MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3814 and 8.94.3815 pertaining to governing the submission and review of applications for funding under the Treasure State Endowment Program (TSEP)	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2018, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., April 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD (406) 841-2702; facsimile (406) 841-2771; or e-mail to bmartello@mt.gov.

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

8.94.3814 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINSTRATION OF TREASURE STATE ENDOWMENT GRANTS (1) The Department of Commerce adopts and incorporates by reference the ~~2016~~ 2018 Montana Treasure State Endowment Program Project Administration Manual ~~(January 2016)~~ (March 2018), as rules for the administration of TSEP grants.

(2) remains the same.

(3) Copies of the regulation adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 S. Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or viewed on the department's web site at ~~http://comdev.mt.gov/TSEP/default.mcpx~~ http://comdev.mt.gov/Programs/TSEP.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule because 90-6-710, MCA, requires the department to adopt rules to implement the program.

8.94.3815 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM – PROJECT GRANTS

(1) The Department of Commerce adopts and incorporates by reference the ~~2016~~ 2018 Montana Treasure State Endowment Construction Application Guidelines ~~(January 2016)~~ (March 2018) as rules governing the submission and review of applications under the TSEP program.

(2) remains the same.

(3) Copies of the regulation adopted by reference in (1) can be viewed on the department's web site at ~~http://comdev.mt.gov/TSEP~~ http://comdev.mt.gov/Programs/TSEP, or may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule because 90-6-710, MCA, requires the department to adopt rules to receive and review the program.

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 Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; by facsimile to (406) 841-2771, or e-mail to banseth@mt.gov, and must be received no later than 5:00 p.m., April 15, 2018.

5. Becky Anseth, TSEP Program Manager, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to bmartello@mt.gov, or by completing a request form at any rules hearing held by the department.

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

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

/S/ MARTY TUTTLE
MARTY TUTTLE
Rule Reviewer

/S/ PAM HAXBY-COTE
PAM HAXBY-COTE
Director
Department of Commerce

Certified to the Secretary of State on March 5, 2018.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3728 pertaining to the administration of the 2019 Biennium Federal Community Development Block Grant (CDBG) Program – Planning Grants	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2018, at 10:30 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., April 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail bmartello@mt.gov.

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

8.94.3728 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PLANNING GRANTS (1) The Department of Commerce adopts and incorporates by reference the ~~2017-2018~~ 2018-2019 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants as rules for the administration of the ~~2017-2018~~ 2018-2019 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Planning Bureau web site at http://comdev.mt.gov/Programs/CDBG/PlanningActivities/Applying.

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

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCDBG@mt.gov, and must be received no later than 5:00 p.m., April 15, 2018.

5. Maria Jackson, Planning Specialist, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

/s/ MARTY TUTTLE
MARTY TUTTLE
Rule Reviewer

/S/ PAM HAXBY-COTE
PAM HAXBY-COTE
Director
Department of Commerce

Certified to the Secretary of State on March 5, 2018.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.602 definitions and 8.111.603 housing credit allocation procedure	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2018, at 11:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m. on April 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail bmartello@mt.gov.

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

8.111.602 DEFINITIONS (1) and (2) remain the same.

(3) "QAP" means the board's "Housing Credit Program ~~2018~~ 2019 Qualified Allocation Plan," which sets forth the application process and selection criteria used by the board for evaluation and selection of projects to receive awards for allocation of housing credits for calendar year ~~2018~~ 2019, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) remains the same.

AUTH: 90-6-106, MCA
IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to update the Qualified Allocation Plan (QAP) definition to reference the 2019 Qualified Allocation Plan for the Montana Housing Credit Program.

Federal low-income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings. Each state's share of federal low-income housing tax credits is allocated to particular buildings under programs administered by the respective states' housing credit

agencies. The Montana Board of Housing is Montana's housing credit agency for purposes of administering the tax credit program and allocating tax credits in the state of Montana. In Montana, the program is known as the Montana Housing Credit Program. Federal law requires that tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP."

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2019 QAP. Thereafter, at its January 8, 2018 meeting, the board considered and approved public notice and distribution of the proposed 2019 QAP. After public notice of the proposed 2019 QAP and of the opportunity for public comment was published and distributed, a public hearing on the proposed 2019 QAP was held on January 23, 2018 and written comments were also received. At its February 13, 2018 meeting, after considering all written and oral comments on the proposed 2019 QAP, staff recommendations, additional public comment and various proposed revisions in response to comments, the board approved the 2019 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The 2019 QAP has been submitted to the Governor for approval.

A copy of the 2019 QAP is available on the internet at http://housing.mt.gov/MFQAP or by requesting a copy from: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov.

8.111.603 HOUSING CREDIT ALLOCATION PROCEDURE (1) through (8) remain the same.

(9) The board will select those projects to receive an award of housing credits that it determines best meet the most pressing housing needs of low income people within the state of Montana, taking into consideration the selection criteria as defined in the QAP. The awarding of points to projects pursuant to the development evaluation criteria of the QAP is for purposes of determining that the projects meet at least the minimum criteria required for further consideration under the QAP and to assist the board in evaluating and comparing projects. Development evaluation criteria scoring is only one of several considerations taken into account by the board and does not control the selection of projects that will receive an award of housing credits. In addition to any other selection criteria specified in the QAP, the board may consider the following factors in selecting projects for an award of housing credits to qualifying projects:

(a) and (b) remain the same

(c) the overall income levels targeted by the projects (including deeper targeting of income levels);

(d) through (k) remain the same.

AUTH: 90-6-106, MCA
IMP: 90-6-104, MCA

REASON: The proposed amendment to ARM 8.111.603 would clarify that, in consideration of income levels targeted by proposed projects for purposes of housing credit awards, the board may consider deeper targeting of income levels. The same provision is included in the 2019 QAP. The proposed amendment is necessary to encourage development and consideration of housing projects targeting relatively lower-income individuals and families. While all housing credit projects are targeted to lower-income individuals and families, targeting to relatively lower income levels may address the housing needs of the lowest-income individuals and families which may otherwise go unmet. Under the proposed amendment, such deeper income targeting could be considered by the board in addition to all other factors as specified in the QAP.

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: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov, and must be received no later than 5:00 p.m., April 15, 2018.

5. Mary Bair, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

/S/ MARTY TUTTLE
MARTY TUTTLE
Rule Reviewer

/S/ PAY HAXBY-COTE
PAM HAXBY-COTE
Director
Department of Commerce

Certified to the Secretary of State March 5, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.3.202 and ARM 12.3.208 pertaining to Classes of License Agents and Acceptable License Agent Security	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 11, 2018, the Department of Fish, Wildlife and Parks (department) proposes to repeal the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than March 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The department proposes to repeal the following rules:

12.3.202 CLASSES OF LICENSE AGENTS

AUTH: 87-1-201, 87-2-901, MCA
IMP: 87-2-901, MCA

REASON: The department uses an Automated License System (ALS), and therefore no longer uses classes of license agents. All vendors also use ALS, rendering this rule outdated and no longer necessary.

12.3.208 ACCEPTABLE LICENSE AGENT SECURITY

AUTH: 87-2-902, MCA
IMP: 87-2-902, MCA

REASON: The requirement for a bond or security is no longer needed with the transfer of funds from the license agent's bank accounts on a biweekly basis. Under a paper system, the department had exposure with it taking several weeks to months to receive the revenue from license sales and needed a security in the form of bonds, letters of credit, or certificates of deposit. Since this exposure has been mitigated, the department is proposing to remove this security requirement which would cause the cost of security to pass to the agents and no longer require agents to purchase the corporate security bond.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Emily Cooper, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail Emily.Cooper@mt.gov, and must be received no later than April 13, 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 Emily Cooper at the above address no later than April 13, 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 25 persons based on the number of license agents/vendors in the State of Montana which is approximately 325.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will significantly and directly impact small businesses. The department has determined that removing the requirement to hold a corporate security bond would have a positive impact on small businesses as it could be a significant cost that they would no longer be required to bear.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 22, 2017, the Department of Environmental Quality published MAR Notice No. 17-392 pertaining to the public hearing on the proposed amendment of the above-referenced rules and adoption of a new version of Department Circular DEQ-8 at page 1580 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., March 27, 2018, to advise of the nature of the accommodation that you need. Please contact Sandy Scherer, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The department is amending its proposed amendments to ARM 17.36.310 and 17.36.345 as set forth below. All other proposed amendments to the above-referenced rules remain the same.

4. The department is proposing to amend ARM 17.36.310(3) to delete language that was inadvertently published in the original notice, as follows, stricken matter interlined, new matter underlined:

17.36.310 STORM DRAINAGE (1) through (2)(b) remain as proposed.

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

(4) through (9) remain as proposed.

5. The department is proposing to amend ARM 17.36.345 adopting the 2017 Edition of Department Circular DEQ-8. The department is proposing to modify the 2017 Edition of Department Circular DEQ-8 as it existed when the original notice was issued. These changes are as follows:

The department has deleted Table 3, titled Manning's Roughness Coefficient, from Appendix E. Eliminating the specific coefficients in the table will allow applicants and the reviewing authority to better evaluate specific site-based conditions and will allow applicants to choose roughness coefficients for materials and conveyance structures without going through the deviation process. This additional flexibility in the choice of coefficient will provide storm drainage calculations that more accurately reflect different landscapes and thus will improve storm water control. The department has deleted references to Table 3 throughout the circular and has replaced them with more specific roughness coefficients.

The department has corrected typographical errors in the spreadsheet example in Appendix G. Under Post-Development Characteristics, the department has corrected the column heading "100-year, 24-hour i (volume)" to read "100-year, Tc (flow rate)," and the heading "2-year, 24-hour (flow rate)" to read "100-year, 24-hour (volume)."

The department has corrected a typographical error in Appendix I. The solution to the hypothetical problem incorrectly stated that the total impervious area must be less than 15 percent. As established in Section 3.2, this should have been 25 percent, and the example and calculations have been corrected accordingly.

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

7. Concerned persons may submit their data, views, or arguments, in writing, to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 East 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., April 13, 2018. To be guaranteed consideration, comments must be postmarked on or before that date. All comments received to date on the proposed rules referenced above and comments received in response to this Amended Notice of Proposed Amendment will be addressed in the adoption for this Amended Notice of Proposed Amendment.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ Edward Hayes BY: */s/ Tom Livers*
EDWARD HAYES TOM LIVERS,
Rule Reviewer Director

Certified to the Secretary of State, March 6, 2018.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.6.238 pertaining to Outdoor Advertising Control	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 16, 2018, the Transportation Commission proposes to amend the above-stated rule.

2. The Transportation Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on April 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail phurley@mt.gov.

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

18.6.238 COMMUNITY WELCOME TO SIGNS (1) A community, county, or sovereign nation may erect welcome to signs within its territorial jurisdiction or zoning jurisdiction, as long as the community, county, or sovereign nation exercises some form of governmental authority over the area upon which the sign is located (e.g., city limits). ~~Community welcome to signs must comply with sign standards found in 75-15-113, MCA, and ARM 18.6.231, unless otherwise specified in this rule. Welcome to signs must not be erected by other types of governmental entities including states or tourist area regions.~~

(2) Qualifying communities, counties, or sovereign nations may develop their own welcome to sign designs, and may also use their own pictographs and a brief jurisdiction-wide program slogan, providing the sign design complies with all provisions of this rule, and has been approved by the department before the sign is granted a permit or erected.

(3) Welcome to signs must not contain any form of commercial advertising. The name only, without any promotional information, of a sponsor, benefactor, or support group may be recognized on welcome to signs located outside of the public right-of-way. Names of sponsors, benefactors, or support groups must be secondary to the welcome to sign. The area of the welcome to sign dedicated to a sponsor, benefactor, or sponsor group name must not be larger than one third the total size of the welcome to sign. ~~, including any promotion of commercial products~~

~~or services through slogans and information on where to obtain the products and services. Welcome to signs must not identify any private or public organizations or affiliations.~~

~~(4) Qualifying welcome to sign applicants must first thoroughly explore all options to erect the sign off public right-of-way, and may request placement within the right-of-way only as the option of last resort.~~

~~(5) Welcome to signs must not be placed along interstate routes.~~

~~(6)~~(4) Welcome to signs may only be placed in qualifying locations which meet the following requirements:

(a) ~~within state-controlled right-of-way limits along controlled routes, except for interstate routes, upon verification by the sign owner that specific locations outside the right-of-way have been considered, but were unavailable;~~ on private or other government-owned property adjacent to controlled routes, with permission of the landowner;

(b) ~~on private or other government-owned property adjacent to controlled routes, except for interstate routes, with permission of the landowner;~~ within state-controlled right-of-way limits along controlled routes, except for interstate routes, if placed 10 feet or more outside the highway clear zone, unless prior department approval has been given through the encroachment permit process. Right-of-way locations require verification by the applicant that at least two specific locations outside the right-of-way have been considered, but were unavailable; and

(c) where the welcome to sign does not distract drivers from official traffic control messages such as regulatory, warning, or guidance messages as determined by the department.

~~(c) outside of key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions;~~

~~(d) within five miles of a community for community signs, or within five miles of a county line for county signs, with no more than one welcome to sign in each direction;~~and

~~(e) within an area where adequate spacing is available between the welcome to sign and other higher priority signs including all traffic control devices, where adequate space is defined as:~~

~~(i) 150 feet on roadways with speed limits of less than 30 mph;~~

~~(ii) 200 feet on roadways with speed limits of 30 to 45 mph; and~~

~~(iii) 500 feet on roadways with speed limits greater than 45 mph;~~

~~(f) in a position where they would not obscure the road users' view of other traffic control devices; and~~

~~(g) ten feet or more outside the highway clear zone, unless prior department approval for an exemption is given.~~

~~(7)~~ (5) Welcome to signs must not ~~meet all of the following design standards~~:

(a) ~~the maximum area of the welcome to sign shall not~~ exceed ~~150~~ 300 square feet in area;

~~(b) the height above ground level shall not exceed 30 feet in height;~~

~~(c)~~(b) contain lettering with a height ~~must be at least~~ of less than four inches ~~in height~~;

~~(d)~~(c) ~~the sign must not~~ be attached to any other sign, sign assembly, or other traffic control device, including supports or any sign structures;

~~(e)~~(d) ~~the sign must not~~ be affixed to fences, power poles, traffic signal poles or boxes, street lights, trees, or painted, or drawn upon rocks, or other natural features;

~~(f)~~(e) ~~the sign must not~~ contain any messages, lights, symbols, or trademarks that resemble any official traffic control devices;

~~(g)~~(f) ~~the sign must not~~ contain any ~~internal illumination, light-emitted diodes (LED), luminous tubing, fiber optics, luminescent panels, or other~~ flashing, moving, or animated features;

~~(h)~~(g) ~~the sign may~~ be lighted by external spot lights ~~if~~ unless the lights are effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled way of the highway, or are of such low intensity as to not cause glare, or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle; ~~and~~

~~(i)~~(h) ~~the sign must not distract from official traffic control messages such as regulatory, warning, or guidance messages.~~ be located near key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions; and

(i) be maintained from highway right-of-way except as stated in (9).

~~(8)~~(6) An outdoor advertising permit must be obtained by the community, county, or sovereign nation for each welcome to sign, accompanied by a nonrefundable inspection fee. There is no initial permit fee or renewal fee for welcome to signs. A private applicant is not eligible for a welcome to sign permit.

(7) A welcome to sign permit will not be considered in determining spacing required between other non-welcome to signs or permitted off-premise advertising signs.

~~(9)~~(8) An encroachment permit must be obtained from the department for each welcome to sign which will be located within the right-of-way limits of any controlled route. ~~An encroachment permit is not required for welcome to signs which will be located on private or government-owned properties adjacent to the controlled route, which location is outside the state-controlled right-of-way limits.~~

~~(10) Welcome to signs must be initially installed and later maintained by the sign owner, at the sign owner's sole expense, by meeting all department rules for sign repair and maintenance.~~

~~(11)~~(9) ~~Sign owners~~ Welcome to sign applicants who are granted an encroachment permit for a welcome to sign to be erected in state-controlled right-of-way must ~~meet all department procedures for work within the right-of-way, including traffic control plans, if required by the department, and any other safety procedures required by the department. Welcome to sign owners must contact the department and receive department approval before conducting any work within state-controlled right-of-way limits.~~ conform with all requirements of the assigned encroachment permit prior to performing any installation of or maintenance to the welcome to sign.

~~(12) This rule applies to new and modified welcome to sign installations, and does not apply to welcome to signs which were erected by any community, county, or sovereign nation before the effective date of this rule, except previously erected~~

~~welcome to signs must meet all maintenance requirements and procedures for work within the right-of-way under this rule.~~

~~(13)~~(10) ~~Any~~ A welcome to sign ~~which is proposed for upgrade or structural modification~~ owner proposing sign modifications beyond routine maintenance must ~~obtain permits and meet all requirements of this rule~~ submit a modification application and receive department approval prior to modification.

~~(14)~~(11) If a highway construction or reconstruction project, or placement of a newly installed higher-priority traffic control device, such as a higher-priority sign, a highway traffic signal, or a temporary traffic control device, ~~as solely determined by the department,~~ conflicts with an existing welcome to sign located within the existing state-controlled right-of-way, the welcome to sign must be relocated, covered, or removed by the sign owner, at the sign owner's expense, at the department's sole determination and directive.

(12) The department reserves the right to deny any welcome to sign permit application that may negatively impact the traveling public.

(13) Existing welcome to signs must comply with this rule within one year, or before [the effective date of this rule], 2019.

AUTH: 61-8-203, 75-15-121, MCA
IMP: 61-8-203, 75-15-111, 75-15-113, MCA

REASON: The proposed amendments to ARM 18.6.238 are necessary to address Montana communities' requests to allow qualifying entities to place "welcome to" signs along MDT-controlled routes which serve as entry points into those areas. The proposed amendments will require the local government to obtain a specific "welcome to" sign permit which will allow placement of welcome to signs. The proposed amendments to (3) will allow plaques with the names of sponsors to be placed on the welcome to signs. The proposed amendment to (4) will direct applicants to seek sign locations on interstate or state highways outside state right-of-way first, followed by allowed placement within right-of-way on non-interstate highways if an MDT encroachment permit is first obtained. The proposed amendment to (5) will state the sign requirements including maximum size of 300 square feet and lettering of at least four inches in height to avoid driver distraction. Finally, the proposed amendment to (13) will set a one-year date for local governments to obtain the necessary OAC permit for existing signs. The welcome to sign permit will not include an initial permit fee, nor any renewal fee in the future.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick J. Hurley, Department of Transportation, Outdoor Advertising Control, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Patrick J. Hurley at the above address no later than 5:00 p.m., April 13, 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 37.4 based on the 374 communities, counties, and tribal governments in the state.

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 on the department's website, or at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

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

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

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

/s/ Barb Skelton
Barb Skelton
Chair
Transportation Commission

Certified to the Secretary of State, March 6, 2018.

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

In the matter of the amendment of ARM 24.171.410 outfitter assistants and 24.171.2301 unprofessional conduct and misconduct	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 12, 2018, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., on April 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdout@mt.gov (board's e-mail).

3. <u>GENERAL STATEMENT OF REASONABLE NECESSITY</u>: The 2017 Montana Legislature enacted Chapter 217, Laws of 2017 (House Bill 289), an act revising outfitter's assistant laws. The bill became effective October 1, 2017. The board determined it is reasonably necessary to amend existing rules to coincide with the 2017 legislative changes and implement the legislation by further defining emergencies for which outfitters may hire outfitter's assistants. When defining emergency, the board determined that outfitters cannot be the cause of the emergency triggering the need to hire outfitter's assistants. Using already established concepts of "cause" from other areas of law, the board may determine, on a case-by-case basis, whether the outfitter caused the emergency.

Additionally, House Bill 289 specifically required that board rules identify the data on outfitter's assistant use that may be collected. The board is also amending the rules to clarify the data that outfitters must submit to the board and further reorganizing the rules to clearly delineate for outfitters the maintenance and disclosure of this information. Implementation citations are being amended to accurately reflect the statutes implemented through the rules. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.171.410 OUTFITTER'S ASSISTANTS (1) An outfitter may only employ or contract with an outfitter's assistant in an emergency. Emergency, as defined in 37-47-101, MCA, includes unforeseen staffing shortages, not caused by the outfitter's action or inaction, for which employing or contracting with an outfitter's assistant is necessary to protect the public health, safety, and welfare while serving a client.

(2) Before an outfitter's assistant serves a client, the outfitter shall:

(a) disclose to each client that the outfitter's assistant is not a licensed guide or outfitter;

(b) explain the emergency causing the need to employ or contract with the outfitter's assistant; and

(c) disclose whether the outfitter's assistant has received first aid certification.

~~(1)~~ (3) For each outfitter's assistant employed or contracted with by an outfitter, the following documentation procedures shall be followed:

(a) An outfitter shall document the employment or retention of each outfitter's assistant ~~in writing~~. The outfitter's assistant shall keep a copy of the employment documentation at all times during the service period. Within 15 days of the first date the outfitter's assistant serves a client, the outfitter shall submit to the department a copy of the employment documentation and fee required in ARM 24.171.401. The ~~writing~~ employment documentation shall include ~~each of the following characteristics~~:

(i) remains the same.

~~(ii) an explanation for the emergency replacement of a licensed guide with the outfitter assistant;~~

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

~~(iv)~~ (iii) the name, date of birth, address, telephone number, and, if available, e-mail address of the outfitter's assistant; and

(v) remains the same but is renumbered (iv).

~~(b) The outfitter assistant shall keep a copy of the documentation at all times during the service period.~~

~~(c) Within 15 days of the first date the outfitter assistant serves any client for the outfitter under the particular emergency use, the outfitter shall send the documentation to the board's official e-mail address or facsimile number, or shall deposit it in the U.S. mail to the board's address, or shall personally deliver it to the board office.~~

(b) Within 15 days of the first date the outfitter's assistant serves any client, the outfitter shall submit the following information to the department:

(i) an explanation of the emergency causing the need to employ or contract with the outfitter's assistant;

(ii) an explanation for why the outfitter's assistant could not obtain a guide license before serving a client;

(iii) a statement indicating whether the outfitter's assistant has applied for a guide license;

(iv) confirmation that the outfitter properly disclosed to the client information required by this rule; and

(v) an affidavit by the outfitter that the outfitter has complied with all laws and rules relating to outfitter's assistants.

(c) Outfitters shall maintain a copy of this documentation and make the records available at all times in accordance with ARM 24.171.408 following the provision of services by the outfitter's assistant.

~~(2) Before an outfitter assistant serves a client, the outfitter shall disclose to each client that the outfitter assistant is not a licensed guide or outfitter and shall also disclose whether the outfitter assistant has received first aid certification.~~

~~(3)~~ (4) Unless otherwise authorized under ARM 24.171.405, regarding booking agents and advertising, an outfitter's assistant may not:

~~(a) be designated by an outfitter to collect fees from clients;~~

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

~~(4)~~ (5) Except where an outfitter's assistant's conduct is further limited by statute or rule, the standards of conduct set forth in ARM 24.171.2301 applicable to guides shall also be observed by the outfitter's assistant.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-325, 37-47-404, 37-47-405, MCA

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide or outfitter's assistant is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. Unprofessional conduct by an outfitter's assistant is grounds for disciplinary action against the outfitter who employed or contracted with the outfitter's assistant. An outfitter shall:

(a) remains the same.

(b) not conduct any services or allow services to be conducted by a supervised guide or outfitter's assistant on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;

(c) not provide services or allow services to be conducted by a supervised guide or outfitter's assistant to clients outside the boundaries of the outfitter's approved operations plan;

(d) through (l) remain the same.

(m) obtain and maintain a reasonable degree of supervision over each guide and outfitter's assistant to ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) through (p) remain the same.

(q) not use a guide with an inactive license; ~~and~~

(r) comply with all laws and rules relating to outfitter's assistants; and

(r) remains the same but is renumbered (s).

(2) ~~A guide~~ Guides shall:

(a) through (d) remain the same.

(3) All licensees shall:

(a) through (c) remain the same.

(d) report to the board office, at their earliest opportunity, any violation of fish and game laws or outfitter, ~~and~~ guide, and outfitter's assistant laws of which they have knowledge;

(e) and (f) remain the same.

(g) not harass, assault, or abuse clients, employees, outfitters, guides, or ~~professional guides~~ outfitter's assistants, or members of the general public, verbally or otherwise;

(h) remains the same.

(i) produce their current license or employment documentation required by ARM 24.171.410 at the request of law enforcement or a representative of the board;

(j) through (p) remain the same.

(q) ~~not fail to~~ comply with the statutes and rules applicable to licensees of the board.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA

IMP: 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341, MCA

REASON: During the legislative session and the board's consideration of rule amendments to implement House Bill 289, members of the public expressed concern that outfitters may be abusing their ability to employ or contract with outfitter's assistants. To address these concerns, the board is amending this rule to clarify that outfitters may be held accountable for violating outfitter's assistant laws, that outfitter's assistants are held to the same standard of conduct as licensed guides while serving clients, and that employing outfitters may be held accountable for unprofessional conduct committed by outfitter's assistants. Other amendments to this rule provide clarity in language and ease of use for the reader.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdout@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 3, 2017, by phone.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.410 and 24.171.2301 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to dlibsdout@mt.gov.

10. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
JOHN WAY, 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 March 6, 2018.

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

In the matter of the amendment of ARM 24.174.501 examination for licensure as a registered pharmacist, 24.174.526 requirements to become a clinical pharmacist practitioner, 24.174.1704 requirements for submitting prescription registry information to the board, and the repeal of 24.174.2401 screening panel, 24.174.2402 complaint procedure, and 24.174.2403 legal suspension or revocation	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 6, 2018, at 9:00 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 repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on March 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2344; or dlibsdpha@mt.gov (board's e-mail).

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

<u>24.174.501 EXAMINATION FOR LICENSURE AS A REGISTERED PHARMACIST</u> (1) The board has selected the National Association of Boards of Pharmacy (NABP) licensure examination (NAPLEX) to be administered to candidates for licensure in Montana. The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. A score of 75 shall be a passing score for this examination. A candidate who does not attain this score may retake the examination ~~after a 90-day waiting period from the date of the exam~~ <u>pursuant to NABP requirements</u>.

(2) through (4) remain the same.

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

IMP: 37-1-131, 37-7-201, 37-7-302, MCA

REASON: The board is amending this rule to reflect new testing and retesting provisions implemented on November 1, 2016, by the National Association of Boards of Pharmacy (NABP), the administrator of the NAPLEX pharmacist licensure examination for the board. The new provisions reduced the waiting period for NAPLEX exam retakes from 90 to 45 days. NABP made this change because it transitioned to a new exam platform that makes it easier to manage exam retakes while ensuring the integrity of the exam process. Based on the NABP change, the board is amending (1) to reference "NABP requirements" instead of stating the specific waiting period to eliminate the need for rule amendment should NABP make future changes to the exam retake process.

24.174.526 REQUIREMENTS TO BECOME A CLINICAL PHARMACIST PRACTITIONER (1) An applicant for a clinical pharmacist practitioner registration shall:

(a) through (c) remain the same.

(d) have completed ~~five years~~ the years of clinical practice experience that meet the requirements for Board of Pharmacy Specialties (BPS) certification or other equivalent national certification, ~~or have completed a pharmacy residency and two years clinical practice experience~~ and hold one of the following active certifications:

(i) remains the same.

(ii) nationally recognized certification equivalent to BPS certification standards in an area of practice as approved by the board and the Board of Medical Examiners (BME).

(e) submit a signed collaborative practice agreement to the board that includes a description of the type of supervision the collaborating ~~physician~~ practitioner will exercise over the clinical pharmacist practitioner;

(f) through (2) remain the same.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reflect recent changes made by the Board of Pharmacy Specialties (BPS) certification authority regarding eligibility requirements for pharmacists applying for BPS certification, and the years of experience necessary to obtain certification. Further, BPS offers eleven certification specialties that require different levels of practice experience and/or recognition of post-graduate year residency training. To reflect the certification changes, and because BPS may continue adding new certification specialties, the board is amending this rule to reference BPS certification without listing specific requirements and avoid having to amend the rule each time new specialties are added.

The board is amending (1)(d) to require a "nationally recognized certification" that is "equivalent to BSP certification standards" to clarify what other programs are acceptable without the need to amend the rule each time new certification programs

are created. The board is changing "physician" to "practitioner" in (1)(e) to align with terminology in 37-2-102(5), MCA, after board staff noticed the error.

24.174.1704 REQUIREMENTS FOR SUBMITTING PRESCRIPTION REGISTRY INFORMATION TO THE BOARD (1) remains the same.

(2) A pharmacy shall submit all prescription drug order information for a controlled substance to the board no later than ~~eight days~~ close of the next business day after the date of dispensing the controlled substance.

(3) and (4) remain the same.

~~(5) For the purposes of establishing a data history at the initiation of the prescription drug registry, each certified pharmacy and out-of-state mail service pharmacy shall submit a one-time batch submission of controlled substances, dispensed to Montana patients from July 1, 2011 forward to the date the registry is operational.~~

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

~~(7)~~ (6) It is the responsibility of the submitting pharmacy to address any errors or questions about information that the pharmacy has submitted to the prescription drug registry and resubmit corrected data no later than ~~eight days~~ close of the next business day after the date of the original submission.

AUTH: 37-7-1512, MCA
IMP: 37-7-1503, 37-7-1512, MCA

REASON: The board is amending this rule to improve accuracy and timeliness of the prescription information available in the Montana Prescription Drug Registry (MPDR). Prescribers and dispensers rely on the prescription information available in the MPDR when providing medical and pharmaceutical treatment to patients and requiring that pharmacies report the information earlier ensures continually current and up-to-date data. Presently, 44 states with prescription drug registries require at least daily reporting of prescription information. Additionally, the board recently surveyed Montana pharmacies to analyze the capability and impact of changing the reporting requirement and based on the responses, concluded the changes are feasible. The board's subcommittee studied this issue when the board last amended the rule in 2015, and some pharmacies indicated they already reported daily while others expressed concern over software limitations and potential cost to implement daily reporting. As the board's recent survey indicated, advancements in software now allow pharmacies that report prescription information automatically to the MPDR to meet a daily reporting requirement. While some pharmacies that manually report prescription information to the MPDR expressed concern with daily reporting, the board determined the impact to these pharmacies will be minimal. The board's recent survey indicated those pharmacies reporting manually spend approximately 30 to 60 minutes per week submitting the prescription information.

The board is repealing (5) because the provision was written when the MPDR launched in November 2012, and it was necessary to collect a one-time batch of prescription information dating back to the enactment of the MPDR (on July 1, 2011). The one-time batch collection was successful and is no longer necessary.

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

24.174.2401 SCREENING PANEL

AUTH: 37-7-201, MCA
IMP: 37-1-307, MCA

REASON: The board is repealing this rule, ARM 24.174.2402, and 24.174.2403 as the rules are unnecessary and duplicative. ARM 24.174.2401 requires a specific composition of board members to serve on its screening panel. However, the board has experienced challenges in establishing a quorum of the screening panel if a member is unavailable or must be recused from a case. Repealing the rule allows the board greater flexibility in assigning members to its two panels, a process already governed by 37-1-307(1)(d), MCA.

ARM 24.174.2402 and 24.174.2403 are unnecessarily duplicative of the department's standardized complaint and disciplinary procedures that are supported by Title 37, chapter 1, parts 1 through 3, MCA.

24.174.2402 COMPLAINT PROCEDURE

AUTH: 37-7-201, MCA
IMP: 37-1-308, 37-1-309, MCA

24.174.2403 LEGAL SUSPENSION OR REVOCATION

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-311, 37-7-321, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2344, or e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate

whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2344; e-mailed to dlibsdpha@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.174.501, 24.174.526, and 24.174.1704 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.174.2401, 24.174.2402, and 24.174.2403 will not significantly and directly impact small businesses.

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

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

BOARD OF PHARMACY
STARLA BLANK, RPh
PRESIDENT

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

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

Certified to the Secretary of State March 6, 2018.

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

In the matter of the amendment of ARM 24.189.901 and 24.189.907 pertaining to application procedures for behavior analysts and assistant behavior analysts	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 6, 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 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 March 30, 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 dlibsdpsy@mt.gov (board's e-mail).

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

24.189.901 BEHAVIOR ANALYST APPLICATION PROCEDURES

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

(d) a completed criminal background check; and

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

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

~~(i) two from licensed behavior analysts; and~~

~~(ii) one from a licensed psychologist, physician, or certified nurse practitioner.~~

(3) and (4) remain the same.

AUTH: 37-1-131, 37-17-406, MCA
IMP: 37-1-131, 37-17-403, 37-17-406, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.189.907 to no longer require reference forms regarding good moral character. Applicants informed staff of the difficulty in finding licensed behavior analysts to provide two of the three required references, as Montana licensure is

new and surrounding states do not yet license behavior analysts. Additionally, the board concluded that adequate information to demonstrate an applicant's character is obtained through the application's disciplinary/criminal history questions and the results of each applicant's criminal background check.

24.189.907 ASSISTANT BEHAVIOR ANALYST APPLICATION PROCEDURES (1) through (2)(d) remain the same.

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

(f) proof of current supervision by a licensed behavior analyst~~; and~~.

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

~~(i) two from licensed behavior analysts; and~~

~~(ii) one from a licensed psychologist, physician, or certified nurse practitioner.~~

AUTH: 37-1-131, 37-17-406, MCA
IMP: 37-1-131, 37-17-403, 37-17-405, 37-17-406, MCA

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpsy@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

5. 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.

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpsy@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 24.189.901 and 24.189.907 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination 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 dlibsdpsy@mt.gov.

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

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

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

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

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.102 pertaining to board oversight of agency actions	)))	AMENDED NOTICE OF PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 23, 2018, the Department of Livestock published MAR Notice No. 32-18-289 pertaining to the proposed amendment of the above-stated rule at page 391 of the 2018 Montana Administrative Register, Issue Number 4.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 6, 2018 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. Mistakenly, the original proposal notice stated the number of days that a person must appeal the action of the employee in writing to the employee's immediate supervisor was from 30 days of the action. The correct number of days should have been from 60 days of the action. The reasonable necessity statement and the authorization and implementation citations remain as proposed. The following correction for (1) is shown below:

32.2.102 BOARD OVERSIGHT OF ~~AGENCY~~ EMPLOYEE ACTIONS

(1) When a ~~private citizen feels~~ person can demonstrate that ~~a decision~~ an action of an ~~agent~~ employee of the Department of Livestock is unfair and if carried to completion will result in unnecessary inconvenience or harm to ~~him, he may seek the reversal of the decision by requesting the board of livestock in writing to stop the implementation of the decision, or to otherwise modify its impact. Upon receipt of the letter, the matter must be placed upon the agenda of the next regular meeting of the board~~ them, that person must appeal the action of the employee in writing to the employee's immediate supervisor within 60 days of the action. Any subsequent appeal must be made to each successive immediate supervisor, up to an appeal to the board.

~~(2) If the action complained of must be halted immediately in order to prevent irreparable harm, the person seeking relief must so state in his letter. In the event the board is not in session at the time the letter is received, the administrator of the division at which the complaint is directed must immediately contact the chairman of the board, or in his absence the vice chairman, who must appoint a member of the board to investigate the act upon the matter as follows:~~

~~(a) He must meet as soon as possible with the person seeking relief and the division administrator at a time and place convenient to the parties involved. At the board member's option the meeting may be by conference telephone call.~~

~~(b) To the extent that the action taken is discretionary and not required by law, the board member may, if satisfied the action is unfair and will cause unnecessary inconvenience or harm, suspend implementation of the action until the next regular meeting of the board, at which time the full board must consider the matter. In the event the administrator wishes to challenge the decision at the next regular board meeting, he must immediately notify the person seeking relief so he may be present if he desires.~~

~~(c) When an administrator whose decision has been reversed by the board member feels the reversal will result in an immediate and serious peril to the public health, welfare or safety he may request an immediate meeting of the board to consider the action. The person seeking relief may also request a meeting with the board if he is dissatisfied with the board member's decision. Such a meeting may be conducted by conference telephone call, provided the person seeking relief is given the opportunity to participate.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 2-15-3101, MCA

REASON: The department proposes to amend the rule to ensure that the department employees most familiar with the circumstances of an appeal will evaluate the appeal first. The amendment would provide that an appeal proceed up the chain of command prior to reaching the board, creating a record for the board to review. Providing an appeal up the chain of command is anticipated to reduce the department's initial response time to an appeal. Providing a timeline for filing the appeal is anticipated to ensure that appeals are presented timely. The requirement that appeals be in writing is retained from the current rule.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., April 13, 2018.

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: */s/ Donna Wilham*
Donna Wilham
Rule Reviewer

Certified to the Secretary of State March 6, 2018.

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

In the matter of the amendment of ARM 37.86.2901, 37.86.2925, 37.86.2928, 37.86.2931, and 37.86.2932 pertaining to the discontinuance of the supplemental disproportionate share hospital payment	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 5, 2018, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 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 March 21, 2018, 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:

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (41) remain the same.

~~(42) "Supplemental disproportionate share hospital" means a hospital in Montana which meets the criteria in ARM 37.86.2925 and 37.86.2931.~~

(43) through (48) remain the same, but are renumbered (42) through (47).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2925 INPATIENT HOSPITAL REIMBURSEMENT, DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS (1) remains the same.

~~(2) Subject to federal approval and the availability of sufficient state special revenue, all supplemental disproportionate share hospitals (SDSH) will receive a SDSH payment. In order to maintain access and quality in the most rural areas in~~

~~Montana, critical access hospitals will receive an increased portion of the available funding. The SDSH payment will be calculated using the formula: SDSH = (M ÷ D) x P.~~

~~(a) For the purposes of determining SDSH payment amounts, the following definitions apply:~~

~~(i) "SDSH" represents the calculated supplemental disproportionate share hospital amount.~~

~~(ii) "M" represents the number of weighted Medicaid paid inpatient days provided by the hospital for which the payment amount is being calculated.~~

~~(A) For critical access hospitals, weighted Medicaid inpatient days equals the number of Medicaid inpatient days provided multiplied by 3.8.~~

~~(B) For all other hospitals, weighted Medicaid inpatient days equals the number of Medicaid paid inpatient days provided.~~

~~(iii) "D" equals the total number of weighted Medicaid paid inpatient days provided by all SDSHs in Montana.~~

~~(iv) "P" equals the unexpended, unencumbered disproportionate share hospital (DSH) allotment for Montana, as determined by the federal Centers for Medicare and Medicaid Services (CMS) according to section 1923 of the Social Security Act, remaining after routine DSH payments have been calculated according to (1), plus the state financial participation.~~

~~(v) The figures used in (2)(a)(ii) and (iii) must be from the department's paid claims data for the hospital's fiscal year that ended in the most recent calendar year that ended at least 12 months prior to the calculation of the HRA payments.~~

~~(3)~~ (2) DSH payments~~, including RDSH payments and SDSH payments,~~ will be limited to the cap established by CMS for the state of Montana. The adjustment percentages specified in (1) will be ratably reduced as determined necessary by the department to avoid exceeding the cap.

(a) through (f) remain the same.

~~(4)~~ (3) Eligibility for RDSH ~~and SDSH~~ payments will be determined based on a provider's year-end reimbursement status.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2928 INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) remains the same.

(2) Part 1 of the HRA payment will be based upon Medicaid inpatient utilization, and will be computed as follows: HRA1 = (M ÷ D) x P.

(a) For the purposes of calculating Part 1 of the HRA, the following apply:

(i) through (iii) remain the same.

(iv) "P" equals the total amount to be paid via Part 1 of the HRA. "P" consists of a state-paid amount plus the applicable federal financial participation (FFP). The portion of "P" that is paid by the state will equal the amount of revenue generated by Montana's hospital utilization fee, less all of the following:

~~(A) the amount expended as match for supplemental DSH payments as provided in ARM 37.86.2925;~~

(B) and (C) remain the same, but are renumbered (A) and (B).

(3) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2931 ROUTINE ~~AND SUPPLEMENTAL~~ DISPROPORTIONATE SHARE HOSPITAL (1) through (3) remain the same.

~~(4) A hospital is deemed a supplemental disproportionate share hospital if it meets the criteria in (1)(b), (2), and (3).~~

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2932 MEDICAID UTILIZATION RATE (1) and (2) remain the same.

~~(3) The period used to determine whether a hospital is deemed a supplemental disproportionate share hospital will be the same period used to calculate the amounts of the supplemental DSH payments, as provided in ARM 37.86.2925.~~

~~(a) An inpatient day includes each day in which an individual, including a newborn, is an inpatient in the hospital, whether or not the individual is in a specialized ward or whether or not the individual remains in the hospital for lack of suitable placement elsewhere.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to discontinue supplemental disproportionate share hospital payments.

The department is proposing this rule amendment to increase the Hospital Reimbursement Adjustor (HRA) supplemental payment and discontinue the Supplemental Disproportionate Share Hospital (DSH) payment to in-state hospitals. With the implementation of Medicaid Expansion, Montana hospitals experienced a decrease in uncompensated care and an increase in reimbursed care to Medicaid members due to an increase in Medicaid Expansion enrollment. By discontinuing the supplemental DSH payment and increasing the HRA supplemental payments to in-state hospitals, the department can leverage funds generated as a result of increased federal medical assistance and use those dollars for HRA supplemental payments to Montana hospitals. The changes described below are proposed in order to effectuate the discontinuation of supplemental DSH payments to Montana hospitals.

ARM 37.86.2901(42)

The department proposes to remove the definition of supplemental disproportionate share hospital.

ARM 37.86.2925(2) and (3)

The department proposes to remove (2) and remove references in (3) to supplemental DSH.

ARM 37.86.2928(2)(iv)(A)

The department proposes to remove this subsection as we will no longer use a portion of hospital utilization fee (HUF) to match supplemental DSH.

ARM 37.86.2931(4)

The department proposes to eliminate the criteria to be a supplemental disproportionate share hospital.

ARM 37.86.2932(3)

The department proposes to remove reference information regarding determining qualification of being supplemental disproportionate share hospital.

The federal upper payment limit (UPL) determines the cumulative increase in supplemental payments to in-state hospitals, which as of February 2018 is estimated at $2,347,000 for SFY2018. If the UPL increases, the impact of this change will increase. There are 61 in-state hospitals that are affected by this proposal; however the cumulative increase will be distributed using a formula based on utilization and therefore each hospital's individual increase will vary.

5. The department intends to apply these rule amendments retroactively to March 6, 2018.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of 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., April 13, 2018.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda Elias
Brenda Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State March 6, 2018.

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

In the matter of the adoption of NEW RULE I pertaining to the creation of a legally enforceable obligation involving qualifying facilities, NEW RULE II pertaining to access to avoided cost modeling data for a qualifying facility, and the amendment of ARM 38.5.1901 pertaining to definitions	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 9, 2018, at 9:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

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

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

NEW RULE I CREATION OF A LEGALLY ENFORCEABLE OBLIGATION

(1) A legally enforceable obligation, as that term is used in 18 C.F.R. § 292.304, is created when a qualifying facility has:

(a) tendered an executed power purchase agreement to the purchasing utility with a price term consistent with the purchasing utility's avoided costs, calculated within 14 days of the date the power purchase agreement is tendered, with specified beginning and ending dates;

(b) undertaken at least the following work toward interconnection:

(i) submitted an interconnection request to the interconnecting utility which has been signed by the qualifying facility in accordance with the generator interconnection procedures of the interconnecting utility's Open Access Transmission Tariff (OATT);

(ii) paid any required deposit fee;

(iii) provided information sufficient to demonstrate that the qualifying facility has complied with the deadlines for an Interconnection Customer specified in the OATT; and

(iv) provided information sufficient to demonstrate that the qualifying facility has not waived deadlines applicable to the interconnecting utility, except that if such deadline or deadlines have been waived by the Interconnection Customer, or an alternative timeline has been agreed to by the Interconnection Customer, that a legally enforceable obligation will be created, for the purposes of this subsection, at the date or dates by which the Interconnection Customer agreed to in lieu of the deadlines specified in the OATT; and

(c) control of the site and permission to construct the qualifying facility, including at a minimum:

(i) a legally recognized interest in the real property on which the qualifying facility will be sited, such as a lease or ownership interest in the real property;

(ii) all required government land use approvals; and

(iii) all necessary environmental permits to build the facility.

AUTH: 69-3-103, 69-3-604(5), MCA
IMP: 69-3-102, 69-3-604(5), MCA

REASON: Adoption of NEW RULE I as proposed refines the "Legally Enforceable Obligation" standard set forth in *In re Whitehall Wind LLC*, Docket D2002.8.100, Order 6444e ¶ 47 (May 18, 2010) (*Whitehall Wind*). The refinements are necessary to provide additional clarity and improve implementation of the standard. In several recent administrative rate-setting proceedings, the interpretation and workability of the *Whitehall Wind* standard was called into question by qualifying facilities. In addition, although its declaratory statements are non-binding, the Federal Energy Regulatory Commission has advised the Public Service Commission (commission) that state-adopted standards for Legally Enforceable Obligations must be based on objective manifestations of a qualifying facility's (QF) commitment to sell energy to a utility, which the utility may not unilaterally obstruct. On November 24, 2017, the commission issued Order 7500d stating that the executed interconnection agreement element of the standard may warrant revisiting and inviting interested persons to initiate a rulemaking to address the interconnection agreement element of the standard. To date, no interested person has initiated a rulemaking. Because QFs in Montana seek to form Legally Enforceable Obligations or claim that they already exist, the proposed rule will clarify and refine a Legally Enforceable Obligation standard that has been difficult to implement efficiently. The proposed standard aligns the Montana standard with that of other states. *See Pub. Serv. Co. of Oklahoma v. State ex rel. Oklahoma Corp. Comm'n,* 115 P.3d 861, 873 (Okla. 2005) (noting that other jurisdictions have required a degree of project development before finding that a QF is capable of incurring a legally enforceable obligation). The proposed rule will also improve the public's access to and understanding of the substance of the standard by codifying it in an administrative rule instead of through piecemeal adjudicatory orders. Finally, the rulemaking process allows for full public and stakeholder participation in addressing a standard that affects multiple parties

and individuals that may not be able or willing to participate in contested case proceedings that concern this standard.

NEW RULE II QUALIFYING FACILITY ACCESS TO AVOIDED COST MODELING DATA (1) Upon a request from a qualifying facility, a utility shall provide reasonably transparent data concerning the utility's avoided cost.

(2) The utility must provide an initial avoided cost calculation within 14 days of receipt of a qualifying facility's production profile at no cost to the qualifying facility. In providing an initial avoided cost calculation to the qualifying facility, the utility must use the methodologies most recently approved by the commission for that utility.

(3) If a utility uses a proprietary modeling software to calculate its avoided cost, the utility must allow a qualifying facility, upon request, to conduct one avoided cost calculation using the utility modeling software with the qualifying facility's own assumptions and inputs at no cost to the qualifying facility. The utility must make its modeling software accessible to the qualifying facility within 14 days of the qualifying facility's request to conduct an alternative avoided cost calculation. The qualifying facility must have access to the modeling software for 14 days after the utility makes it available to the qualifying facility to conduct an alternative avoided cost calculation. A utility must accommodate reasonable requests by a qualifying facility to conduct additional avoided cost calculations using the utility's modeling software and may charge the qualifying facility a reasonable price for use of the modeling software beyond the single avoided cost calculation identified in this subsection.

(4) Pursuant to 69-3-206 and 69-3-209, MCA, a qualifying facility or utility may petition the commission for fines against a qualifying facility or utility for failure to adhere to this rule.

AUTH: 69-3-103, 69-3-604(5), MCA
IMP: 69-3-102, 69-3-604(5), MCA

REASON: Adoption of NEW RULE II, as proposed, codifies the commission's existing policy regarding qualifying facilities' access to proprietary modeling software. *See In re Greycliff Wind Prime*, *LLC*, Docket D2015.8.64, Order 7436d ¶ 24 (Mont. Pub. Serv. Comm'n Sept. 16, 2016); *In re Crazy Mountain Wind, LLC*, Docket D2016.7.56, Order 7505b ¶ 18–20 (Mont. Pub. Serv. Comm'n Jan. 5, 2017); *In re New Colony Wind, LLC*, Docket D2017.6.45, Order 7560a ¶ 34 (Mont. Pub. Serv. Comm'n Dec. 26, 2017). Qualifying facilities have expressed concern about how to tender an executive power purchase agreement to the purchasing utility with a price term consistent with the purchasing utility's avoided costs. The proposed rule addresses this concern by enhancing qualifying facilities' access to tools utilities use to calculate avoided costs and requires utilities to calculate avoided costs consistent with current commission policies. The proposed rule also seeks to encourage amicable contract formation between utilities and qualifying facilities, and seeks to discourage utilities and qualifying facilities from offering avoided cost calculations in furtherance of a litigation strategy rather than a genuine attempt to amicably form contracts. The proposed rule implements requirements designed to achieve the commission's expectation that utilities and qualifying facilities engage in "a robust bilateral negotiation process, centered around sound avoided cost principles, that

can better accommodate the moving parts of an unknown and unpredictable energy future." *See In re Greycliff Wind Prime, LLC*, Docket D2015.8.64, Order 7436d ¶ 24 (Mont. Pub. Serv. Comm'n Sept. 16, 2016).

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

38.5.1901 DEFINITIONS (1) through (2)(d) remain the same

(e) "Production profile" means the expected hourly generation output of a qualifying facility for a full year based an engineering analysis of the qualifying facility's power production capabilities and fuel use or availability.

(e) though (l) remain the same, but are renumbered (f) through (m).

AUTH: 69-3-103, MCA
IMP: 69-3-102, MCA

REASON: Amendment of ARM 38.5.1901 is necessary to provide a definition for production profile with respect to the proposed rules.

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: Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail rhonda.simmons@mt.gov, and must be received no later than 5:00 p.m., April 25, 2018.

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the Department of Public Service Regulation has determined that the adoption and amendment of the above-referenced rules will likely significantly and directly impact small businesses. The small businesses that will be affected significantly and directly are any small qualifying facilities that decide to develop projects under these provisions. These small businesses will benefit from adoption of the proposed rules because the new rules provide more clarity on the creation of a legally enforceable obligation which

can lead to the development of an energy facility that sells power to a public utility. As stated in the rule reason section above, these rules will improve the public's access to and understanding of the substance of the standard by codifying it in an administrative rule instead of through piecemeal adjudicatory orders and this will benefit small businesses. The proposed rules also enhance qualifying facilities' access to tools utilities use to calculate avoided costs and requires utilities' to calculate avoided costs consistent with current commission policies. The department is unaware of any significant and direct adverse impacts that adoption of the proposed rules will have on other small businesses. The department is not aware of any alternative methods that may be reasonably implemented to minimize or eliminate any potential adverse effects of adopting the proposed rule while still achieving the purpose of the proposed rule.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V, the amendment of ARM 42.12.104, 42.12.111, 42.12.124, 42.12.130, 42.12.131, and 42.12.144, and the repeal of ARM 42.12.125, 42.12.202, 42.12.401, 42.12.404, 42.12.405, 42.12.406, 42.12.408, 42.12.412, 42.12.414, and 42.12.416 pertaining to quota areas and the competitive bidding process for alcoholic beverage licenses	))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On April 9, 2018, at 1:30 p.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on March 30, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

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

(1) "Bidder" means an individual or business entity.

(2) "Competitive bid form" means an electronic form provided by the department and submitted by a bidder, to enter a competitive bidding process.

(3) "Competitive bidding" means a process to select a bidder to submit an application for licensure.

(4) "Irrevocable letter of credit" means a letter of credit in which the issuing bank guarantees the:

(a) bidder's ability to pay the bid amount;

(b) bank will not withdraw the credit or cancel the letter;

(c) bank will not modify or revoke the credit without the department's consent;

(d) department as the beneficiary; and

(e) bank's commitment to honor the line of credit for a minimum of one year from the date of the competitive bidding closing.

(5) "Minimum bid amount" means the lowest acceptable bid amount. The minimum bid amount shall be set at 75 percent of the market value of licenses of the same type and privileges that have sold within the quota area or similar quota area.

(6) "Pivotal straight line" means a line that is created from the center point of two overlapping incorporated cities' or incorporated towns' boundaries and extends outward in a manner that separates the two quota areas as close to equidistant as possible.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes adopting New Rule I to provide definitions for terms to be used in New Rules II, III, IV, and V, as proposed to be adopted in this same notice and ultimately located in ARM Title 42, chapter 12, [subchapter 5]. Definitions are necessary to add clarity and provide more detailed information for the industry and public regarding the subject matter.

NEW RULE II PUBLISHING OF ALCOHOLIC BEVERAGE LICENSE AVAILABILITY (1) The department shall publish the availability of a retail alcoholic beverage license, that is subject to the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, when:

(a) a new license becomes available in a quota area in which a license of the same type is not currently available in the quota area;

(b) the opportunity to transfer a license into a quota area becomes available in which a license of the same type is not currently available in the quota area; and

(c) the lapse, revocation, or issuance of a license within the quota area in which the license is located has created the last remaining license for that license type in the quota area.

(2) No more than one license per license type per quota area may be published per calendar year until the quota has been reached for licenses that became available due to the separation of combined quota areas.

(3) The department shall publish the availability of the license once a week for four consecutive weeks in the newspaper of general circulation in the quota area. The publication notice shall include:

(a) the type of license(s) available;

(b) the reason for the availability;

(c) the instructions for submitting a competitive bid form;

(d) the processing fee;

(e) the minimum bid amount; and

(f) that the department will use a competitive bidding process for determining who is granted the opportunity to apply for licensure.

(4) The department has the right to cancel or amend a competitive bidding process at any time. If a competitive bidding process is cancelled, the department shall refund the form processing fee and notice the availability of the license, if applicable, in a future publication.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes adopting New Rule II due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available or were created due to the separation of previously determined combined quota area. The department proposes the following content for the rule:

Section (1), to list the instances when the department shall publish the availability of licenses, for transparency. Requiring the department to publish the availability of licenses under these situations will ensure proper notice is provided so all interested parties have the opportunity to pursue the license.

Section (2), to limit the number of licenses that may be published in a quota area due to the separation of a combined quota area to no more than one license per license type per year per quota area. This creates continuity with 16-4-105, 16-4-201, and 16-4-420, MCA, and clarifies that this requirement is based on a calendar year.

Section (3), to provide how the department shall publish the availability of the licenses and what is required to be in each publication. The number of instances the publication must occur is similar to how the department previously published licenses available under the lottery process to ensure adequate notice is made. The list of items in the publication will provide direction to the public on the available licenses.

Section (4), to allow the department to cancel or amend a competitive bidding process for the unforeseen circumstance that the availability of the license was made in mistake or some portion of the process has been determined to be in error. This will allow the department to make the necessary corrections before the bidding process closes.

NEW RULE III RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BID FORMS (1) Competitive bid forms pursuant to [NEW RULE II] must be submitted electronically on a form provided by the department.

(2) The deadline to submit a bid is ten business days from the date of the last publication notice required in [NEW RULE II (3)].

(3) A bidder will be disqualified from the competitive bidding process if:

(a) the competitive bid form is not received on or before the deadline;

(b) the processing fee is not received on or before the deadline;

(c) the competitive bid form is not signed;

(d) any individual listed as an owner, partner, member, officer, or director is younger than 19 years of age at the time of the competitive bid closing;

(e) the competitive bid form is incomplete;

(f) the bidder's bid amount is less than the minimum bid amount;

(g) the bidder fails to include an irrevocable letter of credit from a financial institution;

(h) the irrevocable letter of credit fails to identify the department as the beneficiary;

(i) the irrevocable letter of credit is not equal to or greater than the bidder's bid amount;

(j) the irrevocable letter of credit fails to specify the license type and/or quota area; or

(k) the department determines, for any other reason, the information provided is inaccurate or incomplete.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-401, 16-4-420, MCA

REASON: The department proposes adopting New Rule III due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available. The department proposes the following content for the rule:

Section (1), to require the competitive bid form to be filed electronically. The department is proposing this to promote the use of the department's safe and efficient online system and to enable the department to more efficiently receive and process the forms.

Section (2), to establish a deadline for when the competitive bid process closes. Establishing a date is necessary to provide guidance to the department and public notice for when forms are due.

Section (3), to provide a non-exhaustive list of reasons why a form will be removed from the process. As proposed, (3)(a) and (b) disqualify a bidder if the form or fees are received after the deadline, because the bidder will have failed to comply with the filing requirements; (3)(c) disqualifies a bidder if they failed to sign the form, because the signature attests that the bidder correctly stated the required information during the form process; (3)(d) disqualifies a bidder in which an owner, partner, member, officer, or director is younger than 19 years of age, to create continuity with 16-4-401, MCA, which prohibits someone under the age of 19 from possessing an alcoholic beverage license; (3)(e) disqualifies a bidder that submitted an incomplete form, as the department cannot process the form without all required fields accounted for; (3)(f) disqualifies a bidder in which their bid amount is less than the minimum bid amount, as the bidder failed to meet the requirement set out in the publication; (3)(g) and (3)(i) disqualify a bidder if the irrevocable letter of credit is missing, is not from a financial institution, or does not equal the bid amount, as required by 16-4-105, 16-4-204, and 16-4-420, MCA; (3)(j) disqualifies a bidder if the irrevocable letter of credit does not mention both the license type and quota area, to ensure the letter of credit was drafted for the license being bid on; (3)(h) reiterates the requirement that the department be identified as the beneficiary on the irrevocable letter of credit from the financial institution; and (3)(k) disqualifies a bidder who provides inaccurate or incomplete information, to remove any bids that failed to meet the minimum requirements of the form.

NEW RULE IV SUCCESSFUL RETAIL ALCOHOLIC BEVERAGE LICENSE COMPETITIVE BIDDER (1) The department shall rank all qualified bidders by bid amount.

(2) Regardless of the timing of bids, in the event a bidder places multiple bids, the department shall accept the highest bid placed by the bidder.

(3) In the event of the highest bid resulting in a tie, the department shall notify those bidders to request the bidders to submit a new bid and irrevocable letter of credit.

(4) The department shall notify the highest bidder.

(5) The highest bidder shall have 60 days to submit the application for licensure from the day the notification was received. Up to 60 additional days may be granted to the highest bidder upon the department receiving and approving a written request by the highest bidder that explains the need for additional time. If the highest bidder does not submit a completed application for licensure within the allotted time, the highest bidder will be disqualified. Once the application for licensure has been submitted, the highest bidder becomes an applicant.

(6) Failure to submit an application for licensure may result in a monetary penalty of no more than five percent of the bidder's bid amount.

(7) The information provided by the applicant on the application for licensure must match the information provided on the competitive bid form. Failure to provide identical information will result in disqualification and the application will be denied.

(8) The applicant must meet all other licensing and premises suitability requirements in order for a license to be issued by the department. Once the application has been approved by the department, the applicant becomes a licensee.

(9) Failure to pay the bid amount by the time the department is ready to approve the license will result in disqualification and the application for licensure will be denied.

(10) The licensee must commence business within one year of receiving the department's notification in (4) unless the department grants an extension.

(11) The licensee is subject to forfeiture of the license at the department's discretion if the licensee:

(a) transfers the license to another person unless the transfer is due to the death of the licensee;

(b) does not use the license within one year of receiving the license;

(c) places the license on nonuse within 5 years of receiving the license; or

(d) proposes to use the license in a location which has had the same license type within the previous 12 months.

(12) If the application for licensure is withdrawn, the license is forfeited, or if the department denies the application for licensure, the next highest bidder will be notified.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes adopting New Rule IV due to the enactment of Senate Bill 5, Sp. L. 2017, which requires the department to conduct a competitive bidding process when licenses become available. The department proposes the following content for the rule:

Section (1), to rank the bidders by bid amount. This is needed to establish the highest bid that was received.

Section (2), to use a bidder's highest bid, regardless of the timing of bids when the bidder submits multiple bids, to prevent any possible confusion from occurring on which bid should be used.

Section (3), to establish the process which will occur if two or more of the highest bids result in a tie. This is necessary to determine which of the tied bidders would be able to proceed forward with licensure.

Section (4), to require the department to notify the successful bidder. This will allow the successful bidder to actively start the application for licensure.

Section (5), to set a deadline on when an application for licensure must be submitted by the successful bidder. The proposal also allows for an extension if requested by the successful bidder and granted by the department. The time frame established is similar to what has been used in the past when the department was required to conduct alcoholic beverage lotteries and is a sufficient amount of time for the successful bidder to submit the application for licensure.

Section (6), to establish a monetary penalty for failing to submit an application for licensure to ensure only those bidders who are serious about licensure enter the competitive bidding process.

Section (7), to require the information on the competitive bid form to match the information on the application for licensure. This information must match because the opportunity to apply for the license was granted to the individual or business entity listed on the competitive bid form, not a different individual or entity.

Section (8), to require the applicant to meet all licensing and suitability requirements prior to a license being issued. This is included to remind the applicant that submitting an application is not the sole determination for issuing a license and that the applicant and proposed premises must meet all the requirements of the Montana Alcoholic Beverage Code.

Section (9), to set the deadline for when the bid amount must be paid to the department. This creates continuity with 16-4-105, 16-4-204, and 16-4-420, MCA, that requires the bid amount to be paid prior to approval of the license.

Sections (10) and (11), to require the licensee to commence business within one year of notification unless an extension is granted and the reasons for which a licensee may be subject to forfeiture of the license. This information is necessary to help educate licensees of the requirements that must be met pursuant to 16-4-105, 16-4-204, and 16-4-420, MCA.

Section (12), to clarity that in the event a successful bidder withdraws their application, forfeits the license, or if the department denies the application, the department will notify the next highest bidder rather than conducting another competitive bidding process.

NEW RULE V DETERMINATION OF BOUNDARIES FOR THE LOCATION OF PREMISES (1) The department shall separate two or more incorporated cities or incorporated towns, pursuant to 16-4-105, 16-4-201, and 16-4-420, MCA, by using a pivotal straight line.

(2) The department shall make available maps of any incorporated cities or incorporated towns that were previously part of a combined quota area whose boundaries were separated pursuant to (1).

(3) Under no circumstance may a license, restricted by the quota limitations in 16-4-105, 16-4-201, or 16-4-420, MCA, be located farther than:

(a) the county boundary within which the incorporated city or incorporated town is located; or

(b) the line that separates the incorporated city or incorporated town's boundary from another incorporated city or incorporated town as specified in (1).

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-420, MCA

REASON: The department proposes adopting New Rule V due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which requires the department to separate previously determined combined quota areas into individual quota areas. The department proposes the following content for the rule:

Section (1), to require the department to separate previously combined quota areas using a pivotal straight line as defined in New Rule I. The department proposes using a pivotal straight line because the two incorporated cities or towns cannot be continuously separated by a straight-line equidistance from each other because of the contours of each incorporated city or town boundary. The department is proposing to determine the center point between the two incorporated cities or towns and create a straight point from that line that minimizes the impact on existing licensees while trying to stay as true as possible to being equidistant.

Section (2), to require the department to make available maps of any quota areas that were impacted with the enactment of SB 5. This will help ensure license applicants and existing licensees are well-informed of the boundaries for which a premises may be located.

Section (3), to prohibit licenses from being located in another county or incorporated city than what it is allowed for. Section (3)(a) includes language proposed to be removed from ARM 42.12.104, in this same notice, because that language is more relevant to this new rule pertaining to premises location boundaries, and (3)(b) ensures license applicants and licensees are well-informed of the boundary for where a proposed premises may be located.

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

<u>42.12.104 ACTION TAKEN WITH CENSUS UPDATE</u> (1) remains the same.

(2) In determining the availability of such licenses, the department will~~:~~

~~(a)~~ utilize only those boundaries that are recognized by the Bureau of the Census~~; and~~

~~(b) consider the distance measurement from an incorporated city to extend in a five-mile radius but, in no case, farther than the county boundary within which the incorporated city is located~~.

(3) remains the same.

~~(4) If more lottery applications are received than licenses available within a quota area, the procedure in ARM 42.12.412 is followed.~~

AUTH: 16-1-303, 16-4-105, 16-4-204, MCA
IMP: 16-4-105, 16-4-106, 16-4-201, 16-4-203, 16-4-204, 16-4-502, MCA

REASON: The department proposes amending ARM 42.12.104 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage lottery until at least January 1, 2024. During the interim, the department is required to conduct competitive bidding processes to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes striking the content in (4) that is specific to alcoholic beverage lotteries, to avoid having multiple active rules that treat the selection of applicants for licensure differently because new rules are being adopted to cover the interim competitive bidding process.

Additionally, the department proposes striking the content in (2)(b) and relocating it in New Rule V, which pertains specifically to premises locations.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding these two statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.111 PROCESSING FEES (1) through (3) remain the same.
(4) The processing fee for a competitive bid form is $100.
(4) and (5) remain the same, but are renumbered (5) and (6).

AUTH: 16-1-303, 16-4-105, 16-4-204, MCA
IMP: 16-1-302, 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-414, 16-4-420, MCA

REASON: The department proposes amending ARM 42.12.111 to incorporate a processing fee for submitting a competitive bid form to offset the cost of processing the request. The department is required to conduct a competitive bidding process for licenses due to the enactment of Senate Bill (SB) 5, Sp. L. 2017.

The department estimates that 54 alcoholic beverage licenses will become available and subject to the competitive bidding process during years 2018 through 2021. Each individual or business entity that participates in the competitive bidding process will be required to pay the $100 processing fee being proposed in new (4). The department anticipates that 600 competitive bids will be submitted for the 54 licenses during the years 2018 through 2021 for a combined amount of fees paid to be estimated at $60,000.

Because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding these two statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.124 REJECTION OF APPLICATION BECAUSE OF NUMBER OF EXISTING LICENSES (1) Applicants shall be notified that the issuance of a new license or transfer will not be allowed by the department when:

~~(a) the issuance of an on-premises consumption alcoholic beverages license for premises located within any incorporated city or town or within a distance of five miles from the corporate limits or boundaries of an incorporated city or town and where~~

(a) the number of licenses of each ~~class~~ type already issued for the quota area is equal to or exceeds the limitations specified in 16-4-105, ~~and~~ 16-4-201, and 16-4-420, MCA; or

(b) remains the same.

AUTH: 16-1-303, 16-4-105, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-405, 16-4-420, MCA

REASON: The department proposes amending ARM 42.12.124 to eliminate excess language that describes a quota area. Additionally, the department proposes adding the citation for 16-4-420, MCA, both in the rule content and the implementing section, to reflect that the rule also applies to restaurant beer and wine license applications since the number of restaurant beer and wine licenses that may be issued are determined by a quota.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because Senate Bill 5, Sp. L. 2017, added rulemaking authority for 16-4-204 and 16-4-420, MCA, the department proposes adding these three statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended.

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) remains the same.

(2) If the location of the proposed premises is not within the boundaries of an incorporated city or incorporated town, the surveyor must attest to the exact distance from the nearest corporate boundary to the proposed premises as measured from official city or county plats.

(a) The distance must be measured ~~by radial survey method~~ from the nearest corporate city boundary to the nearest entrance of the proposed premises.

(3) The sworn statement or affidavit must be substantially in the following form or on a form provided by the department entitled Certified Survey Affidavit:

(a) Legal description and/or street address of proposed premises:

I, (individual's name), (title), have the knowledge and the authority to attest to the location of the premises known as (trade or business name).

The location of this premises is within the incorporated boundaries of (name of city) or is ~~(less than) five miles from the (name of city) corporate boundary or is more than five miles from any incorporated city within (name) county~~ located (number) miles from the incorporated boundaries of (name of city).

(b) In the case of a location outside the corporate boundary include the

following:

The distance was measured ~~by radial survey method~~ from the nearest corporate city boundary to the nearest entrance of the proposed premises. Plat(s)/map(s) verifying the location that indicate the points between which the measurement was made and the distance can be provided upon request.

(c) and (d) remain the same.

AUTH: 16-1-303, 16-4-105, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-420, 16-4-501, MCA

REASON: The department proposes amending ARM 42.12.130 to insert missing commas into the sworn statement example in (3)(a). This proposed change is grammatical only and is unrelated to any legislative changes being proposed in this same rulemaking notice.

Additionally, the department proposes amending (2)(a) and (3)(b) to remove language prescribing how surveyors should measure the distance between the nearest corporate city boundary and the nearest entrance of the proposed premises. The department understands that radial survey methods are not the only way to determine the measurement and the proposal to strike the language will allow surveyors to utilize other surveying methods.

The department also proposes amending (3)(a) to provide surveyors with clearer example language for attesting to the distance the proposed premises is from an incorporated city or town when located outside the city or town's corporate boundaries.

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because Senate Bill 5, Sp. L. 2017, added rulemaking authority for 16-4-420, MCA, the department proposes adding these two statutes to the authorization section of the rule.

42.12.131 APPLICATIONS FOR LICENSES AVAILABLE ~~LICENSE(S)~~ IN QUOTA AREAS, AND APPLICATION PROCESSING TIMES (1) When the department ~~receives applications after the initial lottery application deadline for the~~ is not required to conduct a competitive bidding process for an available license~~(s)~~ in a quota area, ~~the following procedures apply:~~

~~(a) When fewer applications than licenses available are received, the~~ applications will be processed~~;~~

~~(b) If there are more applicants than licenses available in a quota area, then the licenses will be awarded~~ on a first-come, first-served basis. ~~The postmark on each application will establish which of the applications will be processed; and~~

~~(c) Those applications received by the department with the same postmark for an available license will be considered and will proceed to a lottery process.~~

(2) The number of restaurant beer and wine licenses with a seating capacity of 101 persons or more may not exceed 25 percent of the number of restaurant beer and wine licenses allowed in the quota area.

(3) As set forth in 16-4-420, MCA, the department must make a decision either granting or denying a completed restaurant beer and wine license application within four months of receipt of the application. However, if the investigation into the

application uncovers the necessity to analyze additional information not previously provided by the applicant, the four-month time period stops until the information is provided.

AUTH: 16-1-303, 16-4-105, 16-4-204, 16-4-420, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

REASON: The department proposes amending ARM 42.12.131 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postponed the need for the department to conduct an alcoholic beverage lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process for determining the eligible individual or business entity to apply for licensure. The department proposes removing unnecessary language specific to alcoholic beverage lotteries and providing clearer direction for how applications will be processed when the competitive bidding process does not apply.

Due to the change in statute, the department is also proposing to repeal its rules covering the lottery process, in this same rulemaking notice. To retain portions of the language from three of those rules that remain applicable to licensees, the department proposes incorporating the relevant language into this rule. Specifically, the seating capacity language being proposed for new (2) was derived from language currently found in ARM 42.12.414(2)(f) and 42.12.416(1), and the application approval language being proposed for new (3) was derived from language currently found in ARM 42.12.405(2).

Furthermore, because 16-4-105, MCA, provides rulemaking authority and because SB 5 added rulemaking authority for 16-4-204 and 16-4-420, MCA, the department proposes adding these three statutes to the authorization section of the rule. The department also proposes updating the implementing section of the rule in support of the rule content as amended, and proposes revising the rule's catchphrase to better capture the content of the rule as amended.

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) An applicant applying to the department to transfer an all-beverages license under the provisions of 16-4-204, MCA, may negotiate a bona fide sale with the owner of a license, located in a quota area from which that license may be transferred, to purchase a license and, if no ~~lottery drawing~~ competitive bidding is required, shall submit;

(a) an application for transfer of ownership and location in compliance with ARM 42.12.209 and 42.12.210~~.~~;

~~(2) An applicant applying to the department to transfer an all-beverages license under the provisions of 16-4-204, MCA, whose lottery entry is successful in a lottery drawing, is required to have entered into an agreement to purchase a transferable license within 60 days after the lottery drawing and submit additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate that the applicant is actively pursuing the purchase of a license, and that failure to purchase a license is through no fault of the applicant. The additional time is not to exceed 60 days. An additional fee is required to cover~~

~~the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.~~

~~(3) Documentation required under (1) and (2) includes:~~

~~(a)~~(b) documents required for the application pursuant to ARM 42.12.101 to be considered a complete application as defined in ARM 42.12.106;

~~(b)~~(c) a request for termination of existing secured parties' interest, if applicable ~~and the applicable fee ($10 each)~~;

~~(c)~~(d) other documents which may be needed or specified on the application form or during the license investigation process; and

~~(d)~~(e) other documents deemed necessary by the department or hearing examiner ~~may require additional documentation as deemed necessary~~ to reach a final decision.

(4) remains the same, but is renumbered (2).

~~(5) If an applicant is unable to enter into an agreement to purchase a transferable license within the time provided in (2) the application will be rejected and the application ranked next in the lottery drawing will be processed. This procedure is not constrained by 16-4-413, MCA.~~

AUTH: 16-1-303, 16-4-204, MCA
IMP: 16-4-204, 16-4-413, MCA

REASON: The department proposes amending ARM 42.12.144 due to the enactment of Senate Bill (SB) 5, Sp. L. 2017, which postpones the department from conducting alcoholic beverage lotteries until January 1, 2024. Instead, SB 5 requires the department to conduct competitive bids for licenses that become available.

The department proposes striking the term "lottery drawing" in (1) and replacing it with "competitive bidding" to reference the current process by which applicants are chosen to apply for licenses, as enacted by SB 5.

The department proposes striking the language in (2) and (5), as the time frame for submitting an application and what occurs for failure to submit a timely application are proposed to be provided for in New Rule IV, pertaining to the competitive bidding process, in this same notice. It is unnecessary to repeat the language in both rules.

Additionally, the department proposes listing the items that are needed to process a license transfer to improve the readability. This includes adding a citation to ARM 42.12.101, in (1)(b), to provide the public with the reference to where they can find the required documents for licensure.

The department further proposes striking the reference to the $10 fee for removing secured parties, in (3)(b), because this fee is no longer applied in the manner stated in this rule. This change occurred when the department amended its rule pertaining to processing fees, ARM 42.12.111, in 2014. The corresponding reference in this rule should have been removed at that time, but was overlooked. Therefore, the department proposes removing it now.

Furthermore, because SB 5 added rulemaking authority for 16-4-204, MCA, the department proposes adding it to the authorization section of the rule.

5. The department proposes to repeal the following rules:

42.12.125 COMBINED AREA QUOTAS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, MCA

REASON: The department proposes repealing ARM 42.12.125 due to the enactment of Senate Bill 5, Sp. L. 2017, which eliminated combined quota areas by drawing a straight line equidistant between the two cities or towns for determining boundaries, therefore rendering this rule no longer necessary.

42.12.202 TRANSFERS WITHIN COMBINED AREAS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, MCA

REASON: The department proposes repealing ARM 42.12.202 due to the enactment of Senate Bill 5, Sp. L. 2017, which eliminated combined quota areas by drawing a straight line equidistant between the two cities or towns for determining boundaries, therefore rendering this rule no longer necessary.

42.12.401 DEFINITIONS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes repealing ARM 42.12.401 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.404 APPLICATION LIMITATION PER PREMISES

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.404 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the

opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.405 RESTAURANT BEER AND WINE LICENSE APPLICATION FEES

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.405 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

The language in this rule regarding the timing of restaurant beer and wine license applications, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

42.12.406 LOTTERY APPLICATION PROCESS

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes repealing ARM 42.12.406 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.408 FINAL APPLICATION PROCESS FOLLOWING SUCCESSFUL APPOINTMENT UNDER A LOTTERY

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.408 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1,

2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.412 WHEN LOTTERY WILL BE HELD

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.412 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

42.12.414 HOW APPLICANTS WILL BE CHOSEN

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASON: The department proposes repealing ARM 42.12.414 due to the enactment of Senate Bill 5, Sp. L. 2017, which postpones the need for the department to conduct an alcoholic beverage license lottery until at least January 1, 2024. During the interim, the department is required to conduct a competitive bidding process to determine which eligible individual or business entity will have the opportunity to apply for licensure. Therefore, the department proposes repealing its rules pertaining to alcoholic beverage license lotteries to avoid having multiple active rules that treat the selection of applicants for licensure differently, because new rules are being adopted to cover the interim competitive bidding process.

The language in this rule regarding seating capacity and quota areas, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

42.12.416 ALTERATION OF PREMISES FOLLOWING RECEIPT OF RESTAURANT BEER/WINE LICENSE - SEATING CAPACITY

AUTH: 16-1-303, MCA
IMP: 16-4-420, MCA

REASON: The department proposes repealing ARM 42.12.416 to eliminate a

redundancy. The content of the rule, which covers altering the seating capacity of a restaurant beer and wine license, is sufficiently covered in 16-4-420, MCA, and ARM 42.13.103.

The language in this rule regarding seating capacity, which remains relevant for licensees, is proposed to be incorporated into ARM 42.12.131 in this same rulemaking notice.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 23, 2018.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA apply and have been fulfilled. The primary sponsor of House Bill 5, Sp. L. 2017, Senator Steve Fitzpatrick, was contacted by regular mail on November 16, 2017, and subsequently notified by regular and electronic mail on February 7, 2018.

11. Regarding the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses. Documentation of this determination is available upon request from the person in 6.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.3703, 2.21.3707, 2.21.3708, 2.21.3711, 2.21.3719, 2.21.3721, 2.21.3723, and 2.21.3726, and the repeal of ARM 2.21.3709 pertaining to the Recruitment and Selection Policy	)))))))	CORRECTED NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 18, 2017, the Department of Administration published MAR Notice No. 2-21-557 regarding a public hearing on the proposed amendment and repeal of the above-stated rules at page 1309 of the 2017 Montana Administrative Register, Issue No. 16. On January 12, 2018, the department published the notice of amendment and repeal at page 90 of the 2018 Montana Administrative Register, Issue No. 1.

2. In the original notice, the department inadvertently made a grammatical error in ARM 2.21.3703. This notice corrects the error as shown below, with deleted matter interlined.

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Applicant" means an individual who has followed the agency's standard procedures for submitting the required application~~,~~ materials such as, for example, a resume, cover letter, application form, or other documentation.

(2) through (8) remain as amended.

3. Replacement pages for this corrected notice will be submitted to the Secretary of State on March 31, 2018.

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 March 6, 2018.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

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

TO: All Concerned Persons

1. On September 22, 2017, the Commissioner of Securities and Insurance, Montana State Auditor, published MAR Notice No. 6-237 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1542 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department has adopted the following rule, but with the following changes to the original proposal, stricken matter interlined, new matter underlined:

6.6.507F (NEW RULE I) STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2020 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY TO INDIVIDUALS NEWLY ELIGIBLE FOR MEDICARE ON OR AFTER JANUARY 1, 2020 (1) The ~~Medicare Prescription Drug, Improvement, and Modernization Act of 2003~~ Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires that the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare part B deductible may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of the appropriate rules of this subchapter.

(2) through (6) remain as proposed.

3. The department has amended the following rules as proposed: ARM 6.6.503, 6.6.504, 6.6.506, 6.6.521, and 6.6.526.

4. The department has repealed the following rules as proposed: ARM 6.6.511 and 6.6.511A.

5. After consideration of the comments received, the department amends the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

6.6.507A STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY ON OR AFTER JULY 1993, AND WITH AN EFFECTIVE DATE FOR COVERAGE PRIOR TO JUNE 1, 2010 (1) through (5)(g)(i) remain as proposed.

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

(h) through (l)(i) remain as proposed.

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

(6) through (7) remain as proposed.

6.6.507B OPEN ENROLLMENT (1) and (2) remain as proposed.

(a) If an applicant qualifies under ARM 6.6.507B(1)~~(a) or (b)~~, submits an application during either time period referenced in (1) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition; and

(b) If the applicant qualifies under ARM 6.6.507B(1)~~(a) or (b)~~, and submits an application during either time period referenced in (1) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this rule.

(3) remains as proposed.

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS (1) through (3)(c)(ii) remain as proposed.

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

(e) through (6)(b) remain as proposed.

6.6.507E STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010 (1) through (8) remain as proposed.

(9) Standardized Medicare Supplement Plan M shall include only the basic (core) benefit as defined in ARM 6.6.507D(4)(a), plus 50% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as defined in ARM 6.6.507D(4)(b)(ii), (iii), and (vi), respectively.

(10) Standardized Medicare Supplement Plan N shall include only the basic (core) benefit as defined in ARM 6.6.507D(4)(a), plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country, as defined in ARM 6.6.507D(4)(b)(i), (iii), and (vi), respectively, with copayments in the following amounts:

(a) through (11) remain as proposed.

6.6.508 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM (1) remains as proposed.

(2) For purposes of (1), the ~~The~~ loss ratio must be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization must not include:

(a) through (3) remain as proposed.

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

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

(6) through (7)(a) remain as proposed, but are renumbered (5) through (6)(a).

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

(c) and (d) remain as proposed.

(8) and (9) remain as proposed, but are renumbered (7) and (8).

(9)~~(10)~~ As required by (9), an ~~An~~ issuer must make such premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described in this rule, should be made with respect to a policy at any time other than upon its renewal date or anniversary date. Any premium adjustment filings must include all necessary supporting documents to justify the adjustment.

(11) and (12) remain as proposed, but are renumbered (10) and (11).

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES (1) through (7) remain as proposed.

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

(a) and (b) remain as proposed.

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

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (9) remain as proposed.

(10) The CSI adopts and incorporates by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, (MDL-651), page 651-53 through page 651-104, which was last adopted in the 1st quarter of 2017, and is available online at http://www.naic.org/prod_serv_model_laws.htm. Specifically, those pages of the NAIC MDL-651 set forth benefit charts, disclosures to insureds, and outlines of coverage for 2010 or 2020 Medicare supplement plans, as applicable, that must be included in the outline of coverage provided to the consumer in the same order as set forth in NAIC MDL-651. Copies of the NAIC MDL-651 are also available for public inspection at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, Legal Department, 840 Helena Avenue, Helena, Montana 59601. Persons obtaining a copy of these forms must pay the cost of providing such copies.

(11) and (12) remain as proposed.

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) Application forms must include the following questions designed to elicit information as to whether, as of the date of application,

the applicant currently has Medicare supplement, Medicare advantage, Medicaid coverage, or another health policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements as the following may be used. ~~Application forms must use the following statements and questions in substantially the same format as follows:~~

(STATEMENTS)

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

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

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

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

(5) If you are eligible for and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription

drugs and you enrolled in Medicare part D while your policy was suspended, the reinstated policy will not have prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of suspension.

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

(QUESTIONS)

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

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

To the best of your knowledge:

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

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

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

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

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

~~(f) Did you enroll in Medicare Part D in the last 6 months?~~
~~YES _____ NO _____~~
~~(g) If yes, what is the effective date? _____~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[End Statements and Questions Form]

(2) through (6) remain as proposed.

6.6.517 PERMITTED COMPENSATION ARRANGEMENTS (1) through (4) remain as proposed.

(5) As part of the annual filing under ARM 6.6.508~~(6)~~(7), the entity providing Medicare supplement policies shall provide copies of commission schedules.

(a) and (b) remain as proposed.

6.6.519 STANDARDS FOR MARKETING (1) through (2) remain as proposed.

(3) ~~The terms "medigap" and "medicare wrap-around" must not be used.~~ The terms "medicare supplement," "medigap," "medicare wrap-around," ~~and~~ "medicare select," and words of similar import must not be used unless the policy or certificate is issued in compliance with applicable administrative rules and statutes.

6. 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 No. 1: UnitedHealthcare requested that we remove the first sentence of ARM 6.6.519(3) prohibiting the use of the term “medigap.” The commenter noted that this requirement is not in the model rules from the National Association of Insurance Commissioners (NAIC), it is costly to require national forms to adhere to this state-specific requirement, and the federal government officially uses the term “medigap” in the Social Security Act.

RESPONSE No. 1: The CSI agrees with this comment, and has changed ARM 6.6.519(3) to more closely follow the NAIC model rule, and allow use of the terms “medigap” and “medicare wrap-around.”

COMMENT No. 2: Blue Cross Blue Shield of Montana (BCBSMT) and America’s Health Insurance Plans (AHIP) requested that the CSI remove its proposed language in ARM 6.6.508(5) and 6.6.508A(9), which would have applied a bifurcated approach to loss ratio standards based on the methods used to advertise individual Medicare supplement plans. Both commenters stated that the Montana legislature removed similar language from 33-22-906(1), MCA, in 2017, and advocated that the CSI should simply do the same. Both commenters also noted several issues with closing existing plans and reissuing them, as the proposed regulation would allow.

RESPONSE No. 2: The CSI agrees with this comment, and has removed proposed ARM 6.6.508(5) and 6.6.508A(9). The CSI will apply the individual or group loss ratio standards to existing and future Medicare supplement plans regardless of advertising methods used to market those plans.

COMMENT No. 3: Commenter AHIP identified a typo in the original ARM 6.6.508(7)(b), which used “ration” instead of “ratio.”

RESPONSE No. 3: The CSI agrees with this comment, and has fixed the typo.

COMMENT No. 4: Commenter AHIP agreed that New Rule I is necessary to implement MACRA, and emphasized that similarity with the NAIC model “ensure[s] that the appropriate modifications are incorporated fully and reflect[s] a standard of continuity across the nation, which is beneficial for carriers and consumers alike.”

RESPONSE No. 4: The CSI agrees with this comment, and has strived to implement the regulatory changes required by MACRA in a consistent manner.

COMMENT No. 5: Commenter AHIP requested that the CSI remove four questions from the application form outlined in ARM 6.6.510 which are not in the NAIC model. The commenter argued that the questions about Medicare Part C are redundant, the questions about Medicare Part D are superfluous, and both questions could lead to consumer confusion.

RESPONSE No. 5: The CSI agrees with this comment, and has removed those specific questions from the application form in ARM 6.6.510.

COMMENT No. 6: Commenter BCBSMT expressed uncertainty on how subsections (1) and (6) of New Rule I should be applied, and requested that the CSI include additional language to clarify any uncertainty.

RESPONSE No. 6: The CSI is unwilling to add any Montana-specific language to New Rule I, for the reasons outlined by AHIP in Comment No. 4. The CSI will work with BCBSMT to address any uncertainty in application of these new rules prior to January 1, 2020.

COMMENT No. 7: Commenter BCBSMT also noted in proposed New Rule I that the CSI incorrectly cited to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 instead of MACRA.

RESPONSE No. 7: The CSI agrees with this comment, and changed the citation to the correct federal act.

COMMENT No. 8: Commenter BCBSMT argued that subsection (5) of New Rule I is unnecessary, because its provisions do not apply to Montana and some of the language is already stated in subsection (1).

RESPONSE No. 8: While the CSI agrees with the observations by BCBSMT, the CSI is not willing to modify the NAIC model language contained in New Rule I, for the reasons outlined by AHIP in Comment No. 4.

COMMENT No. 9: Commenter BCBSMT requested that the CSI modify ARM 6.6.507C(5) to address questions of guaranteed issue of coverage for 2020 plans.

RESPONSE No. 9: The CSI disagrees with this comment. The CSI believes New Rule I answers all questions of guaranteed issue after January 1, 2020. If this is not the case, the CSI will work with BCBSMT to address any uncertainty in application of these new rules prior to January 1, 2020.

COMMENT No. 10: Commenter BCBSMT took issue with the CSI's statement of reasonable necessity for the proposed amendments to ARM 6.6.507C as being "wholly non-substantive." Specifically, BCBSMT noted that the amendments extended the open enrollment period by 60 days for insureds who enrolled because of materially misrepresented policy provisions.

RESPONSE No. 10: The CSI agrees with this comment. It was not the CSI's intent to mischaracterize any amendments in the statement of reasonable necessity; therefore, that additional 60-day enrollment period has been removed from the adopted rule.

COMMENT No. 11: Commenter BCBSMT notes that there is no proposed new rule corresponding to ARM 6.6.507 and 6.6.507D outlining benefit standards for 2020 plans. The commenter requests clarification whether this omission was intentional or whether a new rule will be proposed in the future.

RESPONSE No. 11: The answer to this question is contained in the NAIC guidance on its proposed rule changes to implement MACRA. No new rule corresponding to ARM 6.6.507 or 6.6.507D is contemplated by the NAIC or the CSI. The CSI believes that the terms of ARM 6.6.507D, unless modified by New Rule I, will continue to apply to 2020 plans.

COMMENT No. 12: Commenter BCBSMT states that the CSI references the incorrect version of the NAIC model regulation (MDL-651) in ARM 6.6.509(10). Furthermore, the commenter requested that the CSI change the page numbers from the NAIC model regulation cited in the proposed rule, and include language that the outlines of coverage apply to 2010 and 2020 plans.

RESPONSE No. 12: The CSI disagrees with the first part of this comment. Incorporation of the most recent NAIC model (with its corresponding page numbers) into ARM 6.6.509(10) is within the CSI's authority and is more efficient, since the 2017 model includes outline of coverage information for 2020 plans. The CSI does agree that a reference to both 2010 and 2020 plans in ARM 6.6.509(10) would be helpful to carriers, and such a reference has been included in the adopted rule.

COMMENT No. 13: Commenter BCBSMT requests inclusion of language to New Rule I to expressly reference 2020 plans, and to remove all use of the term "100%" as redundant.

RESPONSE No. 13: The CSI disagrees with this comment. The CSI is not willing to modify the NAIC model language for the reasons outlined by AHIP in Comment No. 4.

COMMENT No. 14: Commenter BCBSMT requests that the CSI include a definition for "2020 standardized Medicare supplement benefit plan," "2020 standardized plan," or "2020 plan" to ARM 6.6.504.

RESPONSE No. 14: The CSI disagrees with this comment. Those terms are not used in the substantive language of any proposed rule, and therefore the definition would be superfluous.

COMMENT No. 15: Commenter BCBSMT agreed with the CSI's deletion of the last sentence in proposed subsection (8) of ARM 6.6.504. The commenter argued that these regulations only apply to Medicare supplement plans, not Medicare advantage (Part C) plans.

RESPONSE No. 15: The CSI agrees with this comment.

COMMENT No. 16: Commenter BCBSMT requested that the CSI modify ARM 6.6.507 to make it clear that the rule does not apply to pre-standardized Medicare supplement plans issued before July, 1993.

RESPONSE No. 16: The CSI notes that ARM 6.6.507 was originally enacted in 1981. Therefore the terms of the rule as it originally existed could be applied to plans prior to July, 1993.

COMMENT No. 17: Commenter BCBSMT requested non-substantive changes to 6.6.507A(5)(g)(ii) and (5)(l)(ii) to make their provisions more clear.

RESPONSE No. 17: The CSI agrees with this comment, and has modified ARM 6.6.507A(5)(g)(ii) and (5)(l)(ii) accordingly.

COMMENT No. 18: Commenter BCBSMT requested that the CSI remove redundant "new or innovative" language from ARM 6.6.507A(7).

RESPONSE No. 18: While the CSI agrees the language is redundant, the CSI is not willing to modify the NAIC model language, for the reasons outlined by AHIP in Comment No. 4.

COMMENT No. 19: Commenter BCBSMT noted that, given the proposed changes eliminating subsections (a) and (b) in ARM 6.6.507B(1), references to "(a) or (b)" in subsequent subsections should be deleted.

RESPONSE No. 19: The CSI agrees with this comment, and that language has been removed from the adopted rule.

COMMENT No. 20: Commenter BCBSMT requested the addition of a comma after the words “foreign country” in subsections (9) and (10) of ARM 6.6.507E, to provide clarity for the inserted language in the proposed rule.

RESPONSE No. 20: The CSI agrees with this comment, and has revised ARM 6.6.507E(9) and (10) accordingly.

COMMENT No. 21: Commenter BCBSMT requested that the phrase “For purposes of (1),” be included at the beginning of ARM 6.6.508(2) to clarify what subsection (2) applies to.

RESPONSE No. 21: The CSI agrees with this comment, and has revised ARM 6.6.508(2) accordingly.

COMMENT No. 22: Commenter BCBSMT pointed out that different phrases are used throughout these rules to describe “generally accepted actuarial principles and practices,” and argued that only one such term should be used.

RESPONSE No. 22: While the CSI agrees it is generally good practice to use the same phrase for the same legal concept when drafting rules, the CSI is not willing to modify the NAIC model language, for the reasons outlined by AHIP in Comment No. 4.

COMMENT No. 23: Commenter BCBSMT stated that ARM 6.6.508(2) as proposed is confusing, in that it is unclear what the phrases “earned premium for the period” and “in accordance with accepted actuarial principles and practices” apply to.

RESPONSE No. 23: The CSI disagrees with this comment. The changes to ARM 6.6.508(2) are to make the rule adhere more closely to the NAIC model regulations, and the CSI is not willing to modify the NAIC model language, for the reasons outlined by AHIP in Comment No. 4. The CSI will work with BCBSMT to address any uncertainty in application of this model language.

COMMENT No. 24: Commenter BCBSMT suggested that the word “appropriate” in ARM 6.6.508(3) should be changed to “applicable.”

RESPONSE No. 24: The CSI disagrees with this comment. In context, the word “appropriate” means legally appropriate, which is the same as “applicable.” In addition, the CSI is not willing to modify the NAIC model language, for the reasons outlined by AHIP in Comment No. 4.

COMMENT No. 25: Commenter BCBSMT requested clarification of the phrase “of any type” in ARM 6.6.508(4).

RESPONSE No. 25: The CSI agrees that this language is confusing, and has removed it from the adopted rule.

COMMENT No. 26: Commenter BCBSMT stated that subsections (9), (10), and (11) of proposed ARM 6.6.508 are intended to work together, and should be revised to expressly indicate this. The commenter also noted that subsection (9)(a) and (10) may be redundant.

RESPONSE No. 26: The CSI agrees that proposed subsections (9), (10), and (11) of ARM 6.6.508 are designed to work together, which is why they are part of the same rule and numerically next to each other. Proposed subsections (10) and (11) used to be part of subsection (9), but were moved to their own subsections for clarity and to follow Montana rule drafting procedures. The CSI has added language to proposed subsection (10) to make this more clear. The CSI disagrees that proposed subsection (10) is redundant, as it contains requirements and limitations on the rate increases required by subsection (9).

COMMENT No. 27: Commenter BCBSMT requested that an effective date should be substituted for the phrase "issued before or after the effective date of this rule" in proposed ARM 6.6.508(12).

RESPONSE No. 27: The CSI disagrees that adding a date to proposed ARM 6.6.508(12) is necessary, given that the effective dates at the bottom of the rule, and particularly given that the language taken from the NAIC model rule is "before or after the effective date."

COMMENT No. 28: Commenter BCBSMT requested that additional language be added to subsections (4) and (5) of proposed ARM 6.6.508A to reference subsection (9).

RESPONSE No. 28: The CSI has removed proposed subsection (9), and therefore this comment is moot.

COMMENT No. 29: Commenter BCBSMT expressed confusion over the effect of proposed ARM 6.6.508A(8), and in particular whether dual-rating was actually allowed.

RESPONSE No. 29: The CSI agrees with this comment, and has modified ARM 6.6.508A(8) to make it clear that policies can be dual-rated, but that the issuer must pick one rating methodology (including dual-rated) for all policies sold under one policy form.

COMMENT No. 30: Commenter BCBSMT noted that the last sentence of ARM 6.6.510(1) conflicted with the second-to-last sentence, and requested clarification whether the form outlined in that subsection was required.

RESPONSE No. 30: The CSI agrees with this comment, and has removed the last sentence of ARM 6.6.510(1).

COMMENT No. 31: Commenter BCBSMT stated that ARM 6.6.517(5) cited to the incorrect subsection of ARM 6.6.508.

RESPONSE No. 31: The CSI agrees with this comment, and has corrected the citation in the adopted rule.

COMMENT No. 32: Commenter BCBSMT argued that the statement of reasonable necessity for ARM 6.6.517(5)(a) is inadequate. The commenter stated that there was no explanation how having a minimum commission of 3% ensures that plans are actively marketed. The commenter also stated that the CSI failed to provide any evidence "that such issuers are not currently actively marketing their Medicare supplement plans."

RESPONSE No. 32: The CSI disagrees with this comment. Establishing a commission which is below reasonable is de facto evidence that issuers do not want consumer to enroll in the plan, and that the plan is not being actively marketed. Other evidence of "actively marketing" a plan will not help when a consumer goes to an insurance producer, who have greater incentive to sell plans with higher commission. The statement of reasonable necessity for this rule was valid and sufficient. Furthermore, the CSI is not required to show that this rule will "ensure active marketing of Medicare supplement plans." This rule is simply designed to prevent one way issuers may try to avoid actively marketing their plans. If BCBSMT would care to submit additional regulatory requirements that will help ensure that plans are actively marketed in other respects, the CSI would consider adding to this rule.

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

/s/ Kris Hansen
Kris Hansen
Chief Counsel

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to a Pilot Program for Aquatic Invasive Species in the Flathead Basin	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 12, 2018, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-480 pertaining to the public hearings on the proposed adoption of the above-stated rule at page 23 of the 2018 Montana Administrative Register, Issue Number 1.

2. The department has adopted the above-stated rule as proposed: New Rule I (12.5.709).

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

COMMENT #1: The department received a comment on expanding the mandatory inspection before launch requirement to the entire Clark Fork Basin.

RESPONSE #1: Current watercraft inspection rules require mandatory inspection for all watercraft entering the state and all watercraft crossing west over the Continental Divide. This provides an inspection requirement for all watercraft entering the Columbia Basin portion of Montana, including the Clark Fork Basin.

COMMENT #2: The department received comments expressing concern regarding the timeline for opening watercraft inspection stations.

RESPONSE #2: Montana watercraft inspection stations are opening on a rolling timeline this year based on risk of mussel transport. Stations will begin operation at the end of March and operate into October.

COMMENT #3: The department received comments concerning the penalization, fines, and enforcement behind recreationists who skip inspection stations or do not comply with these rules.

RESPONSE #3: The fines and penalties for violating these rules can be found under 80-7-1014, MCA. Enforcement has the authority to stop vehicles that fail to stop at inspection stations under 80-7-1019, MCA.

COMMENT #4: The department received comments expressing concerns with staffing watercraft inspection stations in eastern Montana.

RESPONSE #4: The department is investigating new ways to identify and hire quality staff for watercraft inspection stations. The department is working with regional partners to help identify qualified candidates and job postings began early to increase the time frame where candidates can apply.

COMMENT #5: The department received comments expressing the need to have boaters to take more responsibility to ensure they are not transporting AIS.

RESPONSE #5: Current rules put the responsibility for inspection on boaters that are entering the state or crossing the Continental Divide. It is also the responsibility of boaters to ensure their boats are clean, free of AIS, and drained of water. Boaters can be cited if they fail to comply with these requirements. The department also has a targeted outreach campaign to help ensure boaters are aware of these requirements.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 18.15.101 and 18.15.603, pertaining to Motor Fuels Tax Collection and IFTA	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 26, 2018, the Department of Transportation published MAR Notice No. 18-166 pertaining to the proposed adoption and amendment of the above-stated rules at page 148 of the 2018 Montana Administrative Register, Issue Number 2.

2. The department has adopted New Rule I as proposed. New Rule I is adopted as ARM 18.15.104.

3. The department has amended ARM 18.15.101 and 18.15.603 as proposed.

4. The department received one comment. A summary of the comment received and the department's response is as follows:

COMMENT #1: One comment was received requesting a hearing on the proposed rules.

RESPONSE #1: Mont. Code Ann. § 2-4-302, and Paragraph 7 of the Notice of Proposed Adoption and Amendment state an opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule. The single comment is the only hearing request received by the department, and therefore does not meet the statutory requirement for the department to schedule an oral hearing.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State March 6, 2018.

BEFORE THE DEPARTMENT OFJUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to Ignition Interlock Devices	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 22, 2017, the Department of Justice published MAR Notice No. 23-3-246 pertaining to the proposed adoption of the above-stated rules at page 1598 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department has adopted the following rule as proposed: New Rule II (23.3.954).

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

NEW RULE I (23.3.953) DEFINITIONS (1) and (2) remain as proposed.

(3) "Manufacturer" means the person, company, or corporation ~~who produces the IID~~ responsible for the design, construction, and/or production of the IID.

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

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

(6) remains as proposed.

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

(8) "Vendor representative" means ~~the~~ an individual ~~employee~~ designated by the vendor as a contact for the department. ~~to act on behalf of and/or represent the vendor in all matters relating to the repair, installation, calibration, and removal of IIDs.~~

(9) remains as proposed.

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: Commenters objected to various definitions in proposed New Rule I, including lack of clarity, and requested the definitions of the Association of Ignition Interlock Program Administrators be used with some amendments.

Response 1: The department agrees in part and disagrees in part with the objections. The department does not amend the definitions of certificate holder and circumvention. The department agrees in part and amends the definitions of manufacturer, manufacturer representative, service center, vendor, and vendor representative to improve clarity.

Comment 2: Commenter objected to New Rule II as unnecessary because the volume standard is currently established at 1.2 liters.

Response 2: The department disagrees with this objection because the authority to issue an exemption is in the sole discretion of the department. The department will carefully analyze and give direction to the interlock manufacturer or vendor.

/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 March 6, 2018.

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

In the matter of the adoption of NEW RULES I through IV, the amendment of ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.162, 37.95.172, 37.95.173, 37.95.183, 37.95.184, 37.95.602, 37.95.606, 37.95.622, 37.95.623, 37.95.703, 37.95.705, 37.95.706, 37.95.730, and 37.95.1005, and the repeal of ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174 pertaining to the federal Child Care and Development Block Grant Reauthorization Act, disaster and emergency planning, and health and safety requirements for child care facilities	)	CORRECTED NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 24, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-811 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2141 of the 2017 Montana Administrative Register, Issue Number 22. On February 9, 2018, the department published the notice of adoption, amendment, and repeal at page 308 of the 2018 Montana Administrative Register, Issue Number 3.

2. Subsequent to the publication of the notice of adoption, amendment, and repeal, the department discovered that the rule numbers assigned to NEW RULE I CHILD CARE FACILITIES: EMERGENCY DISASTER AND ACTION PLANS (ARM 37.107.126) and NEW RULE III CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES (ARM 37.95.621) are incorrect, as those rule numbers have been previously issued. The department, therefore, will assign NEW RULE I the official rule number of ARM 37.95.124, and NEW RULE III the official rule number of ARM 37.95.624.

/s/ Flint Murfitt	/s/ Sheila Hogan
Flint Murfitt	Sheila Hogan, Director
Rule Reviewer	Public Health and Human Services

Certified to the Secretary of State March 6, 2018.

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

In the matter of the adoption of New Rules I through XX, the amendment of ARM 37.107.110, 37.107.111, 37.107.115, 37.107.117, 37.107.119, 37.107.127, and 37.107.128 and the repeal of ARM 37.107.113, 37.107.116, 37.107.121, 37.107.123, 37.107.125, 37.107.129, 37.107.132, 37.107.133, 37.107.135 pertaining to the Montana medical marijuana program	)))))))))))	CORRECTED NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-820 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2037 of the 2017 Montana Administrative Register, Issue Number 21. On February 9, 2018, the department published the notice of adoption, amendment, and repeal at page 321 of the 2018 Montana Administrative Register, Issue Number 3.

2. Subsequent to the publication of the notice of adoption, amendment, and repeal, the department discovered that an intended amendment in response to Comment #3 pertaining to NEW RULE V (ARM 37.107.118)(5)(b) was inadvertently omitted. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

NEW RULE V (37.107.118) MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) through (4) remain as adopted.

(5) A licensee must post signs inside the registered premises in a conspicuous location that read:

(a) remains as adopted.

(b) "No On-Site Consumption of Marijuana Except by Registered Cardholders".

(6) through (18) remain as adopted.

AUTH: 50-46-344, MCA
IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State March 6, 2018.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known 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.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2017. This table includes notices in which those rules adopted during the period September 30, 2017, through December 31, 2017, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2017, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2017 and 2018 Montana Administrative Registers.

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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(Board of Personnel Appeals)

(Board of Alternative Health Care)

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