

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.57.421 pertaining to teacher) PROPOSED AMENDMENT
licensure)

TO: All Concerned Persons

1. On October 25, 2018, at 9:00 a.m., the Board of Public Education will hold a public hearing in the Superintendent's Conference room at 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on October 19, 2018, to advise us of the nature of the accommodation that you need. Please contact Pete Donovan, Executive Director, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.57.421 CLASS 4 ENDORSEMENTS (1) Recognized occupations eligible for a Class 4 license shall be evaluated on an annual basis by the Superintendent of Public Instruction. Appropriate career and technical education areas acceptable for endorsement on the Class 4 license include but are not limited to the following: agriculture business, agriculture mechanics, auto body, automotive technology, aviation, building maintenance, building trades, business marketing, computer coding, computer information systems, culinary arts, diesel mechanics, drafting, electronics, emergency medical technician (EMT), engineering, fire and disaster services, graphic arts, health science education, heavy equipment operations, horticulture, industrial mechanics, livestock production, machining, metals, plant and soil sciences, Reserve Officer Training Corps (ROTC) instruction, small engines, stagecraft, teacher education, videography, and welding.

(2) and (3) remain the same.

(4) For health science education, engineering, computer information systems, computer coding, ~~or teacher education~~, EMT, or fire and disaster services, an alternative to the above requirement of 10,000 hours of work experience may be substituted as recognized by the Office of Public Instruction and the Board of Public Education as follows:

(a) through (e) remain the same.

(f) For EMT:

(i) hold a Class 1 or 2 license;

- (ii) hold a current CPR/First Aid certificate and a current license as a lead instructor obtained through the Montana Board of Medical Examiners;
- (iii) provide verification of a minimum of 2,000 hours of EMT experience; and
- (iv) provide verification of successful completion of a blended learning professional development course offered by the Office of Public Instruction.
- (v) In addition to renewal requirements outlined in ARM 10.57.420, renewal of this endorsement will also require a current CPR/First Aid certificate and a current license as a lead instructor obtained through the Montana Board of Medical Examiners.
- (g) For fire and disaster services:
 - (i) hold a Class 1 or 2 license;
 - (ii) provide verification of a minimum of 2,000 hours of employment in fire services or law enforcement; and
 - (iii) provide verification of successful completion of a blended learning professional development course offered by the Office of Public Instruction.
- (5) and (6) remain the same.

AUTH: Mont. Const. Art. X, sec. 9, 20-4-102, MCA

IMP: Mont. Const. Art. X, sec. 9, 20-4-106, 20-4-108, MCA

4. REASON: The Board of Public Education proposes to add new endorsements to Class 4 Educator Licensure in the areas of EMT and fire and disaster services. The EMT and fire and disaster services endorsements will allow Montana secondary students to receive secondary career and technical education (CTE) credit to fulfill graduation requirements.

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: Pete Donovan, Executive Director, Board of Public Education, 46 N. Last Chance Gulch, Suite 2B, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; fax (406) 444-0847; or e-mail pdonovan@mt.gov, and must be received no later than 5:00 p.m., November 2, 2018.

6. Pete Donovan, Executive Director, has been designated to preside over and conduct this hearing.

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the board.

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 board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Pete Donovan

Pete Donovan
Rule Reviewer

/s/ Sharon Carroll

Sharon Carroll
Chair
Board of Public Education

Certified to the Secretary of State September 25, 2018.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.129.401 fees, 24.129.610) PROPOSED AMENDMENT
inactive status, and 24.129.2101)
continuing education requirements)

TO: All Concerned Persons

1. On October 30, 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 Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on October 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcsls@mt.gov (board's e-mail).

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

24.129.401 FEES (1) through (2)(e) remain the same.

(f) reactivation of license fee – difference between active and inactive fee 35
(g) remains the same.

AUTH: 37-1-131, 37-1-134, ~~37-1-319~~, 37-34-201, MCA

IMP: 37-1-134, 37-1-141, 37-34-305, MCA

REASON: During a review of the rules, department staff discovered that the board's reactivation of license fee is not in compliance with ARM 24.101.403(1)(h), the rule containing all uniform administrative fees. The board determined it is reasonably necessary to amend this rule to align with standardized renewal procedures and address questions by both department staff and renewal applicants. The board estimates that the proposed fee change will affect approximately 40 inactive licensees and result in \$600 in additional annual revenue.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

24.129.610 INACTIVE STATUS (1) and (2) remain the same.

(3) With annual renewal, and payment of the required fee in accordance with ARM 24.129.401, a licensee may remain on inactive status. ~~Failure to renew an inactive status license will result in forfeiture of the license.~~

(4) remains the same.

AUTH: 37-1-131, 37-1-134, 37-1-319, ~~37-34-201~~, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, ~~37-34-201~~, MCA

REASON: The board is amending (3) as it conflicts with standardized department renewal procedures, which govern renewal processes for all professional and occupational licensing boards.

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

24.129.2101 CONTINUING EDUCATION REQUIREMENTS (1) ~~All applicants for renewal of an active status license shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. Licensees shall affirm an understanding of their recurring duty to comply with continuing education (CE) requirements as a part of license renewal. The continuing education requirement will~~ CE requirements do not apply until the licensee's first full year of licensure.

~~(a) (2) Fourteen hours of continuing education will be required~~ Licensees shall obtain 14 hours of CE annually for renewal of a license.

~~(b) All continuing education credits must be germane to the profession and must contribute to the professional competence of a clinical laboratory science practitioner.~~

~~(2) Continuing education may be obtained in any of the following settings, and subject to any listed conditions:~~

~~(a) Any continuing education offered by providers and approved by the board and listed in the board office or on the board web site.~~

(3) The board/staff will not preapprove CE programs or sponsors; however, a suggested list of courses/providers can be found on the board's web site. It is the responsibility of the licensee to select quality programs that:

(a) contribute to the licensee's knowledge and professional competence;

(b) contain significant intellectual or practical content; and

(c) are germane to the profession of a clinical laboratory science practitioner.

(4) The licensee is responsible for maintaining:

(a) proof of attendance/certificate of completion;

(b) title/subject of course;

(c) duration of course;

(d) date credits were earned; and

(e) course provider and/or speaker.

~~(b) (5) College course work, approved by the board, which is germane to the profession and contributes directly to the professional competence of a clinical laboratory science practitioner, and~~ which meets the criteria in (3), is subject to the following limitations:

- (i) (a) the licensee must pass the course;
- (ii) (b) one semester credit shall equal 15 hours of continuing education CE;
- (iii) (c) one quarter credit shall equal 10 hours of continuing education CE.
- ~~(c) Continuing education not referenced in (2)(a) shall be submitted to the board for its consideration for approval.~~
- ~~(3) (6) Continuing education CE credits can be earned by teaching courses that are germane to the profession. Credit units may be applied in this category based on a report by the licensee. For a one-hour presentation, the presenter will be awarded two hours of continuing education CE. The following limitations shall apply to requests for credit under this section:~~
 - ~~(a) and (b) remain the same.~~
 - ~~(c) instruction of any course may be submitted for continuing education CE only once;~~
 - ~~(d) remains the same.~~
- (7) The board may randomly audit up to 50 percent of renewed licensees' CE hours.
- (8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

AUTH: 37-1-319, ~~37-34-201~~, MCA

IMP: 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is reorganizing and reformatting this rule to address questions and confusion among licensees and department staff. Further amendments will simplify continuing education (CE) requirements and the reporting processes. The board anticipates that the changes will result in CE being more accessible and less restrictive than the current requirements.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments align with standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is amending this rule to eliminate board preapproval of CE courses and providers. The board determined that the preapproval process is confusing and cumbersome for both licensees and the board. Further, late approval or denial of a provider often results in licensees scrambling to obtain CE prior to renewal. The new process will place the responsibility on the licensee to select appropriate CE courses within the guidelines established in board rule.

The board is adding (7) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (8) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

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 Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdcsls@mt.gov, and must be received no later than 5:00 p.m., November 2, 2018.

5. An electronic copy of this notice of public hearing is available at cls.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 Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdcsls@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 24.129.401, 24.129.610, and 24.129.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdcsls@mt.gov.

9. Sara Hansen-Baiamonte, board counsel, has been designated to preside over and conduct this hearing.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
VICKI RICE, 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 September 25, 2018.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.150.401 fees, 24.150.505)	PROPOSED AMENDMENT AND
inactive status, 24.150.507 military)	REPEAL
training or experience, 24.150.2201)	
continuing education requirements,)	
and 24.150.2301 unprofessional)	
conduct, and the repeal of ARM)	
24.150.2203 proof of attendance)	

TO: All Concerned Persons

1. On October 30, 2018, at 1:00 p.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 Hearing Aid Dispensers (board) no later than 5:00 p.m., on October 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsddhad@mt.gov (board's e-mail).

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

24.150.401 FEES (1) through (1)(e) remain the same.

(f) Renewal active license

550 4500

(g) through (4) remain the same.

AUTH: 37-1-131, 37-1-134, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-402, 37-16-405, 37-16-406,
MCA

REASON: Between 2010 and 2014, the board experienced financial shortfalls and had to raise fees three times to continue board functions. This was due to a severe loss of renewal revenue in 2011 when a change in the law exempted licensed audiologists from needing a hearing aid dispenser (HAD) license and was coupled with a consistent number of complaints to process every year.

Over the past four years, the reduced number of licensees has remained constant while the number of complaints has decreased due in part to a 2014

agreement in which the Office of Consumer Protection, Montana Department of Justice, processes certain complaints regarding HAD contracts. During this time the board's budget stabilized and the board began building a cash reserve. Following the department's recommendation and pursuant to 17-2-302, MCA, the board abated fees for the 2017 and 2018 renewal cycles, but still has a cash balance exceeding twice its annual appropriation. The board determined it is reasonably necessary to now reduce the active status renewal fee to comply with 17-2-302, MCA, by reducing the cash balance. The board estimates that the proposed decrease will affect approximately 59 active licensees and result in a \$56,050 decrease in annual revenue.

24.150.505 INACTIVE STATUS (1) through (4) remain the same.

(5) ~~Inactive licensees reactivating their license shall submit for board review and prior approval, proof of completion of~~ Licensees shifting from inactive to active status must complete a minimum of ten hours of additional formal training or continuing education, which shall not include on-the-job experience.

AUTH: 37-1-319, ~~37-16-202~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule to eliminate board preapproval of continuing education (CE) providers. The board determined that the preapproval process is confusing and cumbersome for both licensees and the board, and notes that late approval or denial of a provider often resulted in licensees scrambling to obtain CE prior to renewal. Following amendment, licensees will be responsible to select appropriate CE courses within the guidelines provided in board rules.

The board is also amending (5) to align with the provisions of 37-1-306, MCA, and standardized department procedures. As occurs in license renewal, licensees changing from inactive to active status will affirm an understanding of their CE requirement and the potential of being audited for compliance.

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

24.150.507 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a hearing aid dispenser. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214) or other discharge documentation;

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: It has come to the department's attention that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon their discharge from the military. Because the rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit evidence of relevant military training, service, or education as part of the licensure process, the department recommended these amendments to allow the board to consider other evidence of military discharge in addition to or in lieu of a DD 214.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) Except as provided in (2) and (3), licensees are required to complete ten clock hours of continuing education (CE) each renewal period and must attest to their compliance on renewal applications shall affirm an understanding of their recurring duty to comply with CE requirements as a part of annual license renewal.

~~(2) A licensee may request an exception or extension of time to complete the continuing education requirements for good cause shown. The request must be received prior to the renewal date. The board may extend the time for completion of the continuing education to a certain date. The licensee must submit documentary proof of continuing education compliance by that date, if it is after the date the license would have expired, had no extension been granted. A licensee may request an exemption from CE requirements due to certified illness or undue hardship. Requests will be considered by the board.~~

~~(3) A licensee whose initial Montana license was issued within the six months immediately preceding the annual renewal date is exempt from the continuing education requirements during that six month period. CE is not required for licensees renewing their license for the first time.~~

~~(4) Continuing education CE courses on fitting and dispensing hearing aids sponsored by the Montana Hearing Aid Society, the International Hearing Society, the American Speech Language Hearing Association, the American Conference of Audioprosthology, the Montana Speech and Hearing Association, the Academy of Dispensing Audiologists, and the American Academy of Audiology are preapproved. College courses and continuing education CE courses offered in related disciplines will be reviewed and approved by the board on a case-by-case basis.~~

~~(5) and (6) remain the same.~~

~~(7) Credit recognition will not be granted for course work which is substantially similar to course work which was successfully completed in the preceding two years and used to meet the continuing educational CE requirements of the board.~~

~~(8) Clock hours of continuing education CE in excess of the ten required hours per renewal period may not be accumulated and carried forward to another renewal period.~~

~~(9) The board may randomly audit up to 50 percent of renewed licensees.~~

~~(10) All CE must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period and for making those records available upon request.~~

Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

- (c) presenter or sponsor;
- (d) course date(s); and
- (e) number of CE hours earned.

(11) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (2) by removing licensees' ability to request CE extensions to align CE provisions with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary.

The board is simplifying (3) to address licensee confusion by clearly stating that new licensees do not have CE requirements their first renewal period.

The board is adding (9) to allow flexibility in conducting random CE audits. Currently, the board randomly audits 10 percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

It is reasonably necessary to add (10) and specify the CE documentation requirements for responding to a random audit. The board is relocating these provisions from ARM 24.150.2203 which is proposed for repeal in this notice.

The board is adding (11) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

24.150.2301 UNPROFESSIONAL CONDUCT (1) through (1)(u) remain the same.

~~(v) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.150.2201 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee;~~

(w) through (y) remain the same, but are renumbered (v) through (x).

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-16-411, MCA

REASON: The board is striking (1)(v) to comply with the department's administrative suspension procedure and 37-1-321, MCA, that licensees not in compliance with CE may be subject to administrative suspension according to standardized audit processes. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

4. The rule proposed to be repealed is as follows:

24.150.2203 PROOF OF ATTENDANCE

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, MCA

REASON: The board is repealing this rule to further facilitate the department's standardized CE audit procedures and locate all necessary CE provisions to ARM 24.150.2201.

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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsddhad@mt.gov, and must be received no later than 5:00 p.m., November 2, 2018.

6. An electronic copy of this notice of public hearing is available at hearingaid.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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsddhad@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 24.150.401, 24.150.505, 24.150.507, 24.150.2201, and 24.150.2301 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 24.150.2203 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsddhad@mt.gov.

10. Sara Hansen-Baiamonte, board counsel, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS
MICHAEL SPINTI, PRESIDING OFFICER

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

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

Certified to the Secretary of State September 25, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF ADOPTION AND
17.56.101, 17.56.102, 17.56.104,)	AMENDMENT
17.56.105, 17.56.201, 17.56.202,)	
17.56.204, 17.56.302, 17.56.303,)	(UNDERGROUND STORAGE
17.56.304, 17.56.305, 17.56.312,)	TANKS)
17.56.401, 17.56.402, 17.56.403,)	
17.56.407, 17.56.408, 17.56.409,)	
17.56.502, 17.56.504, 17.56.701,)	
17.56.702, 17.56.801, 17.56.802,)	
17.56.803, 17.56.807, 17.56.808,)	
17.56.809, 17.56.810, 17.56.811,)	
17.56.821, and 17.56.1301, and the)	
adoption of New Rules I, II, III, and IV)	
pertaining to underground storage tanks)	
petroleum and chemical substances)	

TO: All Concerned Persons

1. On August 24, 2018, the Department of Environmental Quality published MAR Notice No. 17-400, pertaining to the proposed adoption and amendment of the above-stated rules at page 1650 of the 2018 Montana Administrative Register, Issue No. 16.

2. The department has amended ARM 17.56.101, 17.56.102, 17.56.104, 17.56.105, 17.56.201, 17.56.202, 17.56.204, 17.56.302, 17.56.303, 17.56.304, 17.56.305, 17.56.312, 17.56.401, 17.56.402, 17.56.403, 17.56.407, 17.56.408, 17.56.409, 17.56.502, 17.56.504, 17.56.701, 17.56.702, 17.56.801, 17.56.802, 17.56.803, 17.56.807, 17.56.808, 17.56.809, 17.56.810, 17.56.811, 17.56.821, and 17.56.1301 exactly as proposed. The department has adopted New Rule I (17.56.306), New Rule II (17.56.307), New Rule III (17.56.804), and New Rule IV (17.56.1601) exactly as proposed.

3. The following comment was received and appears with the department's response:

COMMENT NO. 1: For New Rule I (17.56.306), it was suggested that the department consider the EPA's approved Low Liquid Level UST Containment Sump Testing Procedures, June 2018, to be an alternative method for owners and operators to meet containment sump testing requirements. This method has been vetted by the EPA, results in less amount of waste water, and has been approved by surrounding states and a significant number of states throughout the Midwest.

RESPONSE: As provided in New Rule I (17.56.306(1)(a)(ii)(C)), the department will allow the EPA's approved Low Liquid Level UST Containment Sump Testing Procedures (June 2018) for owners and operators to meet containment

sump testing requirements subject to the requirement that the method is determined by the department to be no less protective of human health and the environment than the testing methods listed in New Rule I (17.30.306(1)(a)(ii)(A) and (B). The department agrees the commenter's proposed low-level sump testing method is cost effective and produces less waste water and that the EPA has approved this procedure and considers it as protective of human health and the environment.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES
Rule Reviewer

BY: /s/ George Mathieus

GEORGE MATHIEUS
Acting Director

Certified to the Secretary of State, September 25, 2018.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XX pertaining to the)
requirements for the issuance,)
replacement, or renewal of a REAL)
ID compliant driver's license or)
identification card)

TO: All Concerned Persons

1. On July 20, 2018, the Department of Justice published MAR Notice No. 23-3-252 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1330 of the 2018 Montana Administrative Register, Issue Number 14.

2. The department has adopted the above-stated rules as proposed: New Rule I (23.3.171), New Rule II (23.3.172), New Rule III (23.3.173), New Rule IV (23.3.174), New Rule V (23.3.175), New Rule VI (23.3.176), New Rule VII (23.3.177), New Rule VIII (23.3.178), New Rule IX (23.3.179), New Rule X (23.3.180), New Rule XI (23.3.181), New Rule XII (23.3.182), New Rule XIII (23.3.183), New Rule, XIV (23.3.184), New Rule XV (23.3.185), New Rule XVI (23.3.186), New Rule XVII (23.3.187), New Rule XVIII (23.3.188), New Rule XIX (23.3.189), and New Rule XX (23.3.190).

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

Comment 1: A commenter objected to not including the penalty section for providing false information, forged documents, and the process for revoking a credential and requested clarification of the difference between a declaration for REAL ID and traditional credentials.

Response 1: The department disagrees with this comment. The department will use the same language in the application for both a traditional credential and a REAL ID credential. The department has separate authority to cancel credentials when an applicant submits false information.

Comment 2: A commenter objected to the lack of a specific retention period for scanned documents and asked whether presented documents will be available at renewals.

Response 2: The department disagrees with this comment. New Rule XX outlines the retention schedule of scanned documents. A customer is only required to present additional documentation when certain information changes.

Comment 3: A commenter objected to the department not stating the specific requirements for when a customer must report changes to a name, date of birth, or social security number.

Response 3: The department disagrees with this comment. Montana statute (61-5-115, MCA) requires a credential holder to notify the department within 10 days of an address change. There is no such requirement, either by state law or federal regulation, that requires an individual to notify the department of any other changes.

/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 September 25, 2018.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rules I and II pertaining to video)	AMENDMENT
gambling machine malfunctions and)	
cash ticket validation systems and the)	
amendment of ARM 23.16.101,)	
23.16.1802, 23.16.1901, 23.16.1902,)	
23.16.1903, 23.16.1905, 23.16.1906,)	
23.16.1907, 23.16.1907A,)	
23.16.1908, 23.16.1909,)	
23.16.1909A, 23.16.1910,)	
23.16.1910A, 23.16.1911,)	
23.16.1916A, 23.16.1918,)	
23.16.1920, 23.16.1927, 23.16.1928,)	
23.16.1931, and 23.16.2305)	
pertaining to definitions, video)	
gambling machine (VGM))	
specifications, and electronic live)	
bingo and keno equipment)	
specifications)	

TO: All Concerned Persons

1. On August 10, 2018, the Department of Justice published MAR Notice No. 23-16-255 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1481 of the 2018 Montana Administrative Register, Issue Number 15.

2. The department has adopted the following rules as proposed: New Rule I (23.16.1904) and New Rule II (23.16.1922).

3. The department has amended the following rules as proposed: ARM 23.16.101, 23.16.1901, 23.16.1902, 23.16.1903, 23.16.1905, 23.16.1906, 23.16.1907, 23.16.1907A, 23.16.1908, 23.16.1909, 23.16.1909A, 23.16.1910, 23.16.1910A, 23.16.1911, 23.16.1916A, 23.16.1918, 23.16.1920, 23.16.1927, 23.16.1928, 23.16.1931, and 23.16.2305.

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

23.16.1802 DEFINITIONS (1) through (4) remain as proposed.

(5) "CTVS" (cash ticket validation system) means a stand-alone system that electronically acquires information from VGMs solely for the purpose of validating cash ticket vouchers.

(6) through (30) remain as proposed.

5. 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 single comment at the public hearing and no written comments following the hearing. The commenter suggested the definition of a CTVS would be clearer and minimize potential conflicts with existing systems by refining the definition of a CTVS as a "stand-alone" system.

RESPONSE #1: The suggestion is accepted and the rule as amended will be changed accordingly.

/s/ Matthew Cochenour
Matthew Cochenour
Rule Reviewer

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

Certified to the Secretary of State September 25, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 32.3.108 quarantine and)	REPEAL
release of quarantine, 32.3.201)	
definitions, 32.3.206 official health)	
certificate, 32.3.207 permits, 32.3.212)	
additional requirements for cattle,)	
32.3.216 horses, mules, and asses,)	
32.3.307 department ordered)	
pseudorabies testing, 32.3.311)	
procedure upon detection of)	
pseudorabies, 32.3.407 department)	
ordered brucellosis testing of animals,)	
32.3.411 procedure upon detection of)	
brucellosis, 32.3.412 memorandum of)	
understanding, 32.3.433 designated)	
surveillance area, 32.3.436)	
vaccination within the counties in)	
which the DSA is located, 32.3.1003)	
contaminated premises, 32.4.101)	
definitions, 32.4.202 identification of)	
omnivores and carnivores, 32.4.601)	
importation of alternative livestock,)	
and the repeal of ARM 32.3.224)	
domestic bison, 32.3.430 quarantine)	
and retest of suspect animals in)	
negative herd, and 32.3.2002 swine)	
identification code: assignment of)	
codes)	

TO: All Concerned Persons

1. On July 6, 2018, the Department of Livestock (DOL) published MAR Notice No. 32-18-291 pertaining to the proposed amendment and repeal of the above-stated rules at page 1225 of the 2018 Montana Administrative Register, Issue Number 13. On August 10, 2018, the Department of Livestock extended the comment period to August 17, 2018, to give concerned persons additional time for comment on the above-stated rules.

2. Eight separate public informational meetings/listening sessions were held to promote public involvement and awareness. DOL held meetings in counties that would be new to vaccination regulations in addition to Beaverhead County where a DSA boundary adjustment was proposed. Locations included Absarokee, Big Timber, Boulder, Bridger, Lima, and Townsend. A press release was issued to local newspapers and radio stations as well as a regional agricultural periodical.

Addressed envelopes were provided at each meeting to promote public comment. Attendees were made aware that other administrative rules (DSA boundary, vaccination, and the bison import rules) that had proposed changes were open for comment as well.

Prior to the opening of public comment, DOL met with members of Snowline Grazing Association to discuss all administrative rule change proposals and request formal input once the comment period opened. Snowline Grazing Association members would represent most of the producers impacted by the boundary change. Approximately 20 members of the public were present.

3. The department has amended the following rules as proposed: ARM 32.3.108, 32.3.201, 32.3.206, 32.3.207, 32.3.212, 32.3.216, 32.3.307, 32.3.311, 32.3.407, 32.3.411, 32.3.412, 32.3.1003, 32.4.101, 32.4.202, and 32.4.601.

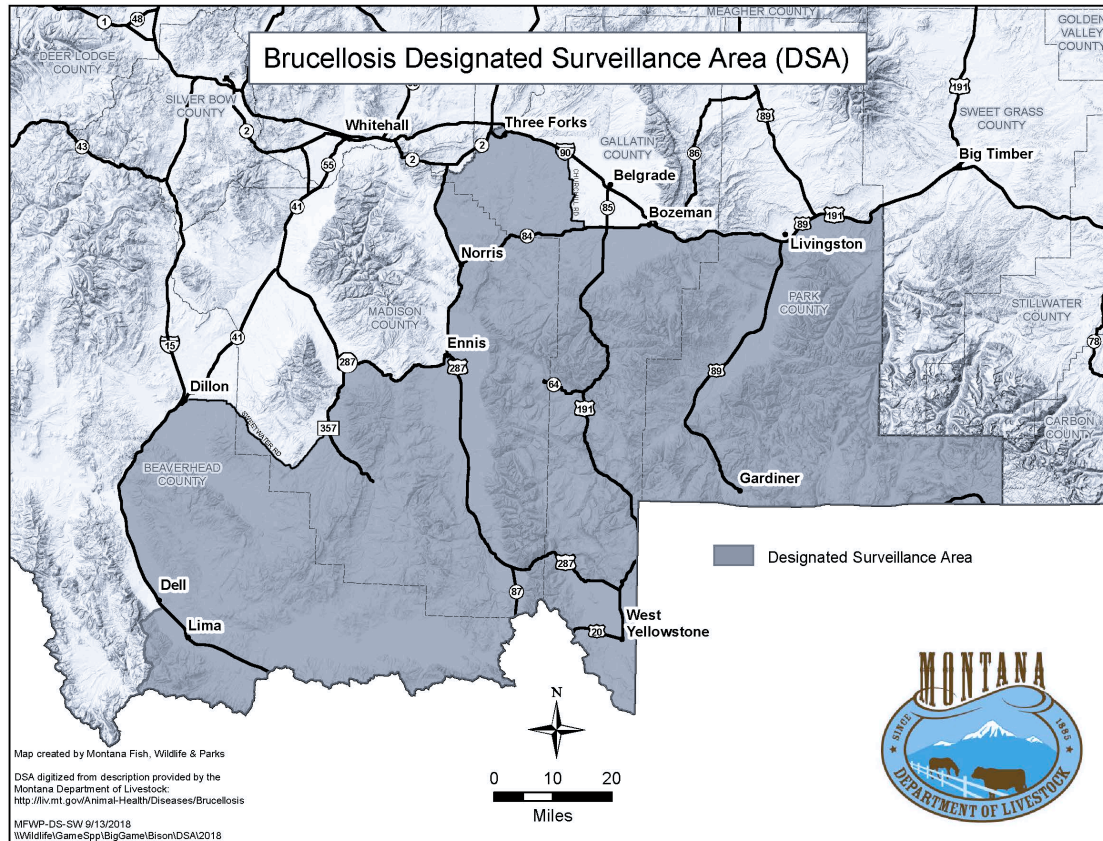
4. The department has repealed the following rules as proposed: ARM 32.3.224, 32.3.430, and 32.3.2002.

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

32.3.433 DESIGNATED SURVEILLANCE AREA (1) through (1)(c) remain as proposed.

(d) Beaverhead County – from Madison-Beaverhead County line, south of Sweetwater Road to East Bench Road near Dillon, then south of East Canal Bench Road to White Lane, then south of White Lane to Blacktail Road, then south of Blacktail Road to Highway 91, then west of Highway 91 to Interstate 15 business loop, then south of Interstate 15 business loop to Interstate 15, then east of Interstate 15, ~~then south of Dell Airport Road, then east of Westside Frontage Road,~~ then south of Big Sheep Creek Road, then south of Meadow Creek to Big Sheep Road at Dell, then east of Big Sheep Road to Deadwood Gulch Road (BLM Road 1869), then east of Deadwood Gulch Road to Forest Road 8273, then east of Forest Road 8273 to Forest Road 1033, then east of Forest Road 1033 to the West Fork of Little Sheep Creek, then east of the West Fork of Little Sheep Creek to the headwaters north of Round Timber Spring to the Montana/Idaho border.

(2) A map of the designated surveillance area follows:



32.3.436 BRUCELLOSIS VACCINATION (1) All sexually intact female cattle and domestic bison 12 months of age or older in a Beaverhead, Big Horn, Broadwater, Carbon, Gallatin, Jefferson, Madison, Park, Stillwater, and Sweet Grass county Counties that borders or contains the DSA must be official vaccinates.
(a) remains as proposed.

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:

ARM 32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE

COMMENT #1: The commenter represents an association of multiple individuals and wrote in support of the amendments that would make import requirements for domestic bison reflect USDA regulations and the national class free status of domestic bison.

RESPONSE: The department thanks the commenter and agrees.

ARM 32.3.433 DESIGNATED SURVEILLANCE AREA

COMMENT #2: Two commenters opined that the boundary change would reduce property values of ranches within the area.

RESPONSE: This comment does not apply to the proposed rule change. The Department of Livestock (DOL) is dedicated to maintaining Montana's brucellosis class free status through a USDA approved Designated Surveillance Area (DSA) and maintaining the marketability of Montana's cattle and domestic bison.

COMMENT #3: Two commenters stated that Montana Fish, Wildlife and Parks should take more responsibility for the disease and a larger role in managing the disease in wildlife.

RESPONSE: These comments do not directly apply to the proposed rule. DOL does not have authority over wild elk, but continues to work closely with Fish, Wildlife and Parks (FWP) to determine the extent of the disease in wildlife. In so doing, DOL can identify areas where livestock are at risk. Additionally, FWP does not have authority over livestock, but makes disease mitigation tools available to landowners within the DSA. These tools are intended to reduce comingling of elk and livestock during the risk period.

COMMENT #4: One land owner stated he is concerned that the expansion of the DSA is premature, needing further testing and investigation. He encouraged the department to wait another year and gather more information pertaining to elk movement patterns.

RESPONSE: DOL disagrees. The boundary adjustment was recommended to the Board of Livestock because a brucellosis exposed elk was discovered outside of the DSA during the 2018 risk period. The adjustment to the boundary is essential to include livestock in the area in brucellosis surveillance. The rapid response by the Board of Livestock to change the boundary in response to information that indicates that livestock may be at risk, promotes trading partner confidence in the disease-free status of Montana livestock. A delay in this boundary adjustment would allow for livestock to leave an area, where brucellosis exposed elk exist during the risk period, without brucellosis surveillance.

COMMENT #5: One land owner stated that a brucellosis exposed elk is a "presumptive" positive and not enough evidence to change the boundary.

RESPONSE: DOL disagrees. If an elk is serologically positive to brucellosis in an area adjacent to the DSA (where we know *B. abortus* exists), then it was exposed to the *Brucella abortus*. With exposure, there is a risk of infection and therefore transmission. All DSA boundary adjustments have been made based on serologic results from elk. In two cases, the boundary change has resulted in the early detection of brucellosis infected livestock. Also see response to comment #3.

COMMENT#6: One commenter supports the scientific approach to a boundary change.

RESPONSE: DOL agrees that a recommended boundary adjustment such as this must be based on the best available science and information.

COMMENT #7: One commenter was not opposed to the expansion if there are adequate resources to cover the expense of this addition.

RESPONSE: This comment does not apply to the proposed rule change. However, DOL has and will continue to work diligently to secure funding for testing and surveillance within the DSA.

COMMENT #8: One landowner commented that the positive elk should have been collared to test again.

RESPONSE: This comment does not apply to the proposed rule. However, collar movement information is helpful to FWP for management reasons and to DOL to identify new areas where the disease may exist in wildlife. Unfortunately, the costs associated with the collar itself, monitoring, and retrieval make the collaring of all captured elk cost prohibitive.

COMMENT #9: One landowner disagrees with drawing a boundary just a little more than a mile north of where the positive elk was captured and then extending it 26 miles west. He commented that "the Red Rock valley running north and south along I-15 is level and unimpeded by draws, gulches, mountains or high ridges. Montana FWP acknowledges there is north-south elk migration in the valley. South and west of the elk capture site is an unbroken series of canyons, steep ridges and high mountains. Montana FWP knows of no east-west elk migration between cow capture site and upper Big Sheep Creek." Because of these reasons, he believes that the probability of elk migrating from the flats along I-15 to the head of Big Sheep Creek is "less than zero." He encouraged the department to not make a decision based on lines on a map and instead to talk with people who study the land, talk to FWP wildlife biologists, and confer with locals who know the country when deciding the new boundary. The landowner also proposed an alternative boundary.

RESPONSE: DOL agrees with the proposed alternative boundary for multiple reasons: (1) Movement data following the elk capture in the area suggests that the elk do stay southeast of the proposal; (2) it is enforceable because it is recognizable by DOL law enforcement, local landowners, and livestock producers, and; (3) none of the elk captured west of this proposed boundary were serologically positive. It is difficult to define a boundary that meets all the above criteria due to the lack of roads or other recognizable features in this area.

ARM 32.3.436 BRUCELLOSIS VACCINATION

COMMENT #10: One commenter stated that we should start a conversation about all replacements retained within Montana being bangs vaccinated.

RESPONSE: This comment does not apply to the proposed rule change. However, DOL agreed with the comment. In 2010, the Board of Livestock (BOL) directed the department to hold seven public meetings in various locations around the state on a proposed administrative rule that required brucellosis vaccination statewide. Following those meetings and the negative feedback from the public that attended, the BOL abandoned the rule. In 2018, the BOL again requested input from stakeholders and industry groups on a statewide vaccination rule. Due to the lack of support, the BOL moved forward with the current proposed changes.

COMMENT #11: Two commenters expressed their support for the proposed changes.

RESPONSE: The department thanks the commenters for their expressed views.

COMMENT #12: One commenter stated that he believed the counties included in the DSA and the counties which are considered adjacent to a DSA should be identified to decrease confusion.

RESPONSE: DOL agrees. In addition to decreasing confusion, this would eliminate the potential for a bordering state to change Montana rule.

COMMENT # 13: One commenter stated that the list of counties should include Big Horn County because some elk from Wyoming's Brucellosis Area of Concern are known to travel into Big Horn County, Montana.

RESPONSE: DOL agrees with this comment. As initially proposed, this administrative rule change would not include Big Horn County, Montana because it does not border on Wyoming's DSA. However, because Big Horn County, Montana does border on Wyoming's Brucellosis Area of Concern, we agree that it should be included.

/s/ Michael S. Honeycutt

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

BY: /s/ Cinda Young-Eichenfels

Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State September 25, 2018.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I regarding the Lockwood)
Solvent Groundwater Plume Site)
Controlled Groundwater Area)

TO: All Concerned Persons

1. On July 20, 2018, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-198 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1383 of the 2018 Montana Administrative Register, Issue Number 14.

2. 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 (36.12.907) LOCKWOOD SOLVENT GROUNDWATER PLUME SITE CONTROLLED GROUNDWATER AREA (1) There is designated a Lockwood Solvent Groundwater Plume Site Controlled Groundwater Area (LSGPS CGWA). The LSGPS CGWA means an area of approximately ~~336~~ 331 acres located east of Billings, Montana, and is generally described as follows:

(a) The LSGPS CGWA covers an area approximately ~~0.54~~ 0.52 square miles and is generally located south and east of the Yellowstone River at Lockwood, Montana, between Rosebud Lane to the south, the Yellowstone River to the north and west, and Maier Road on the east (the east Section line of Sections 26 and 35, T1N, R26E). The boundaries are wholly within: N2N2 Section 35, T1N, R26E; S2 Section 26, T1N, R26E; and S2N2 Section 26, T1N, R26E.

(b) through (4) remain as proposed.

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

COMMENT 1: The department received a comment requesting that the department modify the boundary of the proposed Lockwood Solvent Groundwater Plume Site Controlled Groundwater Area (LSGPS CGWA). The request was to move the boundary approximately 250 feet southwest along the parcels owned by the individual making the request, thereby excluding the easternmost portion of the southern parcel (geocode: 03-1033-26-4-13-01-0000) and entire northern parcel (geocode: 03-1033-26-4-13-11-0000) from the LSGPS CGWA. Evidence within the application was cited to demonstrate that a well drilled on the northern parcel or the eastern portion of the southern parcel should not induce plume migration.

RESPONSE TO COMMENT 1: The department agrees. Wells located within roughly 650 feet of the plume could cause plume migration. The northernmost parcel requested to be removed lies completely outside this zone, and the southern parcel lies partially outside this zone. The original proposed boundary simply followed parcel borders, and therefore, included some areas more than 650 feet from the plume. Upon consideration of the comment and further discussion with the engineer who prepared the petition materials on behalf of RiverStone Health, the department has determined modification of the proposed LSGPS CGWA boundary is appropriate. The rule is amended as requested to exclude the northern parcel, and easternmost section of the southern parcel. Approximately five acres of land were removed from the proposed LSGPS CGWA. A map reflecting the amended boundary is available at <http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/lockwood>.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Brian C. Bramblett
BRIAN C. BRAMBLETT
Rule Reviewer

Certified to the Secretary of State September 25, 2018.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.107.118 and 37.107.305)
pertaining to the Montana medical)
marijuana program)

TO: All Concerned Persons

1. On April 13, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-839 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 711 of the 2018 Montana Administrative Register, Issue Number 7.

2. The department has amended ARM 37.107.305 as proposed.

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

37.107.118 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS
PROVIDER LICENSEE REQUIREMENTS (1) through (5) remain as proposed.

(6) A licensee may have up to 30 square feet of canopy space per registered cardholder. ~~will have a canopy assigned to them by the department according to the table below at the time of license approval. The department will monitor a licensee's number of registered cardholders quarterly. If a licensee is eligible for a different canopy, a licensee may request a canopy reassessment at any time. The department may also reassess a licensee's canopy, at any time, based on the licensee's number of registered cardholders.~~

Canopy	# of Reg. Cardholders	Sq. Ft. Maximum
Canopy 1*	Up to 20	400
Canopy 2	21 30	420
Canopy 3	31 40	580
Canopy 4	41 50	780
Canopy 5	51 70	1,060
Canopy 6	71 100	1,420
Canopy 7	101 130	1,900
Canopy 8	131 170	2,540
Canopy 9	171 230	3,400
Canopy 10	231 300	4,540
Canopy 11	301 400	6,060

Canopy 12	401–540	8,100
Canopy 13	541–720	10,820
Canopy 14	721–960	14,440
Canopy 15	961–1280	19,260
Canopy 16	1281–1710	25,700
Canopy 17	1711–2280	34,280
Canopy 18	2281–3050	45,720
Canopy 19	3051–4065	60,980
Canopy 20	4066 +	81,230

~~*Canopy 1 allows up to 400 square feet, but no greater canopy allocation than 20 square feet per registered cardholder.~~

~~(a) through (18) remain as proposed.~~

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

4. The department has thoroughly considered the comments and testimony received. The following summary of comments received and the department's responses is a concise statement of the principal reasons for and against adoption of the proposed changes to ARM 37.107.118 and 37.107.305.

COMMENT #1: Several comments were received stating that the proposed tiered canopy would be difficult and unworkable.

RESPONSE #1: Based on additional input, the department agrees that the tiered canopy may be difficult to implement, so the department has removed the proposed tiered canopy and changed the amount of canopy allowed per patient to 30 square feet for all providers. The department believes 30 square feet per patient is a prudent canopy size between the existing 50 square foot amount and other proposed size allocations.

COMMENT #2: Several comments were received stating the current canopy of 50 square feet per patient is too much and should be reduced.

RESPONSE #2: See Response #1.

COMMENT #3: Several comments were received stating that providers need the current 50 square foot of canopy to supply the needs of patients.

RESPONSE #3: See Response #1.

COMMENT #4: Several comments were received that organic and outdoor growers need 50 square foot of canopy to grow for patients.

RESPONSE #4: The department disagrees and has not inspected any organic or outdoor growers to date that were using 50 square feet of canopy per patient. Also see the department's Response #1.

COMMENT #5: Two comments from labs were received stating while they do not object to a \$25,000 bond, they do not understand how the state would have standing under the direction of the bond, i.e., loss of materials. For example, the state would not be either liable for the loss, or be logically able to make a claim against a loss of test materials. Therefore, such a bond would not be paid out in the event of such a loss. They suggest that until this is clarified, the bond be set at \$0 as a placeholder until the state's liability for licensed laboratories becomes clearer. This change would not contradict either the Montana Code Annotated or Administrative Rules of Montana, yet would ensure compliance with both.

RESPONSE #5: The department disagrees. A bond provides evidence of financial responsibility and is payable to the department if a laboratory operates the facility in a manner that allows for or results in theft, loss, or diversion of medical marijuana; or the testing laboratory has its license suspended or revoked due to prohibited activities.

COMMENT #6: One testing laboratory commented that in order to bring the METRC Tracking system software guide into scope of current statutory and administrative rule, they suggested the following actions:

- 1) Adopt the document "Medical Marijuana Quality Assurance Testing," 3/22/18 via reference in QA Testing Requirements (ARM 37.107.407), adding a section on sampling method derived from the proposed METRC manual.
- 2) Adopt the document "Laboratory Facility Checklist" from 4/15/18 via reference in lab licensee requirements (ARM 37.107.305).
- 3) Edit the proposed METRC Lab User Guide: a. Remove (i) the quality assurance testing section, (ii) the packaging and sampling methods section and (iii) the testing type, replacing these with references to MMJ QA Assurance Testing document and ISO/IEC 17025:2017.

The commenter further provided the department with documents supporting their position and their proposed edits to the METRC MT Testing Lab User Guide and the department's quality assurance and testing guidelines.

RESPONSE #6: The department agrees that a separate document for quality assurance and testing protocols is necessary and the department has separated "Quality Assurance Sampling Protocols" and "Quality Assurance" from the METRC MT Testing Lab User Guide into a document titled "Quality Assurance and Testing Protocols" that will be referenced in the METRC MT Testing Lab User Guide. The department does not agree that the laboratory facility checklist should be adopted and it will remain as a reference document for the program. The department does

not agree that the packaging and sampling methods or testing types should be removed from the METRC MT Testing Lab User Guide.

COMMENT #7: The department received the following comment: METRC lab User guide: Test results per category: potency currently does not have a pass/fail: change "Select "XXX (%)" and select pass or fail as the status, then enter the percentage of THC" to "Select "XXX (%)" and enter the percentage of THC."

RESPONSE #7: While the department appreciates the commenter's comment, the department respectfully disagrees and will leave the potency test results entry in order to facilitate future planning for potency testing requirements.

COMMENT #8: The department received the following comment: while the required ISO accreditation will help address many of the above concerns, we are worried about the gap between now and a year from now when all labs are required to get ISO accreditation of their testing methods and protocols.

RESPONSE #8: The department agrees that laboratories should have to prove proficiency in all areas of testing in addition to ISO certification, which can take up to a year to complete, and has left the following requirement in the Quality Assurance Testing document. In addition to passing a review of the application and an on-site assessment, the laboratory must participate in a proficiency testing (PT) program and participate in two single-blind, single-concentration PT studies, where available, per year for each method it seeks accreditation. For all fields of testing, including those for which PT samples are not available, the laboratory shall ensure the reliability of its testing procedures by maintaining a total quality management system that meets all applicable requirements of V1:M1, Proficiency Testing, of the 2009 TNI Standards.

COMMENT #9: The department received the following comment: DPHHS should make sure, via inspections, that labs have taken the necessary precautions to ensure that their vehicles and containers will keep samples secure and safe from tampering and contamination throughout an entire day of couriering. Samples should always be under lock and key. Samples should always be stored under environmentally controlled conditions. Just like providers, a lab's samples must be stored at a registered premise at the end of the day.

RESPONSE #9: The department agrees and has added a section to the Quality Assurance Sampling Protocols specifying that: (i) Samples must be accompanied by a transfer manifest; (ii) Samples must be transferred in a locked, climate-controlled container; and (iii) Samples must be stored in a licensed, climate-controlled facility if the lab requires overnight travel to the document quality assurance and testing protocols.

COMMENT #10: The department received the following comment: METRC Lab User Guide: Delays in transportation including overnight stays are a feature of life when travelling in Montana, a reality not experienced often in other METRC states.

We suggest that Franwell/METRC be specifically directed to not prohibit overnight stops and to accommodate reasonable traffic and weather delay to reflect uncertainty in Montana road conditions and distances.

RESPONSE #10: The department disagrees. The transfer manifest is good for a single day of travel. If an overnight stay is required, the lab representative needs to have a licensed facility listed in METRC to store the samples. Transfer manifests cannot be edited once the lab has left a licensed facility. Lab representatives are not allowed to keep samples in their vehicle overnight. This is an industry standard and verbiage has been added to Quality Assurance Sampling Protocols. The department will make available temporary "satellite" lab licenses until Compla, the Montana Medical Marijuana Program licensing system, can be configured to issue the licenses.

COMMENT #11: The department received the following comment: the term "Harvest Batches" is used through the document; however, it is not defined in the Terminology section.

RESPONSE #11: The department agrees and has added the description in the terminology section of the METRC MT Testing Lab User Guide.

COMMENT #12: The department received the following comment: wording in "Sampling Protocols" bullet should be improved for clarity. For example, bullet that reads "Licensee electronically creates test sample(s) in METRC from their batch packages" does mesh with previously established terminology for "Harvest Lot" and "Production Batch."

RESPONSE #12: The department agrees and has made the changes in the METRC MT Lab Testing User Guide.

COMMENT #13: The department received comments about errors on page 6 of the METRC MT Lab User Guide in the table that correlates a product type to its respective testing requirement. For instance: (i) for usable marijuana, water activity testing has been included when it should not have been added, and mycotoxins have been omitted; (ii) for concentrates, terpene testing has been included when they should not have been included, and mycotoxins have been omitted; and (iii) for edible Marijuana-infused product, mycotoxin testing has been omitted.

RESPONSE #13: The department agrees and has made the changes in the METRC MT Lab Testing User Guide, except for mycotoxin testing for edible marijuana-infused products. Mycotoxins are tested at the flower or concentrate level for edible marijuana-infused products.

COMMENT #14: The department received the following comment: on pages 13 and 14, there appear to be some errors. Random testing of heavy metals has also been omitted from the testing requirements listed for concentrates. Furthermore, we see no reason why usable marijuana that will be processed into a concentrate or

extraction needs to be required to have moisture content, micro, and mycotoxin testing. In fact, for extraction products such as live resin, these tests would cause significant issues and likely prevent providers from making such products. We recommend removing these requirements.

RESPONSE #14: The department agrees and has made the changes in the Quality Assurance and Testing Protocols.

COMMENT #15: The department received the following comment: under "filth and foreign matter screening" on page 11 of the METRC guide, we are required to determine whether a gram of material has less than 10,000 CFU of culturable mold. This seems to us to require a general mold test. It is not a test that can be done visually. If our understanding of this is correct, then this requirement really belongs under microbiological screening rather than filth and foreign matter.

RESPONSE #15: The department agrees and has made the changes in the Quality Assurance and Testing Protocols.

COMMENT #16: The department received the following comment: under "Microbiological screening" we are required to test pathogenic E. coli, where a pass is 10 CFU/g or less. In our view, for pathogenic E. coli, the test should be "non-detectable in a gram of material." DPHHS should not allow any material found to possess pathogenic E. coli to pass.

RESPONSE #16: The department agrees and has made the changes in the Quality Assurance and Testing Protocols.

COMMENT #17: The department received the following comment: "pathogenic" should be removed from before E. coli. Traditional means of enumerating E. coli are selective for all E. coli strains, pathogenic or not.

RESPONSE #17: See Response #16.

COMMENT #18: The department received the following comment: heavy metals table – the column header unit has a typo "u/daily dose (5 grams)" header should be "ug/daily dose (5 grams)."

RESPONSE #18: The department agrees and has made the changes in the Quality Assurance and Testing Protocols.

COMMENT #19: The department received the following comment: the Guide also states that concentrates only require residual solvent and pesticide testing. The edible or topical, etc. batch requires cannabinoid, microbiological and mycotoxin tests for compliance. We request a change to make mycotoxin screening and pesticide screening occur on the same batches of material rather than different batches.

RESPONSE #19: The department agrees and has made the changes in the Quality Assurance and Testing Protocols and the METRC MT Testing Lab User Guide.

COMMENT #20: The department received several comments that are in favor of the reinstatement of the original pesticide panel and action limits. A representation of these comments is as follows:

Reinstating the full panel of over 60 pesticides will have zero impact on the cost we charge for the pesticide screening, and it will almost quadruple the number of pesticides for which we test. This is a situation in which DPHHS can ensure medicine will receive more thorough quality assurance testing, thereby increasing patient safety, with no additional cost added to the provider or the patient.

RESPONSE #20: The department agrees; however, since ARM 37.107.407 and the pesticide panel were not a part of this rulemaking, changes in the Quality Assurance and Testing Protocols, METRC MT Testing Lab User Guide, and ARM 37.107.407 pertaining to the pesticide panel will need to be pursued under a separate, future rulemaking.

COMMENT #21: The department received several comments requesting the department to set minimum sample sizes.

RESPONSE #21: The department agrees and has added the following to the Quality Assurance and Testing Protocols: Samples for products, including but not limited to, useable marijuana including trim and manicure, extracts (oils or shatters), tinctures, vape pens, kief, hash, edibles, capsules, salves, and ointments must be .5% of the batch size. Example: if the total batch weight is 3.31lbs, the lab would be required to collect 7.5 grams ($3.31 \text{ lbs.} = 1501 \text{ grams} \times .5\% = 7.5 \text{ grams}$). For multiple strain batches, divided the minimum required sample sized by the number of strains. Example: If there are 5 strains that make up the 3.31lb batch, the lab is required to, at a minimum, collect 1.5 grams per strain ($7.5\text{g}/5\text{strains} = 1.5 \text{ grams}$). A minimum of 1 gram per strain is required regardless of batch size and strain count.

COMMENT #22: The department received the following comment regarding collecting samples from providers: METRC MT Testing Lab User Guide, page 8, (2)(d) Labs cannot control construction or maintenance of providers.

RESPONSE #22: The department agrees and has made changes to the Quality Assurance and Testing Protocols.

COMMENT #23: METRC MT Testing Lab User Guide, page 9, Quality Assurance Sampling Protocols (9) . . ."directly" would preclude multiple pickups by a lab.

RESPONSE #23: The department agrees and has made changes to the Quality Assurance and Testing Protocols.

COMMENT #24: The department received the following comment: pages 7-8 – QA Sampling Protocols are not consistent with the current administrative rule. For example, ARM 37.107.405 does not specify explicitly who conducts the product sampling. However, the METRC guide explicitly states in section (2)(b) on page 8 that the person performing the sampling has to be trained and certified in the appropriate procedures by the laboratory they are employed by. This statement implies the sampling must be performed by a certified testing lab employee. (This is also in conflict with the Quality Sampling Protocol dated 3/22/2018.)

RESPONSE #24: The department disagrees with this conclusion. It has always been the intent of the department to have laboratory personnel collect samples. This is the only way the integrity of the sample can be preserved; and it is industry standard. Notwithstanding the department's disagreement with the commenter's conclusion, Quality Assurance Sampling Protocols (2)(b) has been revised to include "lab personnel" for clarification.

COMMENT #25: One commenter reported that the testing requirements table needs to be checked for consistency with administrative rules. In particular, the "Cannabinoid Products" row appears to have testing requirements not listed in the administrative rule for marijuana-infused products.

RESPONSE #25: The department agrees and has made changes to the Quality Assurance and Testing Protocols and the METRC MT Testing Lab User Guide where the testing requirements for marijuana-infused products and has removed mycotoxins.

COMMENT #26: One lab commented that they believe there are some inconsistencies in reporting potency values. Specifically, some labs in the state subtract moisture content from the potencies values while other labs do not. For example, if a flower sample measures 20% total THC and 10% moisture, a lab may "correct" the THC content by subtracting moisture which would result in a reported value of 22% THC content (i.e., 20% THC/90% dry weight = 22% THC). We feel that such calculations are accurate representations of the product which is sold and consumed by the patient. It also seems to go against the spirit of the METRC guidelines which, on page 8, state that "changing a sample in any way as to inflate the level of potency" is not allowed. We feel that this puts an unfair burden on patients as it forces them to calculate the actual THC in the product they are buying. We request that the department specifically require that all potency measurements be reported on an "as-is" basis or provide guidelines for making moisture corrections and require specific language to be included on the packaging stating that a moisture subtraction was made.

RESPONSE #26: The department disagrees. Potency and moisture content are to be tested separately. Combining potency and moisture content together is falsifying the testing and inflating the THC levels.

COMMENT #27: The department received a large number of comments that were not applicable to the rules being amended in this notice. A sample of the comments follows: "Tethering patients to providers and the card system that underlies that model has been a problem for almost 10 years." "Marijuana rules should be written along the same lines as alcohol rules." "MIPP licenses should be available to experts in the field and not only providers." "Our legislators proclaim, 'liberty for Montanans' from overreaching federal oppression, however, though marijuana is not as addictive as cigarettes, alcohol, or pharmaceutical pain medications, you, as a state entity, treat it as a class 1 drug with far more restrictions and requirements."

RESPONSE #27: The department appreciates the comments of the commenters, and always encourages public comment and input regarding any department program, policy, or proposed rulemaking. However, the department does not formally respond to comments that address matters outside the scope of the pending rulemaking.

5. The department will apply these rule amendments retroactively to April 10, 2018 in order to comply with the requirements of Senate Bill 333 (2017).

6. A small business impact statement has been prepared and may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Montana Marijuana Program, P.O. Box 202953, Helena, MT 59620-2953 or at <http://dphhs.mt.gov/marijuana>.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State September 25, 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 recent rulemaking 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 June 30, 2018. This table includes notices in which those rules adopted during the period March 30, 2018, through September 7, 2018, 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 June 30, 2018, 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 2018 Montana Administrative Registers.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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