behavior technician, or assistant behavior analyst when entering into a new supervision agreement to ensure the safety and quality of behavior analysis services.
- (7) The supervising behavior analyst shall meet face-to-face with each student intern, behavior technician, and assistant behavior analyst supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues and client care.
- (8) Supervising behavior analysts shall provide appropriate and real-time means of communication or backup supervision for their supervisees.

(9) Supervising behavior analysts shall determine the appropriate level supervision (direct, on-site, or general) based on the supervisee's education, training, and experience.

(10) Each supervising behavior analyst assumes professional and legal responsibility for all student interns, behavior technicians, and assistant behavior analysts under the supervising behavior analyst's supervision regardless of the varying types of supervision.

(11) A supervising behavior analyst shall enter into a written supervision agreement with each student intern, behavior technician, or assistant behavior analyst to be supervised to ensure the safety and quality of behavior analysis services, considering the location, nature, and setting of the practice and the experience of the supervisee, and shall provide for:

- (a) an appropriate type or combination of types of supervision identified in (5), including specific supervising behavior analyst response and availability times;
- (b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the particular supervisee; and
- (c) appropriate frequency and duration of face-to-face meetings.

(12) The supervision agreement may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of case files reviewed, based upon the duration and nature of experience gained by the supervisee, the supervising behavior analyst's written assessment and evaluation of the supervisee's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to ensure the safety and quality of behavior analysis services.

(13) The supervision agreement must be kept by the supervising behavior analyst for seven years. A legible copy of the signed supervision agreement must be submitted, if requested, to the board or its designee.

AUTH: Chap. 425, section 7, L. of 2017, MCA

IMP: Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE V CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-17-202, MCA, the board establishes requirements for the continuing education of licensed behavior analysts and assistant behavior analysts.

(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to the licensee's knowledge and competence and that meet these criteria.

(3) A continuing education activity must meet the following criteria:

- (a) The activity must:
 - (i) have significant intellectual or practical content;
 - (ii) deal primarily with substantive behavior analysis issues, skills, laws, rules, or ethical standards related to one's role as a behavior analyst or assistant behavior analyst; and
 - (iii) be conducted by an individual or group qualified by practical or academic experience.

(b) The board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to the licensee's role as a behavior analyst or assistant behavior analyst.

(4) All approved formal continuing education courses must issue a program or certificate of completion containing the following information:

- (a) full name and qualifications of the presenter;
- (b) title of the presentation attended;
- (c) number of hours and date of each presentation attended;
- (d) description of the presentation format; and
- (e) name of licensee.

(5) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years following submission of a continuing education report.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VI CONTINUING EDUCATION IMPLEMENTATION (1) One continuing education credit will be granted for each hour of participation in the continuing education activity.

(2) A licensed behavior analyst or assistant behavior analyst must earn at least ten continuing education credits, of which one hour must be ethics, during each consecutive calendar year. Continuing education credit shall be reported as follows:

(a) No continuing education is required for licensees licensed less than one full calendar year on their first reporting date.

(b) All licensed behavior analysts and licensed assistant behavior analysts must submit affirmation of compliance to the board on each year's license renewal that they understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license. The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(c) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, the licensee may request an exemption. All requests for exemptions will be considered by the board and evaluated on an individual basis.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VII CONTINUING EDUCATION PROGRAM OPTIONS

- (1) Acceptable continuing education may be chosen from (a) through (d).
- (a) Acceptable continuing education includes the following:
 - (i) any APA-approved or BACB-approved continuing education activity or program for behavior analysts that meets the criteria specified in [NEW RULE V];
 - (ii) credit may be given for workshops and other educational activities offered at professional conferences and conventions sponsored by the APA and its affiliates or the BACB if the content of such presentations meets the criteria specified in [NEW RULE V]. General business meetings do not qualify;
 - (iii) any other specific activities, i.e., audio tapes or conference/workshops, meeting the criteria specified in [NEW RULE V];
 - (iv) formally organized classes, with preassigned credit and attendance verifiable by transcript, offered under the auspices of regionally accredited institutions of higher education that meet criteria specified in [NEW RULE V].
- (b) The following professional activities that meet criteria specified in [NEW RULE V] may be submitted in fulfillment of no more than five continuing education units:
 - (i) initial presentation of a meeting paper or workshop in the field of behavior analysis based on thorough review of the literature, and including theoretical ideas, with application to clinical work. One hour of continuing education will be credited for each hour of presentation. In addition, one hour of continuing education will be credited for preparation for each hour of presentation;
 - (ii) publication of a review paper or a formal theoretical paper in a refereed journal in the field of behavior analysis;
 - (iii) carrying out a research project reported in publishable form;
 - (iv) teaching a formally organized class in behavior analysis or related subjects that meets the criteria specified in [NEW RULE V].
- (c) No more than four continuing education units may be granted for courses relative to the management of a professional practice.
- (d) Behavior analyst board members may receive continuing education credit of up to eight hours per calendar year for their attendance of board meetings.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VIII REPRESENTATION OF SELF AND SERVICES (1) In representation of self or services, a licensee:

- (a) shall display the behavior analyst's or assistant behavior analyst's current license to practice behavior analysis on the premises of the professional office;
- (b) shall not represent oneself as a behavior analyst or assistant behavior analyst while the practitioner's license is currently suspended, revoked, or not renewed;
- (c) shall not use fraud, misrepresentation, or deception in obtaining a behavior analyst or assistant behavior analyst license, in passing a behavior analyst or assistant behavior analyst licensing examination, in assisting another to obtain a behavior analyst or assistant behavior analyst license, or to pass a behavior analyst or assistant behavior analyst licensing examination;
- (d) shall not aid or abet an unlicensed person in misrepresenting the person's

professional credentials or in practicing when a license is required, or otherwise illegally engaging in the practice of behavior analysis;

(e) shall not promote the use of behavior analysis assessment techniques by unqualified persons;

(f) shall not use fraud, misrepresentation, or deception in billing clients or third-party payers, in providing behavior analysis or assistant behavior analysis services, in reporting the results of behavior analyst or assistant behavior analyst services, or in conducting any other activity related to the practice of behavior analysis.

(2) Regarding advertising, a licensee or license applicant:

(a) shall not engage in advertising that is false, fraudulent, or misleading;

(b) shall identify paid advertisements as such, unless it is already apparent from the context;

(c) shall not solicit testimonials from current clients, patients, or other persons who, because of their particular circumstances, are vulnerable to undue influence;

(d) shall not induce a client to solicit business on behalf of the behavior analyst or assistant behavior analyst;

(e) shall take professional responsibility when engaging others to create or place public statements that promote their professional practice, products, or activities.

(3) Regarding representation in the public arena, a licensee or license applicant:

(a) shall make reasonable efforts to prevent others whom they do not control (such as employers, publishers, sponsors, organizational clients, and representatives of the print or broadcast media) from making deceptive statements concerning behavior analyst or assistant behavior analyst practice or professional or scientific activities;

(b) shall make reasonable efforts to correct deceptive statements about their work or misuse of their work made by others;

(c) shall not compensate the press (radio, television, or other communication media), or their employees or supervisees, in return for publicity or a news item;

(d) shall not make public statements that are false, deceptive, misleading, or fraudulent (either by omission or commission) concerning licensee's research or practice, or concerning other work activities or those of persons or organizations with which they are affiliated;

(i) As examples (and not in limitation) of this rule, behavior analysts or assistant behavior analysts shall not make false or deceptive statements concerning their:

(A) training, experience, or competence;

(B) academic degrees;

(C) credentials;

(D) institutional or association affiliations;

(E) services;

(F) the scientific or clinical basis for, or results or degree of, success of their services;

(G) fees; or

(H) publications or research findings;

(e) shall, when providing advice or comment when a defined professional relationship does not exist, take reasonable precautions to ensure that the statements are based on appropriate behavior analysis literature and practice. Furthermore, the behavior analyst or assistant behavior analyst shall take reasonable precautions to ensure that the recipient of such information does not infer that a defined professional relationship has been established with the behavior analyst or assistant behavior analyst personally;

(f) shall not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential clients or other persons who, because of their particular circumstances, are vulnerable to undue influence. However, this does not preclude attempting to implement appropriate collateral contacts with significant others for the purpose of benefiting an already engaged client;

(g) shall not associate with, or permit the behavior analyst's or assistant behavior analyst's name to be used in connection with, any services or products in such a way as to misrepresent the services or products, the degree of the licensee's responsibility for the services or products, or the nature of the licensee's association with the services or products.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE IX PRACTICE OF BEHAVIOR ANALYSIS (1) In regard to conduct in the integrity of the profession, a licensee:

(a) shall not create an unreasonable risk of physical or mental harm or serious financial loss to the client, such as malpractice or an act or acts below the standard of care concerning behavior analysts or assistant behavior analysts, whether actual physical or mental injury or harm was suffered by the client;

(b) shall not provide any services in the practice of behavior analysis except those services within the scope of the licensee's education, training, supervised experience, or appropriate professional experience;

(c) shall not participate in activities in which it appears likely that the licensee's skills or data will be misused by others, unless corrective mechanisms are available.

(2) Regarding disclosure and obligation to report, a licensee:

(a) shall disclose fees and confidentiality prior to initiating the defined professional relationship with clients, except in the case of a clinical emergency. Upon initiating the defined professional relationship there must be a discussion of the nature and anticipated course of contracted services, limitations of confidentiality and modalities of communication by which treatment is provided, and mandated reporting situations. When services rendered involve more than one interested party, the behavior analyst or assistant behavior analyst shall clarify the dimensions of confidentiality and professional responsibility to all participating parties;

(b) who has substantial reason to believe that there has been a violation of the statutes or rules of the board, shall so inform the board in writing. However, when the information regarding such violation is obtained in a defined professional

relationship with a client, the behavior analyst or assistant behavior analyst shall report it only with the written permission of the client;

(c) shall, when initiating conjoint services to several persons who have a relationship (e.g., familial, communal, or business), attempt to clarify which of the individuals are clients and the relationship the licensee will have with each person. This clarification includes the role of the licensee and the probable uses of the services provided or the information obtained;

(d) shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

(e) shall not undertake research on human subjects without a study of the potential effects of the research on the subjects, and shall not undertake research on human subjects without full disclosure of risks to the subjects.

(3) In regard to judicial or disciplinary situations:

(a) a licensee or license applicant shall cooperate with an investigation by:

(i) furnishing any papers or documents in the possession and under the control of the licensee, as per the appropriate health care records act;

(ii) furnishing in writing a full and complete explanation covering the matter contained in the complaint; and

(iii) responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the respondent in the proceedings;

(b) a behavior analyst or assistant behavior analyst shall not offer, undertake, or agree to cure or treat disease or affliction by a secret method, procedure, or treatment; nor shall the licensee treat, operate, or prescribe for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board.

(4) Licensees may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) A behavior analyst or assistant behavior analyst must understand the construction/administration/interpretation of the test procedures the licensee employs.

(6) Licensees must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) The behavior analyst or assistant behavior analyst shall be aware of personal and societal biases and engage in nondiscriminatory practice. The behavior analyst or assistant behavior analyst shall be aware of how biases such as age, gender, race, ethnicity, national origin, religion, sexual orientation, gender identity, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(8) Behavior analysts or assistant behavior analysts shall maintain current knowledge of legal standards regarding parenting plans, divorce, and laws regarding abuse, neglect, and family violence. Licensees shall also understand the civil rights of parties in legal proceedings in which they participate, and manage their professional conduct in a manner that does not diminish or threaten those rights.

(9) Behavior analysts or assistant behavior analysts shall recognize and state any limitations of their assessments and reports.

(10) Behavior analysts or assistant behavior analysts shall not render diagnoses or form an expert opinion about any party not personally evaluated.

(11) Behavior analysts or assistant behavior analysts shall avoid dual relationships and other situations which might produce a conflict of interest.

(12) Behavior analysts or assistant behavior analysts shall inform all participants, including clients, as to the limits of confidentiality which can be expected with regard to any information they may provide to the licensee over the course of the evaluation. This includes the limits of confidentiality applicable to the general practice of behavior analysis, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse.

(13) Licensees shall not commit an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of behavior analysis.

(14) Each licensee shall not fail to report to the board any student interns, behavior technicians, or assistant behavior analysts whom the licensee supervises.

(15) Licensees shall follow the BACB's Professional and Ethical Compliance Code for Behavior Analysts unless it directly conflicts with Montana statutes or rules.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE X PROFESSIONAL RESPONSIBILITY (1) Regarding client welfare, a licensee:

(a) shall attempt to terminate a clinical or consulting relationship when it is reasonably clear to the licensee that the client is not benefiting from it or is being harmed by continued service;

(b) shall not use relationships with clients to promote commercial enterprises of any kind for personal gain or the profit of an agency;

(c) shall not bill for services not directly performed for a client, unless there is an explicit agreement that permits this type of billing;

(d) shall take reasonable steps to avoid harming the licensee's clients with whom there is a defined professional relationship, and to minimize harm where it is foreseeable and unavoidable;

(e) shall make reasonable efforts to plan for facilitating care in the event that behavior analysis services are interrupted by factors such as the licensee's illness, death, unavailability, or relocation, or by the client's relocation or financial limitations;

(f) shall, when entering into employment or contractual relationships, provide for orderly and appropriate resolution of responsibility for client care in the event the employment or contractual relationship ends, with paramount consideration given to the welfare of the client;

(g) shall make an appropriate referral of the client to another professional when requested to do so by the client;

(h) shall continue the defined professional relationship with the client until a relationship is established with the professional person to whom the client is referred or until the relationship has been terminated by mutual agreement. In situations where referral, consultation, or other changes in the conditions of the treatment are indicated, and the client refuses referral, the licensee shall carefully weigh the possible harm to the client, the licensee, and the licensee's profession that might ensue from continuing the relationship.

(2) Regarding respect for others, a licensee:

(a) shall not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, or clients;

(b) who performs interventions or administers, scores, interprets, or uses assessment techniques shall be familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use:

(i) shall recognize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals;

(ii) shall attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation, because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status;

(iii) shall, when offering assessment or scoring procedures to other professionals, accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use;

(iv) shall ensure, unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results, that an explanation of the results is provided using language that is reasonably understandable to the person assessed or to another legally authorized person on behalf of the client;

(v) shall, regardless of whether the scoring and interpretation are done by a behavior analyst, by assistants, by behavior technicians, by student interns, or by automated or other outside services, take reasonable steps to ensure that appropriate explanations of results are given and adequate provisions are made for referring and counseling individuals when needed;

(c) when interpreting assessment results, including automated interpretations, shall take into account the various test factors and characteristics of the person being assessed that might affect licensees' judgments or reduce the accuracy of their interpretations and indicate any significant reservations they have about the accuracy or limitations of their interpretations.

(3) In regard to conflict of interest, a licensee shall be concerned primarily with the welfare of any client involved and only secondarily with the interest of the licensee's own professional group, when there is a conflict among professional workers.

(4) Regarding the therapeutic relationship, a licensee:

(a) shall provide behavior analysis services for the purpose of diagnosis, assessment, or treatment only in the context of a defined professional relationship.

However, nothing in these rules precludes the provision of behavior analysis services for crisis management or intervention, even in the absence of a defined professional relationship;

(b) shall not prepare personnel reports and recommendations based on test data secured solely by mail, unless such appraisals are an integral part of a continuing client relationship with a company;

(i) the reports shall not be embellished with detailed analyses of the subject's personality traits, as would be appropriate only after intensive interviews with the subject;

(ii) the reports shall not make specific recommendations as to the employment or placement of the subject, which go beyond the licensee's knowledge of the job requirements of the company; and

(iii) the reports shall not purport to eliminate the company's need to carry on other regular employment or personnel practices such as appraisal of the work history, checking of references, or past performance in the company;

(c) shall not undertake or continue a defined professional relationship with a client when the behavior analyst or assistant behavior analyst is or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions. If such a condition develops after a defined professional relationship has been initiated, the licensee shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination, and shall assist the client in obtaining services from another professional;

(d) shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client;

(e) shall make assessments, recommendations, reports, and diagnostic or evaluative statements based on information and techniques (including personal interviews of the individual when appropriate) sufficient to provide appropriate substantiation for their findings; and

(f) shall refrain from releasing raw test results or raw data to persons, other than to clients as appropriate, who are not qualified to use such information.

(5) Regarding education, a licensee:

(a) shall present behavior analysis information accurately and with a reasonable degree of objectivity, when engaged in teaching or training;

(b) shall not teach the use of techniques or procedures that require specialized training, licensure, or expertise, to individuals who lack the prerequisite training, legal scope of practice, or expertise;

(c) shall establish an appropriate process for providing feedback to students and supervisees in academic and supervisory relationships; and

(d) shall evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

(6) Regarding supervision, a licensee:

(a) shall adequately supervise auxiliary staff to ensure that a client's mental or physical health or safety is not at risk;

(b) shall clearly identify any behavior technician for clients, third-party payers, and other entities when supervising a behavior technician;

(c) shall delegate to their employees, supervisees, and research assistants

only those responsibilities that such persons can reasonably be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided;

(d) shall not commence supervision of a person practicing psychology;

(e) shall, upon board approval of the supervision, reasonably and adequately supervise persons practicing behavior analysis, so as to ensure the client's mental and physical health and safety are not at risk and that each supervisee complies with all applicable standards, rules, and statutes; and

(f) shall strictly comply with the rules governing supervision.

(7) Regarding forensic activities, a licensee shall not render a formal professional opinion about an individual without direct and substantial professional contact with or a formal assessment of that person.

(8) The violation of any statute, rule, or standard applicable to the licensee in relation to the licensee's practice of behavior analysis is unprofessional conduct.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE XI RELATIONSHIPS (1) Regarding multiple relationships, a licensee:

(a) shall not undertake or continue a defined professional relationship with a client when the objectivity of the licensee is impaired because of present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationships with the client or a relevant person directly associated with or related to the client.

(2) Regarding sexual relationships, a licensee:

(a) shall not accept as clients persons with whom they have engaged in sexual intimacies;

(b) shall not engage in sexual intimacies with current clients;

(c) shall not engage in sexual intimacies with a former client for at least two years after termination of professional services. The licensee who engages in such activity after the two years following termination of professional services bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(i) the amount of time that has passed since professional services terminated;

(ii) the nature and duration of the professional services;

(iii) the circumstances of termination;

(iv) the client's personal history;

(v) the client's current mental status;

(vi) the likelihood of adverse impact on the client; and

(vii) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of post termination sexual or romantic relationship with the client.

(3) Regarding bartering, the licensee:

(a) shall not participate in bartering if the relationship is clinically

contraindicated or exploitative;

(b) shall not engage in bartering unless fair market value is used for goods or services bartered.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE XII PRIVILEGED INFORMATION AND RECORDS

(1) Regarding privileged information and records, the licensee:

(a) shall not reproduce or describe behavior analysis tests or assessment procedures in popular publications, lectures, or public presentations in ways that might invalidate them;

(b) shall, in rendering professional services to an individual client, or services billed to a third-party payer, maintain professional records that include:

(i) the presenting problem(s) or purpose of diagnosis;

(ii) the fee arrangement;

(iii) the date and substance of each billed contact or service;

(iv) any test results or other evaluative results obtained and any basic test data from which they were derived;

(v) notation and results of formal consults with other providers; and

(vi) a copy of all test or other evaluative reports prepared as part of the defined professional relationship;

(c) shall administer, store, and dispose of written, electronic, and other records in such a manner as to ensure their confidentiality;

(d) shall not withhold records under their control that are requested and imminently needed for a client's treatment solely because payment has not been received, except as otherwise provided by law;

(e) shall continue to treat as confidential information regarding a client after the defined professional relationship between the behavior analyst and the client has ceased.

(2) Licensees shall maintain and not destroy client records:

(a) for a period of seven years after the client reaches the age of 18, for clients who are minors; and

(b) for a period of seven years after the last professional client contact, including a release of records, for clients who are adults.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.301, 24.189.401, 24.189.601, 24.189.633, and 24.189.2104 will not significantly and directly impact small businesses.

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

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

11. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, Ph.D., CHAIRPERSON

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

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

Certified to the Secretary of State July 24, 2017.

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

In the matter of the adoption of New Rules I through IV and the repeal of ARM 37.27.901, 37.27.904, 37.27.907, 37.27.908, 37.27.912, 37.27.916, 37.27.920, 37.27.921, and 37.27.926 pertaining to Medicaid substance use disorder services) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 24, 2017, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 9, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I MEDICAID SUBSTANCE USE DISORDER SERVICES:
PURPOSE (1) The purpose of rules contained in this subchapter is to establish standards for the coverage and reimbursement of substance use disorder services under the Montana Medicaid Program.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

NEW RULE II MEDICAID SUBSTANCE USE DISORDER SERVICES:
GENERAL REQUIREMENTS (1) General Medicaid provider requirements found in ARM 37.85.104 through 37.85.1125 are applicable to all Medicaid substance use disorder services.

(2) HELP Medicaid requirements found in ARM 37.84.101 through ARM 37.84.115 are applicable to all Medicaid substance use disorder services.

(3) Medicaid substance use disorder services include:
(a) screening and assessment;

- (b) individual therapy;
 - (c) group therapy;
 - (d) family therapy;
 - (e) multiple-family group therapy;
 - (f) targeted case management for substance use disorders as defined in ARM 37.86.3301 through 37.86.3306 and ARM 37.86.4001 through 37.86.4010;
 - (g) nonhospital inpatient substance use disorder detoxification;
 - (h) nonhospital inpatient substance use disorder residential treatment; and
 - (i) nonhospital inpatient substance use disorder residential day treatment.
- (4) All services must be delivered by facilities or programs approved by the department.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

- NEW RULE III MEDICAID SUBSTANCE USE DISORDER SERVICES: REIMBURSEMENT** (1) Medicaid substance use disorder programs must bill for services using procedure codes, modifiers, and definitions contained in the:
- (a) Centers for Medicare and Medicaid Services' (CMS) Healthcare Common Procedure Code System (HCPCS); and
 - (b) American Medical Association's (AMA) Current Procedural Terminology (CPT) Codes.
- (2) Subject to requirements of this rule, the Medicaid substance use disorder program pays the lower of the following for Medicaid eligible members:
- (a) the Medicaid substance use disorder program's usual and customary charge for services;
 - (b) the reimbursement methodologies described in ARM 37.85.212; or
 - (c) for items or services where no Resource Based Relative Value (RBRVS) or Medicare fee is available, the department's fee schedule.
- (3) The allowable Medicaid substance use disorder procedure billing codes and department fee schedules are available at the department's website located at <http://medicaidprovider.mt.gov/> and incorporated by reference at ARM 37.85.105.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

- NEW RULE IV MEDICAID SUBSTANCE USE DISORDERS SERVICES: TREATMENT REQUIREMENTS** (1) All Medicaid substance use disorder services must be determined medically necessary by a licensed health care professional within the scope of their Montana professional license.
- (2) Medical necessity includes documentation to support:
- (a) an appropriate level of care placement for service based upon the American Society of Addiction Medicine (ASAM) Criteria, Third Edition; Copyright 2013 by the American Society of Addiction Medicine, Inc.; <http://www.asam.org/publications/the-asam-criteria/text/>; and
 - (b) an International Classification of Diseases – Revision 10 Clinical Modification (ICD-10-CM) diagnosis of a substance use disorder.

(3) All services except assessment services must be based upon a treatment plan established with the member.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

4. The department proposes to repeal the following rules:

37.27.901 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: REHABILITATION OPTION 32 is found on page 37-6089 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.904 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: GENERAL REQUIREMENTS is found on page 37-6093 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.907 CHEMICAL DEPENDENCY BUREAU MEDICAID SUBSTANCE DEPENDENCY AND ABUSE TREATMENT SERVICES: REHABILITATION OPTION 32, FINANCIAL ELIGIBILITY is found on page 37-6097 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.908 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: BILLING PROCEDURE FOR CONSULTATIONS WITH PARENTS is found on page 37-6098 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.912 ENROLLMENT OF MEDICAID PROVIDERS OF SUBSTANCE DEPENDENCY AND ABUSE TREATMENT SERVICES is found on page 37-6105 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.916 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: INPATIENT FREE STANDING TREATMENT REQUIREMENTS is found on page 37-6109 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.920 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: OUTPATIENT TREATMENT, REQUIREMENTS is found on page 37-6113 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.921 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: CERTAIN OUTPATIENT SERVICES, REQUIREMENTS is found on page 37-6114 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

37.27.926 CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: DAY TREATMENT, REQUIREMENTS is found on page 37-6121 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 53-24-215, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt New Rules I through IV and repeal ARM 37.27.901, 37.27.904, 37.27.907, 37.27.908, 37.27.912, 37.27.916, 37.27.920, 37.27.921, and 37.27.926.

In the 2015 Legislative Session, the 64th Montana Legislature passed Senate Bill 405 (SB405), which implemented Medicaid expansion in Montana under the federal Affordable Care Act, or "ACA." In implementing Medicaid expansion, 42 USC 18022(b) and 45 CFR 156.110 require that the department adhere to specific standards for Essential Health Benefits (EHB). 42 USC 18022(b)(1)(A) through (J) and 45 CFR 156.110(a)(1-10) identify ten categories of EHB services in which the department is required to provide treatment services and reimbursement equal in scope to any other illness. Coverage for Medicaid substance use disorder services is one of the ten identified categories. Pursuant to 42 USC 18022(b)(1)(A) through (J), EHB standards must be defined in a manner that:

(A) reflects appropriate balance among the ten statutory EHB categories;

(B) is not designed in such a way as to discriminate based on age, disability, or expected length of life;

(C) takes into account the health care needs of diverse segments of the population; and

(D) does not allow denials of EHB based on age, life expectancy, or disability.

Current administrative rules for Medicaid substance use disorder services contain language that fails to meet these requirements by limiting services to adults; requiring prior authorization for indicated procedures; indicating limitations of provider enrollment to those who are under contract with the department; and referencing treatment protocols, diagnosis, and care placement information that is outdated. This proposed rulemaking is intended to correct these deficiencies.

The department proposes updating the terminology of "chemical dependency" to "substance use disorders" in all new rules and justification as the term "chemical dependency" is antiquated language.

NEW RULE I

The department proposes this New Rule I to set forth the purpose of subchapter 9.

NEW RULE II

The department proposes by (1) of this new rule to identify the general Medicaid provider requirements set forth in ARM 37.85.104 through ARM 37.85.1125 as applying to all Medicaid substance use disorder services to ensure providers are aware of the general Medicaid requirements that must be followed under this program.

The department proposes by (2) of this new rule to inform providers that the HELP Medicaid requirements as set forth in ARM 37.85.104 and 37.85.1125 apply to Medicaid substance use disorders services.

The department proposes by (3) of this new rule to expand the definition of Medicaid substance use disorder services formally found in ARM 37.27.901(1) to include the following additional services in the term "Medicaid substance use disorder services" pursuant to the requirements of 42 USC 18022(b)(1)(A) through (J):

(a) New Rule II(3)(a) "screening" as a payable service to allow providers to screen Medicaid members to determine whether a full assessment is medically appropriate;

(b) New Rule II(3)(f) "targeted case management for substance use disorder services" and referring to the general Medicaid targeted case management rules set forth in ARM 37.86.3301 through 37.86.3306 and to the specific Medicaid targeted case management for substance use disorders rules set forth in ARM 37.86.4001 through 37.86.4010 to ensure treatment providers of substance use disorders are aware of and follow the correct administrative rules for targeted case management;

(c) New Rule II(3)(g) "detoxification" as a payable service in a nonhospital inpatient substance use disorders treatment center given that many provide detoxification services for the first few days of an inpatient stay; and

(d) New Rule II(3)(h) and (i), "nonhospital" in the description of inpatient substance use disorders services (residential treatment and residential day treatment) to clarify that providers may only bill for such services under subchapter 9 if they are provided in a nonhospital setting.

The department proposes by (4) of this new rule to inform providers of the type of facility certification required to bill for Medicaid substance use disorders services.

NEW RULE III

The department proposes by (1) of this new rule to require substance use disorder treatment programs to use procedure codes, modifiers, and definitions in the Centers for Medicare and Medicaid Services' (CMS) Healthcare Common Procedure Code System (HCPCS) and the American Medical Association's (AMA) Current Procedural Terminology (CPT) Codes when billing for services.

The department proposes by (2) of this new rule to outline the three reimbursement rates considered in processing Medicaid payment and the hierarchy used to determine the lower cost reimbursement rate.

The department proposes by (3) of this new rule to indicate where providers of substance use disorder services can find the allowable Medicaid procedure codes, the associated fee schedules, and Medicaid program information to bill for substance use disorder services. The reference to ARM 37.85.105 is included in this section because this is the administrative rule that contains the fee schedules.

NEW RULE IV

The department proposes by (1) of this new rule to set forth the requirement from the Affordable Care Act (ACA) that the determination of whether substance use disorder services are medically necessary must be made by licensed health care providers acting within the scope of their Montana professional license.

The department proposes by (2) of this new rule to define information necessary to support a diagnosis of "medical necessity" for substance use disorder services.

The department proposes by (3) of this new rule to set forth the requirement that all substance use disorder services other than assessment services be based upon a treatment plan established with the member.

Repeal of ARM 37.27.901, 37.27.904, 37.27.907, 37.27.908, 37.27.912, 37.27.916, 37.27.920, 37.27.921, and 37.27.926

ARM 37.27.901

The requirements under these rules are no longer applicable for the substance abuse disorder rule services. The information regarding the Medicaid provider fee schedules has been moved to New Rule III.

The department proposes repealing ARM 37.27.901 because it no longer reflects the identification or implementation of substance use disorder services under the Montana Medicaid program. The list of treatment services is being moved to New Rule II(3) and expanded to reflect current law.

ARM 37.27.904

The department proposes repealing ARM 37.27.904 because it no longer reflects the general service requirements for substance use disorder services under the Montana Medicaid program, which is set forth in New Rule III. Language regarding treatment planning set forth in ARM 37.27.904(2) is being moved to New Rule IV(3).

ARM 37.27.907

The department proposes repealing ARM 37.27.907 because the information in the rule concerning substance use disorder providers' determination of Medicaid member eligibility no longer applies. Substance use disorder providers no longer determine Medicaid member eligibility.

ARM 37.27.908

The department proposes repealing ARM 37.27.908(1) and (2), which no longer reflect billing and reimbursement procedures. New Rule IV reflects the current procedures regarding reimbursement substance use disorders services.

ARM 37.27.912

The department proposes repealing ARM 37.27.912 because the information in the rule concerning requirements for Medicaid substance use disorder provider enrollment is found in the proposed language for ARM 37.27.904, and the information in the rule concerning where the manual may be obtained is antiquated as all Medicaid provider manuals are found online on the Medicaid Provider Portal, <https://medicaidprovider.mt.gov/>.

ARM 37.27.916

The department proposes repealing ARM 37.27.916 because the Montana Medicaid program no longer requires the age limitation and prior authorization requirements set forth in the rule for inpatient substance use disorder, and because the diagnosis and placement information in this rule is found in the proposed language for New Rule IV.

ARM 37.27.920

The department proposes repealing ARM 37.27.920 as the information listed a level of care for treatment services and not services. Clarification of services covered are found in the proposed language for New Rule II.

ARM 37.27.921

The department proposes repealing ARM 37.27.921 as the information is found in the proposed language for New Rule IV.

ARM 37.27.926

The department proposes repealing ARM 37.27.926 as the Montana Medicaid program no longer requires the age limitation and prior authorization requirements set forth in the rule for inpatient substance use disorder day treatment.

Summarize the approach that was taken.

Current Medicaid substance use disorder rules were reviewed and compared to the proposed Blue Cross Blue Shield of Montana "Blue Dimensions Group Plan" for comparability of services available. Specific services and requirement differences were identified. This information was used to propose changes to current rules for Medicaid substance use disorder services listed above.

FISCAL IMPACT

The proposed new rules will increase benefits for eligible individuals under the Medicaid benefit package. The proposed new rules allowing nonhospital inpatient and day-treatment services to be billed under Medicaid for adults ages 21 years and older will have the following estimated annual fiscal impact:

| Standard Medicaid – State Fiscal Year | | |
|---------------------------------------|----------------------------|----------------------------|
| Funding Source | SFY2018 Additional Cost | SFY2019 Additional Cost |
| General Fund/ State Special Revenue | \$1,331,476 | \$1,331,476 |
| Federal Match | \$2,514,496 | \$2,514,496 |
| Total | \$3,845,972 | \$3,845,972 |

Total number of individuals served for SFY2018 and SFY2019 will be 1,302.

The above numbers do not take into account a projected number of individuals who apply for Medicaid Expansion and are deemed Standard Medicaid eligible.

6. The department intends the proposed rule amendments to be applied effective October 1, 2017.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 7 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by e-mail on July 24, 2017.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will significantly and directly impact small businesses by increasing possible revenue generated by the additional covered services. Projected revenues are those indicated under the fiscal impact statement.

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

13. The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA. The following matrix presents the department's intended performance monitoring scheme.

| Principal reason for the rule | Measurement | Data Collection Methods/Metrics | Period of Measurement |
|--|---|---|-----------------------|
| Provide coverage of inpatient, day treatment, and detoxification services for Standard Medicaid recipients | Length of stay for service | Track services provided through the Medicaid Management Information System (Medicaid) | Annually |
| Provide coverage of substance use disorder treatment services to all individuals under Standard Medicaid | Number of individuals served in all services by county, age, and gender | Track services provided through the Medicaid Management Information System (Medicaid) | Annually |

/s/ Francis X. Clinch
Francis X. Clinch, Attorney
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State July 24, 2017.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.2950 pertaining to) PROPOSED AMENDMENT
graduate medical education payment)
program)

TO: All Concerned Persons

1. On August 24, 2017, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 9, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.2950 GRADUATE MEDICAL EDUCATION PAYMENT PROGRAM

(1) Subject to the availability of funding, restrictions imposed by federal law, and the approval of the state plan by the Centers for Medicare and Medicaid Services (CMS), the department will pay, in addition to the Medicaid payments provided for in ARM 37.86.2806, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, and 37.86.2947, a Graduate Medical Education (GME) payment for the purpose of partially funding a primary care and psychiatry residency programs for eligible hospitals located in Montana.

(2) Revenue for the GME payment will be generated through a transfer of funds from the Montana University System to the ~~Department of Public Health and Human Services~~ department through an Intergovernmental Transfer contract agreement. The transfer of funds from the University System will occur prior to July 31 of each year.

(3) The department will make an annual payment to each eligible hospital on or before August 31 of each year.

(a) remains the same.

(b) If an eligible hospital reports no primary care or psychiatry resident full time equivalents (FTE) participating in the GME program for any given program year or portion thereof, the eligible hospital will not receive payment for those time periods of nonparticipation. FTE totals include residents conducting rural rotations. For purposes of this rule, a rural rotation is a period of time of at least 28 days where a primary care or psychiatry resident is working in a rural location, outside of their primary facility and urbanized area, with the express purpose of the resident being available to provide care to the rural area's patient population.

(4) The GME payment regarding ~~the~~ primary care and psychiatry residency programs must be computed, in order, as follows:

(a) divide the total Graduate Medical Education Full Time Equivalent (GMEFTE) count for each eligible facility based upon the most recently filed as-filed cost report, Medicaid paid claims data, and approved self-attestation form by the Total Graduate Medical Education Full Time Equivalent (TGMEFTE) for all eligible facilities to determine the Hospital Percentage of Graduate Medical Education (HPGME);

$$\frac{\text{GMEFTE}}{\text{TGMEFTE}} = \text{HPGME}$$

(b) through (5) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

Montana has a significant shortage of psychiatrists and primary care physicians, especially in rural areas, making it difficult for many Montanans to access health care in their communities. The shortage is related to a historical lack of physician residency, Graduate Medical Education (GME) training in the state and an aging physician workforce. Further, Montana is one of three states without a psychiatry residency program, making it challenging for physicians to learn and understand the behavioral health needs of the Montana population. Improvement in access to health care for rural Montanans can be achieved by adding psychiatry to the primary care residency program and encouraging resident physician training in rural communities; however, current administrative rules do not allow adequate funding for the development of new residencies or funding for rural training.

During the 65th Montana Legislature, the Montana Office of the Commissioner of Higher Education (Commissioner) and the Montana Graduate Medical Education Council (Council) discussed with the Legislature that while funding for residency training occurs primarily through the federal Centers for Medicare and Medicaid Services (CMS), CMS does not fund the total cost of resident physician training, and all additional funding is being provided by the five residency sponsoring hospitals in Billings, Kalispell, and Missoula. This lack of funding limits the training of resident physicians in Montana and specifically limits the rural physician supply. According to

data supplied by the Council, the number of resident physicians being trained in Montana has increased from 18 in 2012 to 75 in 2017. In 2018, the number of resident physicians trained will increase to 78. To meet this need, the Legislature appropriated an additional \$400,000 in House Bill 2 for the Montana University System, which will be used in conjunction with federal funding and the residency training costs assumed by the five residency sponsoring hospitals, with an end to supplement the current physician allocation and encourage residency training in rural Montana.

The department proposes to amend ARM 37.86.2950, regarding its administration of the GME payment program, to (i) add psychiatry to the primary care references in (1) and (4) of the rule as the types of residency training programs in Montana eligible for receiving GME payment under Medicaid; (ii) adopt new rule language in (4) which would provide that rural rotations made by resident physicians may be included in the FTE counts for an eligible hospital in order to receive additional GME payments; and (iii) amend (4)(a) to clarify the forms and sources of the data the department reviews and requires from GME eligible hospitals prior to making the calculations described in (4).

The first proposed amendment is necessary because Montanans lack access to behavioral health services, and adding psychiatry to the GME payment program may directly increase public access to these services by resident physicians practicing psychiatry. Participating hospitals will receive additional funding which has historically been used for primary care only. Hospitals currently provide these services at a loss since they are not funded under the primary care residency program. Adding psychiatry to the residency programs also executes the program funding increases authorized by the 65th Montana Legislature.

The second amendment, proposed to include FTE counts for rural rotations in the calculation for eligible facilities, is necessary as adding rural rotation FTE counts will enable hospitals to receive additional funding for resident physician training in rural communities for both primary care and psychiatry. Sending resident physicians out into rural areas for training increases the likelihood those physicians will practice in rural Montana, according to data compiled by the Council. The benefit from such a practice is seen by an increased clinical presence in rural areas for Montanans, greater diversity in training for the resident physician, and additional recoupment for the hospital of its residency training costs.

The third amendment is necessary because the department desires to improve accuracy of its GME payments calculations and current data reporting requirements are not as sufficient as they were when the rule was adopted in 2011. The additional forms and data reporting made available to the department include the department's proposed use of a self-attesting form on which eligible facilities will report FTE counts for rural rotations, approved by hospital authority since that information is difficult for the providers and the department to accurately track. The department believes the proposed changes are the minimum required to perform its duties as the financial intermediary under state and federal law.

After conversations with providers, the Commissioner, and the Council, the department believes the proposed amendments meet the needs of the Commission and the eligible hospitals that provide the resident physician training; satisfy the intention of the Legislature; and improve the department's administration of the GME payment program through this rule. Without these amendments, the unfunded obligation of the five residency sponsoring hospitals will continue to grow and become untenable, having an adverse impact on the availability of physicians to care for rural Montanans.

FISCAL IMPACT

The proposed amendments do not have a direct fiscal impact to the department. The 65th Montana Legislature appropriated \$400,000 to the Montana University System through House Bill 2. The funds for the appropriation are derived from the general fund.

The proposed rule is estimated to affect: 261,160 Medicaid members and the five residency sponsoring hospitals: Billings Clinic, St. Vincent Healthcare, Providence St. Patrick's Hospital, Community Medical Center, and Kalispell Regional Medical Center.

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

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

9. 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.

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

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State July 24, 2017.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through III pertaining to the) PROPOSED ADOPTION
Montana medical marijuana program)

TO: All Concerned Persons

1. On August 24, 2017, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 9, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I LEGAL PROTECTIONS -- ALLOWABLE AMOUNTS (1) A registered cardholder who has named a provider may possess up to 1 ounce of useable marijuana.

(2) A registered cardholder who has not named a provider may possess up to 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana.

(3) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of useable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-319, 50-46-344, MCA

NEW RULE II TESTING LABORATORIES (1) Until such time as permanent rules for licensure are adopted the department shall determine if a temporary license will be issued to a laboratory after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-328, 50-46-329, 50-46-344, MCA

NEW RULE III CHEMICAL MANUFACTURING ENDORSEMENTS (1) Until such time as permanent rules for chemical manufacturing endorsements are adopted the department shall determine if a temporary endorsement will be issued to a marijuana provider or marijuana-infused products provider after consideration of the application.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-312, 50-46-319, 50-46-328, 50-46-329, 50-46-344, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through III because emergency rules were promulgated as MAR Notice No. 37-803 in Issue 13 of the Montana Administrative Register on July 7, 2017. The emergency rules were effective June 30, 2017 and are only valid for only 120 days. The rules are proposed to replace the emergency rules and allow for the transition period between the emergency rules and when the department will further adopt rules to implement the provisions of Senate Bill 333 (SB333). At that time, these rules will be amended to further define the allowable amount language and identify the specific requirements for marijuana testing laboratories and marijuana providers who seek chemical manufacturing endorsements.

New Rule I

The intent of New Rule I is to track the allowable amounts language from Initiative 182 (I-182) and SB333. These allowable amounts are already familiar to stakeholders, cardholders, providers, and law enforcement and will remain consistent and in effect until other permanent rules address this topic in terms of canopy allotment.

New Rule II

New Rule II is to facilitate a smooth transition of testing procedures, standards, and guidelines in furtherance of public health and safety. The rule will temporarily license testing laboratories. This will allow the testing labs to exist and legally handle medical marijuana samples. Issuance of a temporary license does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

New Rule III

New Rule III provides the means to issue a temporary chemical manufacturing endorsement to medical marijuana providers and medical marijuana-infused products providers. Due to the volatile nature of some chemical manufacturing, it is imperative for public safety for the department to know the location and by what means chemical manufacturing will occur. Issuance of a temporary chemical

manufacturing endorsement does not guarantee that a facility will meet the requirements that will be established through the normal rulemaking process.

Fiscal Impact

There is no fiscal impact with the proposed rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor was notified by email on July 12, 2017.

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

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

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

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

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.21.160 and 42.21.165) PROPOSED AMENDMENT
pertaining to livestock reporting and)
per capita fees - honey bees)

TO: All Concerned Persons

1. On August 24, 2017, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 14, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.21.160 DEFINITIONS For purposes of this chapter the following definitions apply:

- (1) through (11) remain the same.
- (12) remains the same, but is renumbered (13).
- (13) remains the same, but is renumbered (12).

AUTH: 15-1-201, 15-9-101, MCA

IMP: 15-1-121, ~~15-1-137~~ 15-6-137, 15-6-138, 15-8-104, MCA

REASON: The department proposes amending ARM 42.21.160 to correct the alphabetical order of two sections of the rule to bring it into compliance with the Secretary of State's recommended format for definition rules. The department also proposes correcting a statute citation error in the implementing section of the rule. There are no language changes being proposed for the rule at this time.

42.21.165 LIVESTOCK REPORTING AND PER CAPITA FEE PAYMENT

- (1) remains the same.
- (2) The reporting form required in (1) must list the livestock type and count, by county, where livestock are located on February 1. For all poultry and honey bees, swine 3 months of age or older, and all other livestock 9 months of age or

older, the livestock owner/producer shall report the number of animals within each of the following established categories:

- (a) remains the same.
- (b) cattle (yearlings, heifers, steers, cows, and bulls);
- (c) through (g) remain the same.
- (h) honey bee hives ~~or boards~~;
- (i) through (3) remain the same.

(4) If a livestock owner fails to submit a completed livestock reporting form by the March 1 deadline, the department shall use the owner's reported or estimated livestock counts from the previous year to estimate the livestock type and count for the current year. ~~For livestock owners with livestock located on property owned by someone else that have not self-reported by the March 1 deadline, the department shall estimate the livestock owner's livestock type and count based on the livestock numbers provided by the landowner.~~

(5) ~~Effective in 2016, per~~ Per capita livestock fee payments are due to the department by May 31 of the reporting year.

- (6) remains the same.

AUTH: 15-1-201, MCA

IMP: 15-6-207, 15-24-903, 15-24-905, 15-24-921, 15-24-922, 15-24-925, 87-4-406, MCA

REASON: The department proposes amending ARM 42.21.165 based on the enactment of House Bill 345, L. 2017, which revised the definition of "livestock" for the purposes of the per capita fee on livestock, to specify that honey bees are the only type of bees that need to be reported. Leaf-cutting bees, for example, are no longer required to be reported. Therefore, the department proposes amending (2) to insert the word "honey" ahead of bees to make this distinction clear in the rule.

The department also proposes adding detail to the term "cattle" in (2)(d), in response to inquiries from livestock owners. Specifically, yearlings, heifers, steers, cows, and bulls are all considered cattle by the industry. Including this detail in the rule is intended to help livestock owners when completing their reporting forms. Additionally, the department proposes striking "or boards" from (2)(h), because boards are no longer used by bee owners for reporting purposes.

The department further proposes striking the last sentence in (4) to correspond with an agreement reached last year with the Montana Department of Livestock. To prevent duplicate reporting issues from occurring, landowners do not need to report livestock located on their land if the livestock is owned by another party. The "livestock owned by others" section was eliminated from the livestock reporting form in 2016, necessitating this change in the rule for consistency and to prevent confusion.

The department further proposes removing the 2016 calendar year reference from (5) because it serves no purpose beyond that year.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2017.

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

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 345, L. 2017, Representative Geraldine Custer, was contacted by regular mail on June 23, 2017 and July 5, 2017.

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

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 42.19.1104 pertaining to tax |) | PROPOSED AMENDMENT AND |
| exemptions for nonfossil energy |) | REPEAL |
| systems, the repeal of ARM |) | |
| 42.19.1240 pertaining to taxable rate |) | |
| reductions for value-added property, |) | |
| and the repeal of ARM 42.19.1301 |) | |
| and 42.19.1302 pertaining to the |) | |
| department's notification of property |) | |
| tax liens |) | |

TO: All Concerned Persons

1. On August 24, 2017, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the amendment and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 14, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.19.1104 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) The property owner of record, or the property owner's agent, must make application to the local department office for classification as a nonfossil form of energy generation. ~~Application will be made on a form available on the department's website or from the local department field office before March 1 or within 30 days of receipt of an assessment notice, whichever~~ from the date on the classification and appraisal notice, whichever is later, to be considered for exemption for the current tax year.

(2) When a completed application is received by the local department field office, the department staff will adhere to the following procedures:

(a) The energy system will be inspected and the application considered in time to assure that any exemption will affect the property's value in the earliest possible tax year following the date of application.

(b) If the energy system is completed prior to March 1 of a year, the

application must be filed by March 1 or within 30 days of receipt of an assessment notice, ~~which ever~~ from the date on the classification and appraisal notice, whichever is later, of that year in order for an exemption to apply for the full ten-year period.

(c) If the energy system is completed after March 1 of a year, the application must be filed by March 1 or within 30 days of receipt of an assessment notice, ~~which ever~~ from the date on the classification and appraisal notice, whichever is later, of the next year in order for an exemption to apply for the full ten-year period.

(d) If an applicant misses the deadlines outlined above, ~~he~~ they will lose one year of exemption potential for every deadline date that passes. For example:

(i) If an individual completes installation of an energy system in the current year, but does not apply for an exemption within 30 days from the date on the classification and appraisal notice, the exemption would start on January 1 of the following year and be allowed for a total of nine years. ~~February 2001, but does not apply for exemption until July 2001 (which is more than 30 days after receiving the assessment notice), the individual has a total exemption potential of only nine years (the property tax exemption would be allowed for nine years - 2002 through 2010).~~

(ii) If the individual completes installation of an energy system in July 2001, of the current year, but does not apply for an exemption until April 2003, two years later, the individual has a total exemption potential of only eight years ~~(the property tax exemption would be allowed for eight years - 2003 through 2010).~~

(e) and (3) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-224, 15-32-102, MCA

REASON: The department proposes amending ARM 42.19.1104(1) and (2) to better define the time period for filing an exemption request by replacing the reference to "receipt of the notice" with language to make it clear that the 30 days begins from the date on the classification and assessment notice. By referencing the notice date, the starting point is clear for all involved. The department sends classification and assessment notices out in advance of the date on them to allow for mailing time. The department further proposes striking the reference to "field" office in (1), because it is outdated terminology.

The department also proposes adding the word "energy" ahead of "system" in (2)(a) through (c) for clarity and consistency regarding use of this term throughout the rule, and proposes updating the language in (2)(d) to remove unnecessary words and outdated calendar year references from the examples to make them easier to understand and applicable to all calendar years.

The proposed amendments to this rule are unrelated to the actions being proposed for other rules in this notice to implement new legislation.

4. The department proposes repealing the following rules:

42.19.1240 TAXABLE RATE REDUCTION FOR VALUE ADDED PROPERTY

AUTH: 15-24-2405, MCA

IMP: 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, MCA

REASON: The department proposes repealing ARM 42.19.1240 as a matter of housekeeping. The value-added manufacturing tax rate reduction that had been provided for in 15-24-2401 through 15-24-2405, MCA, was repealed by the 2013 Legislature. Therefore, the department proposes repealing this rule because it is outdated and no longer supported or necessary.

42.19.1301 DEFINITIONS

AUTH: 15-1-201, MCA

IMP: 15-17-212, 15-17-323, MCA

REASON: The department proposes repealing ARM 42.19.1301 because the terms defined in the rule are exclusive to ARM 42.19.1302, which is also proposed to be repealed in this same notice due to the enactment of House Bill 18, L. 2017, which removed the department from the notification process for property tax liens.

42.19.1302 FORM

AUTH: 15-1-201, MCA

IMP: 15-17-212, 15-17-323, MCA

REASON: The department proposes repealing ARM 42.19.1302 due to the enactment of House Bill 18, L. 2017, which revised tax lien and tax deed laws. Changes to 15-17-212 and 15-17-232, MCA, removed the department from the notification process for property tax liens and rendered the form and instructions provided for in this rule no longer necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2017.

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

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 18, L. 2017, Representative Tom Jacobson, was contacted by regular mail on June 14, 2017 and July 7, 2017.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 5.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.15.214 pertaining to resident) PROPOSED AMENDMENT
military salary exclusion)

TO: All Concerned Persons

1. On August 24, 2017, at 11 a.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the amendment of the above-stated rule. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 14, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.15.214 RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident service member are exempt from Montana income tax:

(a) remains the same.

(b) basic, special, and incentive pay received for serving on active duty as a member of the National Guard under Title 10 USC orders;

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

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and inactive duty training for service not described in (1)(b) ~~or (1)(c)~~ through (1)(d);

(b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) ~~or (1)(c)~~ through (1)(d);

(c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) ~~or (1)(c)~~ through (1)(d); and

(d) and (3) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, 15-30-2117, MCA

REASON: The department proposes amending ARM 42.15.214 to add

language into the rule to make it clear that "active duty" in the National Guard means active duty performed under an order issued pursuant to Title 10 or under Title 32, U.S.C., for a homeland defense activity. The current version of this rule could be construed to disallow Title 10 National Guard annual training that is not part of a contingency operation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2017.

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

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

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

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

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

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.13.601, 42.13.701, and) PROPOSED AMENDMENT
42.13.702 pertaining to the conditions)
for operating a brewery, production)
threshold, and beer reporting)
requirements)

TO: All Concerned Persons

1. On August 24, 2017, at 3 p.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on August 14, 2017, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) through (3) remain the same.

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 100 barrels or more than ~~40,000~~ 60,000 barrels that operates a sample room shall:

(a) and (b) remain the same.

(c) provide not more than 2,000 barrels of beer annually for consumption on the premises, including the premises of any affiliated manufacturers as defined in 16-3-213, MCA;

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

~~(5) In addition to all other requirements, a brewery with an annual nationwide production of more than 10,000 but less than 60,000 barrels shall:~~

~~(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;~~

~~(b) only provide samples without charge on its premises between 8 a.m. and 2 a.m.;~~

~~(c) prevent the sale of alcoholic beverages for off-premises consumption between 2 a.m. and 8 a.m.; and~~

~~(d) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those purchased in original packaging for off-premises consumption from individuals' possession by 2 a.m.~~

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, MCA

REASON: The department proposes amending ARM 42.13.601 due to the enactment of House Bill (HB) 541, L. 2017, which revised the definition of a small brewery, increased the number of barrels a small brewery may produce, and revised production taxes imposed on brewers.

House Bill 541 revised the definition of a small brewery by increasing the allowable annual nationwide production from 10,000 barrels to 60,000 barrels. The 60,000 barrel threshold includes beer produced by the brewery, beer purchased by the brewery for resale, and beer produced by any affiliated manufacturers. The department proposes amending (4) to reflect this statutory change in the number of barrels.

Additionally, HB 541 limits the amount of beer a brewer and its affiliated manufacturers may provide for on-premises consumption. The department proposes incorporating this language into (4), as new (c), to ensure licensees are familiar with the requirement to help with compliance.

Furthermore, the department proposes striking (5), as the content of that section became outdated with the change allowing small brewers to produce up to 60,000 barrels of beer annually.

42.13.701 PRODUCTION THRESHOLD (1) remains the same.

(2) In situations where a brewer produces over ~~20,000~~ 10,000 barrels nationally and internationally in the first month of the fiscal year, all of its production will be taxed at \$4.30 for the year.

(3) and (4) remain the same.

~~(5) A brewery that sells directly to a retailer is responsible for the payment of the tax.~~

AUTH: 16-1-303, MCA

IMP: 16-1-406, 16-1-409, MCA

REASON: The department proposes amending ARM 42.13.701 due to the enactment of House Bill 541, L. 2017, which revised the definition of a small brewery, increased the number of barrels a small brewery may produce, and revised production taxes imposed on brewers.

House Bill 541 reduced the annual production threshold for the highest beer tax rate from 20,000 barrels to 10,000 barrels. The department proposes amending (2) to create continuity with this change in 16-1-406, MCA.

Furthermore, the department proposes striking (5), because a brewer's tax responsibility and reporting requirements will now be provided for in ARM 42.13.702,

as proposed to be amended in this same notice.

42.13.702 BEER REPORTING REQUIREMENTS (1) ~~Each brewery located outside of Montana shall file with the department monthly reports, provided by the department, with the following information:~~

~~(a) A~~ On or before the 15th of each month, a brewery that sells beer directly to a retailer located or consumer in Montana must pay the shall pay any tax due, pursuant to 16-1-406, MCA, on or before the 15th of each month for beer sold in the previous month and complete Montana Form BET; and file the following reports with the department for the preceding month:

(a) Form BET, reporting the amount of beer sold directly to retailers and consumers, the amount of beer produced within the reporting period, and the amount of beer sold to consumers for on-premises consumption;

~~(b) A brewery that sells beer directly to a retailer shall report on or before the 15th of each month the amount of beer sold directly to retailers in the previous month on Form BET-3; or~~ Form BET-3, reporting the names of the retailers and quantity of beer the retailer purchased; and

~~(c) Each retailer that purchases beer from an out-of-state brewery shall report the amount of beer purchased on Form BET-2~~ Form BSM, reporting the amount of beer shipped directly to each beer wholesaler.

~~(2) Each brewery located in Montana selling directly to consumers or retailers must pay tax for beer sold in the previous month pursuant to 16-1-406, MCA, and complete Montana Form BET~~ On or before the 15th of each month, a retailer shall file Form BET-2, reporting the amount of beer purchased from out-of-state breweries.

AUTH: 16-1-303, MCA

IMP: 16-1-406, ~~16-3-213, 16-4-401~~ 16-3-211, MCA

REASON: The department proposes amending ARM 42.13.702 to make the reporting requirements for beer sold within the state by a brewery clearer for the industry. The proposed amendments will create continuity with the reporting requirements for wineries, as provided for in ARM 42.13.404. The proposed amendments are intended to more clearly outline what is required of the brewery in an effort to reduce confusion and increase compliance.

Additionally, the department proposes incorporating reporting requirements into (1), as new (a), to track production and on-premises sales to consumers to ensure small brewers stay within the statutory limits for operating a sample room.

Furthermore, the department reviewed the current implementing statutes cited for the rule and proposes striking two that serve no purpose or no longer apply, and proposes adding one in support of the rule as amended.

The amendments proposed for this rule are unrelated to other rulemaking actions being proposed in this same notice to implement new legislation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than September 5, 2017.

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

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 541, L. 2017, Representative Adam Hertz, was contacted by regular mail on June 14, 2017 and July 7, 2017.

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

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State July 24, 2017.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.302, 44.5.301, and) PROPOSED AMENDMENT
44.5.302 pertaining to online filing of)
annual reports)

TO: All Concerned Persons

1. On August 24, 2017, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on August 17, 2017, to advise us of the nature of the accommodation that you need. Please contact Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-6197; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail Jeffrey.Hindoien@mt.gov.

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

44.2.302 SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) Pursuant to 2-15-401 and 2-15-404, MCA, the Secretary of State has developed and partially implemented a statewide electronic filing system (system) to allow the online filing of many business documents required to be filed with the Secretary of State.

~~(2) The online filing system is named SIMS, which is an acronym for the Secretary of State's information management system.~~

~~(3) The implemented first phase of SIMS allows the online filing of Uniform Commercial Code documents.~~

(4)(2) SIMS The system is hosted in a PCI (payment card industry) compliant data center and day-to-day operational and security management is the responsibility of a contracted vendor.

(5)(3) The SIMS application system is built to accept and store properly entered data, allow later search capability of the system, and provide standardized reporting.

~~(6) SIMS users are required to set up an SIMS account through ePass (the state of Montana's online access portal), which identifies them for the purpose of authentication, unless the Secretary of State is granted an exception from complying with ePass policies or standards.~~

~~(7)~~(4) Password complexity for online users is consistent with Department of Administration standards.

~~(8)~~(5) State and federal law governing the filing of lien notices does not require signatures if the document is filed online.

~~(9)~~(6) ~~SIMS~~ The system generates an image based on the information entered by the online user which contains a unique filing number and filing date/time and may be printed for the user's records.

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

AUTH: 2-15-401, 2-15-404, MCA

IMP: 2-15-401, 2-15-404, MCA

REASON: The Secretary of State is not utilizing the acronym "SIMS" as part of the operational environment for the system, so the name and acronym are being removed from the rule to avoid any confusion. As the system has now been developed, users may not be required to establish an account through ePass in all circumstances, so the reference to an absolute requirement for such an account in former (6) is being removed from the rule.

44.5.301 DEFINITIONS AND REQUIREMENTS FOR ANNUAL REPORT

ONLINE FILING ~~(1)~~ The following definitions apply for filing corporation and limited liability company annual reports on-line:

~~(a)~~ "Compliance officer" is a person who works in the secretary of state's office who is qualified to certify that an annual report meets the requirements of the law;

~~(b)~~ "Registered user" is a person or entity who is registered with a private vendor to file annual reports using the online filing system available through Internet technology;

~~(c)~~ "Submitter" is a person or entity that files an annual report online.

~~(2)~~ Fees and payment methods for online filing of annual reports are published online by the private vendor.

~~(3)~~(1) Annual reports filed through the use of Internet technology are considered to be annual reports filed online.

~~(4)~~ The following annual reports are acceptable for online filing:

~~(a)~~ domestic and foreign profit corporations (meet the requirements of Title 35, chapter 1, section 1104, MCA);

~~(b)~~ domestic and foreign nonprofit corporations (meet the requirements of Title 35, chapter 2, section 904, MCA);

~~(c)~~ domestic and foreign limited liability companies (meet the requirements of Title 35, chapter 8, section 208, MCA).

~~(5)~~(2) An annual report may be filed electronically online without the signature of the authorized agent.

~~(a)~~ If an original or reproduced paper document is filed, the annual report must be signed by an authorized agent.

~~(6)~~ Annual reports against the following entities are not acceptable for online filing:

~~(a)~~ inactive corporations;

~~(b) inactive limited liability companies;~~
~~(c) corporations or limited liability companies that are pending renewal for term of existence.~~

~~(7)~~(3) Online filing is available 24 hours a day, 7 days a week.

~~(8)~~(4) Except for dissolved entities applying for reinstatement, online filing is not available for domestic corporations or domestic limited liability companies after the first business day in December, until the first business day in January. Except for revoked entities applying for recertification, online filing is not available for foreign corporations and foreign limited liability companies ~~will not be available for filing online~~ after the first business day in November until the first business day in January.

~~(9)~~(5) Submitters will be notified through the online application system when the site is unavailable due to technology problems or system maintenance.

~~(10)~~ The following requirements must be met in order to successfully complete an on-line annual report filing:

~~(a)~~ the requirements set forth under Title 35, chapter 1, section 1104 and Title 35, chapter 2, section 904, and Title 35, chapter 8, section 208, MCA.

~~(11)~~(6) An annual report document that is successfully completed and submitted ~~on-line~~ online will be considered filed upon receipt by the Secretary of State's office. The ~~on-line~~ online technology application will ensure the document is properly completed prior to acceptance. The submitter will be notified by an ~~on-line~~ online message if required fields are not properly completed. A message confirming successful completion and acceptance will appear ~~on-line~~ online when the filing is accepted.

~~(12)~~(7) Submitters should ~~print and~~ retain their acknowledgement message as proof that the ~~on-line~~ online filing was received by the Secretary of State's office. The acknowledgement message will contain a unique filing number, filing date, and time.

~~(13)~~(8) The ~~on-line~~ online annual reports will be rejected if information is omitted.

~~(14)~~(9) The submitter will be notified through the ~~on-line~~ online site if the electronically filed annual report is rejected. If a filing is later determined to be improper the Secretary of State's office will notify the submitter via phone, fax, or e-mail notification.

~~(15)~~(10) The date and time a successfully submitted ~~on-line~~ online filing is considered to be effective is the date and time the document was accepted by the Secretary of State's office.

AUTH: 2-15-401, 2-15-404, 30-9A-526, MCA

IMP: 2-15-404, 30-9A-102, 30-9A-523, 35-1-1104, 35-1-1308, 35-1-1315, 35-2-904, 35-8-208, MCA.

REASON: The current rule was promulgated in 2008 in relation to an older electronic business filings system that no longer exists. The new system does not have the same restrictions as the 2008 system on the availability of on-line filing for certain types of annual reports, so those distinctions are being removed from the rule.

44.5.302 FORM OF ANNUAL REPORT (1) An annual report filed pursuant to 35-1-1104, 35-2-904, and 35-8-208, MCA, must be ~~on a form prescribed and furnished by the secretary of state if it is not filed online~~ in accordance with ARM 44.5.301.

AUTH: 2-15-401, 2-15-404, 35-1-1307, 35-1-1308, MCA

IMP: 2-15-404, 35-1-217, 35-1-1104, 35-1-1308, 35-1-1315, 35-2-904, 35-8-208, MCA.

REASON: In accordance with 35-1-1308 and 35-1-1315, MCA, the Secretary of State is prescribing by rule the standard and required format for the submission of annual reports by corporations and limited liability companies. Under the amended rule, annual reports must be filed with the Secretary of State online, and paper filings will no longer be an acceptable format for filing.

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 Jeff Hindoien, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing Jeffrey.Hindoien@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

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

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

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

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

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

/s/ COREY STAPLETON
Corey Stapleton
Secretary of State

Dated this 24th day of July, 2017.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.59.1002 pertaining to merger)
application procedures for banks)

TO: All Concerned Persons

1. On June 9, 2017, the Department of Administration published MAR Notice No. 2-59-560 pertaining to the proposed amendment of the above-stated rule at page 724 of the 2017 Montana Administrative Register, Issue Number 11.

2. No comments were received.

3. The department has amended ARM 2.59.1002 exactly as proposed.

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

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

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 32.2.401 department of) AMENDMENT
livestock animal health division fees;)
32.3.401 definitions; 32.3.435 testing)
within the DSA; 32.3.455 brucellosis)
tests to be reported)

TO: All Concerned Persons

1. On March 10, 2017 the Department of Livestock published MAR Notice No. 32-17-279 pertaining to the proposed amendment of the above-stated rules at page 267 of the 2017 Montana Administrative Register, Issue Number 5. On April 28, 2017 the department published the notice of amendment at page 492 of the 2017 Montana Administrative Register, Issue Number 8.

2. The implementation statute 81-2-101, MCA in ARM 32.3.455 is incorrect due to a typographical error. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

32.3.455 BRUCELLOSIS TESTS TO BE REPORTED

(1) remains as adopted.

AUTH: 81-2-102, MCA
IMP: ~~81-2-101~~, 81-2-102, MCA

3. The replacement page for this corrected notice will be submitted to the Secretary of State on September 30, 2017. The online version of the rule has been corrected.

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State July 24, 2017.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.403 pertaining to)
diagnostic laboratory fees)

TO: All Concerned Persons

1. On June 23, 2017 the Department of Livestock published MAR Notice No. 32-17-284 pertaining to the proposed amendment of the above-stated rule at page 850 of the 2017 Montana Administrative Register, Issue Number 12.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Donna Wilham
Donna Wilham
Rule Reviewer

Certified to the Secretary of State July 24, 2017.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2017. This table includes those rules adopted during the period March 31, 2017, through June 30, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2017, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2017 Montana Administrative Register.

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

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COREY STAPLETON
SECRETARY OF STATE

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