

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through VIII pertaining to Public) PROPOSED ADOPTION
Safety Answering Point certification,)
funding, and monitoring)

TO: All Concerned Persons

1. On January 12, 2018, at 11:00 a.m., the Department of Administration will hold a public hearing in Room 7 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; Montana Relay Service 711; or e-mail rsullivan@mt.gov.

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

NEW RULE I DEFINITIONS (1) "Certified PSAP" means a local government entity that hosts a public safety answering point certified by the department as provided in [NEW RULE II].

(2) "Department" means the Department of Administration provided for in 2-15-1001, MCA.

(3) "Local government" means the same as defined in 7-11-1002(2), MCA.

(4) "PSAP" means a public safety answering point as defined in 10-4-101, MCA.

(5) "PSAP certification requirements" means the requirements of Title 10, chapter 4, MCA, and ARM Title 2, chapter 13, subchapter 3.

(6) "Tribal government" means any one of the seven federally recognized tribal governments of Montana and the Little Shell Tribe of Chippewa Indians.

AUTH: 10-4-108, MCA

IMP: 10-4-305, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: The department is proposing to adopt NEW RULES I through VIII to comply with the rulemaking requirements imposed by 2017 HB 61, section 4, codified at 10-4-108, MCA. The department's proposal is based on the work of the Administrative Rules Subcommittee of the 9-1-1 Advisory Council and the draft approved by the 9-1-1 Advisory Council on November 16, 2017. The rules describe the criteria that must

be met for a local government entity that hosts a public safety answering point to receive quarterly distributions from the 9-1-1 systems account. The rules detail the process for becoming certified to receive funds; the department's authority to decertify or reduce funding provided to a local government; the method that will be used to determine the amount the department will distribute to a local government entity; the allowable uses that may be reimbursed by payments from the 9-1-1 systems account; and the department's duty to monitor compliance with the requirements of Title 10, chapter 4, MCA.

STATEMENT OF REASONABLE NECESSITY: NEW RULE I defines terms used repeatedly in these rules, including frequently used statutory terms and new terms. The definitions are necessary for clarity and understanding of these terms in the context of 9-1-1 systems and services.

NEW RULE II PSAP CERTIFICATION (1) A local government entity that hosts a PSAP qualifies as a certified PSAP when it:

- (a) operates a 9-1-1 system meeting the minimum requirements under 10-4-103, MCA;
- (b) first receives all emergency wireline and wireless voice calls from persons requesting emergency services in the PSAP's service area; and
- (c) verifies it meets the PSAP certification requirements by applying with and being approved by the department.

(2) A local government entity must host a certified PSAP to receive payments under 10-4-305, MCA.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: Under this rule, a local government entity that hosts a PSAP must be certified by the department to receive payments from the 9-1-1 systems account. The rule also provides an overview of the certification process and describes the certification criteria.

By requiring PSAP certification, the department can ensure that a local government entity that hosts a certified PSAP meets statutory requirements to receive payments. In addition, certification of the local government entity allows that government entity to serve as the department's primary point of contact and representative of other entities participating in the 9-1-1 system. Historically, where multiple local government entities have participated in a 9-1-1 system, one of the local government entities hosted the primary PSAP, and the other local government entities have received payments from the 9-1-1 account through the primary PSAP.

NEW RULE III APPLICATION FOR CERTIFICATION (1) An applicant for certification shall submit an application on a form prescribed by the department. Applications may be found on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

- (2) The application must be complete and must include the following:

(a) a declaration signed by an official authorized to act on behalf of the local government entity submitting the application that the applicant meets the requirements of [NEW RULE II(1)] and will operate in accordance with the PSAP certification requirements; and

(b) a copy of any agreement required under (3) or (4).

(3) If more than one local government entity is participating in an application:

(a) the local government entities must have entered into an interlocal agreement under 7-11-104, MCA, defining the terms of the parties' participation in the 9-1-1 system; and

(b) the declaration required in (2)(a) must be signed by an official authorized to act on behalf of each local government entity participating in the PSAP and must include an acknowledgment that the participating entities have entered into an interlocal agreement.

(4) If a tribal government is participating in a 9-1-1 system and PSAP with a local government entity that hosts a PSAP, and the tribal government will receive distributions from payments made under 10-4-305, MCA:

(a) the local government entity that hosts a PSAP must have an agreement with the tribal government defining the terms of the parties' participation in the 9-1-1 system and PSAP; and

(b) the declaration required in (2)(a) must be signed by an official who is authorized to act on behalf of the tribal government.

(5) The applicant must be prepared to provide verification of statements made in its application and declaration if requested by the department.

(6) To receive payments under 10-4-305, MCA, in state fiscal year 2019, a local government entity shall apply for certification on or before May 1, 2018. To receive payments in subsequent fiscal years, a local government entity that hosts a PSAP shall apply for certification biennially on or before April 1.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: This rule describes the requirements to apply for certification. To simplify the application process, the department will allow a local government entity applying for certification to review the requirements and declare it is in compliance. If more than one local government entity will be participating in the 9-1-1 system, the department must receive a declaration from all participating entities.

In addition, the local government entity that hosts the PSAP must have an interlocal agreement with other local government entities participating in the 9-1-1 system to describe how payments from the 9-1-1 systems account will be shared between the local government entity that hosts the PSAP and the other participating entities. To foster decision making at the local level, the department believes it is best for the participating local government entities to describe their relationship with one another in an interlocal agreement, rather than defining the relationships in rule.

Tribes can receive 9-1-1 payments by participating in a 9-1-1 system with a local government entity that hosts a certified PSAP. For the reasons stated in the preceding paragraph, a local government entity hosting a certified PSAP with a

participating tribe must include with the application a declaration from an authorized tribal official and an agreement describing the relationship between the tribe and local government entity.

The department set a May 1, 2018, application date to give the department enough time to process applications in advance of the July 1, 2018, date when the initial distributions of funds under HB 61 are made. The application date in 2018 was set as late as possible to give local government entities more time to prepare applications and ensure they will meet requirements. In future years, after local government entities have adjusted to the requirements, applications for certification will be due by April 1 to give the department sufficient time to process applications.

Because the department is required to monitor expenditures of program funds for 9-1-1 purposes under 10-4-107, MCA, the department's authority to request supporting documents is included in this rule.

Because the department will receive annual financial information from local government entities hosting a certified PSAP, and because local government entities do not frequently make substantial changes that would affect eligibility for certification, the department believes biennial certification will be sufficient to effectively monitor and enforce the certification requirements.

NEW RULE IV CERTIFICATION PROCESS (1) The department shall review applications for certification to determine whether the applicant has met the PSAP certification requirements.

(2) If an applicant meets the PSAP certification requirements, the department shall issue a written determination, and the certified PSAP may begin receiving payments under 10-4-305, MCA.

(3) If an application for PSAP certification is not approved, the department shall send the applicant written notice of any application deficiencies and PSAP certification requirements that were not met.

(4) The applicant shall have 90 days from the date of the notice to correct deficiencies and demonstrate compliance. Except as provided in (5) or (6), if an applicant has not corrected deficiencies and demonstrated compliance with PSAP certification requirements within 90 days, the department shall:

- (a) deny the application; or
- (b) grant conditional PSAP certification; and
- (c) provide the applicant notice and an opportunity for hearing.

(5) An applicant that has received a deficiency notice may request an additional 90 days to correct deficiencies or demonstrate compliance with PSAP certification requirements.

(6) If an applicant wishes to immediately dispute a department determination, the applicant may ask the department to provide formal notice of denial and an opportunity for hearing.

(7) The department may appoint a hearing examiner to conduct hearings under 2-4-611, MCA.

(8) The final determination in a contested case regarding PSAP certification is made by the department director.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-109, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: This rule describes the department's process for making PSAP certification decisions. Under HB 61, a local government entity hosting a PSAP must meet the PSAP certification requirements to receive payments from the 9-1-1 systems account. NEW RULE IV is needed to describe the process the department uses to review applications for certification. If there are deficiencies, the department must give the applicant notice of the problems so they can be corrected. Some official acts must be ratified by the local government's elected governing body. In such cases, weeks or months may be needed for the local government to complete this process. Therefore, the department will give the local government entity 90 days to address deficiencies in an application for certification. In some cases, it may take longer than 90 days to correct a problem; thus, the department should be allowed to grant extensions as provided in (5).

When an application is deficient, under the Montana Administrative Procedure Act (MAPA) and due process, the department must make the applicant aware of the deficiency and provide the applicant an opportunity to address the issue. If problems are not or cannot be corrected, the department must deny the application and provide formal notice and hearing. NEW RULE IV sets forth the notice and hearing process required by MAPA and due process.

NEW RULE V DECERTIFICATION AND FUNDING REDUCTION (1) The department may determine a certified PSAP is not in compliance with PSAP certification requirements if a certified PSAP:

(a) is not in compliance with any of the requirements of Title 10, chapter 4, MCA, or ARM Title 2, chapter 13, subchapter 3;

(b) uses or distributes funds for any purpose other than those identified in [NEW RULE VII];

(c) does not timely comply with department requirements; or

(d) has not timely provided information requested by the department.

(2) If the department determines a certified PSAP is not in compliance with a PSAP certification requirement, the department shall send the certified PSAP a deficiency letter identifying the PSAP certification requirement that is not met and the action needed to correct the deficiency. The certified PSAP shall have 30 days from the date of the deficiency letter to correct all deficiencies and demonstrate compliance.

(3) A certified PSAP that has received a deficiency letter may request an additional 30 days to correct deficiencies or demonstrate compliance with PSAP certification requirements.

(4) If a certified PSAP disputes a department determination, the certified PSAP may ask the department to provide formal notice of denial and an opportunity for hearing.

(5) Except as provided in (3) or (4), if a certified PSAP has not corrected all deficiencies and demonstrated compliance with PSAP certification requirements

within 30 days of the deficiency letter, the department shall provide the certified PSAP notice and an opportunity for hearing under Title 2, chapter 4, part 6, MCA.

(6) The department may appoint a hearing examiner to conduct hearings under 2-4-611, MCA.

(7) The final determination in a contested case regarding PSAP certification is made by the department director.

(8) When the department makes a final determination that a certified PSAP is not in compliance with PSAP certification requirements, the department may:

(a) reduce or suspend payment to the local government entity or entities involved in the PSAP;

(b) require repayment of funds expended on activities determined not to meet eligibility requirements; and/or

(c) decertify the local government entity or entities involved in the PSAP.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-109, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: This rule describes circumstances that allow the department to suspend or reduce payments in accordance with 10-4-107 and 10-4-109, MCA. The statutory grounds for suspending or reducing payments include failing to use funds as permitted by Title 10, chapter 4, MCA; failing to provide information required by the department; and failing to comply with department requirements.

In its stewardship of the 9-1-1 systems account, the department must act promptly to ensure payments are made only as permitted by the PSAP certification requirements. If a local government entity is mispending funds, failing to provide information, or failing to comply with requirements, the department must provide notice of any problems so they can be corrected. NEW RULE V is needed to allow a local government entity that hosts a PSAP to comply with requirements within 30 days and for the department to promptly stop payments if it does not. If, for good cause, it will take longer than 30 days to correct a problem, the department should be allowed to grant extensions as provided in (3).

Prior to suspending payments, under MAPA and due process, the department must provide formal notice of deficiencies and provide the applicant an opportunity to address or contest the issue. NEW RULE IV sets forth the notice and hearing process required by MAPA and due process.

If, after notice and hearing, the department determines a local government entity is not in compliance with PSAP certification requirements, the department may take any of the actions listed in (8). A local government entity hosting a PSAP should be decertified if it is unable to meet certification requirements and would not be eligible to receive payments. If funds are expended on activities that do not meet eligibility requirements, the department may require the repayment of such funds under 10-4-108, MCA.

NEW RULE VI ALLOCATION OF FUNDS (1) Funds in the account for fees collected for 9-1-1 services under 10-4-201, MCA, must be allocated as provided in 10-4-305, MCA.

(2) Each certified PSAP must receive an allocation of the total quarterly balance of the 9-1-1 systems account equal in proportion to the quarterly share received by the local government entity that hosted the PSAP during state fiscal year 2017.

(3) The department maintains a list of the quarterly share received by local government entities that hosted PSAPs during the state's 2017 fiscal year. The list can be found on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to explain the basis for allocating payments from the 9-1-1 systems account and to describe where interested persons can find the department's list of the quarterly shares that were distributed in fiscal year 2017. Under 10-4-305, MCA, the department is required to make quarterly distributions of the 9-1-1 systems account based on the quarterly share received by the local government entity that hosted the PSAP during the 2017 fiscal year. By posting the information on the department's website, the department can provide transparency to local government entities who are expecting payments from the 9-1-1 systems account. The information provided will enable local government entities to verify that their distribution is based on the amount distributed in FY 2017. In addition, this information will be beneficial to local government entities as they prepare budgets based on FY 2017 information and 10-4-305, MCA.

NEW RULE VII ALLOWABLE USES OF FUNDS (1) Funds distributed to a certified PSAP from the 9-1-1 systems account established by 10-4-304, MCA, may be used by the certified PSAP for 9-1-1 purposes, including any of the uses set forth in the department's list of allowable uses, adopted by reference in this rule, and effective December 11, 2017. The list is available on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

(2) If an item, a service, or personnel is or will also be used or employed for a purpose other than the 9-1-1 system, the department shall allocate funds based on the cost attributable only to the 9-1-1 system. A certified PSAP shall:

(a) advise the department that the item, service, or personnel is or will also be used or employed for a purpose other than the 9-1-1 system;

(b) calculate the cost of the item, service, or personnel that is attributable to the 9-1-1 system and provide the calculation and cost to the department; and

(c) provide information verifying the use and calculation upon request by the department.

(3) The department may approve additional uses of funds on a case-by-case basis upon request by a certified PSAP, provided that the use would clearly support operation, maintenance, or enhancement of the 9-1-1 system.

(4) A certified PSAP may further distribute funds to a local government entity or tribal government participating with the certified PSAP in the 9-1-1 system for any of the uses described in (1).

AUTH: 10-4-108, MCA
IMP: 10-4-107, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: The purpose of this rule is to identify allowable uses of funds paid from the 9-1-1 systems account. Under 10-4-107, MCA, the department is required to monitor the expenditure of funds and ensure payments are used only for 9-1-1 purposes. The department has developed a list of allowable uses of funds based on previous distributions to local government entities for 9-1-1 purposes. Because these allowable uses are already considered to be for 9-1-1 purposes, a local government entity can expend funds received from the 9-1-1 systems account for any of these identified uses. This rule informs interested persons about the list of allowable uses and how they can access the list.

NEW RULE VII implements and enforces the spending limitations in 10-4-107 and 10-4-305, MCA. Section (2) addresses the common situation where an item, a service, or personnel is used by a local government entity for more than one purpose. In such cases, the department believes reimbursement from the 9-1-1 systems account for the full amount of the expenditure is not permitted under Title 10, chapter 4, MCA, because distributions from the 9-1-1 systems account are limited to payments for 9-1-1 purposes under 10-4-107, MCA. Therefore, the proposed rule allows the local government entity to calculate and request a prorated reimbursement for the portion of the expenditure attributable to a 9-1-1 purpose.

Section (3) advises local government entities that they may also request approval for uses of funds for 9-1-1 purposes that are not identified on the list of allowable uses because some uses that have not previously been identified as allowable uses may be permissible under 10-4-107, MCA.

Section (4) clarifies that a local government entity that hosts a certified PSAP may distribute funds to other local government or tribal government entities participating in the 9-1-1 system with the local government entity that hosts the PSAP so long as the funds are ultimately used for an allowable expense. As described above, under 10-4-107, MCA, distributions from the 9-1-1 systems account can only be made for 9-1-1 purposes.

NEW RULE VIII REPORTING, MONITORING, AND RECORDKEEPING

(1) On or before April 1, a certified PSAP shall submit an annual report documenting the status of payments received by the certified PSAP from the 9-1-1 systems account in a form prescribed by the department. The annual report must document all transactions including distributions, expenditures, and the amount of any funds held in reserve directly attributable to payments received from the 9-1-1 systems account during the preceding years.

(2) The department shall monitor transactions to ensure payments received from the 9-1-1 systems account are used as provided in [NEW RULE VII]. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if funds are not used as provided in [NEW RULE VII].

(3) The department may audit transactions involving payments received from the 9-1-1 systems account and may request information and records necessary to

determine whether a certified PSAP is compliant with PSAP certification requirements.

(4) A certified PSAP shall keep and maintain records regarding all transactions involving payments received from the 9-1-1 systems account, including, at minimum, the following:

- (a) annual revenue and expenditure report(s);
- (b) general ledger report(s) (i.e., detailed ledger queries); and
- (c) supporting documentation (i.e., invoices) for each expenditure that verifies that an expenditure is allowable.

(5) A certified PSAP shall maintain the records described in (4) for a period of five years following the date of distribution or expenditure. The department may determine a certified PSAP is not in compliance with PSAP certification requirements if records are not kept and maintained as provided in this rule.

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-109, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: Under 10-4-107, MCA, the department is required to monitor expenditure of funds from the 9-1-1 systems account to ensure funds are used for 9-1-1 purposes. To fulfill this requirement, NEW RULE VIII describes the recordkeeping and reporting obligations of local government entities that host a certified PSAP and the department's duty to monitor PSAPs for compliance with the requirements of Title 10, chapter 4, MCA.

To facilitate monitoring, the department has proposed a requirement that certified PSAPs provide annual reports of expenditures and submit to audits. Although the department considered less frequent financial reports, local government entities were providing reports annually under prior law, and that has enabled the department to ensure funds were used for 9-1-1 purposes. The longer it takes for the department to become aware that funds have been misallocated, the more difficult it will be for local government entities to collect and repay the funds. The department does not expect to audit each annual report submitted by a local government entity every year, but the department will audit as needed to verify the information provided in annual reports and ensure local government entities are providing accurate information to the department.

The rule advises local government entities that they must keep records regarding the expenditure of funds received from the 9-1-1 systems account for a period of five years, which parallels existing record retention requirements.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail rsullivan@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

5. Don Harris, Department of Administration, has been designated to preside over and conduct this hearing.

6. The division 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Public Safety Communications Bureau rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Frank Garner, was contacted on September 1, 2017, by electronic mail, telephone, and United States Postal Service first class mail.

9. The department has determined that under 2-4-111, MCA, the proposed adoption of NEW RULES I through VIII will not significantly and directly affect small businesses.

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

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

Certified to the Secretary of State December 11, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XV and the repeal of) PROPOSED ADOPTION AND
ARM 4.6.401 through 4.6.404) REPEAL
pertaining to the Montana Pulse Crop)
Committee)

TO: All Concerned Persons

1. On January 11, 2018, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 8, 2018, to advise us of the nature of the accommodation that you need. Please contact Zach Coccoli, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442 or e-mail z.coccoli@mt.gov.

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

NEW RULE I COMMITTEE ORGANIZATION (1) The organization of the Montana Pulse Crop Committee has been sufficiently set out in Chapter 1 of this title.

AUTH: 2-4-201, 2-15-112, 80-1-102, 80-11-1003, MCA
IMP: 2-4-201, 2-15-112, 2-15-121, MCA

NEW RULE II PROCEDURAL RULES (1) The committee adopts and incorporates the Attorney General’s model procedural rules as stated in ARM 1.3.101 through 1.3.233 and the department’s public participation rules in ARM 4.2.201 through 4.2.204. A copy of the model rules may be obtained from the Montana Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201.

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 2-4-201, 2-4-202, MCA

NEW RULE III PUBLIC PARTICIPATION (1) Public participation is to be allowed to the fullest extent practicable and consistent with other requirements of state law and the rights and requirements of personal privacy. The purpose of this

rule is to provide transparency, aid in the responsiveness of the committee, and assist all concerned persons to better understand committee activities and funded programs. The following guidelines shall aid the committee in allowing for public participation relative to resources available and the nature of the issues involved:

(a) The committee shall provide and make accessible all informational materials including policy, programs and/or technical information to enable interested or affected parties to make informed and constructive contributions toward committee decisions. News releases and other publications may be used for this purpose as well as informational discussions and meetings with interested citizen groups.

(b) The committee shall make efforts to summarize complex technical materials for public and media use. Requests for such information shall be promptly addressed.

(c) The committee shall maintain a current list of interested persons and organizations including anyone who has requested inclusion on such a list for the distribution of information such as that listed in (1)(a) of this rule. The committee shall in addition notify any interested persons of any public hearing.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1002, 80-11-1003, 80-11-1004, 80-11-1005, 80-11-1008, MCA

NEW RULE IV AWARDING OF CONTRACT (1) Citizens shall have the opportunity for involvement in awarding of contracts and this shall be provided by observing the laws regarding awarding of contracts by public agencies. These laws require that any significant contracts be submitted to bid and public notice is through the invitation to bid.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1003, 80-11-1006, MCA

NEW RULE V COMMITTEE LIAISON (1) In addition to all other requirements the committee shall continue to maintain liaison with citizen organizations active in areas concerning committee responsibilities. This liaison will be on formal and informal basis through participation in their meetings and in their organizations.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1002, 80-11-1003, MCA

NEW RULE VI GRANTS (1) Grant applications for project funding must be received by the deadline set by the committee. The committee shall set at least one grant deadline per year. Consideration of a late grant application may occur if the committee agrees by unanimous vote.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1002, 80-11-1003, MCA

NEW RULE VII REVIEW AND EVALUATION (1) All applications shall be reviewed and evaluated for project type, funding requested, market need for the project, and whether the project is new or on-going.

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 80-11-1003, MCA

NEW RULE VIII COMMITTEE DETERMINATION (1) At the first meeting of the committee following the grant application deadline the projects to be funded for the following fiscal period are selected and the amount of grant funding will be determined.

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 80-11-1002, 80-11-1003, MCA

NEW RULE IX NOTIFICATION OF AWARDS (1) Grant applicants shall be notified within 60 days after the committee's budget meeting as to whether or not their application(s) have been granted. Applications shall also be notified of the amount to be funded for each approved project.

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 80-11-1002, 80-11-1003, MCA

NEW RULE X PERFORMANCE EVALUATION (1) The committee shall periodically evaluate all outstanding grant agreements for adequate and satisfactory financial control, accounting, and performance by grantee(s).

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 80-11-1003, MCA

NEW RULE XI MODIFICATION OR TERMINATION OF GRANTS (1) The committee may modify or terminate the funding of any grant if a determination is made that the grantee has not complied or cannot comply with a provision of the grant agreement. The committee shall notify the grantee in writing within 30 days of such determination of the reasons for the determination and the effective date of the modification or termination.

AUTH: 80-1-102, 80-11-1003, MCA
IMP: 80-11-1003, MCA

NEW RULE XII PROHIBITION ON INDIRECT PAYMENTS (1) In order to make sure funds are not used for prohibited purposes, indirect costs are not generally allowed as a part of a grant. If the committee chooses to make an exception of the rule, a unanimous vote is required and the percentage of indirect costs cannot be more than five percent.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1003, 80-11-1006, MCA

NEW RULE XIII PULSE ASSESSMENT AND REFUNDS (1) There shall be levied an assessment of one percent of the net receipts of pulse crops produced in Montana.

(2) All assessments are subject to refund provided the following criteria are met:

(a) Application for assessment refund shall be in writing on forms provided by the committee.

(i) Forms will be furnished upon application to the Montana Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201.

(b) Written application for refund of the pulse assessment must be submitted by the first seller of the pulse commodity or by an individual with the seller's power of attorney.

(c) Refund application forms shall be submitted 30 days after the date of first sale and no later than 90 days from the date of the first sale of pulse for which a refund is filed.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1003, 80-11-1004, 80-11-1005, 80-11-1006, 80-11-1007, 80-11-1008, MCA

NEW RULE XIV REQUIREMENTS FOR REPORTS (1) All monthly pulse merchandiser report forms shall be sent out from the Montana Pulse Crop Committee. Reports shall be completed and returned to the committee after being properly signed and sworn to every month. These reports shall be filed with the committee within 20 days after the close of the business for the month in which the report is being filed.

(2) Requests for past due reports shall be addressed in the following manner:

(a) First notice shall be a form letter from the Montana Pulse Crop Committee requesting submission of the past due reports within 10 days of the date of the letter.

(b) Second notice shall be a telephone call giving five additional days to submit the past due reports.

(c) Third and final notice shall be a visit from a Department of Agriculture inspector to collect the past due reports.

(d) Any person failing to produce the past due reports shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$500 upon conviction.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1001, 80-11-1002, 80-11-1003, 80-11-1004, 80-11-1005, 80-11-1006, 80-11-1007, 80-11-108, MCA

NEW RULE XV CORRECTION OF ERROR ON REPORTS (1) Checking of all reports for errors in the amount of pulses purchased, amount of assessment paid, failure to make payment of assessment on all first purchases of pulses, or lack of signature will be addressed in the following manner:

(a) A telephone call shall be made to the purchaser in attempt to correct the error.

(b) A corrected report shall be requested if the error cannot be corrected over the telephone.

(c) A visit by the Department of Agriculture inspector shall be made if the error cannot be corrected over the telephone and if a corrected report cannot be obtained.

(d) Any person failing to comply with the request for corrections will be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$500 upon conviction.

AUTH: 80-1-102, 80-11-1003, MCA

IMP: 80-11-1004, 80-11-1007, MCA

REASON: Senate Bill 285 (2017) created the Montana Pulse Crop Committee.

4. The department proposes to repeal the following rules:

4.6.401 MONTANA PULSE CROP ADVISORY COMMITTEE

AUTH: 80-11-504, MCA

IMP: 80-11-510, MCA

4.6.402 DEFINITIONS

AUTH: 80-11-504, MCA

IMP: 80-11-503, 80-11-515, MCA

4.6.403 ANNUAL PULSE CROP COMMODITY ASSESSMENT

AUTH: 80-11-504, MCA

IMP: 80-11-515, MCA

4.6.404 APPLICATIONS FOR PULSE CROP RESEARCH AND MARKETING PROJECT FUNDS

AUTH: 80-11-504, MCA

IMP: 80-11-511, MCA

REASON: Senate Bill 285 (2017) created the Montana Pulse Crop Committee, eliminating the need for the Montana Pulse Crop Advisory Committee.

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: Zach Coccoli, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail z.coccoli@mt.gov, and must be received no later than 5:00 p.m., January 22, 2018.

6. Zach Coccoli, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

8. 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 not significantly and directly impact small businesses.

/s/ Zach Coccoli
Zach Coccoli
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State December 11, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PROPOSED
4.6.301, 4.6.302, and 4.6.303) REPEAL
pertaining to the Montana Cherry)
Research and Development Program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On January 30, 2018, the Department of Agriculture proposes to repeal the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on January 19, 2018, to advise us of the nature of the accommodation that you need. Please contact Zach Coccoli, Department of Agriculture, PO Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail z.coccoli@mt.gov.

3. The department proposes to repeal the following rules:

4.6.301 MONTANA CHERRY ADVISORY COMMITTEE

AUTH: 80-11-504, MCA
IMP: 80-11-510, MCA

4.6.302 ANNUAL CHERRY COMMODITY ASSESSMENT-COLLECTION

AUTH: 80-11-504, MCA
IMP: 80-11-515, 80-11-516, MCA

4.6.303 APPLICATION FOR CHERRY RESEARCH AND MARKETING
PROJECT FUNDS

AUTH: 80-11-504, MCA
IMP: 80-11-511, MCA

REASON: The Montana Cherry Advisory Committee advised the director of the Montana Department of Agriculture to consider eliminating the Montana Cherry Research and Market Development Program at a meeting on April 21, 2017. A public hearing was held September 14, 2017 where input was received from approximately a dozen cherry producers. A referendum was mailed to all known Montana cherry producers on November 16, 2017. 69 ballots were received by the

Department of Agriculture. The final vote tally was 52-17 in favor of eliminating the Montana Cherry Research and Market Development Program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Zach Coccoli, Department of Agriculture, PO Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail z.coccoli@mt.gov, and must be received no later than 5:00 p.m., January 22, 2018.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Zach Coccoli at the above address no later than 5:00 p.m., January 22, 2018.

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

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

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

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

/s/ Zach Coccoli
Zach Coccoli
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State December 11, 2017.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 10.64.301 pertaining to school) AMENDMENT
bus requirements)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On January 19, 2018, the Board of Public Education proposes to amend the above-stated rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on January 8, 2018, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.64.301 SCHOOL BUS REQUIREMENTS (1) The Board of Public Education adopts and incorporates the Standards for School Buses in Montana – 2017 (as amended). A copy of this document is available from the Office of Public Instruction, Pupil Transportation Division, P.O. Box 202501, Helena, Montana 59620-2501 and is available at the following web address:
<http://opi.mt.gov/Leadership/Management-Operations/Legal-Division/Administrative-Rules-Notices-Standards>
http://opi.mt.gov/pdf/PupilTransport/17BusStandards_Proposed.pdf
(2) remains the same.

AUTH: 20-2-121, MCA
IMP: 20-10-111, MCA

4. REASON: The Board of Public Education adopted Standards for School Buses in Montana – 2017 with an effective date of October 14, 2017. Since that time, bus contractors and districts have been working to install the required crossing control arms. They have found that the crossing control arms are more expensive than what was originally quoted and there are ongoing maintenance concerns with the arms. For these reasons the board wishes to make this requirement permissive rather than mandatory. The Bus Standards have been amended to reflect this change.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., January 19, 2018.

6. 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 Peter Donovan at the above address no later than 5:00 p.m., January 8, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 41 persons based on the number of budgeting and fiscal districts in the State of Montana.

8. Peter Donovan has been designated to preside over and conduct this hearing.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 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 board.

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

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

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll
Board Chair
Board of Public Education

Certified to the Secretary of State December 11, 2017.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rule I under ARM Title 17, chapter 30,	)	ON PROPOSED ADOPTION
subchapter 6 pertaining to water quality)	
standards	)	(WATER QUALITY)

TO: All Concerned Persons

1. On January 26, 2018, at 10:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The board 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., January 19, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

NEW RULE I VARIANCE FROM STANDARD FOR WATER BODY
CONDITIONS

(1) The department may grant to a permittee a variance from a water quality standard if the department determines in writing that:

- (a) the standard is more stringent than the quality of the receiving water;
- (b) the condition in (a) exists because of anthropogenic contributions of the pollutant to the water body;
- (c) the condition in (a) cannot reasonably be expected to be remediated during the permit term for which the variance is sought;
- (d) the discharge to which the variance would apply would not materially contribute to the condition in (a); and
- (e) one of the demonstrations provided at 40 CFR 131.14(b)(2)(i)(A)(1), which is by this reference adopted and incorporated into this rule, applies.

(2) To obtain a variance, a permittee shall submit to the department an application that:

- (a) identifies the pollutant for which the variance is sought;
- (b) identifies the permittee by name, address, and telephone number;
- (c) identifies the receiving water body;
- (d) demonstrates to the department's satisfaction that the requirements of (1) are met; and
- (e) proposes, with supporting documentation, a variance level that is:
 - (i) the highest attainable interim standard in the receiving stream;
 - (ii) the interim effluent condition that reflects the greatest pollutant reduction that is achievable; or

(iii) if no additional feasible pollutant control technology can be identified, the interim standard or effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the variance is submitted. For a variance under this paragraph (2)(e)(iii), the permittee shall prepare and implement a pollutant minimization plan that contains a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

(3) The department shall review each application to determine whether a reasonable alternative is in place that would eliminate the need for the variance, including:

- (a) a permit compliance schedule;
- (b) reuse;
- (c) a TMDL for the pollutant where the permittee is meeting the established waste load allocation; or
- (d) other department actions.

(4) If the department makes a preliminary finding that a reasonable alternative to approving a variance is available, the department shall consult with the applicant prior to making a decision regarding the variance.

(5) If the department determines that no reasonable alternative to a variance exists, the department shall determine whether the information provided by the applicant meets the requirements of (1) and (2). If the department finds that the requirements of (1) and (2) are met, and that a variance is needed, the department shall approve the variance after conducting a hearing following no less than 45 days' notice to the public. All written or oral public comments related to the variance shall be presented to the department during this public comment period.

(6) Within 30 days after approval of the variance, the department shall submit the variance and any supporting documentation and analysis to EPA. The variance is not approved for federal Clean Water Act purposes until EPA notifies the department that the variance complies with the federal Clean Water Act, 33 USC 1251, et seq.

(7) The variance may be used to develop MPDES permit limits. A permit incorporating a variance issued by the department under this rule is subject to ARM Title 17, chapter 30, subchapter 13. The department shall review the variance five years from the date the department issues a final discharge permit incorporating the variance.

(8) The variance must be reviewed by the department every five years to reevaluate the conditions in (2)(e). Based on this review, the department may terminate, continue, or modify the variance. In order to continue or modify the variance, the permittee shall provide information demonstrating compliance with (1) and (2). In cases where water quality in the receiving stream has improved during the term of the variance, DEQ shall consider the ambient upstream condition of the waterbody, as characterized for the previous two years, in determining an appropriate variance level under (2)(e).

(9) Based on the review conducted under (8), the department may approve the variance, with any modifications after public comment and public hearing under (5). Within 30 days after department approval of the variance, the department shall submit the variance and any supporting analysis to EPA. The variance is not

approved for federal Clean Water Act purposes until EPA notifies the department that the variance complies with the federal Clean Water Act, 33 USC 1251, et seq.

(10) A copy of 40 CFR 131.14(b)(2)(i)(A)(1) may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59601-0901.

AUTH: 75-5-222, MCA

IMP: 75-5-222, MCA

REASON: The new rule is necessary to fulfill the requirements of 75-5-222(2), MCA. This statute provides that if pollution upstream of a discharger is due to anthropogenic sources, a variance from the applicable standards may be appropriate under certain conditions. It also requires rulemaking to implement the statute. The statute codifies Senate Bill 325, introduced in the 2015 Montana Legislature. This statute was directed at focusing water quality remediation efforts toward the primary pollution contributors, often historic mining, instead of less significant Montana Pollutant Discharge Elimination System dischargers, such as publicly owned treatment works, until the upstream source is remediated and water conditions improve.

The new rule sets forth the conditions under which a permittee may apply for a variance from water quality standards. The first and second sections of the rule highlight specific requirements of the statute and federal regulations, which provide criteria and procedures for the department to issue variances from water quality standards. The federal regulations for variances from water quality standards are at 40 CFR 131.14. Section 75-5-222(2), MCA, requires the board to adopt standards that are consistent with comparable federal regulations. It is necessary to include these details in the rule to provide transparency and clear direction to potential variance applicants.

Sections (3) and (4) of New Rule I direct the department to review applications for variances to ensure that other mechanisms (such as total maximum daily loads) are not already in place that would preclude the need for a variance. These alternative mechanisms would not limit the ability of a permittee to apply for a variance; however, due to the time and expense necessary to establish and implement a variance, the board wants to ensure applicants are aware of other available options that may more effectively and efficiently satisfy the need for the variance.

Section (5) of New Rule I is necessary to ensure consistency in the department's review and approval of variances issued under this rule. Because variances are exceptions to water quality standards, section (6) clarifies that each individual variance must be approved by the EPA before it may be implemented for Clean Water Act purposes. In order to be consistent with 75-5-222(2)(b), MCA, section (7) specifies that variances will be reviewed after five years.

Section (8) outlines requirements for periodic review of the variance. The five year review period aligns with requirements in 75-5-222(2)(b), MCA. The specific guidelines for renewal and modification are necessary to provide transparency to permittees and consistency in the department's review. Another important aspect of section (8) is that the permittee's variance must, through time, align with improving water quality. As water quality improves as a result of upstream remediation, the

treatment requirements under the variance become more stringent in consideration of the improved water quality upstream of the permittee. This is necessary to meet the requirements of the Water Quality Act to maintain and improve water quality.

Section (9) states that renewals and modifications of the variance are subject to the same review and approval as the initial variance. This requirement is included for consistency and transparency.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., February 9, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by the department in person on March 7, 2017.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chairman

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

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 23.2.205 and repeal of ARM	)	AMENDMENT AND REPEAL
23.12.1415 pertaining to investigative)	
complaint review and a student's	)	NO PUBLIC HEARING
ranking at the Montana Law	)	CONTEMPLATED
Enforcement Academy)	

TO: All Concerned Persons

1. The Department of Justice proposes to amend and repeal the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Justice no later than 5:00 p.m. on January 5, 2018, to advise us of the nature of the accommodation that you need. Please contact David M. Ortleby, Department of Justice, MLEA, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9952; fax (406) 444-9977; or e-mail david.ortley@mt.gov.

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

23.2.205 COMPLAINT REVIEW (1) Whenever a law enforcement agency concludes that a state agency has actively conducted an investigation within their jurisdiction without proper notification, a written complaint may be forwarded to the attorney general ~~for referral to the law enforcement advisory council~~. Whenever a complaint is received, the attorney general or a designated representative will request a written response from the agency involved in the complaint. The attorney general or a designated representative ~~law enforcement advisory council~~ will review the response, determine if the action constituted a violation of investigative protocol, ~~and advise the attorney general.~~ and

~~(2) If the advisory council determines there has been a violation of investigative protocol, the attorney general or a designated representative shall act to ensure future compliance with the administrative rules.~~

AUTH: 2-15-112, MCA
IMP: 44-2-115, MCA

REASON: The law enforcement advisory council is an informal group of advisors to the attorney general. The council is not mandated by law. As a practical matter the attorney general, or the attorney general's designee, reviews and resolves allegations stemming from alleged violations of the Department of Justice

investigative protocol. The department has determined that referral of written complaints, which are infrequent, to the advisory council unnecessarily complicates the investigative process and results in a duplication of effort. The added layer of bureaucracy results in delay and additional cost without furthering the process intended by the rule.

4. The department proposes to repeal the following rule:

23.12.1415 STUDENT'S FINAL RANKING IN THE BASIC COURSE CLASS

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

REASON: The administrator and training staff of the Montana Law Enforcement Academy have determined that the final ranking of students in the basic law enforcement officer course serves no legitimate educational purpose and does not otherwise motivate students. The overwhelming majority of students attending the Academy are enrolled by law enforcement agencies by whom the peace officer has been hired. Any student's academic record is available to future employers upon request and receipt of an appropriate release. Outstanding performance while attending the Academy is recognized through awards presented at graduation in several categories, including academics.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: David M. Ortley, Department of Justice, MLEA, 2260 Sierra Road East, Helena, Montana 59602; telephone (406) 444-9952; fax (406) 444-9977; or e-mail david.ortley@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to David M. Ortley at the above address no later than 5:00 p.m., January 19, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 14 persons based on 146 agencies whose officers attend MLEA and are certified by the Peace Officers Standards and Training Board (POST).

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

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

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

Certified to the Secretary of State December 11, 2017.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I, pertaining to the value of) PROPOSED ADOPTION
housing furnished by an employer for)
workers' compensation purposes)

TO: All Concerned Persons

1. On January 12, 2018, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the basement auditorium of the Sanders Building (DPHHS), 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 8, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6451; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JSwant@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I VALUE OF EMPLOYER-FURNISHED HOUSING (1) For the purposes of this rule, the following definitions apply:

(a) "Agricultural employer" means an employer whose operations are assigned to an agricultural classification code for workers' compensation purposes. The term is intended to be consistent with the definition of agriculture provided by 15-1-101, MCA.

(b) "Bedroom" means a room in a dwelling that is primarily used for sleeping.

(c) "Dwelling" means a building equipped for human habitation.

(d) "Zero bedrooms" means a dwelling that is an efficiency, dormitory, or a bunkhouse.

(2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana as specified in the publication entitled "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates."

(a) The publication is available online via the department's website, <http://erd.dli.mt.gov>.

(b) A printed copy of the publication is available to the public at no cost, upon request to the department's employment relations division.

(3) In recognition of Montana's rural nature and expansive landscape, and the fact that housing supplied by an agricultural employer is likely to be remotely situated and distant from communities with an established rental housing market,

housing furnished by an agricultural employer is discounted by 50% of the fair rental value for housing established in (2) of this rule, for the county in which the dwelling is located.

(4) If an individual is not currently using the room for sleeping, it is not considered a bedroom for the purpose of this rule.

(5) The provisions of this rule apply to housing furnished any worker.

AUTH: 39-71-203, MCA

IMP: 39-71-123, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt a rule to implement the provisions of Chap. 339, L. of 2017 (House Bill 449), so as to provide insurers, employers, and employees with reasonable certainty of the value (for workers' compensation insurance purposes) of housing furnished by the employer to an employee.

The department considered a variety of approaches to creating the rule, including setting values based on rental rates in the nearest community in which there is significant retail shopping, discounted by a mileage factor, based on the distance from the housing location to that community. A discount factor based on the number of miles of paved roads, and another discount factor based on the number of unpaved roads was considered. The actual mileage approach was rejected as being too complicated, requiring too much effort to calculate, and more likely to lead to factual disputes regarding the route selected. A similar approach regarding mileage to the county seat was also rejected for the same reasons.

The department selected the fair market rental rates used for Section 8 housing allowances for each county in Montana, which are set based by surveys by the U.S. Department of Housing and Urban Development for dwellings of various sizes, as an objective rental rate for housing in the county where the dwelling is located. The bill was brought by the sponsor to address the specific concerns of rural agricultural employers. In recognition of the rural nature of Montana's agricultural employers, and the increased likelihood of such employers having operations a long way from the county seat, the department has proposed an agricultural discount. Use of a single discount rate allows for simple calculation of the value which all parties can readily determine.

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 Department of Labor and Industry, Attn: Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; or e-mail JSwant@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

5. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the

notice, as published in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled on July 17, 2017, via telephone.

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

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 11, 2017.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.101.413 renewal dates and) PROPOSED AMENDMENT AND
requirements, 24.189.601 psychologist) ADOPTION
application procedures, 24.189.604)
minimum standards, 24.189.610 work)
samples - examination, 24.189.630)
licensure as a psychologist by)
experience (senior), and the adoption of)
New Rule I nonroutine psychologist)
applications, and New Rule II)
nonroutine behavior analyst or assistant)
behavior analyst applications)

TO: All Concerned Persons

1. On January 12, 2018, at 11:00 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 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 no later than 5:00 p.m., on January 5, 2018, 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 dlilbdspsy@mt.gov (board's e-mail).

3. The department proposes to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS

(1) through (5)(ad) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ae)	Psychologists	Psychologist	Annually	December 31
		<u>Behavior Analyst</u>	<u>Annually</u>	<u>December 31</u>
		<u>Assistant Behavior Analyst</u>	<u>Annually</u>	<u>December 31</u>

(af) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The 2017 Montana Legislature enacted Senate Bill 193, an act creating licensure and regulation for certain behavior analysts and providing rulemaking authority for the board to implement the bill. When the board initially implemented the bill in a rulemaking project this summer, the two types of behavior analyst licensees were inadvertently omitted from this department renewal rule. The department is now adding the two new license types to this rule that sets forth renewal dates and requirements for all licensing types.

4. The board proposes to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.189.601 PSYCHOLOGIST APPLICATION PROCEDURES (1) through (2)(d) remain the same.
(e) a copy of a self-query of the National Practitioner Data Bank; and
~~(f) completed reference forms from a minimum of three references attesting to the applicant's good moral character; and~~
(g) remains the same but is renumbered (f).
~~(3) Reference forms must be from people familiar with the quality of the applicant's education and work experience. The references must be licensed psychologists.~~
(4) through (6) remain the same but are renumbered (3) through (5).

AUTH: 37-1-131, 37-17-202, MCA
IMP: ~~37-1-101~~, 37-1-131, 37-17-302, MCA

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

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

24.189.604 MINIMUM STANDARDS (1) and (2) remain the same.
(3) If the applicant is applying based on 37-17-302(3)(c), MCA, the applicant's course of studies must meet the minimum standards specified in this rule. The course of studies must be assessed by a board-approved evaluator. The board shall consider, but is not bound by, the recommendation of the ~~Association of State and Provincial Psychology Boards~~ board-approved evaluator when determining whether the course of studies meets minimum standards. A fee may be required by the evaluator and shall be paid by the applicant to the evaluator.
(4) remains the same.

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA
IMP: 37-1-131, 37-17-302, MCA

REASON: Earlier this year in MAR Notice No. 24-189-36, the board amended (3) to allow assessment by any evaluator approved by the board, while removing the Association of State and Provincial Psychology Boards (ASPPB) as the only board-approved evaluator. At that time, the board should have amended (3) further to strike the second reference to the ASPPB, but this was inadvertently missed.

24.189.610 WORK SAMPLES - EXAMINATION (1) through (2)(b) remain the same.

(c) The computerized national examination must be passed before an applicant may be made eligible to take the oral examination.

(3) through (5) remain the same.

(6) Applicants who fail the computerized examination will be required to retake ~~both the computerized and oral examinations~~ examination. Applicants failing the oral examination once will only be required to retake the oral examination. Applicants who fail the computerized or oral examinations twice shall, in addition to being retested, file in advance a plan that must be preapproved by the board and must include a time period for securing further professional training and experience. The license applicant is then obligated to complete the preapproved plan prior to being authorized to take the examination or to being licensed.

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-1-131, 37-17-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address questions from psychologist applicants, board members, and staff and set a clear pathway for licensure. While staff has encouraged applicants to take the computerized exam first, the board concluded that establishing the requirement in rule will help ensure consistency in application processing, and streamline the process by simplifying staff resources required to track and manage examination eligibility.

24.189.630 LICENSURE AS A PSYCHOLOGIST BY EXPERIENCE (SENIOR) (1) through (1)(d) remain the same.

(e) submits a complete application form with the proper fees at least 90 days in advance of the April or October examination dates. Such application will include work samples ~~and reference letters~~ as described in ARM 24.189.601;

(f) remains the same.

AUTH: 37-17-202, MCA
IMP: ~~37-17-307~~, 37-17-310, MCA

REASON: See REASON for ARM 24.189.601 in this notice. Implementation citations are being amended to delete reference to a repealed statute.

5. The board proposes to adopt the following new rules:

NEW RULE I NONROUTINE PSYCHOLOGIST APPLICATIONS

(1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

(a) the applicant has a prior felony conviction. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;

(c) any of the applicant's occupational or professional licenses have been disciplined or an application for any occupational or professional license was denied in this state, another state, or jurisdiction;

(d) the applicant voluntarily or involuntarily surrendered an occupational or professional license in this state, another state, or jurisdiction;

(e) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(f) the applicant has been a respondent in a complaint for unlicensed practice of psychology in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action;

(g) the applicant has addiction issues, including active or previous alcohol and/or drug abuse, and treatment for the same;

(h) the applicant has not been active in the profession of psychology for the preceding three years or more; or

(i) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

IMP: 37-1-101, 37-1-131, 37-17-302, MCA

REASON: It is reasonably necessary to adopt NEW RULES I and II to further implement 37-1-101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board had previously considered all applications as nonroutine, these new rules will provide licensing staff the necessary clarification and board guidance on differentiating between routine and nonroutine applications. The board is adopting these rules to further streamline application processing by reducing the number of applications that need board review before issuance.

NEW RULE II NONROUTINE BEHAVIOR ANALYST OR ASSISTANT BEHAVIOR ANALYST APPLICATIONS

(1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has a prior felony conviction. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;
- (b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for any occupational or professional license was denied in this state, another state, or jurisdiction;
- (d) the applicant voluntarily or involuntarily surrendered an occupational or professional license in this state, another state, or jurisdiction;
- (e) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;
- (f) the applicant has been a respondent in a complaint for unlicensed practice of behavior analysis in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action;
- (g) the applicant has addiction issues, including active or previous alcohol and/or drug abuse, and treatment for the same;
- (h) the applicant has not been active in the profession of behavior analysis for the preceding three years or more; or
- (i) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-17-406, MCA

IMP: 37-1-101, 37-1-131, 37-17-403, 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., January 19, 2018.

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, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.601, 24.189.604, 24.189.610, and 24.189.630 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 and II will not significantly and directly impact small businesses.

Documentation of the department and 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 MURPHY, Ph.D., CHAIRPERSON

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

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

Certified to the Secretary of State December 11, 2017.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.210.301 definitions,	)	PROPOSED AMENDMENT
24.210.401 fee schedule, 24.210.426)	
trust account requirements, 24.210.601)	
general license administration)	
requirements, 24.210.624 inactive)	
licenses, 24.210.625 inactive to active)	
license status, 24.210.635 renewals,)	
24.210.641 unprofessional conduct,)	
24.210.646 disciplinary guidelines --)	
public notice, 24.210.805 property)	
management trust account)	
requirements, 24.210.827 inactive)	
status, and 24.210.828 unprofessional)	
conduct for property management)	
licensees)	

TO: All Concerned Persons

1. On January 12, 2018, 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 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 Realty Regulation (board) no later than 5:00 p.m., on January 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrre@mt.gov (board's e-mail).

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

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and unless the context otherwise requires, the following meanings shall also apply:

(1) through (6) remain the same.

~~(7) "Cancellation" is the period of time following the release of the salesperson license from the supervising broker, and prior to transfer of the license to another broker, or placed on inactive status.~~

(8) through (11) remain the same but are renumbered (7) through (10).

(11) "Designated property manager" is a property manager who has been designated by other property managers of a property management company to be the property manager with the authority for the maintenance of a trust account.

(12) through (20) remain the same.

(21) "Maintenance service" means any entity hired to perform repairs or maintenance on the property.

(22) "Personal funds" means funds other than trust funds, which belong to the licensee or the property management business. Uses may include, but are not limited to:

(a) trust account maintenance;

(b) financial institution fees;

(c) designated interest earnings; and

(d) purchasing checks.

(23) "Personal indebtedness" means the licensee's personal expenses or expenses of the property management business debited from a trust account, including, but not limited to:

(a) personal bills or expenses;

(b) recreational expenditures;

(c) personnel wages, benefits, and incentives; and

(d) business operating expenses.

(21) remains the same but is renumbered (24).

(22) (25) "Residential property" shall include real estate having four or less units that are principally used for, or capable and intended for use as, residences, and any single unit in a group of units when transferred as a single unit. The term of occupancy must be greater than 30 days to be considered residential.

(23) through (29) remain the same but are renumbered (26) through (32).

AUTH: 37-1-131, 37-51-203, MCA

IMP: ~~37-1-401~~, 37-1-131, 37-1-136, 37-51-103, ~~37-51-202~~, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is striking (7) to remove the term and reflect current licensure terminology.

In conjunction with amendments to trust account and unprofessional conduct rules in this notice, the board is adding (11), (21), (22), and (23) to clearly define terms utilized in the amended rules.

After auditing several property managers who manage vacation rentals, the board's trust account auditor requested clarification on these rentals. The board determined that vacation rentals are not residential in nature and more like hotels and other public accommodations. The board is amending (25) to clarify this definition.

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

24.210.401 FEE SCHEDULE (1) through (7) remain the same.

(8) Broker change of place of business or each salesperson	
change of broker or transfer of cancelled license	80
<u>(8) Change of salesperson supervising broker:</u>	
<u>(a) submitted via paper change form</u>	<u>40</u>
<u>(b) submitted online</u>	<u>no fee</u>
(9) through (11) remain the same.	
(12) Placing active or cancelled license on inactive status	20
(13) through (18) remain the same.	
(19) Predetermination, equivalency , or waiver application fee	87.50
(20) through (24) remain the same.	

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-207, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-308, 37-51-309, 37-51-311, 37-51-502, MCA

REASON: The Legislative Audit Division conducted a performance audit of the Board of Realty Regulation, Licensing Real Estate Professionals, in January 2016. Audit recommendations included an online method for changing supervising broker relationships and the department implemented the necessary programming. The board is amending this rule to eliminate the fee for supervisors who will make these changes online and require no staff assistance. The board is retaining the fee for salesperson changes done using a paper form, but is reducing the fee to \$40. The board estimates these changes will affect approximately 159 licensees who will continue to utilize paper change forms, and reduce annual revenue by \$44,600.

The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is amending (12) to remove the term and reflect current licensure terminology.

The board's 2016 performance audit found that the equivalency application was rarely used, but added unnecessary costs to the license process, and recommended its elimination. The board repealed ARM 24.210.615 in a prior 2017 rulemaking project, but inadvertently missed striking the reference in (19).

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

24.210.426 TRUST ACCOUNT REQUIREMENTS ~~(1) Offices or firms having more than one broker may utilize a single trust account.~~

~~(2) The broker will not be disciplined for a negative account balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.~~

~~(3) A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these~~

~~trust account requirements whether by the delegating broker or the designated broker.~~

~~(4) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed.~~

(1) A broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by a broker, a broker's salesperson, or funds received by a broker as a designated broker pursuant to (3)(c) on behalf of customers or clients. Brokers who have delegated authority for maintenance of a trust account are required to review the records maintained by the designated broker to ensure compliance with these rules.

(2) All licensees shall ensure that all trust funds which the licensee receives are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of receipt of the money, unless otherwise agreed to by the parties. If funds are delivered to a third party, the licensee must obtain documentation of receipt by the third party. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.

~~(5) (3)~~ If a broker elects to hold trust funds, the broker must comply with the following:

(a) Offices or firms having more than one broker may utilize a single trust account;

(b) A broker may maintain more than one trust account, but each trust account must be maintained separately;

(c) A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these trust account requirements whether by the delegating broker or the designated broker;

(a) (d) All monies, belonging to others and accepted by the broker while acting in the capacity as a broker, shall be deposited in an insured account at an institution located in Montana and identified by the words "trust account." Trust funds must be liquid and may not be maintained in sweep accounts, invested in certificates of deposit or repurchase agreements, or any other method which places trust funds at risk. The broker must account for trust funds at all times;

(b) The name of such account shall be identified by the words "trust account";

(e) Trust funds may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by written agreement. Interest payable to the broker shall be identified by written agreement as consideration for services performed and will be considered personal funds unless otherwise designated;

(e) (f) Trust funds shall be retained in this trust account until the transaction involved is closed or terminated; however,

~~(d) However, trust funds may be disbursed to the closing agent in anticipation of closing upon written agreement of the buyers and sellers. The broker must account for trust account funds at all times;~~

~~(e) (g)~~ At the client's written instructions, trust funds which would otherwise be due and payable from a trust account may be retained in the trust account although there is no purchase, lease, or rental agreement in existence, or when the transaction has been terminated;

~~(f) No payments of personal indebtedness of the broker shall be made from a trust account or trust funds;~~

~~(g) (h)~~ Money held in the trust account, which is due and payable to the broker, must be withdrawn within ten business days after such money becomes due and payable to the broker. Money not withdrawn from the trust account within the ten business days is subject to the personal funds limitations. However, the money may not be withdrawn until the financial institution has indicated that deposit has been verified and the funds are available;

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

~~(i) No payments of personal indebtedness shall be made from a trust account or trust funds;~~

~~(k)~~ The broker will not be disciplined for a negative account or ledger balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available;

~~(l) (l)~~ Maintenance of a each individual trust account shall include the broker or designated broker, keeping at the broker or designated broker's office, a complete record of all funds received and disbursed in the following manner:

~~(i)~~ proof of deposit showing the date of deposit or electronic transfer, amount, source of the money, and where deposited;

~~(ii)~~ remains the same.

~~(iii)~~ disbursement of trust funds shall be made by either check or electronic transfer. If checks are used, trust account checks shall be numbered and all voided checks recorded. The checks shall denote the broker's business name, and address, and should must be designated as "trust account";

~~(iv)~~ remains the same.

~~(v)~~ for funds received, the record must include the date the funds are deposited, the name of the party who is giving the money, the name of the principal, and the amount;

~~(vi)~~ for disbursements, the record must include the date the funds are disbursed, the name of the, each payee, the name of the principal, and the amount;

~~(vii)~~ and ~~(viii)~~ remain the same.

~~(j)~~ and ~~(k)~~ remain the same but are renumbered (m) and (n).

~~(l) The board is authorized to examine each broker's trust account and related real estate documents. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative; and~~

~~(m) (o)~~ A salesperson or a broker who has delegated the broker's obligation to maintain a trust account to a designated broker pursuant to (4) (c), shall place all funds for deposit in the custody of the supervising or designated broker in adequate

time for the supervising or designated broker to comply with all trust account requirements.;

~~(6) (p) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in said trust account, with the exception that a A broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker.;~~

~~(i) Personal personal funds may be distributed to the broker or the financial institution for payment of trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager; and~~

~~(ii) If if personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When depositing funds, the date of the deposit, the source of funds, and the amount must be shown. When disbursing funds, the date of the disbursement, the name of the payee, and the amount must be shown. A running balance must be shown after each entry.;~~

~~(g) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in the trust account; and~~

~~(7) A broker may maintain more than one trust account.~~

~~(8) All licensees shall ensure that all trust funds which they receive are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of receipt of the money, unless otherwise agreed to by the parties. If funds are delivered to a designated holder, the licensee must obtain documentation of receipt by the designated holder. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.~~

~~(9) The broker is responsible at all times for the proper handling of earnest money, security deposits, or other funds received by the broker, the broker's salesperson, or funds received by the broker as a designated broker pursuant to (1) on behalf of customers or clients.~~

~~(10) remains the same but is renumbered (r).~~

~~(4) The board is authorized to examine each broker's trust account and related real estate documents. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative.~~

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: ~~37-1-131, 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, 37-51-324, 37-51-503, MCA~~

REASON: Following an increase in the number of complaints based on trust account audits, the board's screening panel requested the board review and amend the rules for better organization and clarity, and consider requiring additional

education on trust accounting. Department staff conducted a thorough review of the trust accounting rules and presented the board with recommendations for amendments. Additional trust account education for property managers was implemented in a prior rulemaking project in 2017. The board is amending and reorganizing this rule and ARM 24.210.805 to implement the rest of the recommendations and address the concerns of staff and the screening panel. Additionally, while none of the requirements are new, several of them were never stated in rule.

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

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (3) remain the same.

(4) A salesperson shall not practice without being associated with a supervising broker. A salesperson whose license has been cancelled because of ~~termination of association with their supervising broker~~ has been terminated, must properly notify the board of any new supervising broker relationship, or the desire to place the license on inactive status and pay all required fees within ten days of the board receiving the termination of association. A licensee shall not practice with an inactive license.

~~(5) A licensee shall not practice with a cancelled license. A license shall remain cancelled until transferred to a new supervising broker or placed on inactive status.~~

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

(a) through (e) remain the same.

(f) Temporary transfers of supervision may be extended beyond the effective termination date subject to the limitation of ~~(16)(c)~~.

(g) remains the same.

(18) remains the same but is renumbered (17).

(a) and (b) remain the same.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ~~(17)~~ (16). However, the authorization set forth in ~~(17)(a)~~ (16)(a) shall not be required.

(19) remains the same but is renumbered (18).

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-301, 37-51-305, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (4) and striking (5) to remove the term while clarifying current standards regarding when licensees may not practice.

24.210.624 INACTIVE LICENSES (1) A licensed broker or salesperson not engaged in licensed activities may place the licensee's license on inactive status by: completing the change form requesting that the license be placed inactive and

~~(a) paying the required fee in accordance with ARM 24.210.401;~~
~~(b) forwarding the license to the board office for cancellation of the active license; and~~

~~(c) submitting a written request that the license be placed inactive.~~
(d) A salesperson must also forward a release from the salesperson's supervising broker.

(2) through (4) remain the same.

(5) An inactive licensee may not receive compensation for real estate activity ~~not earned~~ except for compensation that was earned while the license was active or payments made to an inactive licensee as the seller of a real estate brokerage business.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (1) to remove the term and reflect current processes for inactive status licensure.

The board determined it is reasonably necessary to amend (5) and clarify when inactive licensees can receive compensation based on suggestions from licensees and industry members. When transactions take many months to close and a licensee has moved to inactive status during that time, the licensee is still due the earned commission.

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

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS (1) remains the same.

~~(a) file a change of address application request to move to an active status via the board-provided change form;~~

~~(b) provide evidence of completing 24 hours of continuing education within the preceding 24 months demonstrate completed continuing education that would have been required if on active status not to exceed 24 credits; and~~

(c) remains the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-204, ~~37-51-302, 37-51-308, 37-51-311~~, MCA

REASON: The board is updating (1)(a) to express current standardized processes and terminology, as there is no application for changing addresses.

The board determined it is reasonably necessary to amend (1)(b) to address licensee questions and confusion among licensing staff regarding the CE required to change from inactive to active licensure.

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

24.210.635 RENEWALS (1) remains the same.

~~(2) Renewal notices will be sent as specified in ARM 24.101.414. Active salesperson licensee renewals will be sent to the address of the salesperson's broker of record. Inactive licensee renewals will be sent to the licensee's address of record on file with the board. Each licensee is All licensees, including inactive licensees, are required to renew or the license will lapse, expire, or terminate per 37-1-141, MCA.~~

~~(3) A cancelled salesperson license may not be renewed. The license must be placed on inactive status or transferred to a supervising broker before it can be renewed.~~

(4) through (6) remain the same but are renumbered (3) through (5).

AUTH: 37-1-131, ~~37-1-319~~, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, ~~37-1-319~~, 37-51-202, ~~37-51-309~~, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating this rule to remove the term and reflect current renewal processes.

The board is striking (3) to align with proposed amendments to ARM 24.210.601 elsewhere in this notice.

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

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(b) remain the same.

(c) engaging the services of any attorney, title company, appraiser, escrow agent, insurance agent, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(d) engaging or recommending the services of an attorney, title company, appraiser, escrow agent, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or real estate agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(e) through (ae) remain the same.

(af) paying a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to any principals, ~~or~~ reducing the commission owed

by any principals, or payments made to the seller of a real estate brokerage business even if the seller is no longer a licensee is not considered payment of a commission to an unlicensed person;

(ag) through (ak) remain the same.

(al) engaging in or conducting business as a real estate licensee, or advertising as a real estate licensee, or conducting the business of a real estate licensee at a time when the licensee's real estate license has expired, ~~is cancelled~~, or is on inactive status;

(am) through (ao) remain the same.

(ap) acting as a dual agent in a transaction without a written agreement from each principal;

(ap) through (ay) remain the same but are renumbered (aq) through (az).

(6) and (7) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-137, 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-301, 37-51-302, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, 37-51-503, 37-51-508, 37-51-512, MCA

REASON: The board is amending (5)(c) and (d) of this rule, and ARM 24.210.828 to address concerns of the board's screening panel and trust account auditor. Noting that an increasing number of brokers and property managers also own maintenance companies, the board concluded that the public trust is better ensured when this ownership is disclosed and is amending the rules to establish such nondisclosure as unprofessional conduct.

The board determined it is reasonably necessary to address questions from licensees and industry members by clarifying the guidelines for commission payments as unprofessional conduct. Noting that many retiring licensees structure the sale of their businesses in this manner, the board is amending (5)(af) to address an increasing number of inquiries to the executive officer.

The board is amending (5)(al) to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is removing the term from the rule.

The board is adding (5)(ap) to provide clarification requested by both attorneys and the auditor, after several audits demonstrated that dual agents did not have the proper paperwork in place. The board has traditionally required that dual agents have written agreements with both parties, but it was not explicitly stated in the rules. Additionally, 37-51-313, MCA, requires that agents comply with the terms established in the buyer broker agreement and the listing agreement, and that dual agents are obligated to the seller/buyer in the same manner as a seller/buyer agent, but the board received several complaints where agents were acting as dual agents without written agreements. The board concluded that it is reasonably necessary to add this section to address the increase in dual agency complaints and better protect the public.

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

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE (1) through (2)(b) remain the same.

~~(c) suspension of the right to practice for a period not exceeding one year;~~
(d) through (i) remain the same but are renumbered (c) through (h).
(3) and (4) remain the same.

AUTH: 37-1-131, 37-1-136, ~~37-1-319~~, 37-51-203, MCA

IMP: 2-4-623, 37-1-136, 37-1-312, ~~37-1-319, 37-51-202~~, 37-51-321, MCA

REASON: During a review of the rules, board attorneys noted that this provision may unnecessarily limit the board's ability to suspend a license as part of the disciplinary process. Per 37-1-312, MCA, the board is authorized to impose either indefinite or fixed-term suspensions. The board concluded that it is reasonably necessary to strike this limitation to ensure the board's ability to utilize adequate suspension as a disciplinary sanction.

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

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) Each property manager will maintain a trust account ~~which will be designated by the words "trust account,"~~ wherein all deposits, rent payments, or other trust funds received by the property manager, on behalf of any other person, shall be deposited. ~~Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, third party, or any other person as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account. Property managers must maintain all required ledgers for each trust account.~~

(a) Offices or firms having more than one property manager may utilize a single trust account.

(b) A property manager may maintain more than one trust account, but each trust account must be maintained separately.

(2) The trust account must be readily accessible, insured in a financial institution located in Montana, and identified by the words "trust account." All monies, belonging to others and accepted by the property manager, shall be deposited in an insured account at an institution located in Montana, and identified by the words "trust account." Trust funds must be liquid and may not be maintained in sweep accounts, invested in certificates of deposit or repurchase agreements, or any other method which places trust funds at risk. The property manager must account for trust funds at all times.

(3) Trust funds may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, third-party, or any other person, as may be designated by written agreement. Interest payable to the property

manager shall be identified by written agreement as consideration for services performed and will be considered personal funds unless otherwise designated.

(4) Maintenance of the trust account is the responsibility of the property manager.

(a) A property manager may delegate authority for maintenance of a trust account to a designated property manager with whom the property manager is employed or associated. Delegation shall not relieve either property manager from responsibility for any failure to comply with these trust account requirements whether by the delegating property manager or the designated property manager.

(b) Property managers are responsible for all funds deposited into the trust account by them or their property management staff.

~~(2) (5)~~ The property manager will not be disciplined for a negative account or ledger balance that occurs only as the result of a deposit that was dishonored after the financial institution had indicated the funds were available.

~~(3) All funds belonging to others and accepted by the property manager must be deposited in an insured account in a financial institution located in Montana. The account must be identified by the words "trust account."~~

~~(4) (6) Funds deposited in a property manager trust account, in connection with a property management transaction, shall not be commingled with the property manager's personal funds or other funds in the trust account, with the exception that the A property manager may deposit and keep a sum not to exceed \$1000 of a property manager's personal funds in the trust account, which sum includes any from the property manager's personal funds, including the interest earned on the trust account, which accrues if the trust account is maintained in an interest-bearing account and the interest accrues to the property manager. Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges, related trust account maintenance expenses, and when due and payable to the property manager. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When depositing funds, the date of the deposit, the source of funds, and the amount must be shown. When disbursing funds, the date of the disbursement, the name of the payee, and the amount must be shown. A running balance must be shown after each entry.~~

~~(5) A property manager may maintain more than one trust account.~~

(7) Funds deposited in a property manager trust account, in connection with a property management transaction, shall not be commingled with the property manager's personal funds or other funds in the trust account.

~~(6) (8) All monies belonging to others, which are received by a property manager in a residential lease or rental transaction, must be deposited in the property manager's trust account within three business days. All monies belonging to others, which are received by a property manager in a nonresidential lease or rental transaction, must be deposited into the property manager's trust account within three business days, unless otherwise provided in the lease or rental agreement.~~

~~(a)~~ (9) When the property management agreement is terminated, but the rental agreement is still in effect, and the licensee is holding funds deposited by a tenant, the licensee shall:

(a) notify the tenant in writing within five business days of termination of the agreement:

(i) that the agreement has terminated;

(ii) that the funds and current tenant files, including lease and condition reports, will be transferred to the property owner or the owner's designee within 30 days of the notification. termination; and

(iii) The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.;

~~(b) The property manager must transfer funds and current tenant files, including the lease and property condition reports, pursuant to the notice to the tenant within 30 days of termination.~~

~~(7) Maintenance of the trust account will be the responsibility of the property manager. Property managers are responsible for all funds accepted by them or their property management staff.~~

~~(8)~~ (10) Except for personal funds referenced in ~~(4)~~ (6), no payments of personal indebtedness of the property manager shall be made from such trust accounts or trust funds.

(11) When a property manager is managing the property manager's own real estate, all tenant security deposits must be deposited into a trust account. All remaining funds received and disbursed must be handled in the following manner:

(a) if the property manager solely owns 100 percent of the real estate, rents received shall not be required to be placed into a trust account. If rents received are placed into a trust account, any and all disbursements from the trust account must be described in the property management agreement. A disbursement may not be considered personal indebtedness if the disbursement is for the maintenance of the property(ies) itself and is designated in the management agreement; and

(b) if the property manager owns less than 100 percent of the real estate, all rents received must be placed into a trust account. Any and all disbursements from the trust account must be described in the property management agreement. A disbursement may not be considered personal indebtedness if the disbursement is for the maintenance of the property(ies) itself and is designated in the management agreement.

~~(9)~~ (12) Money held in the trust account, which is due and payable to the property manager, must be withdrawn within ten business days after such money becomes due and payable to the property manager, or when the owner and tenant ledgers are reconciled, except as exempted in (5). The money may not be withdrawn until the deposit has been verified and money not withdrawn from the trust account within the ten business days is subject to the personal funds limitations of (6).

~~(40)~~ (13) Maintenance of a each individual property management trust account shall include the property manager keeping at the property management office a completed record of all funds received and disbursed in the following manner:

- (a) proof of deposit showing the date of deposit or electronic transfer, amount, source of money, and where deposited;
- (b) remains the same.
- (c) disbursement of trust funds shall be made by either check or electronic transfer. If checks are used, trust account checks must be numbered and all voided checks recorded. The checks must denote the property manager's business name, address, and must be designated as "trust account";
- (d) remains the same.
- (i) for funds received, the record must include the date the funds are deposited, the name of the party who is giving the money, the name of the principal, and the amount;
- (ii) for disbursements, the record must include the date the funds are disbursed, each the name of the payee, the name of the principal, and the amount;
- (iii) and (iv) remain the same.
- (11) through (13) remain the same but are renumbered (14) through (16).
- ~~(14) Every property manager shall keep all records required by (10) and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than eight years from the date the property management agreement terminates.~~
- (17) Trust account records, complete files of properties managed (including, but not limited to, the property management agreement, lease or rental agreement, and all transactions concerning the property in which the property manager was involved), and all other related documents shall be maintained for not less than eight years from the date the property management agreement terminates. A property manager is not relieved of this requirement in the event the property manager sells or ceases to operate a business.
- (15) remains the same but is renumbered (18).
- ~~(16)~~ (19) The board is authorized to examine each property manager's trust account and all related property management records. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The property manager is required to fully cooperate with the board representative.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, ~~37-1-316~~, 37-1-319, ~~37-51-202~~, ~~37-51-321~~, 37-51-324, ~~37-51-601~~, MCA

REASON: Following an increase in the number of complaints based on trust account audits, the board's screening panel requested the board review and amend the rules for better organization and clarity, and consider requiring additional education on trust accounting. Department staff conducted a thorough review of the trust accounting rules and presented the board with recommendations for amendments. Additional trust account education for property managers was implemented in a prior rulemaking project in 2017. The board is amending and reorganizing this rule and ARM 24.210.426 to implement the rest of the recommendations and address the concerns of staff and the screening panel.

Additionally, while none of the requirements are new, several of them were never stated in rule.

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

24.210.827 INACTIVE STATUS (1) A licensee not engaged in licensed activities may place the licensee's license on inactive status by completing the change form requesting that the license be placed inactive and by paying the required fee in accordance with ARM 24.210.401.:

~~(a) paying the required fee;~~
~~(b) forwarding the license to the board office for cancellation of the active license; and~~
~~(c) submitting, in writing, a request that the license be placed on inactive status.~~

(2) and (3) remain the same.

(4) Inactive licensees may not receive compensation for property management activity ~~not~~ except for compensation that was earned while their license was active or payments made to an inactive licensee as the seller of a property management business.

(5) A licensee whose license is on inactive status with the board has the sole responsibility to keep the board informed as to any change of the licensee's residency or mailing address during the period of time the license remains on inactive status.

AUTH: 37-1-131, ~~37-1-141~~, 37-1-319, 37-51-203, MCA

IMP: ~~37-1-101~~, 37-1-131, 37-1-141, 37-1-319, 37-51-601, MCA

REASON: The board is amending this rule to align with standardized department procedures and uniform terminology among all licensing boards. Because "cancelled" is not a valid license status, the board is updating (1) to remove the term and reflect current processes for inactive status licensure.

Following questions from licensees and industry members, the board determined it is reasonably necessary to amend (4) and clarify when inactive property managers can receive compensation. When transactions take many months to close and a property manager has moved to inactive status during that time, the licensee is still due the earned compensation. Additionally, an inactive seller of a property management business can receive payments for that sale.

The board is adding (5) to specify the inactive property manager's duty to inform the board of residency or mailing address changes. This has been required for years of other board licensees in ARM 24.210.624, but had not been added to this rule.

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

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(c) remain the same.

(d) engaging the services of any attorney, insurance agent, maintenance service, or other like person or like entity, on behalf of a principal, third-party, or other person, without informing and obtaining consent from the person obligated to pay for the services;

(e) engaging or recommending the services of an attorney, insurance company, maintenance service, or other like person or entity, on behalf of a principal, third-party, or other person, without disclosing any family relationship, financial relationship, and/or financial interest that the licensee or property management agency with which the licensee is associated may have in that person or entity being engaged or recommended;

(f) and (g) remain the same.

~~(h) entering into a transaction or agreement with the intent not to perform;~~

(i) through (w) remain the same but are renumbered (h) through (v).

~~(x) (w) managing property owned by a separate person or entity~~ without a written property management agreement in place, signed by the owner;

(y) through (ab) remain the same but are renumbered (x) through (aa).

~~(ac) (ab) engaging in or conducting business as a property manager, or advertising as a property manager, or engaging in or conducting the business of a property manager at a time when the licensee's license has expired, or is on inactive status, or has been cancelled; however, payments received by the seller of a property management business even if the seller is no longer a licensee is not considered engaging in or conducting business as a property manager;~~ or

(ad) remains the same but is renumbered (ac).

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-137, ~~37-1-306~~, 37-1-316, 37-1-319, ~~37-51-202~~, 37-51-508, 37-51-512, ~~37-51-601~~, 37-51-607, MCA

REASON: The board is amending (3)(d) and (e) of this rule, and ARM 24.210.641 to address concerns of the board's screening panel and trust account auditor. Noting that an increasing number of brokers and property managers also own maintenance companies, the board concluded that the public trust is better ensured when this ownership is disclosed and is amending the rules to establish such nondisclosure as unprofessional conduct.

It is reasonably necessary to delete (3)(h) at the board prosecutor's request, because it is nearly impossible to prove an individual's intent. Additionally, this subsection is rarely, if ever, cited as a specific violation, as such conduct falls under (3)(i).

The board is amending (3)(w) at the request of the board's trust account auditor. Several audits revealed that licensees and property management companies were managing property owned by a licensee (either as individuals or a business association owned by a different legal entity than the management company) without management agreements in place. Noting that the licensees were unaware they needed management agreements in place, the board is amending (3)(w) to clarify the requirement.

It is reasonably necessary to amend (3)(ab) to address questions from licensees and industry members by clarifying that the seller of a property management business can receive payments for that sale without engaging in the practice of property management. Noting that many retiring licensees structure the sale of their businesses in this manner, the board is amending this subsection to address an increasing number of inquiries to the executive officer.

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

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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

5. An electronic copy of this notice of public hearing is available at realestate.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 Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrre@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 24.210.301, 24.210.401, 24.210.426, 24.210.601, 24.210.624, 24.210.625, 24.210.635, 24.210.641, 24.210.646, 24.210.805, 24.210.827, and 24.210.828 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2305; or to dlibsdrre@mt.gov.

9. Rhonda Morgan, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
RIC SMITH, BROKER
PRESIDING OFFICER

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

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

Certified to the Secretary of State December 11, 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 37.80.101, 37.80.102,	)	PROPOSED AMENDMENT
37.80.201, 37.80.202, 37.80.203,)	
37.80.205, 37.80.301, 37.80.316,)	
37.80.317, and 37.80.501 pertaining)	
to the Child Care Assistance)	
Program's implementation of)	
amendments to the Child Care and)	
Development Block Grant Act and)	
Final Rules at 45 CFR Part 98)	

TO: All Concerned Persons

1. On January 12, 2018, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 29, 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 amended provide as follows, new matter underlined, deleted matter interlined:

- 37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) remains the same.
- (2) Financial assistance may be available to pay a portion of a working parent's child care costs. Payment may only be made to:
 - (a) through (c) remain the same.
 - (d) a legally-certified provider, provider of family, friend, or neighbor care as that term is defined at ARM 37.95.102; or
 - (e) a relative care provider.
- (3) The Child Care Assistance Program will be administered in accordance with:
 - (a) the requirements of federal law governing the Child Care and Development Block Grant Act of 2014, codified at 42 USC 9858 et seq., and 45 CFR

parts 98 and 99, child care and development fund, adopted July 24, 1998 November 29, 2016; and

(b) remains the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

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

(1) remains the same.

(2) "Authorization of services" means the span of time, number of hours per week, and schedule that an eligible child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility. The authorization of services is used to create the ~~certification~~ authorization plan.

(3) "~~Certification~~ Authorization plan" means the document prepared by the department, or its agent, that states the amount of child care assistance to be paid and includes any additional information required by the department. This document is generated after the authorization of services has been created.

(4) "Child care" means ~~care provided at a licensed or registered child care facility or by a certified provider, by a provider listed in ARM 37.80.101 for a child less than 13 years of age at the time of eligibility determination or person less than 18 years of age with special needs or a person who is 18 years of age and who is a full-time student expected to complete an educational program by 19 years of age or a child with disabilities or special needs.~~ The terms "child care" and "day care" have the same meaning and are used interchangeably in this subchapter.

(5) remains the same.

(6) "Child care facility" means ~~a licensed child care center, a registered group child care home, a registered family child care home, or a certified provider home~~ a place where a provider listed in ARM 37.80.101 is authorized under license or registration to provide child care.

(7) remains the same.

(8) "Child with disabilities" means a child with a disability as that term is used in 45 CFR Part 98.

~~(8)~~(9) "Child with special needs" means a child ~~under 18 years of age, or a person who is 18 years of age and who is a full-time student expected to complete an educational program by 19 years of age,~~ who requires additional assistance because of an emotional or physical disability, a cognitive delay, or both that is verified by ~~medical records or other appropriate documentation~~ from a medical professional.

(9) through (12) remain the same, but are renumbered (10) through (13).

~~(13)~~ (14) "Full-time child care" means care certified for over 30 ~~or more~~ hours per week on a regular basis.

~~(14)~~ (15) "Full-time field experience and class time" means 30 hours per week combined of field experience and class time accrued by a postsecondary education student, ~~not including home study time.~~

(15) through (17) remain the same, but are renumbered (16) through (18).

~~(18) "Legally certified provider" means an individual certified under ARM Title 37, chapter 95 and selected by a parent or guardian to receive payment for child care for no more than two children unless all the children are from the same household.~~

(19) through (21) remain the same.

~~(22) "Provider" means legally certified, legally certified-in-home providers, and licensees and registrants of other child care facilities~~ a licensee or registrant listed in ARM 37.80.101.

~~(23) "Relative care" has the same meaning as "relative care" defined by the Child Care Licensing Program in ARM 37.95.102.~~

(23) and (24) remain the same, but are renumbered (24) and (25).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, ~~the following nonfinancial requirements must be met in order for parents must work or attend school or vocational training to receive child care payments_ under this chapter to be made:~~

~~(a) With the exceptions in (1)(b)(2), a two parents household must work the following minimum number of hours each month:~~

~~(i) for two parent households, parents must work a total of 120 hours per month, but there is no minimum number of hours which that each parent must work each month; or_~~

~~(ii) (b) for A single parent households:~~

~~(A) the parent must be working must work a minimum of 60 hours each month; or~~

~~(B) the parent has no work requirement if attending attend school or vocational training full-time; or_~~

~~(C) the A single parent must be working a minimum of 40 hours each month if attending school or vocational training part-time.~~

~~(b) remains the same, but is renumbered (2).~~

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

~~(iv)(A) through (iv)(C) remain the same, but are renumbered (i) through (iii).~~

~~(v) through (vii) remain the same, but are renumbered (e) through (g).~~

~~(viii) (h) in extreme unusual circumstances of verifiable medical, financial, and physical hardship, a decision to approve eligibility or continued eligibility in cases not otherwise meeting the required eligibility standards can be made by either the Child Care Program manager or the chief of the Early Childhood Services Bureau may approve or continue eligibility.~~

~~(2) A household which is not receiving cash assistance funded by TANF may be eligible for child care assistance under this chapter while a parent is participating in education or training reasonably expected to lead to gainful employment if:~~

~~(a) either the parent or another adult who is included in the calculation of household size as provided in ARM 37.80.202 meets the minimum hourly work requirement provided in this rule; or~~

~~(b) the minimum hourly work requirement is waived while a parent participates in a full-time field experience, or a full-time combination of field experience and course work, required for graduation in the parent's curriculum.~~

(3) Child care assistance under this chapter for parents who are pursuing vocational training or education is subject to the following limitations and requirements:

~~(a) assistance is not available to parents seeking postsecondary education beyond the level of a bachelor's degree or its equivalent, except that assistance may be provided while a parent is participating in training which lasts no more than six weeks if the department or its designated agent determines that such training has a high probability of leading to employment in the near future; and~~

~~(b) assistance is not available for education and training to a parent who has earned an educational certificate or a degree within the past five years; ;~~

~~(c) the training is for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana; and~~

~~(d) the training is obtained through an institution approved by the Board of Regents or other recognized accrediting body.~~

(4) remains the same.

(5) Due to limited funding for child care assistance, some households which that meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority is for benefits are determined as follows:

(a) A household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which that require child care, subject to the following: ;

~~(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is referred to a child care resource and referral agency to obtain child care assistance, so long as the participant contacts the resource and referral agency within thirty calendar days after the date the referral is made.~~

~~(ii) If the parent does not contact the child care resource and referral agency within thirty calendar days after being referred for TANF child care assistance, eligibility for child care assistance will begin on the date a child care certification plan is obtained from the child care resource and referral agency.~~

(b) A household containing a child with special needs is guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502 or a child with disabilities.

(c) A household headed by a teen parent is guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502.

(d) All other eligible non-TANF households shall be prioritized by ranking household income as a percentage of the Federal Poverty Guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available.

(i) Non-TANF households are ranked by household income as a percentage of the Federal Poverty Guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available.

~~(e) (ii) If there are two or more non-TANF households at the same percentage level of priority as set forth in (d), the household whose application was received first has a higher priority.~~

(6) remains the same.

~~(7) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating household size under this chapter, are required to be out of the home to attend work or training. Brief care or eligibility interruptions may be accommodated under continuity of care policies, as established in the department's Child Care Manual, section 6-6. A copy of section 6-6 of the manual may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2952 listed on the authorization plan.~~

~~(8) A household experiencing unemployment due to good cause as defined in ARM 37.78.508 loss of work or cessation of attendance at a job training or education program may have child care benefits extended and the usual child care schedule continued for 30 90 calendar days or to the end of the 12 month eligibility period following the job loss reported change, if the following conditions are met:~~

~~(a) the department has sufficient funds to provide extended child care benefits; and~~

~~(b) the household requests the extension within ten calendar days after the parent's last day of employment; job training, or education program and.~~

~~(c) the An unemployed parent or parents must actively seek new employment during the period of extended child care.~~

(9) Child care assistance is only available under this chapter for child care provided by:

~~(a) a legally certified provider who is certified under this chapter; or~~

~~(b) (a) a licensed or registered child care facility certified under this chapter or registered provider under ARM 37.95.103 and ARM 37.95.106, excluding facilities licensed solely for drop-in, irregular, intermittent, and occasional care.~~

(10) During the hours school is in session, a licensed or registered child care provider ~~or a legally certified provider~~ is not eligible for child care assistance for a child six years of age or older on or before September 10 of the current year.

(11) remains the same.

(12) A 12 month eligibility span is given for a Non-TANF or TANF family meeting all the eligibility requirements.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) remains the same.

(2) At annual redetermination, a household not receiving temporary assistance for needy families (TANF), whose income exceeds 150% and is below 185% of the FPG for a household of its size is eligible for child care assistance under graduated eligibility. To qualify for graduated eligibility, the following apply:

(a) ~~eligibility is limited to one six-month~~ given for a 12 month eligibility period; and

(b) through (5) remain the same.

(6) ~~In computing a household's size for purposes of determining eligibility and the parent's copayment, the following persons must be included~~ includes as members of the household following individuals:

(a) through (d) remain the same.

(7) ~~In computing a household's size for purposes of determining eligibility and the parent's copayment, the~~ The parent has the option of choosing to may include or exclude as a household member any other qualified person residing with the child. ~~After~~ If the household exercises its option to parent includes or excludes a person when eligibility is initially being determined, ~~the household~~ he or she cannot subsequently choose a different option, unless the optional members leaves the household.

(8) ~~In computing a household's income for purposes of determining eligibility and the parent's copayment, the~~ The income of all persons counted in computing household size must be counted in the household's income.

(9) through (11) remain the same.

(12) No child care assistance payments can be issued until an authorization and corresponding certification authorization plan that authorizes payment for child care services has been created by the child care resource and referral agency.

(13) The child care authorization and corresponding certification authorization plan sets limits for child care benefits. ~~Authorization and corresponding certification plans may change. The most recent authorization and corresponding certification plans are the effective plan. No further notice must be provided when benefits expire at the end date of an authorization and corresponding certification plan~~ The authorization plan stays at the same level for the 12 month eligibility period and covers temporary changes defined in 45 CFR, 98.21(a)(2017).

(14) and (15) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.203 REQUIREMENT TO REPORT CHANGES (1) remains the same.

(2) Applicants and recipients of child care assistance must report by phone, email, written communication, or in person to the resource and referral agency administering their case any change in the following circumstances within ten calendar days from the date the change occurs ~~or the applicant or recipient learns of the change:~~

(a) ~~persons living in the applicant's or recipient's household;~~

~~(b) (a) employment of any household member, including new employment, loss of employment, increase or decrease in working hours, and increase or decrease in earned income a change in work, training, or educational status;~~

~~(c) (b) an increase or decrease in the household's monthly gross income above 85 percent of State Median Income (SMI); or~~

~~(d) training or school attendance, including changes to the location or hours of the training;~~

~~(e) (c) a change in mailing address, residential address, and or phone number;~~

~~(f) compliance by the applicant or recipient with any order or determination of the department's Child Support Enforcement Division;~~

~~(g) receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or amount of child support received; or~~

~~(h) circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.~~

(3) Applicants and recipients of child care assistance may report any change to their circumstance at any time during the eligibility period.

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

(6) When a circumstance change listed in (2) is reported to the child care resource and referral agency, the agency will follow-up with a written notification describing changes to the case.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS (1) through (6) remain the same.

~~(7) Rates for children with special needs may be adjusted for special accommodations which increase the cost of care. A special needs subsidy rating scale and/or an individual child care plan must be completed to determine the appropriate rate adjustment. The criteria used to determine special needs adjustments are set forth in section 1-4a of the Child Care Manual The department has the discretion to adjust rates for children with special needs or disabilities.~~

(8) remains the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) remains the same.

(2) The provider is responsible for informing parents who are receiving child care assistance under this chapter that the provider's license, or registration, ~~or certification~~ has been revoked or expired. The provider may not bill the household for payments denied by the department due to the provider's failure to comply with licensing, certification, or registration requirements.

(3) Child care providers must be certified or recognized by the department or its designated agent as eligible to receive payment under this chapter. All applicable forms must be completed and submitted for approval. Registered and licensed facilities ~~and legally certified providers~~ are approved by the Licensing Bureau of the department's Quality Assurance Division. Facilities licensed or registered by other entities must be recognized by the Licensing Bureau of the department's Quality Assurance Division.

(4) and (5) remain the same.

(6) Providers must have a policy on preventing and reducing expulsion and suspension. The policy must include the following:

(a) reasons for expulsion;

(b) procedures for expulsion;

(c) how the provider will assist the child and parent with transitions; and

(d) the types of referrals the provider will make such as those to a community agency that could offer additional supports to the family.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) through (3) remain the same.

(4) In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:

(a) for obtaining provider ~~certification~~ registration through ~~this chapter~~ ARM 37.95.103 prior to claiming payment for covered child care under this chapter; and

(b) remains the same.

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 calendar days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) The claim must be for actual care provided by the provider designated on the child care authorization and corresponding ~~certification~~ authorization plan as defined in ARM 37.80.102(4) and subject to the limitations described in ARM 37.80.201(9). The provider may not bill for care subcontracted to another individual or facility.

(b) and (c) remain the same.

(d) If the authorization and corresponding ~~certification~~ authorization plans are not completed until after the calendar month in which the child care is provided, the claim will be considered to be filed timely if a completed billing form with all information and documentation necessary to process the claim is received by the department or the entity designated by the department for this purpose within 60 days after the billing document is sent to the provider.

(e) and (6) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-711, 52-2-713, MCA

37.80.317 AUTHORIZATION OF SERVICES

~~– CERTIFICATION AUTHORIZATION PLANS~~ (1) Child care assistance is provided for through an authorization of services and an authorization plan.

The authorization of services and ~~certification~~ authorization plan include the following information:

(a) through (e) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) Child care assistance will be terminated if any of the following occurs:

(a) ~~the child care resource and referral agency does not recertify the household or the certification plan expires~~ the household does not apply for redetermination;

(b) through (d) remain the same.

(e) the child care provider no longer meets licensing standards ~~or loses certification for payment;~~

(f) and (g) remain the same.

(h) ~~the child no longer receives care~~ has had a span of more than five unexplained absences reported by at the child care facility specified in the authorization and corresponding ~~certification~~ authorization plan and there is no indication that the child will be receiving care at that facility in the near future; or

(i) through (3) remain the same.

(4) The department is obligated to the parent and/or the provider only to the extent specified in the authorization and corresponding ~~certification~~ authorization plan and the rules governing child care assistance. No agreement or arrangement between the parent and provider purporting to modify or terminate any provision of the ~~certification~~ authorization plan is binding on the department.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Best Beginnings Child Care Scholarship (BBCCS) program is administered by the department and funded by federal funds through the Child Care Development Fund (CCDF) with some matching state general fund monies. The BBCCS program offers child care assistance for low income families with working parents, families referred by Temporary Assistance for Needy Families (TANF), and children with Child Protective Services (CPS). The BBCCS program has eligibility determined through Child Care Resource and Referral (CCR&R) agencies.

The proposed rule changes are necessary to conform the department's rules for the administration of the Montana program to the federal Child Care and Development Block Grant Act of 2014 and federal regulations at 45 CFR Part 98. The proposed rule amendments would increase continuity of care for families by providing a 12 month eligibility period, reducing barriers for families participating in the Best Beginnings Child Care Scholarship Program, and move policies toward being both family and provider friendly. The proposed rule changes also provide consistency with child care licensing rule changes. Other minor amendments are proposed to clarify rule language and provide consistency in department references.

The department is proposing rule changes to meet the following Child Care and Development Fund federal regulations at 45 CFR Part 98:

1. A policy on refusing to continue service will be developed and enforced;
2. The impact on eligibility of a reported change in income or circumstances is revised;
3. 12 month authorization of child care services is implemented;
4. A 12 month eligibility period for families receiving TANF is implemented;
5. A grace period of at least three months will cover a parent's loss of work or cessation of attendance at a job training or education program for Non-TANF and TANF families;
6. Graduated eligibility (also referred to as graduated phaseout) will continue for twelve months in some circumstances and may include an annual redetermination;
7. A child who is 12 years old at the time of eligibility determination will be eligible through the end of the 12 month eligibility period;
8. A case can be closed prior to the end of a 12 month eligibility period if there is excessive unexplained absence from child care despite multiple attempts to contact the family and child care provider; and
9. Define "temporary change" consistent with the definition in 45 CFR Part 98, 98.21(a)(1)(ii)(A-E).

The department is also proposing amendments to these rules to accomplish the following:

1. Revise language referring to the categories of child care providers to be consistent with the department's amendments to ARM Title 37, chapter 95 in MAR Notice No. 37-811;
2. Change the process for children with a disability to allow a twelve-month span for approval for additional reimbursement and reduce the documentation required to make the process easier for both parents and child care providers; and
3. Remove redundant language about school and work activity.

37.80.101 PURPOSE AND GENERAL LIMITATIONS

The department is proposing this amendment to make the language in this rule consistent with the language used in the child care licensing rules.

37.80.102 DEFINITIONS

To be consistent with the wording of the department's child care licensing and registration rules in ARM Title 37, chapter 95, the department is proposing to amend the definitions of "child care facility," and "provider"; delete the definition of "legally certified provider"; and add the definition of "relative care." The department has also proposed adopting and amending various child care licensing and registration rules, which are described in MAR Notice No. 37-811, that the department filed with the Secretary of State on November 27, 2017. The department anticipates the proposed adoption and amendment of the rules under MAR Notice No. 37-811 will be effective January 13, 2018 – prior to the adoption or amendment of these definitions in this notice.

The department is proposing changes to the definition "child with special needs" to remove redundant language and adding a definition of "child with disabilities" to follow the federal definition used by the Child Care Development Fund (CCDF).

The department is proposing changes to the definition "child care" to align with federal requirements.

The department is proposing changing "certification plan" to "authorization plan" for consistency. The correct term is "authorization plan."

The department is proposing changing "full-time field experience and class time" to remove confusing language for clients.

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE

The department is proposing amending this rule to: remove confusing language about activity requirements for single-parent or two-parent households; remove redundant language about how to meet the school activity requirement; add language to meet federal requirements for a loss of work or cessation of attendance at a job, education, or training program and setting a 12 month eligibility period; clarify language about the priority list if eligible participants exceed funding; and remove unnecessary language about a payment that is included in the authorization plan.

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT

The department is proposing amending the rule to implement federal requirements for a 12 month eligibility period and for graduated eligibility. Graduated eligibility allows a phase out period when a parent's income exceeds the income level allowed to initially qualify for the program. The department is also editing to improve clarity.

37.80.203 REQUIREMENT TO REPORT CHANGES

The department is proposing to amend this rule to reduce the reporting requirements for a parent, increase the ways a parent can report a change, and meet a federal requirement for written notice to child care providers.

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

The department is proposing to amend this rule to reduce the documentation required to qualify for additional reimbursement for a child with special needs or disabilities.

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION

The department is proposing to amend the rule to align the language with child care licensing rules. The department is also proposing to require child care providers to have a policy on expulsion and suspension. This meets federal requirements and is intended to reduce expulsions and suspensions.

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS

The department is proposing to amend the rule to align with child care licensing rules and to update to current, consistent language.

37.80.317 AUTHORIZATION OF SERVICES – CERTIFICATION PLANS

The department is proposing to amend the rule to replace rule language with the currently used terms.

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE

The department is proposing to amend the rule to align with child care licensing rules and to update to current language. The department is proposing to add language explaining when a case can be closed due to unexplained absences reported by a child care provider. The department is proposing to clarify that a case may be closed when a parent chooses not to reapply although eligibility could be re-determined to continue.

Fiscal Impact

The department expects the proposed rules will not have a fiscal impact to the state; all proposed rules will fall within the current budget of the Best Beginnings Child Care Scholarship program.

The Best Beginnings Child Care Scholarship program offers child care assistance for families with parents attending school and/or working under the Non-TANF

program, families referred by Temporary Assistance for Needy Families (TANF), and children with Child Protective Services (CPS). As of July 2017, there were 1,827 Non-TANF families, 394 TANF families (referred by Working Caretaker Relative, TANF, and Tribal IV-E), and 972 children with CPS receiving child care assistance. Additionally, 3,118 children from Non-TANF families, 788 children referred by TANF serves (Working Caretaker Relative, TANF, and Tribal IV-E), and 972 children with CPS (for a total of 4,878 unduplicated children) were receiving child care assistance.

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., January 19, 2018.

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 paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Geralyn Driscoll
Geraldyn Driscoll
Rule Reviewer

/s/ Erica Johnston for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State December 11, 2017.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through VI pertaining to)
Montana Department of Agriculture)
Mediation Services)

TO: All Concerned Persons

1. On October 27, 2017, the Department of Agriculture published MAR Notice No. 4-17-242 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1926 of the 2017 Montana Administrative Register, Issue Number 20.

2. The department has adopted the above-stated rules as proposed: New Rules I (4.20.101), II (4.20.102), III (4.20.103), IV (4.20.104), V (4.20.105), and VI (4.20.106).

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State December 11, 2017.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I and II and the amendment of) AMENDMENT
ARM 6.6.3813 pertaining to Credit for)
Reinsurance)

TO: All Concerned Persons

1. On October 27, 2017, the Commissioner of Securities and Insurance, Montana State Auditor, published MAR Notice No. 6-239 pertaining to the proposed adoption and amendment of the above-stated rules at page 1929 of the 2017 Montana Administrative Register, Issue Number 20.

2. The commissioner has adopted New Rule I (6.6.3815) and New Rule II (6.6.3833) as proposed.

3. The commissioner has amended the above-stated rule as proposed.

4. These rules shall become effective on January 1, 2018.

5. No comments or testimony were received.

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

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State December 11, 2017.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULES I through IX and the repeal of) REPEAL
ARM 24.22.301, 24.22.304,)
24.22.307, 24.22.311, 24.22.316, and)
24.22.321 pertaining to the incumbent)
worker training program)

TO: All Concerned Persons

1. On October 13, 2017, the Department of Labor and Industry published MAR Notice No. 24-22-324 regarding a public hearing on the proposed adoption and repeal of the above-stated rules on page 1734 of the 2017 Montana Administrative Register, Issue No. 19.

2. On November 3, 2017, a public hearing was held at which time oral and written comments were to be received from the public. Written comments were received during the public comment period.

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

Comment 1: One commenter supported the amendments as proposed.

Response 1: The department acknowledges the comment.

Comment 2: One commenter requested a summary of the primary changes presented in the rulemaking notice, to assist the commenter in reviewing the rules.

Response 2: As a customer service, the department prepared a summary as requested by the commenter. The department notes that it is not required by the Montana Administrative Procedure Act to respond to comments prior to the close of the formal comment period. The department noted the summary is not intended to be comprehensive or definitive, and applicants are urged to read the text of the rules in order to understand the procedures and requirements for obtaining an incumbent worker training grant. The contents of the summary do not supersede the requirements of the rules, and will not be accepted as a basis for not complying with the rules. The summary provided to the commenter is as follows:

"Per the 2017 legislature's changes to the MCA, the following changes to the administrative rule are being proposed:

- Outlines what the department needs and responsibilities as review and appeal process is shifted from gateway organizations.
- Clarifies and defines

- What qualifies as training;
- What will be required for training providers that are not qualified training institutions as identified in MCA;
- When wages can/cannot be used for match;
- Who can submit applications on behalf of a business;
- What must be included with applications;
- How far in advance applications should be submitted;
- How applications are reviewed;
- When the department may defer applications;
- Conferences and periodic updates are prohibited;
- Timeline for the business to return their financial agreement;
- Provided a formal process to request changes to applications and approved grants."

Comment 3: A commenter expressed concern about NEW RULE IV, regarding the subsection (8) requirement to gather the trainer's professional biography and trainer's professional resume. The commenter stated that it may place an undue burden on the applicant.

Response 3: The department notes that the requirement only applies to trainers who are not a part of a Montana accredited university, or community college system listed in 53-2-1216, MCA. The department has concluded that Montana's higher education institutions have hired staff whose qualifications have been confirmed. The department believes that it is appropriate to have some mechanism to determine qualifications for other workforce training providers. Most providers have websites that include a professional biography, which can be printed as a .pdf document and used as documentation for the IWT application.

Comment 4: A commenter expressed concern about NEW RULE V, objecting to the limitations prohibiting the use of IWT funding to purchase continuing education and conferences. The commenter stated that continuing education and conferences are important for networking, creating and continuing working relationships, and learning or teaching new ideas.

Response 4: The department acknowledges the concern, but notes that the limitation prohibiting continuing education has existed since 2007 because IWT is intended to up-skill workers, not to maintain industry expectations for credentials. The limitation prohibiting conferences from qualifying is due to the fact that neither conferences nor networking meet the current definition of skills-based training. In addition, the department finds that with conference attendance it is notoriously difficult to prove completion, and training provided at conferences is either lecture based or too brief to justify the cost of related transportation and lodging.

4. The department has adopted the new rules as proposed:

NEW RULE I (24.22.322) DEFINITIONS

NEW RULE II (24.22.327) GENERAL REQUIREMENTS REGARDING TRAINING

NEW RULE III (24.22.328) GENERAL PROVISIONS RELATING TO GRANT FUNDS

NEW RULE IV (24.22.331) GRANT APPLICATION PROCESS

NEW RULE V (24.22.335) EVALUATION OF GRANT APPLICATIONS AND LIMITATIONS

NEW RULE VI (24.22.338) AWARD OF GRANT

NEW RULE VII (24.22.341) CHANGES TO THE APPLICATION OR APPROVED GRANT

NEW RULE VIII (24.22.344) PAYMENT OF GRANT FUNDS

NEW RULE IX (24.22.347) APPEALS

5. The department has repealed the rules as proposed.

6. The rule changes are effective January 1, 2018.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 11, 2017.

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

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

TO: All Concerned Persons

1. On September 22, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-807 pertaining to the public hearing and comment period on the proposed amendment the above-stated rules at page 1609 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department has amended the following rules as proposed: ARM 37.8.102 and 37.8.311.

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

COMMENT 1: Many commenters supported the rules changes on the basis that maintaining the present court order and surgical requirement for changing one's gender on a birth certificate are unnecessarily burdensome and costly.

RESPONSE 1: The department agrees. Surgical transition requires costly and sometimes non-medically necessary medical procedures that may not be covered by health insurance. Such procedures may also be medically contraindicated and thus dangerous for a given person. In 2014, the American Medical Association (AMA) released the following statement: "For many transgender people, a needless operation should not be a government requirement to amend a sex designation on a birth certificate." The AMA's statement encouraged that policies "must acknowledge that the correct course of treatment for any given individual is a decision that rests with the patient and the treating physicians."

Removing the necessity of obtaining a court order avoids putting unnecessary burden on registrants. Court petitions are expensive (the filing fee for a civil action in Montana district court alone is presently \$120) and complicated, and not all individuals can access the court process without an attorney. Moreover, there is not currently a single standardized process or requirement for issuing court orders for gender change. Several district court judges have questioned why the department involves their court in the process and that the current rule invokes privacy concerns by necessitating that the petitioner discuss private medical details in open court.

COMMENT 2: Several commenters remarked that the surgical requirement constituted an impossible barrier for many intersex individuals to obtaining birth certificates that match who they are because these individuals may not require or desire surgery.

RESPONSE 2: The department agrees. Studies estimate that as many as 1.7 percent of babies are born with chromosomes, gonads, internal or external genitalia that differ from expectations of traditional gender norms. Only one in 2,000 of these babies is different enough that doctors may recommend surgical intervention to make the body appear more in line with such expectations. Accordingly, a great number of such individuals may be prevented from obtaining a correct birth certificate without the proposed changes.

COMMENT 3: Numerous commenters, including one retired Montana Supreme Court justice, submitted comment that having an accurate gender marker on a birth certificate is important to exercising an individual's legal rights.

RESPONSE 3: The department agrees. Birth certificates are often required for purposes related to employment, education, family law, to verify an individual's identity, and to verify their citizenship. Having an accurate gender marker on a birth certificate is critical to validating an individual's dignity and privacy, two fundamental rights that are protected by Article II, Sections 4 and 10, of the Montana Constitution. These documents are also critical to protecting an individual's inalienable right to seek safety, health, and happiness as protected by Article II, Section 3.

COMMENT 4: Some commenters indicated that it can be dangerous for an individual to have identification that does not accurately match that individual's gender.

RESPONSE 4: The department agrees. Research indicates that individuals whose identification does not match their gender are frequently subject to discrimination that prevents access to programs or services that can be critically important and life-sustaining. Accurate birth certificates are important when enrolling in school, applying for jobs, and obtaining other identity documents. This impact can be particularly acute in gender-segregated spaces such as substance-abuse facilities, hospitals, group foster homes, and homeless shelters. When individuals are housed in these environments based on their sex assigned at birth according to their identity documents, it can lead to harassment and even violence. For example, the 2015 U.S. Transgender Survey found that 49 percent of transgender individuals who stayed at a homeless shelter reported verbal harassment and 17 percent reported sexual assault.

COMMENT 5: Numerous commenters offered non-specific opposition to the proposed rules or argued that the changes are immoral or contradictory to their religious beliefs. Moreover, many individuals submitted comments that can be summarized as stating that one is biologically born a man or a woman and that anything else is subjective or political.

RESPONSE 5: The department thanks the commenters for their concerns. However, the department may not consider individualized concepts of morality or religious conviction in how it conducts public business. Section 1557 of the Patient Protection and Affordable Care Act of 2010 (Public Law 111–148), the Act's nondiscrimination provision, prohibits discrimination based on race, color, national origin, sex, age, or disability in certain health programs or activities—including those conducted by the department. Sex discrimination within the meaning of Section 1557 includes discrimination based on gender identity. For example, individuals cannot be denied health care or health coverage based on gender identity, and must be treated consistent with their gender identity. The amended rules aid the department in fulfilling this legal duty and reduce the risk of inadvertent discrimination. Moreover, Montana Executive Order No. 04-2016 mandates that all executive agencies "[d]evelop and implement policies necessary to ensure that all persons employed or served by state government are afforded equal opportunity, without discrimination, based upon [gender identity or expression]." The proposed and adopted rules serve to further this order.

COMMENT 6: Some commenters remarked that the department has been enjoined from complying with the provisions of Section 1557.

RESPONSE 6: The department thanks the commenters for their concerns; however the department disagrees. On December 31, 2016, one district court—the U.S. District Court for the Northern District of Texas—issued a nationwide injunction in *Franciscan Alliance, Inc. et al v. Burwell*, enjoining the U.S. Department of Health and Human Services Office for Civil Rights (HHS OCR) from enforcing Section 1557's prohibitions against discrimination based on gender identity. However, the law and rules promulgated under that law remain the law of the land, and the department must comport its policies with that law—even if noncompliance is not presently subject to punishment by HHS OCR. Even though HHS OCR is enjoined from enforcing this provision, individuals who face discrimination can still file a private lawsuit to enforce Section 1557, meaning the department could be subject to costly litigation. As outlined above, there remains several other reasons to adopt the rules as proposed, including removing regulatory barriers that impose unnecessarily burdensome and costly regulations on Montana citizens, and complying with Executive Order No. 04-2016.

COMMENT 7: Many commenters remarked that the amended rules will lead to unforeseen fiscal impacts or other unanticipated results, such as increased fraud. Some commenters expressed concern that individuals will frequently change their gender marker back-and-forth.

RESPONSE 7: The department thanks the commenters for their concerns; however the department disagrees. In state fiscal year 2016, the Montana Office of Vital Records (OVR) processed 10 gender marker changes on Montanans' birth certificates under then-existing rules for doing so. To date, no fiscal impact has been realized aside from the minor fees charged by the OVR for filing a correction

affidavit and obtaining a certified copy of the corrected document (\$15 and \$12, respectively). The department does not anticipate a new fiscal impact from the amended rules because the changes merely alter how an individual goes about obtaining a gender marker change. Two representatives from the Montana Department of Justice Motor Vehicles Division attended the public hearing on the amended rules and offered no concerns.

The department also respectfully disagrees that the amended rules will facilitate fraudulent activity. There is no evidence that simplified gender marker correction policies have resulted in greater levels of fraud. Identity documents are, by definition, intended to accurately reflect one's identity. Accordingly, mismatched identification often impairs law enforcement activities, and individuals with mismatched identification frequently report being delayed or detained by law enforcement officials. Attempts by law enforcement to locate persons of interest with mismatched identification can be impaired when official records or statements from friends and family do not match that individual's gender expression. This is one reason why, in the Department of Homeland Security's adoption of regulations to effect the Real ID Act 2005, the agency left "the determination of gender up to the States."

Simplified gender marker change policies do not present a financial fraud risk because lending institutions and other creditors typically do not track gender marker data for establishing identity. A person seeking to commit such acts is far more likely to change other identifying aspects, such as name and date of birth.

Other states that have enacted policies similar to the amended rules do not report instances where individuals frequently change the gender marker on a birth certificate. Even when simplified, this process is time-consuming and still costs \$27.

COMMENT 8: Many commenters remarked that the amended rules should only be the result of legislative action, or that the changes constitute an unlawful violation of the separation of powers as established by Article III, Section 1 of the Montana Constitution.

RESPONSE 8: The department thanks the commenters for their concerns; however the department disagrees. In accordance with Article III, Section 1, the Montana Administrative Procedures Act requires that each "proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted." 2-4-305, MCA. In the case of the proposed and adopted rules, the department cites 50-15-204, MCA, where the Montana Legislature delegated the following rulemaking authority: "The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records."

COMMENT 9: Some commenters remarked on the important role of the courts when determining whether an individual should be permitted to change the gender marker on a birth certificate.

RESPONSE 9: The department appreciates and greatly values the role that the judiciary plays in the vital records process. However, the department respectfully disagrees that courts play a necessary role in determining when an individual should be able to change the gender marker on a birth certificate. As mentioned above, Montana law and administrative rules supply no standard that must be met or process followed by a petitioner seeking a gender marker change. As a result, some Montana courts have questioned why the department interjects them in the process or requires individuals to reveal private medical information in open court.

COMMENT 10: Some commenters remarked that the amended rules are too vague on the definition of the term "gender transition," or that a definition of the term should be supplied.

RESPONSE 10: The department thanks the commenters for their concerns, but respectfully disagrees. The department agrees with the American Medical Association that "the correct course of treatment for any given individual is a decision that rests with the patient and the treating physicians." Because the appropriate course of treatment for gender transition or confirmation should be tailored to that individual's needs, the department has declined to provide a definition and instead will allow an individual to attest, under penalty of law, that they have undergone such transition.

4. The department intends to apply these rules retroactively to December 9, 2017. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Laura Smith for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State December 11, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.62.103, 37.62.106,)
37.62.144, 37.62.501, 37.62.911,)
37.62.1311, and 37.62.2101)
pertaining to child support guidelines)
for the calculation of support)
obligations)

TO: All Concerned Persons

1. On October 13, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-809 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1781 of the 2017 Montana Administrative Register, Issue Number 19.

2. The department has amended the following rules as proposed: ARM 37.62.103, 37.62.106, 37.62.501, 37.62.911, 37.62.1311, and 37.62.2101.

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

37.62.144 SOCIAL SECURITY AND VETERANS BENEFITS (1) Social security and veterans benefits which are based on the earning or service record of either parent shall be considered in establishing new support orders or modification of existing orders under the following conditions:

(a) through (d) remain as proposed.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

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

COMMENT #1: One commenter stated that the wording of changes proposed to ARM 37.62.106(3)(d) and (e) was awkward, and that a parents' record of job seeking was not an employment barrier.

RESPONSE #1: The department thanks the commenter for the comment. However, the department believes that a poor record of seeking work might be an important barrier to employers who believe it may indicate a lack of desire to work. The department will retain the proposed rule language.

COMMENT #2: One commenter suggested that "and/or service" be inserted into the change proposed to ARM 37.62.144(1), immediately preceding record.

RESPONSE #2: The department thanks the commenter for the comment. The department believes that the proposed addition would add ambiguity to the rule. Alternatively, the department will add the words "or service" to improve the clarity of the rule.

/s/ Caroline Warne
Caroline Warne
Rule Reviewer

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

Certified to the Secretary of State December 11, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.105 pertaining to)
updating Medicaid fee schedules with)
Medicare rates and updating effective)
dates)

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-810 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2012 of the 2017 Montana Administrative Register, Issue Number 21.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) and (2) remain as proposed.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) through (t) remain as proposed.

(u) The Federal Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for education health services, as provided in ARM 37.86.4412, is effective ~~July 1, 2017~~ January 1, 2018.

(v) through (6) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

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

COMMENT #1: Two commenters suggested the department is not following 37-10-104, MCA in that optometrists are not reimbursed for services at the same rate as ophthalmologists who hold a doctor of medicine or doctor of osteopathy degree.

RESPONSE #1: The department must follow Montana law and 53-6-125, MCA requires the department to reimburse physicians with a doctor of medicine (MD) or doctor of osteopathy (DO) degrees using a conversion factor different from other healthcare professionals, including optometrists. However, the department uses the

same resource-based relative value scale (RBRVS) methodology in determining reimbursement rates for ophthalmologists and optometrists and thus they are reimbursed in the same manner. Prior to 2008, optometrists were reimbursed using the same conversion factor as physicians. In 2007, the 60th Montana Legislature passed Senate Bill 354 (SB354), which defined and clarified the Medicaid reimbursement conversion factor for physicians. SB354 which was codified in 53-6-124, MCA and 53-6-125, MCA defined "physician" as a person who holds an MD or DO degree and who has a valid license to practice medicine or osteopathic medicine in Montana. It must be presumed that the Legislature in 2007 was aware of 37-10-104, MCA, cited by the commenters, because that statute has been in existence since 1959. Also, if the Legislature in 2007 intended for the physician conversion factor to apply to optometrists, it would have included them in the definition of "physician" but did not.

COMMENT #2: Several commenters expressed concern if the department followed the Medicare fees for durable medical equipment (DME) they would make almost no profit and it would jeopardize access for Medicaid members especially in rural areas of Montana. They also had concerns for a member's health stating post-operative outcomes will suffer.

RESPONSE #2: Beginning January 1, 2018, in order for the department to receive Federal Financial Participation, the Medicaid DME program payments must not exceed the 2018 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule in the aggregate. This is mandated in accordance with the 21st Century Cures Act. Therefore, the department will adopt the Calendar Year 2018 Medicare DEMPOS fee schedule.

COMMENT #3: Because MAR Notice No. 37-788 was adopted before MAR Notice No. 37-810, the retroactive effective date in ARM 37.85.105(3)(u) of July 1, 2017 is no longer applicable. In order for the Federal Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for education health services to be consistent with the other effective dates of January 1, 2018, the department is amending the rule.

RESPONSE #3: The department has amended the July 1, 2017 date in ARM 37.85.105(3)(u) to January 1, 2018.

4. This rule amendment is effective January 1, 2018.

/s/ Brenda Elias
Brenda Elias, Attorney
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State December 11, 2017.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.104 pertaining to)
physician-related services manual)

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-812 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2019 of the 2017 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

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

/s/ Brenda Elias
Brenda Elias, Attorney
Rule Reviewer

/s/ Laura Smith for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State December 11, 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 September 30, 2017. This table includes those rules adopted during the period June 30, 2017, through September 30, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2017, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2017 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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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in November 2017 appear. Potential vacancies from January 1, 2018 through March 31, 2018, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 1, 2017.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
13th Judicial District Judge			
Mr. Donald L. Harris Billings	Governor	Fagg	11/22/2017 1/1/2019
Qualifications (if required): None Stated			
Board of Behavioral Health			
Mr. Durand T. Bear Medicine Browning	Governor	Reappointed	11/9/2017 1/1/2021
Qualifications (if required): Licensed Addiction Counselor			
Ms. Kimberly C. Gardner Helena	Governor	Reappointed	11/9/2017 1/1/2021
Qualifications (if required): Licensed Clinical Social Worker			
Dr. Catherine B. Jenni Missoula	Governor	Reappointed	11/9/2017 1/1/2021
Qualifications (if required): Licensed Professional Counselor and Marriage and Family Therapist			
Board of Directors of the State Compensation Insurance Fund			
Senator Lynda Bourque Moss Billings	Governor	Reappointed	11/17/2017 5/1/2021
Qualifications (if required): Public Representative			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Directors of the State Compensation Insurance Fund Cont.			
Mr. Clifford Guy Larsen Missoula	Governor	Mihelish	11/17/2017 5/1/2021
Qualifications (if required): Executive management experience in an insurance company			
Mr. James P. Molloy Helena	Governor	Miltenberger	11/17/2017 5/1/2021
Qualifications (if required): Private enterprises			
Mr. Lawrence Zanto Jr. Helena	Governor	Reappointed	11/17/2017 5/1/2021
Qualifications (if required): Policy Holder and he will continue to serve as Chair			
Board of Nursing Home Administrators			
Director Sheila Hogan Helena	Governor	Opper	11/9/2017 1/1/2021
Qualifications (if required): Director of the Department of Public Health and Human Services			
Ms. Sylvia Moore Clancy	Governor	Corson	11/9/2017 6/1/2022
Qualifications (if required): Public at-large and must be 55 years of age or older			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Nursing Home Administrators Cont.			
Mrs. Carla A. Neiman Plains	Governor	New	11/9/2017 6/1/2022
Qualifications (if required): Rep. of professions or institutions caring for chronically ill and infirmed aged patients			
Board of Physical Therapy Examiners			
Mrs. Holly Claussen Missoula	Governor	Miller	11/17/2017 7/1/2020
Qualifications (if required): Licensed Physical Therapist			
Butte Natural Resource Damage (NRD) Restoration Council			
Representative Ryan Lynch Butte	Governor	McClafferty	11/9/2017 1/1/2021
Qualifications (if required): Public Representative			
Mr. Roderick David Williams Butte	Governor	Reappointed	11/9/2017 1/1/2021
Qualifications (if required): Public Representative			
Ms. Helen O'Connor Joyce Butte	Governor	Reappointed	11/9/2017 1/1/2021
Qualifications (if required): Public Representative			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Commission on Community Service			
Ms. Danette Rector Missoula	Governor	Reappointed	11/9/2017 7/1/2020
Qualifications (if required): Representative of a nonprofit who works with Senior Citizens			
Mr. Eric Strauss Clancy	Governor	Mitchell	11/9/2017 7/1/2020
Qualifications (if required): State agency representative for labor			
Mr. Charles Wetherington Billings	Governor	Reappointed	11/9/2017 7/1/2020
Qualifications (if required): Public Member			
Montana Wheat and Barley Committee			
Mr. Alan Klempel Bloomfield	Governor	Schock	11/9/2017 6/1/2020
Qualifications (if required): (R) Farmer deriving substantial income growing wheat or barley from District VII			
Mr. Michael V. O'Hara Fort Benton	Governor	Reappointed	11/9/2017 6/1/2020
Qualifications (if required): (D) Farmer deriving substantial income growing wheat or barley from District VII			

EXECUTIVE BRANCH APPOINTEES FOR NOVEMBER 2017

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Emergency Response Commission			
Mr. Daniel Anthony Kaluza Butte	Governor	Rhoads	11/9/2017 10/1/2019
Qualifications (if required): Utility company doing business in Montana			
State Employee Charitable Giving Campaign Advisory Council			
Ms. Sandy Booth Helena	Governor	Barnes	11/9/2017 6/13/2019
Qualifications (if required): State Employees			
Traumatic Brain Injury Advisory Council			
Mrs. Jessica Boyer Great Falls	Governor	Ostrowski	11/9/2017 1/1/2018
Qualifications (if required): Survivor or family of survivor of traumatic brain injury			
Ms. Ann Geiger Whitehall	Governor	Ross	11/9/2017 1/1/2020
Qualifications (if required): Advocate for Brain-Injured Persons			

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Chiropractors Dr. Lee Hudson, Great Falls Qualifications (if required): Practicing Chiropractor	Governor	1/1/2018
Dr. Vincent Maddio, Helena Qualifications (if required): Practicing Chiropractor	Governor	1/1/2018
Board of Horse Racing Mr. John Hayes, Great Falls Qualifications (if required): Third District Representative	Governor	1/1/2018
Board of Pardons and Parole Mr. Darryl Dupuis, Polson Qualifications (if required): Enrolled Tribal Member	Governor	1/1/2018
Ms. Patricia Edith Iron Cloud, Poplar Qualifications (if required): Enrolled member of a state-recognized Indian Tribe located in Montana	Governor	1/1/2018
Ms. Sandy Heaton, Deer Lodge Qualifications (if required): Mental Health Professional	Governor	1/1/2018
Board of Public Education Representative Lila V. Taylor-Evans, Busby Qualifications (if required): Resident of District 2 and a Republican	Governor	2/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Public Education Cont. Mr. Jesse Miles Barnhart, Broadus Qualifications (if required): District 2 Republican	Governor	2/1/2018
Board of Regents Mr. Major Robinson, Billings Qualifications (if required): District 2 Representative	Governor	2/1/2018
Board of Regents of Higher Education Mr. Casey Lozar, Helena Qualifications (if required): District 2 Democrat	Governor	2/1/2018
Capitol Complex Advisory Council Dr. Aimee R. Ameline, Great Falls Qualifications (if required): Dentist	Governor	3/29/2018
Children's Trust Fund Board Mr. Joseph Mathieu Raffiani, Billings Qualifications (if required): Public Member	Governor	1/1/2018
High School Association Executive Board Mr. Drew Blewett, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Judicial Nomination Commission		
Mrs. Nancy Zadick, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2018
Montana Arts Council		
Ms. Arlene Parisot, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Corwin Clairmont, Ronan Qualifications (if required): Public Representative	Governor	2/2/2018
Ms. Karen Bohlinger, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Thomas Cordingley, Helena Qualifications (if required): Public Representative	Governor	2/2/2018
Mr. Jason Pyette, Havre Qualifications (if required): Public Representative	Governor	2/2/2018
Montana Children's Trust Fund Board		
Mrs. Clementine Lindley, Billings Qualifications (if required): Public Member	Governor	1/1/2018
Ms. Leslie Caye, Pablo Qualifications (if required): Public Member	Governor	1/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Election and Technology Advisory Council		
Ms. Bonnie Ramey, Boulder Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Vickie Zeier, Missoula Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Sandra Boardman, Chinook Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Kathie Newgard, Polson Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Charlotte Mills, Bozeman Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Shelly Fyant, Pablo Qualifications (if required): None Stated	Secretary of State	1/19/2018
Ms. Jody Walker, Deer Lodge Qualifications (if required): None Stated	Secretary of State	1/19/2018
Montana Grass Conservation Commission		
Mr. William F. Kennedy, Ekalaka Qualifications (if required): Officer of or serves on the board of directors of a state district	Governor	1/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Grass Conservation Commission Cont.		
Ms. Vicki Dunaway, Billings	Governor	1/1/2018
Qualifications (if required): Member of the public who possesses a general understanding of livestock industry		
Potato Commodity Advisory Committee		
Mr. Tim Lake, Polson		
Qualifications (if required): Potato Producer	Governor	3/1/2018
Mr. Jack Meyer, Manhattan		
Qualifications (if required): Potato Producer	Governor	3/1/2018
State Lottery Commission		
Mr. Tom Keegan, Helena		
Qualifications (if required): Attorney	Governor	1/1/2018
Representative Cynthia Hiner, Deer Lodge		
Qualifications (if required): Public Representative	Governor	1/1/2018

None Stated **EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State-Tribal Economic Development Commission		
Ms. Theresa Hould McKeon, Malta Qualifications (if required): Survivor or family member of survivor of traumatic brain injury	Governor	1/1/2018
Ms. Angela Wathan, Whitefish Qualifications (if required): Injury Control or Prevention Programs	Governor	1/1/2018
Temporary Assistance for Needy Families		
Ms. Arlene Templer, Pablo Qualifications (if required): Representative of CSKT Tribal Employment Program	Director	3/1/2018
Representative Mary M. Caferro, Helena Qualifications (if required): Public Representative and former TANF Parent	Director	3/1/2018
Ms. Heather O'Loughlin, Helena Qualifications (if required): Representative of a statewide research organization	Director	3/1/2018
Ms. Pamela Carlson, Helena Qualifications (if required): Representative of TANF WoRC Consortium	Director	3/1/2018
Mr. Patrick Sweeney, Billings Qualifications (if required): Representative of past TANF Recipient	Director	3/1/2018
Ms. Lorianne Burhop, Missoula Qualifications (if required): Representative of a statewide food program	Director	3/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Temporary Assistance for Needy Families Cont.		
Ms. Lucinda Burns, Lame Deer Qualifications (if required): None Stated	Director	3/1/2018
Ms. Barbara Burton, Helena Qualifications (if required): Representative of a youth related advocacy organization	Director	3/1/2018
Ms. Erin Irvine, Ronan Qualifications (if required): Public Representative/single mother and current college student	Director	3/1/2018
Ms. Veronica Moldenhauer, Great Falls Qualifications (if required): Representative of an early childhood education organization	Director	3/1/2018
Ms. Jaymie Sheldahl, Helena Qualifications (if required): Representing Head Start	Director	3/1/2018
Ms. Karen Vanni, Great Falls Qualifications (if required): Representative of a nonprofit organization working with low income clients	Director	3/1/2018
Ms. Pam Watson, Helena Qualifications (if required): Representing Montana Department of Labor and Industry	Director	3/1/2018
Ms. Kelsen Young, Helena Qualifications (if required): Representative of a statewide advocacy program	Director	3/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Traumatic Brain Injury Advisory Council		
Mrs. Jessica Boyer, Great Falls Qualifications (if required): Survivor or family of survivor of traumatic brain injury	Governor	1/1/2018
Youth Justice Council		
Sheriff Craig Anderson, Glendive Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Commissioner Laura Obert, Townsend Qualifications (if required): Local Government and Board of Crime Control Member	Governor	3/1/2018
Mr. Tim Brurud, Havre Qualifications (if required): Private Non-Profit	Governor	3/1/2018
Judge Mary Jane Knisely, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018
Mr. Randy Shipman, Dillon Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018
Mr. Dave Bailon, Kalispell Qualifications (if required): Volunteer who works with Delinquents or Potential Delinquents	Governor	3/1/2018
Mr. Peter Ohman, Bozeman Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018

EXECUTIVE BRANCH VACANCIES – JANUARY 1, 2018 THROUGH MARCH 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Youth Justice Council Cont.		
Mr. Braeden Quinn, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Geri Small, Lame Deer Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Tara French, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018
Ms. Marilyn Helen King, Bozeman Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Haley Cox, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Abigail Helland, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Isabel Hamilton, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Kristina Lucero, Missoula Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018

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SECRETARY OF STATE

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