

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I and II and amendment of	)	PROPOSED ADOPTION AND
ARM 4.12.1018, 4.12.1020, and	)	AMENDMENT
4.12.1031 pertaining to Commodity)	
Dealer Licenses)	

TO: All Concerned Persons

1. On September 4, 2019, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 30, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I MODIFIED LICENSES FOR COMMODITY DEALERS (1) The department may issue or change a license as needed to insure the producer's safety and maintain competitive fairness. If the department deems modifications are in the best interest of producers, and the alternative is not issuing a license at all, it may make modifications to licenses. All appeals, either formal or informal, to modifications are subject to the MAPA dispute process. Common modifications are listed in (a) through (c).

(a) Conditional licenses are limited in scope and differ in the amount, type, or time requested by the licensee or initially issued by the department.

(i) Conditional licenses may prevent companies from entering into new contracts until they are fully compliant or meet financial requirements.

(ii) Conditional licenses are usually triggered by a radical change in the financial status of the commodity dealer or the legality or price of the commodity.

(b) Suspended licenses are submitted with incomplete paperwork and/or bonding or are noncompliant with the financial statements filing date pursuant to the Administrative Procedure Act as referenced in ARM 4.12.1020.

(c) Revoked licenses are removed by the department due to falsified paperwork or inability to pay a producer.

AUTH: 80-4-403, MCA
IMP: 80-4-403, MCA

REASON: The department is authorized to modify commodity dealer licenses to insure payment to producers. The proposed rule provides common modifications and their associated triggers to help industry anticipate the department's probable action when responding to a variety of situations that arise in the commodity trade. No economic impact is related to the proposed rule.

NEW RULE II PENALTY MATRIX FOR COMMODITY DEALERS AND WAREHOUSE LAWS

(1)

Violation	1st time (or accidental)	2nd (or intentional)	3rd
Required paperwork submitted one month or more late or incomplete with no risk to the farmer/customer	Warning	Warning	\$100 dollars per additional month and possible suspension of license until the paperwork is submitted
Required paperwork submitted one month or more late or incomplete paperwork, with risk to the farmer/customer	Warning	\$250 dollars per additional month and possible suspension of license until the paperwork is submitted	\$250 dollars per additional month and possible revocation of license
Required language not included in commodity contract (i.e., deferred payment) or warehouse receipt not provided	Warning	\$100 per contract or missing receipt up to a maximum fine of (\$5000)	\$200 per contract or missing receipt up to a maximum fine of (\$10,000) and possible revocation of license
Paperwork includes false or misleading material statements about buying, financial records, bonding,	Up to \$250 and possible suspension of license until the paperwork is corrected	The lowest corrected bonding cost amount or \$10,000, possible suspension, or revocation of license	The lowest corrected bonding cost amount or \$100,000, revocation of license

warehouse receipts, or storage capacity			
Failure to post required testing information or retain samples as required by law	Warning	\$250	\$500
Operating as a commodity dealer or warehouse without a license	The higher bonding cost amount or \$500	The higher bonding cost amount or \$10,000 (no more than \$100,000)	

AUTH: 80-4-403, 80-4-429, MCA

IMP: 80-4-421, 80-4-426, 80-4-427, 80-4-428, 80-4-429, 80-4-502, 80-4-601, MCA

REASON: The proposed penalty matrix implements House Bill 50, passed in the 2019 Regular Session of the Montana Legislature. Civil penalties are defined for entities that fail to obtain proper licenses or are in violation of other commodity dealer/warehouse laws. Fines are designed to discourage entities from not properly licensing and bonding.

Economic Impact: The number of entities in violation is unknown. The department does not expect to issue fines in the first year of implementation and recognizes that collecting fines, especially minimal amounts, may be problematic. Compliance fines in subsequent years will range between \$0 and \$100,000.

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

4.12.1018 TERM OF LICENSES - EXPIRATION (1) A public warehouse license period ~~shall be for the term of~~ is July 1, through June 30, ~~or part thereof~~. A public warehouse license ~~shall expires~~ expires July 1 of each year.

(2) A commodity dealer license period ~~shall be for the term of~~ is July 1, through June 30, ~~or part thereof~~. A commodity dealer license ~~shall expires~~ expires July 1 of each year.

AUTH: 80-4-403, MCA

IMP: 80-4-404, MCA

REASON: Proposed amendments update language to comply with Secretary of State Administrative Rules of Montana standards. No economic impact is tied to these amendments.

4.12.1020 FINANCIAL STATEMENTS FILING DATE (1) The financial statement accompanying an applicant's original application ~~shall~~ must show a statement closing date that is within six months of the date of application. Thereafter, the licensee applying for renewal ~~shall~~ must submit an annual statement not later than ~~90~~ 120 days after the close of ~~his~~ their business year.

(2) If the financial statement indicates noncompliance with the financial requirement provisions of the grain act or the licensee fails to submit an acceptable financial statement within ~~90~~ 120 days of the end of ~~his~~ their fiscal year end, ~~then~~ the department may immediately suspend ~~his~~ their license pursuant to the Administrative Procedure Act, issue a fine, and/or make the license conditional on the paperwork arriving at a specified time.

AUTH: 80-4-403, MCA

IMP: 80-4-421, 80-4-502, 80-4-601, MCA

REASON: Industry requested the department extend timelines for financial statement filings from 90 days to 120 days. Doing so increases the time entities have to acquire the required compliance paperwork and aligns with the current state of the industry. Additional language for late and/or noncompliant paperwork reflects changes made during the 2019 Regular Session of the Montana Legislature in House Bill 50 and Senate Bill 73.

Economic Impact: Proposed amendments grant additional time to licensees to submit their financial statements which may result in lower ancillary costs, such as accounting fees, for some. The exact amount of these reduced costs is not calculatable.

4.12.1031 OTHER COMMODITIES (1) In addition to those specified commodities in 80-4-402, MCA, the following crops are commodities for all purposes:

(a) pulse crops including but not limited to peas, dried peas, chickpeas, and lentils;

(b) beans-; and

(c) hemp.

(i) Hemp is an oil crop seed commodity covered under the provisions of 80-4-402, MCA, and ARM Title 4, chapter 19, subchapter 1.

AUTH: 80-4-402, MCA

IMP: 80-4-402, 80-4-501, 80-4-601, 80-4-704, 80-18-103, MCA

REASON: While hemp has been treated as an oil crop seed for commodity purposes, the department recognizes this may not be understood by entities seeking to comply with the law. By adding hemp-specific rules and laws, the department cross-references the commodity to make buyers aware of regulations and options.

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: Cort Jensen, Department of Agriculture, 302 N. Roberts. P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., September 9, 2019.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on July 29, 2019.

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

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State July 30, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 4.10.207, 4.10.504, 4.10.1201	)	PROPOSED AMENDMENT
through 4.10.1204, and 4.10.1401)	
through 4.10.1404 pertaining to)	
pesticide records, registrations, and)	
use of 1080 livestock protection)	
collars and M-44 cyanide capsules)	
and devices)	

TO: All Concerned Persons

1. On September 3, 2019, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 30, 2019, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

4.10.207 APPLICATOR RECORDS (1) ~~All certified commercial~~
Commercial, public utility, government, ~~certified~~ noncommercial applicators and their
operators ~~shall be required to~~ must keep and maintain operational application
records for two years.

(2) ~~For every~~ Every application record performed either by an applicator or
operator, ~~the application record~~ must include:

(a) The name of the applicator or operator applying the pesticide; ~~Initials or~~
~~an assigned number are acceptable if the full name of the applicator or operator is~~
~~cross-referenced and accessible to the department.~~

~~(b) The following items:~~

~~(i) date;~~

~~(ii) time should be specific;~~

(b) Date of application;

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

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

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

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

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

(e) Equipment used:

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

(d)(f) The pesticide or pesticides used, ~~must include~~ including the company name, trade name, and the EPA registration number ~~or the type of formulation.~~

(e)(g) The rate of application, ~~includes the formulation rate and the diluent to be sprayed~~ including the amount of formulated product per volume or weight to be applied on a given unit area. Examples: 1 pint of product per 5 gallons of water per acre (1 pt/5 gal water); 2 oz. of product per 1 gallon water (2 oz/1 gal water); 1 pint of product per 100 pounds of fertilizer per acre.

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

(g)(i) The primary pest or pests involved.

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

(i)(k) Weather conditions such as wind speed, wind direction, and temperature, if applicable. ~~Outdoor applications generally require the recording of some weather conditions.~~

(2)(3) Applicators utilizing two or more pesticides in a tank mixture ~~shall be required to~~ must record all required data ~~as required~~ for each pesticide in the tank mix.

(3)(4) ~~Applicators shall maintain application records~~ Applicators must record application information on a daily basis not to exceed 24 hours from the time of the last application.

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

(5)(6) Seed treaters applicators and wood product ~~treaters~~ shall only be required to applicators must maintain records only on the volumes of pesticides applied and the other items set forth in (1) (a), (b) (i) (d) (e) and (f) (2)(a) through (h).

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

(a) ~~There will, however, be no department~~ Department publication of any information of these records which may disclose operations of selling, production, or use of pesticides by any person is prohibited. ~~Such prohibition has been declared~~

under ~~section~~ 80-8-107, MCA, and confirmed under department interpretation of a letter of explanation to the above-cited opinion from the attorney general.

~~(7)~~(8) Applicators, upon written request of the department, shall must submit to the department ~~an accurate typed or printed record~~ records of each application performed with all ~~restricted~~ pesticides, or those ~~restricted pesticides~~ specifically named by the department. The records shall must be submitted within 14 calendar days of the department's request or as otherwise requested by the department. The request for records may include the records for the complete calendar year. The record must contain all the items listed in (2)(a) through (k), unless not required based on (6). ~~The records shall be submitted on the standard form provided by the department or on forms approved by the department. The record shall contain the following items listed in this rule: (1) (a), (b) (i), (iii), (d), (e), (f), (g), (h) and (2). The record may contain all the items listed in sections (1) and (2).~~

(a) If no applications of the ~~restricted-use~~ pesticides ~~are made~~ occurred during the requested time period, ~~this applicators~~ must be documented document this to the department.

~~(8) Applicators shall submit to the department an accurate typed or printed report of their use of restricted and general use pesticides every fifth year beginning in calendar year 1990 and thereafter every five years. The report must include a summary of use of these pesticides by county, total acreage, amount of the formulated product used, the product used by company name and trade name, and the EPA registration number for the fifth year only. The report must be submitted to the department by January 31 of the next year. The report must be submitted on the standard form provided by the department or on forms approved by the department.~~

~~(a) If no application of general and/or restricted-use pesticides are made during the calendar year, this must be documented by the department.~~

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

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.207 clarify pesticide dealer recordkeeping requirements and update grammar to comply with Secretary of State Administrative Rules of Montana requirements. The department recognizes there is a positive fiscal impact associated with reducing pesticide applicator recordkeeping requirements, but calculating the exact amount is not possible.

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

(2) ~~Each dealer~~ Dealers, including pharmacists, veterinarians, and certified pharmacies, shall must maintain a complete ~~and accurate typed or printed~~ record of all restricted use pesticides purchased and sold. These records must be retained for two years.

(3) The sales record shall include for each individual sale of a restricted use pesticide of restricted use pesticides must include:

- (a) ~~the~~The company name on the label;
- (b) ~~the~~The complete trade name ~~or the EPA registration number;~~
- (c) The EPA registration number;
- ~~(c)~~(d) ~~the~~ The volume sold;
- ~~(d)~~(e) ~~the~~ The license or permit number of the ~~certified~~ applicator or the dealer purchasing the restricted pesticide;
- ~~(e)~~(f) ~~the~~ The date of sale; and
- ~~(f)~~(g) ~~the~~ The name of the applicator, dealer, employee, or family member purchasing the restricted pesticide;

(4)~~(a)~~ ~~Each~~ Upon request of the department, pesticide dealers, including pharmacists, veterinarians, and certified pharmacies selling restricted pesticides, ~~upon request of the department, shall submit to the department written~~ must submit records providing the information in ARM 4.10.504(3). ~~The department may also require the sales records of general use pesticides providing the information in ARM 4.10.504(3)(a), (b) and (c).~~

(a) The records shall must be submitted within 14 calendar days of the request. ~~The records shall be made on the standard forms provided by the department or on forms approved by the department.~~

(b) If no restricted ~~or general-use~~ pesticides are sold during the time period requested ~~by the department, this should be so~~ must be documented to the department.

~~(5)(a) Dealers shall submit to the department an accurate typed or printed report of their sale of restricted and general use pesticides every five years. The report is due for every fifth calendar year by January 31 of the next year. The report shall include the total volume sold, the trade name, the company name and the EPA registration numbers or the type of formulation of each individual product for the fifth year only beginning in 1990 and thereafter every five years.~~

~~(6)~~(5) Records required of dealers, pharmacists, veterinarians, and certified pharmacies shall be subject to must be available for inspection by authorized employees of the department at during all business hours. ~~Dealers shall be required to submit the records or a true and accurate copy of the records to the department upon written request.~~

~~(7)~~(6) Dealers and retailers selling retail pesticides, as designated in ARM 4.10.502, are exempt from the record keeping requirements of this rule. Records of retail pesticides shall must be maintained as required in ARM 4.10.502(2).

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

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

REASON: Amendments to ARM 4.10.504 remove language that previously allowed the acceptance of reports on pesticides used every fifth year, beginning in 1990. Additional grammatical and formatting changes clarify applicator record keeping requirements and comply with the Secretary of State Administrative Rules of Montana requirements. The department recognizes there is a positive fiscal impact

associated with reducing pesticide dealer record keeping requirements, but calculating the exact amount is not possible.

4.10.1201 GENERAL (1) The department ~~hereby~~ establishes rules regarding the registration and restricted use of 1080 livestock protection collars ~~[hereafter referred to as collar(s)]~~ to control coyotes (*Canis latrans*) that depredate sheep and goats.

(2) Registrants of the collar, dealers selling the collar, and applicators using the collar, ~~shall be~~ are subject to future labeling restrictions and requirements ~~as may be prescribed from time to time designated~~ by the agency and/or the department.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1201 update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1202 REGISTRATION (1) Registration of the collars for sale or distribution in the state ~~shall be~~ is limited to state and federal registrants ~~of the collar only~~.

(2) ~~The collars shall not be sold~~ The registrant may not sell, transferred, transported, ~~given~~ give away, or entrusted collars to ~~the care of any person by the registrant~~ any individual who is not ~~authorized~~, properly licensed or permitted, by the department.

(3) Only the registrant or the collar manufacturer ~~are~~ is authorized to fill collars with 1080 solution. ~~Certified applicators are not authorized to fill collars.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1202 update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1203 DEALER SALES (1) ~~The Montana department of livestock and/or a federal agency such as the United States department of agriculture (USDA)~~ The department or a federal agency may become licensed dealers for the sale and distribution of the collars, ~~or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department.~~ The dealer ~~shall be required to~~ must maintain an inventory record of collars purchased, sold, distributed, given away, or entrusted. The record ~~shall include each purchase of the collars by the dealer, each individual's name and~~ must include the date of sale, the applicator's name, address, phone number, license or permit number, EPA registration number, expiration date

to whom the dealer sells the collars, and the number of collars remaining in the dealer's stock.

(2) The dealer ~~shall not~~ may only sell, give away, or entrust any collars to ~~other than trained and certified-~~ properly licensed or permitted pesticide applicators, ~~authorized to use collars.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1203 update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1204 APPLICATOR CLASSIFICATION AND REQUIREMENTS

(1) ~~Individuals who desire to use collars shall have to be qualified and certified as either a certified licensed commercial or government applicator or a permitted farm applicator~~ An individual who uses collars must be a licensed or permitted applicator as required in ARM 4.10.201 or 4.10.401. All individuals desiring to become certified shall be required to must pass a written examination as required in ARM 4.10.203(3)(a) and (4)(a) and attend a training course sponsored or approved by the department, and pass an examination.

(2) The training course ~~shall include~~, but is not limited to:

(a) ~~Training in the~~ The safe use, handling, and attachment of collars;

(b) ~~Training in disposal~~ Disposal of punctured or leaking collars, contaminated animal remains, contaminated vegetation and soil, and contaminated clothing;

(c) ~~Instructions for practical~~ Practical treatment of 1080 poisoning in humans and domestic animals;

(d) ~~Instructions on record keeping.~~ Record keeping requirements;

(e) ~~Familiarization with Montana pesticide laws and rules;~~ and

(f) ~~Familiarization with collar~~ Collar labeling.

(3) ~~Individuals desiring to become certified shall be required to pass a written examination based on materials and training provided by the department. Applicants for a certified license must pass the examination with a score of eighty percent (80%), and applicants for a special use permit must pass with a score of seventy percent (70%). Applicants failing the examination the first time shall not be allowed to retake the examination for seven (7) days after the notification. Applicants failing the examination a second time may retake the examination fifteen (15) days after notification by certified mail. Applicants failing the examination a third time shall not be allowed to retake the examination until the next licensing period beginning January 1 the next year and shall attend another approved training course. Examinations may be retaken at any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office, or the applicant may make arrangements for examination or reexamination at other locations in the state at the convenience and approval of the department.~~

~~(4)(2)~~ Applicants maintaining their license for four consecutive licensing periods are required to follow ARM 4.10.203(5)(a) and (b), (6), and (7). ~~shall be required to requalify for licensing prior to every fifth licensing period. Applicator requalification shall be accompanied by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be required to have the government agency sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The standards for requalification shall be the same as those required for initial certification. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The department may also require applicators to pass an examination and/or attend training during any licensing period on new major pesticide technology which applies to the applicator's classification.~~

~~(5) All individuals who have attended a training course and have passed the written examination on the use of the collars, will be certified under one of the following classifications:~~

~~(a) certified licensed government applicator regulatory pest control predator —livestock protection collar;~~

~~(b) certified licensed commercial applicator—agricultural pest control—vertebrate—livestock protection collar;~~

~~(c) permitted or certified farm applicator livestock protection collar.~~

~~(6) Applicants desiring certification for use of collars and individuals certified to use the collars shall have to meet and comply with other applicable licensing requirements as established by departmental rules.~~

~~(7)(3) Applicants using the Livestock protection collar applicators shall have in their possession must have the "Technical Bulletin for the Livestock Protection Collar" in their possession and must use collars in accordance with the Livestock Protection Label. Section 3 (Use Restrictions) and Section 4 (Supervision, Inspection of 1080 Livestock Protection Collars). The "Technical Bulletin for the Livestock Protection Collar" by the Montana department of agriculture and the Montana department of livestock effective as of February 23, 1996, contains the use restrictions that must be followed during application of the livestock protection collars and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944) or the Montana Department of Livestock, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2023).~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1204 clarify 1080 livestock collar requirements and update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1401 GENERAL (1) The department hereby establishes rules regarding the registration and restricted use of M-44 cyanide capsules in M-44

ejector devices to control certain wild canids: ~~coyotes (Canis latrans); red fox (Vulpes vulpes); gray fox (Urocyon cinereoargenteus); and wild dogs~~ canids as allowed by the product label that depredate livestock and poultry, vector communicable disease, or harm populations of threatened and endangered species.

(2) Registrants of the ~~sodium~~ cyanide capsules and applicators using the capsules in the M-44 devices, ~~sodium~~ cyanide spring-loaded ejector mechanisms, ~~shall be~~ are subject to future labeling restrictions and requirements ~~as may be prescribed from time to time by the agency and/or the department.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1401 clarify requirements for M-44 cyanide capsules and ejectors, and update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1402 REGISTRATION (1) Registration of the M-44 cyanide capsules for sale or distribution in the state ~~shall be~~ is limited to state and federal registrants ~~of the cyanide capsules only.~~

(2) ~~Cyanide capsules shall not be sold~~ Registrants must not sell, transferred, transported, given give away, or entrusted M-44 cyanide capsules ~~to the care of any person who is not authorized, any individual who is not properly licensed or permitted, who is not under the supervision, control of, or monitored by the registrant and by the department.~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1402 update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1403 M-44 CYANIDE CAPSULE DEALER SALES (1) The department or a federal agency may become licensed dealers for the sale and distribution of M-44 cyanide capsules. ~~The Montana department of livestock and/ or a federal agency such as the United States department of agriculture (USDA) may become licensed dealers for the sale and distribution of the cyanide capsules or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department. Each dealer shall be required to~~ The dealer must maintain an inventory record of capsules purchased, sold, distributed, given away, or entrusted. The record shall reflect each ~~and every purchase of the capsules by the dealer must include the date of sale, each individual's the applicator's name, address, phone number, and license or permit number, EPA registration number, expiration date, to whom the dealer sells the capsules, and the number of capsules, remaining in the dealer's stock.~~

~~(2) Dealers shall not~~ The dealer may only sell, give away, or entrust any M-44 cyanide capsules to other than trained and certified to properly licensed or permitted pesticide applicators.

(3) Dealer sales and distribution of M-44 cyanide capsules to licensed or permitted applicators ~~shall be limited to fifty (50) capsules per purchase~~ may be limited at the discretion of the department. ~~This limit may be exceeded on a case by case approval by the department if the applicator can document/justify to the department the need to exceed the fifty (50) capsule per purchase limit.~~ Federal or state agencies providing capsules to their employees are not limited by this ~~numerical~~ restriction.

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1403 update language to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

4.10.1404 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS

~~(1) Individuals who desire to use~~ An individual who uses cyanide capsules in M-44 devices ~~shall have to be qualified and certified as either a certified-licensed must be a licensed or permitted applicator as required in ARM 4.10.201 or 4.10.401.~~ All individuals ~~desiring to become certified shall be required to~~ must pass a written examination as required in ARM 4.10.203(3)(a) and (4)(a) and attend a training course sponsored ~~or approved by the department.~~ The training course ~~shall includes, but is not limited to:~~

(a) ~~Training in the~~ The safe use and handling of the capsules and the M-44 ejector device-;

(b) ~~Training in the proper use of the antidote kit.~~ The proper use and handling of personal protective equipment;

(c) Instructions and practical demonstration on the proper placement of the M-44 ejector device-;

(d) ~~Familiarization with all applicable federal~~ Federal, state, and local laws and regulations on the cyanide capsules and M-44 devices-;

(e) ~~Information on labels and labeling~~ Labels, biology of wild canids, environmental considerations, disposal, and storage-; and

(f) ~~Instructions on required record keeping.~~ Record keeping requirements.

~~(2) Individuals desiring to become certified shall be required to pass a written examination. Applicants for a certified license must pass the examination with a score of eighty percent (80%), and applicants for a special use permit must pass with a score of seventy percent (70%). Farm applicators shall not be allowed to qualify by oral examination. Applicants failing the examination the first time shall not be allowed to retake the examination for fifteen (15) days after notification of failure by certified mail. Applicants failing the examination a second time may retake the examination thirty (30) days after notification by certified mail. Applicants failing examination a third time shall not be allowed to retake examination until the next licensing period beginning January 1 the next year. Examinations may be retaken at~~

~~any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office or the applicant may make arrangements for examination or reexamination at other locations in the state at the convenience and approval of the department.~~

~~(3)(2) Requalification. Applicators maintaining their license for four consecutive licensing periods shall be~~ are ~~required to follow ARM 4.10.203(5)(a) and (b), (6), and (7), requalify for licensing prior to every fifth licensing period. Applicator requalification shall be accomplished by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be required to have the sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The only training courses that will be reviewed for approval will be those attended by the applicator during the last half of the third licensing period or the fourth licensing period of a qualification period. The department may also require applicators to pass an examination during any licensing period on new major pesticide technology which applies to the applicator's classification.~~

~~(4) All individuals who have attended a training course and having passed the written examination on the use of the capsules in M-44 devices will be certified in one of the following classifications:~~

~~(a) certified licensed government applicator—regulatory pest control—predator—sodium cyanide (M-44);~~

~~(b) certified licensed commercial applicator—agricultural pest control—vertebrate—sodium cyanide (M-44);~~

~~(c) permitted or certified farm applicator—sodium cyanide (M-44).~~

~~(5)(3) Certified licensed~~ Licensed ~~commercial M-44 applicators are exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103. These applicators shall~~ must ~~comply with all the requirements in ARM 4.10.104 through 4.10.108 on liability.~~

~~(6) Applicants desiring certification for use of cyanide capsules and individuals certified to use the capsules shall have to meet and comply with other applicable licensing requirements as established by departmental rules.~~

~~(7)(4) Applicators using the M-44 device shall have in their possession~~ must have ~~the Use Restriction Bulletin (Training Manual for M-44 Applicators) on their person and must use the M-44 device in accordance with the~~ M-44 cyanide capsule label, section titled "Use Restrictions for M-44 Cyanide Capsules." ~~The Use Restriction Bulletin (Manual for M-44 Applicators) printed by the Montana department of agriculture February 23, 1996, contains the use restrictions that must be followed during the application of the M-44 device and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944).~~

AUTH: 80-8-105, MCA

IMP: 80-8-105, MCA

REASON: Amendments to ARM 4.10.1404 clarify applicator classifications and requirements for M-44 cyanide capsules. Language is also updated to comply with Secretary of State Administrative Rules of Montana requirements. No fiscal impact is associated.

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: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., September 9, 2019.

5. Cort Jensen, Department of Agriculture, 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/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State July 30, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 8.94.3728 pertaining to the	)	PROPOSED AMENDMENT
administration of the 2021 Biennium)	
Federal Community Development)	
Block Grant (CDBG) Program –)	
Planning Grants)	

TO: All Concerned Persons

1. On August 30, 2019, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, 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., August 28, 2019, 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 docadministrativerules@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 ~~2018-2019~~ 2019-2020 Application and Administrative Guidelines for Housing, Public Facilities and Economic Development Planning Grants as rules for the administration of the ~~2018-2019~~ 2019-2020 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 amend 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, 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 docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., September 6, 2019.

5. Bonnie Martello, Paralegal, 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 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/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State on July 30, 2019.

BEFORE THE GOVERNOR'S OFFICE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PUBLIC HEARING
14.8.101, 14.8.102, 14.8.103, 14.8.104,	)	ON PROPOSED REPEAL AND
14.8.105, 14.8.106, 14.8.107, 14.8.108,	)	ADOPTION
14.8.109, 14.8.110, 14.8.121, 14.8.122,)	
14.8.123, 14.8.124, 14.8.125, 14.8.126,)	
14.8.127, 14.8.128, 14.8.201, 14.8.202,)	
14.8.203, 14.8.204, 14.8.205, 14.8.206,)	
14.8.210, 14.8.211, 14.8.212, 14.8.213,)	
14.8.214, 14.8.218, 14.8.219, 14.8.220,)	
14.8.221, 14.8.225, 14.8.226, 14.8.227,)	
14.8.228, 14.8.229, 14.8.230, 14.8.301,)	
14.8.302, 14.8.303, 14.8.304, 14.8.305,)	
14.8.306, 14.8.307, 14.8.308, 14.8.309,)	
14.8.310, and 14.8.311 and the adoption of)	
New Rules I through VIII pertaining to)	
energy supply emergency rules)	

TO: All Concerned Persons

1. On September 18, 2019, at 1:00 p.m., the Department of Environmental Quality, acting on behalf of the Governor's Office, will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal and adoption of the above-stated rules. Before the hearing, on the same day, at 12:30 p.m., the department will conduct an informal public meeting to discuss the proposed rules and answer questions pertaining to these 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 Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the 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 Governor is proposing to repeal many of the substantive rules in ARM Title 14, chapter 8, subchapters 1 through 3 for the reasons set forth below for the repeal of those rules. All remaining substantive requirements concerning energy emergencies or energy supply alerts are proposed to be repealed and adopted as new rules in new subchapter 4. This would allow one rule to address requirements for distributors of petroleum, natural gas, or electricity, and avoid repetition of similar requirements for each type of energy. It would also make the rules easier to read and understand.

4. The rules proposed for repeal are as follows:

14.8.101 PURPOSE

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: This rule, concerning the purpose of the subchapter, is unnecessary because there is no reason to have a rule on the purpose of a subchapter for which all substantive rules are being proposed to be repealed. In addition, rules describing the purpose of a subchapter are not favored because the effect of a rule should be clear from its text and a purpose rule might conflict with the text of a rule in the subchapter. Therefore, this rule should be repealed.

14.8.102 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: This rule, containing definitions for ARM Title 14, chapter 8, subchapter 1, which concerns petroleum fuel shortages, is unnecessary and should be repealed. New Rule I would contain definitions for the new energy supply alert and energy emergency rules. Many of the terms defined in ARM 14.8.102 are not being used, so definitions for those unused terms will not be included in New Rule I.

14.8.103 NOTIFICATION OF THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: This rule is being proposed to be repealed and its requirements, concerning notification by the Governor of a declaration of a supply alert or emergency, are being proposed to be rewritten and adopted in New Rule II. The first sentence, concerning declaration of a supply alert or emergency, is unnecessary because 90-4-309 and 90-4-310, MCA, authorize the Governor to declare a supply alert or emergency. This provision is therefore not being included in New Rule II.

14.8.104 ENERGY SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.104, which concerns supply alerts for motor gasoline, because it is unnecessary. The only rules

to which it refers, ARM 14.8.105 and 14.8.106, are being proposed for repeal. The reasons for the proposed repeal of those rules are set out below. Therefore, ARM 14.8.104 should be repealed.

14.8.105 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.105, which concerns public sector supply alert procedures for motor gasoline, because the Governor has authority in 90-4-309, MCA, to require state agencies and political subdivisions to reduce energy usage and promote conservation, waste prevention, and salvage of energy related resources. This administrative rule is not necessary to implement that authority and so is proposed to be repealed.

14.8.106 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.106 because it is unnecessary. It refers to non-binding requests concerning energy conservation that the Governor may make to the public or certain businesses and the Governor already has the inherent authority to make non-binding requests.

14.8.107 ENERGY SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.107 because the only rules to which it refers, ARM 14.8.108 and 14.8.109, are being proposed for repeal.

14.8.108 PUBLIC SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.108 because it is unnecessary. The Governor has authority under 90-4-309, MCA, in an energy supply alert, to require state agencies and political subdivisions to reduce energy

usage and promote conservation, waste prevention, and salvage of energy related resources. Because (1) and (2) concern those matters, they are redundant and it is appropriate to repeal them.

Section (3) gives the Governor authority to require a state agency that no longer exists, the Department of Health and Environmental Sciences, to examine and make recommendations concerning air quality restrictions affecting middle distillate usage or available substitutes. The Department of Environmental Quality is the agency now charged with regulating air quality, including applicable air quality aspects of middle distillate use. The Governor has inherent authority to require executive branch state agencies such as the Department of Environmental Quality to examine air quality restrictions affecting middle distillate use and to make recommendations about such restrictions to the Governor. State agencies must carry out such energy supply alert measures as ordered by the Governor. 90-4-311, MCA. An order to examine restrictions relating to air quality concerning middle distillate use and make recommendations regarding them would be covered under that statute. Therefore, (3) is not necessary and should be repealed.

Section (4) requires the Public Service Commission (PSC) to examine restrictions relating to fuel hauling and make recommendations to the Governor. Fuel hauling is subject to safety regulation by the Montana Department of Transportation (MDT). See 61-10-154, MCA, and implementing rules at ARM Title 18, chapter 8. However, a motor carrier may not operate, which includes hauling fuel, without a certificate of public convenience and necessity from the PSC. 69-12-311, MCA. The Governor already has inherent authority to require executive branch state agencies such as MDT to conduct studies and make recommendations. Under 90-4-311, MCA, all state agencies, including the PSC, are required to implement supply alert and emergency measures ordered by the Governor. An order to examine restrictions on fuel hauling and make recommendations regarding them would be covered under that statute. Therefore, (4) is not necessary and should be repealed.

Section (5) gives the Governor authority to order state agencies with more than 10,000-gallon storage capacity for middle distillates of petroleum to report reserves if ordered by the Governor in a supply alert. The Governor has both inherent and statutory authority to make such orders and state agencies are required to follow them. 90-4-311, MCA. Therefore, no rule is necessary.

Section (6) authorizes the Governor to request the federal Department of Energy (DoE) to redirect supplies of middle distillates to Montana. The Governor has inherent authority to make such a request; therefore, this provision is unnecessary. In addition, the DoE has no obligation to comply, so this provision should not be in a rule.

14.8.109 PRIVATE SECTOR SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.109 for the same

reasons given for the proposed repeal of ARM 14.8.106.

14.8.110 ENERGY SUPPLY ALERT PROCEDURES - AVIATION
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.110 because it is unnecessary. The Governor has the inherent authority to make requests for voluntary action to aviation gasoline distributors.

14.8.121 ENERGY EMERGENCY PROCEDURES - MOTOR
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.121, concerning energy emergency procedures for motor gasoline, because the two rules to which it refers, ARM 14.8.122 and 14.8.123, are being proposed for repeal.

14.8.122 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES -
MOTOR GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.122 because it is unnecessary. The Governor has authority under 90-4-310, MCA, to order state agencies to act in an energy emergency and has inherent authority to make non-binding requests of state employees.

14.8.123 PRIVATE SECTOR EMERGENCY PROCEDURES - MOTOR
GASOLINE

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.123 because it is unnecessary. Section (1), concerning requests by the Governor to companies to voluntarily reduce energy consumed in travel, is unnecessary because the Governor has the inherent authority to make requests of the private sector. In addition, because compliance would be voluntary, it is not appropriate to have it in rule. The remaining sections, concerning days and hours of operation and numbers of gasoline containers that may be dispensed

in an energy emergency, are unnecessary because the Governor already has the authority under 90-4-310, MCA, to make such orders. It is more appropriate to specify the details of such orders in an emergency declaration or subsequent order.

14.8.124 ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.124 for the same reasons given for the proposed repeal of ARM 14.8.123.

14.8.125 ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.125 because the two rules to which it refers, ARM 14.8.126 and 14.8.127, are being proposed for repeal.

14.8.126 PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.126, which authorizes the Governor to require building owners to lower thermostat settings for space heating and to take other measures to conserve consumption of middle distillates, because it is unnecessary. The Governor already has the authority in 90-4-310, MCA, to order government agencies and the private sector to conserve energy, including middle distillates, in an energy emergency. The Governor already has authority under 90-4-310(4)(b), MCA, to suspend or modify requirements that affect the use of energy, including middle distillates.

14.8.127 PRIVATE SECTOR ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.127, which authorizes the Governor to order retailers, motor carriers, trucks, and commercial establishments to take certain actions to conserve middle distillates and to

prohibit practices that raise their prices, for the same reasons given for the repeal of ARM 14.8.126.

14.8.128 ENERGY EMERGENCY PROCEDURES - AVIATION FUEL

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.128, which authorizes the Governor to request aviation gasoline sellers to prioritize aviation gas sales to emergency services, because it is unnecessary. The Governor already has the authority under 90-4-310(4)(a), MCA, to implement priorities for the allocation of any type of fuel. In addition, the existing rule authorizes the Governor to make requests for voluntary action, which the Governor has inherent authority to do. Because the request is for voluntary action, it does not belong in a rule.

14.8.201 PURPOSES

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.201 for the same reasons given for the proposed repeal of ARM 14.8.101.

14.8.202 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.202 for the same reasons given for the proposed repeal of ARM 14.8.102.

14.8.203 REGISTRATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: ARM 14.8.203 authorizes the Governor to request certain governmental and intergovernmental entities and Montana utilities to designate an employee to supply information requested under this rule. It is proposed to be repealed because a rule is not necessary for the Governor to make a non-binding request. Requirements for contact and substantive information from energy distributors are proposed for adoption in New Rule III.

14.8.204 UTILITY CURTAILMENT PLANS

AUTH: 90-4-316, MCA

IMP: 90-4-307, MCA

REASON: The Governor is proposing to repeal ARM 14.8.204, concerning utility curtailment plans, because it is unnecessary. The Governor has authority under 90-4-307(1), MCA, to require curtailment plans from distributors and they are required to comply by 90-4-313, MCA. The submission must be "in the form and within limits" specified by the Governor. Therefore, there is adequate authority in statute and a rule is unnecessary.

14.8.205 INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.205, which concerns information required to be submitted to the state by certain non-profit corporations and utilities. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert. The reasons for repeal of provisions of ARM 14.8.205 that are not being proposed to be adopted in New Rule III are set forth below.

The Governor is proposing to repeal (1) because it is no longer necessary. Reservoir inventory information is now publicly available. In addition, the Governor cannot by rule impose requirements on federal or non-Montana agencies. Therefore, no rule is needed.

Section (2), concerning reporting of load relative to resources by an electrical distributor experiencing a shortage, is proposed to be deleted and replaced with language in New Rule III(1) that clarifies and specifies what triggers the reporting requirement and the frequency of reporting. "Utility" is used in the language proposed to be repealed and "distributor," which is defined broadly in 90-4-302(2), MCA, to mean any entity engaged in generating, producing, transmitting, or distributing energy in Montana, is proposed to be used in the new language because it more accurately identifies the functions of an electricity business that, if it experienced a shortage, could result in the declaration of a supply alert or emergency. The information listed in proposed New Rule III(1) is necessary for the Governor to be able to determine if a supply alert or emergency is necessary.

The requirement for information proposed in New Rule III(2) is necessary for the Governor to be able to manage a supply alert or emergency while those declarations are in effect.

Current (3) is proposed to be repealed because the proposed language in New Rule III(2) contains reporting requirements.

14.8.206 EVALUATING INFORMATION

AUTH: 90-4-316, MCA

IMP: 90-4-308, MCA

REASON: The Governor is proposing to repeal (1) because it concerns voluntary curtailment. The Governor has the inherent authority to request voluntary curtailment of electrical energy distribution. Because any curtailment under (1) would be voluntary, no rule is necessary.

The Governor is proposing to repeal (2) because it concerns evaluations of information received under ARM 14.8.205 concerning depletion of reservoir generating capabilities and recommendations for different stages of mandatory curtailment based on the severity of those depletions. Section (2) is unnecessary because the Governor has authority in 90-4-310(4), MCA, to curtail energy usage, and the authority to take curtailment actions regarding specific stages of an emergency is merely a subset of the general authority to require curtailment. The stages of an emergency in the rule are not the way emergencies are handled today, and are therefore unnecessary. Today's approach is to address the particular responses through an incident command approach, where the appropriate actors determine the type and level of response needed. New Rule IV would require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose action to the Governor.

14.8.210 DETERMINING THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA
IMP: 90-4-308, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.210 because it is unnecessary for the following reasons. The energy policy committee referred to in the rule no longer exists. Proposed New Rule IV would authorize the Department of Environmental Quality to make recommendations to the Governor concerning electrical supply shortages. Section 90-4-308, MCA, sets out the matters the Governor is required to consider when determining whether to declare a supply alert or emergency and 90-4-306, MCA, requires the Governor to solicit the advice of consumers and distributors both before and during all phases of supply alerts or emergencies.

14.8.211 DECLARATION OF ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

AUTH: 90-4-316, MCA
IMP: 90-4-309, 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.211 for the following reasons. The first sentence, which requires the Governor to declare a supply alert or emergency on determining that the requisite situation exists, is unnecessary because 90-4-310, MCA, authorizes the Governor to declare an energy supply alert or emergency on a finding that certain statutory factors have been met. The requirements of the remaining sentences, which require the

Governor to notify state and local governments and utilities affected by a supply alert or emergency, of the declaration and its requirements and to issue a press release, would be addressed in proposed New Rule II.

14.8.212 ENERGY SUPPLY ALERT PROCEDURES

AUTH: 90-4-316, MCA

IMP: 90-4-309, MCA

REASON: The Governor is proposing to repeal ARM 14.8.212 because it does not have any substantive requirements and the only rules to which it refers, ARM 14.8.213 and 14.8.214, are being proposed for repeal.

14.8.213 SUPPLY ALERT STAGE 1

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: The Governor is proposing to repeal ARM 14.8.213 because it is unnecessary or inconsistent with legal authority. Section (1) does not contain any substantive requirements and so is unnecessary.

Section (2) is unnecessary because the Governor has authority under 90-4-309, MCA, to order state agencies and local governments to act in a supply alert and they are required by 90-4-311, MCA, to comply. The portion of (2) authorizing the Governor to make requests of utilities and consumers for voluntary action in a supply alert is unnecessary because the Governor has inherent authority to make requests and because the requests for voluntary action are not binding and are not appropriate in a rule.

Section (3) is not necessary because it indicates that compliance by consumers is voluntary and does not impose any duties on local governments or utilities.

Section (4) is not necessary because it states that enforcement is not applicable to the requirements of (2). The Governor has authority under 90-4-309 and 90-4-311, MCA, to require state agencies and local governments to comply with orders in a supply alert.

14.8.214 SUPPLY ALERT STAGE 2

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-311, MCA

REASON: ARM 14.8.214 is proposed for repeal because it is not necessary to establish requirements for stages of a supply alert and for the same reasons given for the repeal of ARM 14.8.213.

14.8.218 ENERGY EMERGENCY PROCEDURES

AUTH: 90-4-316, MCA
IMP: 90-4-310, MCA

REASON: The Governor is proposing to repeal ARM 14.8.218 because all of the rules to which it refers are being proposed for repeal. The Governor's authority to act after declaring an emergency is set out in 90-4-310, MCA, and no rule is necessary.

14.8.219 ENERGY EMERGENCY STAGE 1

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.219 because its provisions are either unnecessary or repeat authority already in statute.

14.8.220 ENERGY EMERGENCY STAGE 2

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-311, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.220 because it is unnecessary. The reason for eliminating stages of an emergency is the same as the reason given for the proposed repeal of ARM 14.8.206. Sections (2)(c)(i) and (ii) authorize the Governor to make requests of certain state, federal, and private entities. This is unnecessary because the Governor has inherent authority to make requests. In addition, the Governor has broad authority in 90-4-310, MCA, to act in an emergency and no rule is necessary.

14.8.221 ENERGY EMERGENCY STAGE 3

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.221 because it addresses stage 3 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of ARM 14.8.206.

14.8.225 PRIORITY LOAD CUSTOMERS - EXEMPTION PROCEDURE

AUTH: 90-4-316, MCA
IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.225 because it is unnecessary and does not reflect how electrical utilities supply power to users. It addresses stage 2 emergencies and the stages of emergencies in this subchapter would be deleted for the reasons given for the proposed repeal of

ARM 14.8.206. The Governor has authority to curtail use of electricity in an emergency. In addition, utilities generally lack the ability to control the supply to individual users, except for a few large users that have direct, or "radial," lines that service them. The department may work with electrical utilities to identify essential users and develop approaches to reduce usage by nonessential users and help ensure supply to essential users.

14.8.226 NON-PRIORITY LOAD APPELLANTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.226 because it is unnecessary. It concerns requests for, appeals from, denial of, and non-priority load exemptions in a stage 2 emergency. However, the stage classifications of an emergency are proposed for repeal. See the reason for proposed repeal of the stages of an emergency in ARM 14.8.206. So, this rule would no longer be appropriate and should be repealed. The Governor has authority under 90-4-310, MCA, to curtail the use of electricity in an emergency and to require curtailment plans from utilities. Any entity required to curtail may communicate informally with the Governor. The reasons for elimination of an administrative appeals process are set out in the statement of necessity for the repeal of ARM 14.8.229.

14.8.227 MONITORING

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-312, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.227, which addresses monitoring during two stages of energy supply alerts and three stages of energy emergencies. However, those stages are being proposed to be eliminated. See the proposed repeal of ARM 14.8.206 and the reasons for that proposed repeal.

In addition, (1)(c) of the existing rule purports to require action from two non-Montana entities that are voluntary associations of electrical generators that coordinate regional electric power matters, the Northwest Power Pool and the Mid-continent Area Power Pool. However, Montana lacks authority over those entities because they are private non-profit entities located outside of Montana. Therefore, this rule should be repealed.

14.8.228 ENFORCEMENT

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-311, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.228 because it is unnecessary. Requirements for compliance with and enforcement of orders issued during a supply alert or emergency are contained in 90-4-313, 90-4-314, and 90-4-

319, MCA, and it is not necessary to repeat their requirements in a rule. In addition, (3) concerns curtailment and the Governor has curtailment authority in 90-4-310(4)(a), MCA, so the authority in this rule is not necessary.

Sections (4) through (6) concern surcharge and rates for consumption of electricity and pass-through of expenses incurred in responding to a supply alert or emergency. The Public Service Commission has authority in 69-8-210, MCA, and ARM 38.5.8226 to approve interim rate increases to allow cost recovery. To the extent the Governor has authority in 90-4-310, MCA, over the matters in (4) through (6), no rule is necessary.

14.8.229 APPEALS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.229 because (1) there is no authority in statute for appeals, and (2) an appeals process is unnecessary and unlikely to be fruitful. The short-term nature of emergencies makes it unlikely that an appeal could be heard or decided, and that relief could be granted, before the emergency terminates. It is more likely that a court action for a temporary restraining order or preliminary injunction could be heard and decided, with appropriate relief granted, while the emergency is still in effect.

14.8.230 ADJUSTMENTS

AUTH: 90-4-316, MCA

IMP: 90-4-310, 90-4-314, MCA

REASON: The Governor is proposing to repeal ARM 14.8.230 for the same reasons set forth for the proposed repeal of ARM 14.8.229.

14.8.301 PURPOSE

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.301 for the same reasons given for the proposed repeal of ARM 14.8.101.

14.8.302 DEFINITIONS

AUTH: 90-4-316, MCA

IMP: 90-4-316, MCA

REASON: The Governor is proposing to repeal ARM 14.8.302 for the same reasons given for the proposed repeal of ARM 14.8.102.

14.8.303 REQUIREMENT TO PROVIDE ADVANCE NOTIFICATION OF PETROLEUM SUPPLY SHORTAGES

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of (1) and (2) is the same as set forth for the repeal of ARM 14.8.205. New Rule III would contain requirements for distributors of energy to submit information to the state concerning energy shortages that could lead to a declaration of a supply alert or emergency and for information required to be submitted during an emergency or supply alert.

14.8.304 REQUIREMENT TO FILE MONTHLY REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because the existing rules are unwieldy; their provisions for submission of information would be combined into New Rule V. New Rule V would contain requirements that refiners and gas plant operators provide the department with certain monthly reports.

14.8.305 REQUIREMENT TO FILE ANNUAL REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: This rule is proposed to be repealed because it is unnecessary. EIA 25 was an annual report required by the Energy Information Administration, a part of the federal Department of Energy. It concerned monthly distribution of petroleum products by retail distributors. That report is no longer used. Another report, EIA 782c, is issued monthly and has supplanted EIA 25. The Governor is proposing to require submission of that report in New Rule V. Therefore, no report is necessary and the rule should be repealed.

14.8.306 FORM AND FORMAT OF REPORTS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning form and format of the reports would be added to New Rule V.

14.8.307 REPORTING PERIODS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.307 because it is unnecessary. The requirements of (1) are proposed to be moved to New Rule V to consolidate the reporting periods with the substantive requirements for the reports. Provisions requiring submission of reports for past periods are proposed to be repealed because the department has all the historical natural gas and refined petroleum data necessary to monitor historical changes in petroleum and natural gas movements across the state. Section (2) concerns reporting periods for submissions required in ARM 14.8.305, which is being proposed for repeal. Therefore, (2) is unnecessary and should be repealed.

14.8.308 RESUBMISSIONS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning resubmission of erroneous, incomplete, illegible, or missing reports would be contained in New Rule VI.

14.8.309 REPORTING AGENCY

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The Governor is proposing to repeal ARM 14.8.309 because it is unnecessary. All the rules referenced in the rule either have been proposed for repeal or have been proposed to be amended to require that submissions to the department must be made via e-mail. Therefore, ARM 14.8.309 should be repealed.

14.8.310 TRADE SECRETS

AUTH: 90-4-316, MCA
IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning protection of trade secrets or other proprietary information are being proposed to be included in New Rule VII.

14.8.311 EXEMPTIONS

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The reason for the proposed repeal of all rules in ARM Title 14, chapter 8, subchapters 1 through 3 and the adoption of a new subchapter 4 has been set forth above. The provisions concerning exceptions from compliance are being proposed to be included in New Rule VIII.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) "Confidential information" has the same meaning as in 2-6-1002, MCA.
- (2) "Customer" means any individual, partnership, corporation, firm, governmental entity, or organization that purchases an energy resource within Montana.
- (3) "Department" or "DEQ" means the Department of Environmental Quality as defined in 2-15-3501, MCA.
- (4) "Distributor" has the same meaning given in 90-4-302, MCA.
- (5) "Emergency" means an energy emergency as defined in 90-4-302, MCA.
- (6) "Energy" has the same meaning given in 90-4-302, MCA.
- (7) "Firm" means any person, as defined in 90-4-302, MCA, engaged in any activity covered by these rules.
- (8) "Local government" means any county, city, town, municipal corporation, or other political subdivision of the state.
- (9) "Person" has the same meaning given in 90-4-302, MCA.
- (10) "Petroleum" means crude oil and petroleum products.
- (11) "Petroleum products" has the same meaning given in 90-4-302, MCA.
- (12) "Supply alert" means an energy supply alert as defined in 90-4-302, MCA.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-309, 90-4-310, MCA

REASON: These terms are used to set out substantive requirements in the rules in new subchapter 4 and need to be defined. "Emergency" and "supply alert" are being defined as a shorthand way of referring to an "energy emergency" and an "energy supply alert" to make the rules easier to read. "Petroleum" is not specifically defined in statute. The Governor believes that collection of limited data concerning crude oil is necessary for the Governor and the department to plan for, and take appropriate action during, supply alerts or emergencies. The Governor therefore proposes to define petroleum to include crude oil. The Governor proposes to delegate to the department the authority to collect limited data on crude oil in New Rule V on forms that are already submitted to the Montana Board of Oil and Gas Conservation.

NEW RULE II DECLARATION OF SUPPLY ALERT OR EMERGENCY

(1) The Governor shall give written notice to state agency heads, local government entities, appropriate trade groups, and distributors affected by a declaration of a supply alert or emergency of the declaration and its requirements. The Governor shall issue a news release describing the action taken.

AUTH: 90-4-316, MCA

IMP: 90-4-309, 90-4-310, 90-4-311, 90-4-313, 90-4-314, MCA

REASON: New Rule II would require the Governor to give written notice to entities affected by a declaration of a supply alert or emergency of the declaration and its contents and to issue a news release describing the action taken. The reason is that affected entities and the public should be informed of such a declaration.

NEW RULE III INFORMATION REQUIRED OF DISTRIBUTOR (1) If a distributor experiences an event that the distributor believes may cause or is causing an energy supply shortage or other condition that may result in a supply alert or emergency as defined in 90-4-302, MCA, or if the Governor believes such an event has occurred and notifies the distributor, the distributor shall, within 24 hours after the event occurs or the Governor gives notification, report the event to the department's duty officer at (406) 431-0014, and send the following information concerning the event to the department at DEQEnergyEmergency@mt.gov;

- (a) a current status report including geographic area of impact;
- (b) estimated effect on energy customers and on health/human safety;
- (c) effect of the incident on infrastructure, including other energy sectors, transportation, food distribution, and emergency services;
- (d) expected duration;
- (e) recommended actions the public or industry can take to reduce or adjust consumption;
- (f) the distributor's contact information;
- (g) any other information the distributor thinks might be helpful in a supply alert or emergency; and
- (h) any other information requested by the department that the department determines is necessary to address the supply alert or emergency.

(2) During a supply alert or emergency each distributor named in the declaration of the supply alert or emergency shall submit via e-mail to DEQ at DEQEnergyEmergency@mt.gov at a frequency determined by the department or by another method if requested by the department, a report that contains the information in (1).

(3) The department shall inform the public about each supply alert or emergency and actions being taken to address it and actions that the public is requested or required to take.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: ARM 14.8.205 and 14.8.303 require each electricity distributor and each firm within certain categories of petroleum distributors to supply information to the state, if a problem may prevent the distributor from meeting energy requirements of Montana customers. They are proposed to be repealed and New Rule III would consolidate information submission requirements into one rule covering all major energy sectors. The department and Governor's office rely on industry and the public to provide information on events that may lead to an energy supply alert or energy emergency. Section (1) would require energy distributors to inform the department when an event occurs that they or the Governor believe causes, or may cause, an energy supply shortage or other condition that may result in a declaration of a supply alert or emergency. The thresholds for a situation for which distributors are expected to report to the department are taken from the definitions of energy supply alert and energy emergency in 90-4-302, MCA. The reason for basing the thresholds on the statute is that the statute provides flexibility in determining what is an important event for each situation. As each energy situation will be different, this flexibility is needed. Section (1) sets out the information that a distributor would be required to submit to the department in those circumstances. That information is necessary for the Governor to be able to determine if a declaration of a supply alert or emergency is necessary. Because a distributor is familiar with its energy supply system, its customers, and how an event could affect them, it is reasonable for distributors to submit to the department the information in (1) concerning the geographic area affected, the estimated effect on energy customers and on health/human safety, infrastructure, including other energy sectors, transportation, food distribution, and emergency services, expected duration, and recommended actions the public or industry can take to reduce or adjust consumption, as well as other information the distributor or department believes helpful or necessary to address the event.

A phone number for the department duty officer and an e-mail is provided for easy reference. The department will update distributors if this contact information changes.

Section (2) would require, during an alert or emergency, each distributor named in a declaration to submit information to the department, via e-mail daily, or at a different frequency or by another method if necessary, the information in (1). This information is necessary to allow the Governor to manage an alert or emergency while those declarations are in effect.

Section (3) would require that the department inform the public about each declaration of a supply alert or emergency and actions taken or requested to be taken. This is similar to requirements in ARM 14.8.103 and 14.8.211 and is necessary to keep the public informed and to obtain action from the public needed to address the shortage.

NEW RULE IV EVALUATING INFORMATION (1) The department shall evaluate the information provided under [NEW RULE III] and recommend to the Governor one or more actions based on the severity of the shortage.

AUTH: 90-4-316, MCA

IMP: 90-4-304, 90-4-305, 90-4-308, 90-4-309, 90-4-310, MCA

REASON: New Rule IV is proposed to require the Department of Environmental Quality to evaluate the information provided under New Rule III and propose appropriate action to the Governor. This is necessary so that relevant information about an energy shortage will be evaluated and that appropriate action will be recommended to the Governor.

NEW RULE V REQUIREMENT TO FILE MONTHLY REPORTS (1) Each refiner and gas plant operator shall submit monthly plant processing data by fuel type including inventories, receipts, inputs, production, shipments, fuel use, and losses by submitting copies of the federal Monthly Refinery Report (EIA-810) or Monthly Natural Gas Liquids Report (EIA-816).

(2) Each petroleum pipeline company shall submit a monthly report, on the form prescribed by the department, of:

(a) pipeline receipts, deliveries, and inventories by terminal location and consignee for all petroleum products delivered through its Montana system; and

(b) its total quantity of out-of-state imports and exports.

(3) Each prime petroleum supplier shall submit a copy of that supplier's federal Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption (EIA-782C).

(4) Each natural gas supplier shall submit a report of the supplier's sales volumes for natural gas sold in the state using the federal Monthly Report of Natural Gas Purchases and Deliveries to Consumers (EIA-857).

(5) Each petroleum refiner shall submit monthly a copy of that refiner's Montana Board of Oil and Gas Conservation Refiner's Monthly Report of Receipts and Disposition of Crude Oil.

(6) Each report required to be submitted in this rule must be submitted to the department by e-mail to petroleumdatareporting@mt.gov within 20 days after the end of the month for which the report is being provided.

(7) Each monthly report required in this rule is for a calendar month.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule V to require certain types of distributors of petroleum or natural gas in Montana to submit information to the Department of Environmental Quality on a monthly basis concerning the quantities of petroleum or natural gas distributed in the state. This information is necessary for the department to use in evaluating whether shortages are occurring that might lead to a declaration of a supply alert or emergency and to monitor energy supply and consumption during a supply alert or emergency.

NEW RULE VI CORRECTING SUBMISSIONS (1) Any documents submitted under [NEW RULE V] that are subsequently revised must be resubmitted in their revised form by the submitting firm within 10 days after the revision is completed.

(2) The department may request a firm required to submit a report under this subchapter to replace an illegible or missing report. A firm shall submit a replacement to the department via e-mail to petroleumdatareporting@mt.gov within 30 days after the department sends a written request to the firm by e-mail or U.S. postal mail.

AUTH: 90-4-316, MCA

IMP: 90-4-305, MCA

REASON: The Governor is proposing to adopt New Rule VI to authorize the Department of Environmental Quality to require an entity that is subject to reporting requirements to submit, within 30 days after being sent a written request, revised or replacement reports if either (1) information is erroneous or incomplete and the actual volume is at least five percent different than reported, or (2) a report is missing or illegible. The Governor believes that 30 days gives a reporting party sufficient time to prepare and transmit a revised or replacement report. The requirement is necessary to ensure that the department has adequate information to evaluate shortages and to advise the Governor on the need to declare an alert or emergency or to take specific action during an alert or emergency.

NEW RULE VII. TRADE SECRETS, CONFIDENTIAL, OR PROPRIETARY INFORMATION (1) Information submitted under 90-4-305(2), MCA, is subject to 90-4-305(6), MCA.

(2) For information not listed in 90-4-305(2), MCA, that is required to be submitted under this subchapter, if a distributor believes it to be confidential, trade secrets, or of a proprietary nature, and wishes:

(a) not to submit it to the department, the distributor shall inform the department and describe the nature of the information. Unless the department obtains a court order requiring disclosure, the distributor is not required to submit the information to the department;

(b) to submit the information to the department and have it protected it as confidential information, the distributor shall provide an affidavit to the department that establishes, to the department's satisfaction, that the information is confidential. On determining that the information is confidential, the department shall hold the information as confidential and, upon receiving a request for disclosure, may not disclose it unless it first informs the submitter and provides a reasonable period for the submitter to obtain a court order designating the information confidential.

(3) Unless a court orders otherwise, the department shall withhold from public scrutiny information submitted to it under this subchapter if the submitter provides an affidavit that establishes, to the department's satisfaction, that release of the information jeopardizes the safety of an individual or the public.

AUTH: 90-4-316, MCA

IMP: 2-6-1002(1), MCA

REASON: The Governor is proposing to adopt New Rule VII to address claims by entities submitting information required in new subchapter 4 that the submitted information is confidential and may not be disclosed to the public.

First, 90-4-305(6), MCA, provides that the information required to be submitted in 90-4-305(2), MCA, which concerns certain information about petroleum, may not be divulged if it is specific to a particular distributor and that public officers or employees may not be required to release it to a party to an action or proceeding unless the information is directly involved in the action or proceeding. To clarify that the department will follow that statute, the rule refers to the statutory provisions.

Second, the Governor believes it is necessary to set out, in rule, the process for the proper protection or disclosure of other information required to be submitted under the energy supply alert and emergency statutes and rules. Therefore, the Governor is proposing to adopt, in rule, the process established by the Legislature and the Montana Supreme Court to give effect both to the public's right to review and copy public documents and a submitting firm's property rights in, or concerns about public safety from public disclosure of, submitted information.

In 2015, the Legislature repealed the public records laws and adopted new laws in part 10 of Title 2, chapter 6, MCA, codified at 2-6-1002(1), MCA. Section 2-6-1002(1), MCA, defines confidential information as "information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is: "(d) designated as confidential by statute or through judicial decisions, findings, or orders."

Section 2-6-1002(11), MCA, defines "public information" broadly, but excludes from that definition "confidential information that must be protected against public disclosure under applicable law." Section 2-6-1003(1), MCA, states that "every person has a right to examine and obtain a copy of any public information of this state," but (2) authorizes the department to "withhold from public scrutiny information relating to individual or public safety...if release of the information jeopardizes the safety of...the public...". These statutory changes must be viewed in the context of decisions of the Montana Supreme Court. That Court has interpreted the Montana Constitution to require protection of a business's trade secrets and other proprietary and valuable information. In *Great Falls Tribune v. Public Service Commission*, 2003 MT 369, ¶ 39, 319 Mont. 38, 82 P.3d 876, the Court held that, while a corporation has no privacy right to prevent public disclosure of its information, it may have a property right if the information is a trade secret or property that is entitled to protection from being taken for public use without just compensation. The Court further held that, to claim protection of a property right in information, the submitting entity must file a supporting affidavit with the state agency receiving the information that shows that the information "constitutes property rights which are protected under constitutional due process requirements." The Court further stated that the showing must be specific enough for the agency, any objecting person, and reviewing authorities to clearly understand the nature and basis of the claims to confidentiality. *Great Falls Tribune*, ¶¶ 56-57. The Court also determined that, given the purpose and expertise of state administrative agencies, the receiving state agency must make

the initial determination of whether the information is protected from disclosure. ¶¶ 43, 56.

So, to give effect to 2-6-1002 and 2-6-1003, MCA, the Governor is proposing rule language authorizing the department to withhold from public scrutiny information submitted to it under this subchapter if the department determines, based on an affidavit provided to it by the submitter of the information, that the information is a trade secret, proprietary or otherwise confidential, or that release of the information jeopardizes the safety of an individual or the public.

If the department determines that the information should be withheld from public scrutiny because of its confidential business nature, the department may not disclose the information until, upon receiving a request for disclosure, it informs the submitter of the request and provides the submitter a reasonable period to obtain a court order designating the information confidential. If the department determines that release of the information would jeopardize individual or public safety, the department may not release it unless a court orders the release.

NEW RULE VIII EXCEPTIONS FROM COMPLIANCE (1) The Governor, in a declaration of an alert or emergency, may authorize the department to relieve a firm or governmental entity from a duty to comply with a provision of this subchapter if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency.

AUTH: 90-4-316, MCA

IMP: 90-4-305, 90-4-313, MCA

REASON: New Rule VIII would authorize the Department of Environmental Quality to relieve a firm or governmental entity from complying with a requirement of the energy emergency rules in new ARM Title 14, chapter 8, subchapter 4 if the department determines that compliance is not necessary to plan, prepare for, or implement a supply alert or emergency. The reason for this new rule is that the intent of these rules is to require actions that will significantly help response and recovery efforts in an impending or actual energy supply alert or emergency. Because the Governor wishes to promote regulatory efficiency and minimize costs, actions that do not significantly help response and recovery efforts would not be of use to the state and therefore should not be required. Delegating to the department, which has staff with expertise concerning energy supply matters, the authority to grant relief from complying with a requirement would allow it to act to accomplish the purposes of the subchapter without requiring unnecessary actions.

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 Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m. September 20, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. Norm Mullen, attorney for the department, has been designated to preside over and conduct the 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

GOVERNOR'S OFFICE

/s/ Raphael Graybill
RAPHAEL GRAYBILL
Rule Reviewer

BY: /s/ Patrick Holmes
PATRICK HOLMES
Natural Resource Policy Advisor

Certified to the Secretary of State, July 30, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the repeal of ARM	)	PROPOSED ADOPTION AND
18.7.232 pertaining to Electronic	)	REPEAL
Utility Permitting for Right-of-Way)	
Occupancy)	

TO: All Concerned Persons

1. On September 6, 2019, at 10:00 a.m., the Department of Transportation will hold a public hearing in the auditorium of the Department of Transportation building, 2701 Prospect Avenue, Helena, Montana 59620, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on August 30, 2019, to advise us of the nature of the accommodation that you need. Please contact Gabe Priebe, Utilities Engineering Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail gpriebe@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2019 Legislature enacted Senate Bill 76, Ch. 303, L. 2019, an act generally revising the laws relating to occupancy of and encroachment on transportation commission-designated highway systems or state highway rights-of-way. Among other changes, the bill allows the department to issue occupancy and encroachment permits for installation, construction, maintenance, repair, or system upgrade of all utilities on commission-designated highway systems or state highways. The bill becomes effective October 1, 2019.

The department is proposing New Rule I to conform to the new legislative changes and implement the bill on utility encroachment permitting processes. Further statements of reasonable necessity for each rule subsection follow the rule text.

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

NEW RULE I ELECTRONIC UTILITY PERMIT APPLICATION PROCESS

(1) An applicant must apply for a utility encroachment permit or utility occupancy agreement (collectively Utility Permit) through the department's Utility Permitting Administration System (UPAS), through the department's website at www.mdt.mt.gov, for the installation of any utility facility on right-of-way under the

jurisdiction of the department. The Utility Permit conditions and department's Montana Right-of-Way Utilities Manual set forth the procedures and conditions for all utility installations statewide. The department may impose additional restrictions or requirements for Utility Permits. The following conditions apply to all Utility Permit applications:

- (a) Permits are only issued in the name of the utility owner;
- (b) A utility owner, utility company, or utility company contractor may not begin any utility work on the right-of-way until an approved Utility Permit is issued by the department and the utility owner is authorized to proceed;
- (c) If the utility owner expects work to impact travel lane capacity, the utility owner must contact the appropriate department district office to discuss traffic control concepts in advance of submitting a Utility Permit application;
- (d) The utility owner's construction forces and the utility contractor must keep a copy of the completed Utility Permit, including all attachments, at the work site at all times. All documents and the utility work are subject to department review at all reasonable times; and
- (e) A pending application shall, if necessary, be modified by the utility owner to improve safety or facilitate alteration or maintenance of the right-of-way as determined by the department.

(2) Each application must:

- (a) be complete and accompanied by all required supplemental materials. The department reserves the right to reject ineligible, incomplete, or otherwise improper applications. The department may request additional information if warranted after initial application review. Applicants have 30 days to respond to an additional information request. If no response is received, the application will automatically be denied;
 - (b) be in the name of the utility owner that is responsible for the installation and maintenance of the utility facility, including name, address, e-mail address, responsible employee's title, and telephone number;
 - (c) be authenticated via the applicant's password;
 - (d) include authorization, if any, for the utility owner's contractor to obtain a Utility Permit on the utility owner's behalf. All terms and conditions set forth in the Utility Permit apply to the contractor;
 - (e) include the name of any subcontractor who will be conducting the installation, the subcontractor's contact information, and an executed subcontractor's construction agreement if required by the department; and
 - (f) be accompanied by a \$100 non-refundable electronic convenience fee.
- (3) Application attachments must include:
- (a) an electronic plan set in PDF depicting the proposed installation. The plans must be in a format acceptable to the department and must include utility company identification, work location, utility type and size, type of construction, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, and right-of-way limits;
 - (b) a traffic control plan which conforms to the Manual on Uniform Traffic Control Devices (MUTCD).

(4) The American Society of Civil Engineers (ASCE) standard guideline for recording and exchanging utility infrastructure data is adopted by reference. The

ASCE guideline is available at www.asce.org. ASCE standard survey-grade Global Positioning System (GPS) survey, or "as built survey" of the utility facility location(s), must be submitted electronically to the department within 90 days of completion of the installation or construction, or otherwise as allowed in (c). The ASCE standard as-built surveys must comply with the department's Utility Manual and the following:

(a) A Utility owner may:

(i) Submit ASCE standard survey-grade Global Positioning System (GPS) as-built surveys certified by a licensed professional engineer (PE) or professional land surveyor (PLS) showing the facility type, function, size, configuration, material, location, elevation, and any special features such as encasement, manholes and valves, or as otherwise specified in the Utility Permit special conditions. The ASCE standard certified survey data will not be subject to department inspection and audit unless discrepancies are noted by the department;

(ii) Submit ASCE standard survey-grade as-built surveys, certified by a duly authorized officer or employee of the utility owner instead of a licensed PE or PLS, showing the facility type, function, size, configuration, material, location, elevation, and any special features such as encasement, manholes and valves, or as otherwise specified in the Permit special conditions. The ASCE standard non-PE or PLS certified survey data may be subject to department audit and inspection.

(b) ASCE standard non-PE or PLS certified as-built surveys are subject to department audit, inspection, and verification of accuracy. If the department notes discrepancies between submitted as-built surveys and inspections, the department may hire an independent contractor to locate the utility facility and obtain accurate as-built survey data. All costs associated with this activity are the responsibility of the utility owner.

(c) If ASCE standard as-built surveys are not submitted within 90 days, or another time period as determined by the department upon utility owner's request, the department may remove the utility facility, place all other submitted Utility Permit applications from the delinquent utility owner on hold, or hire a consultant to complete the survey work and charge all costs to the delinquent utility owner. A utility owner may request an extension due to weather or other conditions, which may be approved in writing by the department.

(d) The department may reimburse a utility owner for PE or PLS certified ASCE standard as-built surveys if the utility facility is eligible for relocation reimbursement due to a pending highway project.

(e) Costs incurred at any time by the department or its contractors due to significant incorrect as-built survey information supplied by the utility owner, or major deviations in actual placement from that described in the original permit, are the responsibility of the utility owner. The department will bill the utility owner for costs incurred.

(5) Utility owners performing maintenance of permitted utility facilities occupying right-of-way under the jurisdiction of the department must apply for a utility Notification Permit (Notification Permit). A Notification Permit application must be submitted electronically through UPAS through the department's website at mdt.mt.gov. Notification permits are subject to all applicable UPAS requirements and the following conditions:

(a) the application must provide an exact description of the maintenance work, including location, date(s) of maintenance work, traffic control plan, and any other information requested by the department;

(b) no fee or as-built survey data is required for a Notification Permit;

(c) the department will require the utility owner's construction forces or a utility contractor performing utility maintenance work in the right-of-way without a Notification Permit to vacate the right-of-way immediately until a Notification Permit has been issued by the department, including any required traffic control plan.

(6) The department may revoke a Utility Permit or a Notification Permit for failure to comply with the terms and conditions of the permit. Upon Utility Permit or Notification Permit revocation, the department may remove the utility facility and restore the highway and right-of-way at the sole expense of the utility owner. Prior to any revocation, the department shall notify the utility owner in writing, setting forth the violations, and providing the utility owner a time period to correct the violations to the satisfaction of the department. The utility owner may request an extension due to weather or other conditions which may be approved in writing by the department. The department may decline to issue further Utility Permits or Notification Permits to a utility owner who fails to comply with this rule or permit requirements.

AUTH: 60-4-402, MCA

IMP: 60-4-402, 60-4-403, MCA

REASON: Proposed New Rule I(1), (2), and (3) are necessary to allow the Montana Department of Transportation (MDT) to improve the review and tracking of utility installations throughout the state. MDT's right-of-way is becoming occupied by more and more utilities, and current requests for telecommunications equipment to occupy the right-of-way including fiber and small cell equipment is further necessitating the need for a better way to manage utility installations in the right-of-way. New Rule I will require the use of UPAS, with its electronic permitting and data management which out-performs and offers higher functionality than the current paper-based permitting and as-built records. The New Rule I UPAS records will be comprehensive and allow the applicant to view the status and progress of all applications online. New Rule I UPAS records will provide MDT and utilities access to useful utility information to improve decision-making on MDT and utility projects within the right-of-way.

The proposed electronic convenience fee in (2) will impact an estimated approximately 700 permit applicants for SFY 2020, resulting in a revenue increase to the State of Montana of approximately \$70,000 annually.

Proposed New Rule I(4) is necessary to reflect the need for MDT to store quality utility installation data in an electronic system. Conflicts with utilities are a major cause of delays to highway contractors and the New Rule I UPAS Utility Location Data repository (ULDR) will track utilities in the right-of-way. New Rule I(4) as-built survey requirement is in line with the nationwide trend toward obtaining more accurate utility location information as inaccurate locations of underground utilities are measurable contributors to construction problems. The American Society of

Civil Engineers (ASCE) standard guideline is incorporated into New Rule I (4) in order to provide consistent standards statewide. When latitude, longitude, and elevation information is performed during installation to create 3D digital as-builts, MDT, utility owners, and contractors will have useful insights into project impacts, designs, and optimization. New Rule I(4) as-built requirements are necessary to avoid damage to existing utilities, identify conflicts beforehand, prevent utility outages, and possibly avert injury or death.

Proposed New Rule I(5) is necessary to track utility maintenance activities in the right-of-way via an electronic notification system. Section (5) requires a maintenance notification system to increase MDT and contractor communication and accountability while streamlining the current paper-based processes.

Proposed New Rule I(6) is necessary to describe the circumstances and repercussions for rule and UPAS violations, allowing MDT to seek compliance with the new rule.

5. The department proposes to repeal the following rule:

18.7.232 PROCEDURE - NEW UTILITY FACILITIES ON HIGHWAY
RIGHT-OF-WAY

AUTH: 60-3-101, 60-4-402, MCA
IMP: 60-3-101, 60-4-402, MCA

REASON: The proposed repeal is necessary to repeal existing rule language on current procedures to apply for an occupancy agreement or encroachment permit for utility occupancy of new highway right-of-way. The procedure will be replaced by the UPAS electronic utility permitting process proposed in New Rule I.

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: Gabe Priebe, Utilities Engineering Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail gpriebe@mt.gov, and must be received no later than 5:00 p.m., September 6, 2019.

7. Office of Legal Services, Department of Transportation, 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 on the department's website, or at any rules hearing held by the department.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on June 12, 2019.

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

12. With regard to the requirements of 2-15-142, MCA, the department has determined the adoption and repeal of the above-referenced rules will have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State July 30, 2019.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.201.1108 alternatives and	)	PROPOSED AMENDMENT
exemptions, 24.201.2148 verification,)	
24.201.2402 exercise of practice)	
privilege in other jurisdictions,)	
24.201.2410 enforcement against)	
license holders and practice privilege)	
holders)	

TO: All Concerned Persons

1. On September 5, 2019, 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 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 Public Accountants no later than 5:00 p.m., on August 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpac@mt.gov (board's e-mail).

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

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) Exemption of the Montana peer review requirement will apply to:

(a) remains the same.

(b) firms that only prepare financial statements ~~which do not require reports under SSARS 8 as codified in~~ under SSARS 19 ~~(management use only compilation reports)~~ and that perform no other attest or compilation services. Such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(2) remains the same.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board determined it is reasonably necessary to amend (1)(b) as

preparation of services under SSARS (Statements on Standards for Accounting and Review Services) 8 and 19 were superseded by SSARS 21 in 2014 and the outdated references are no longer applicable. Removing the specific SSARS reference will eliminate the need for the board to amend rules in response to new SSARS versions while maintaining the exemption for firms that only prepare financial statements under SSARS.

24.201.2148 VERIFICATION (1) Licensees notified that they have been randomly selected for an audit of their basic CPE requirement must submit all courses and appropriate documentation using the NASBA CPE ~~tracking system~~ audit service and comply with the deadline for submitting documentation.

(2) remains the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-131, 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The 2019 Montana Legislature enacted Chapter 50, Laws of 2019 (Senate Bill 75), an act generally revising laws related to the board and expanding continuing education audits. The bill was signed by the Governor on March 7, 2019, and became effective July 1, 2019. The board is implementing the bill by striking the limitation to audit randomly selected licensees since the legislation permits the board to perform audits on other bases when certain criteria are met.

The National Association of State Boards of Accountancy (NASBA) recently changed the platform of their CPE system and the name of the program. The board is further amending (1) to require that all audited licensees provide their information through the new NASBA CPE audit service rather than the defunct legacy system.

24.201.2402 EXERCISE OF PRACTICE PRIVILEGE IN OTHER JURISDICTIONS (1) Any registered firm or licensee of this board offering or rendering services in or to another jurisdiction pursuant to practice privilege, based upon their registration or license from this board, is deemed to have consented to the administrative jurisdiction of the other board of accountancy.

AUTH: 37-50-201, 37-50-203, MCA

IMP: 37-50-325, MCA

REASON: The 2017 Montana Legislature enacted Chapter 162, Laws of 2017 (House Bill 500), an act changing registration requirements for nonresident accountants. Following the bill's July 1, 2017, effective date, board staff considered the bill's changes to firm mobility and recommended the board amend this rule to notify registered firms that by practicing under the practice privilege, they agree to recognize the jurisdiction of the other board of accountancy above their Montana firm registration. The board agreed with the suggestion and is amending this rule to clarify registered firm jurisdiction and reduce questions to the board office.

24.201.2410 ENFORCEMENT AGAINST LICENSE HOLDERS AND PRACTICE PRIVILEGE HOLDERS (1) The following terms may be cause for imposition of disciplinary action:

- (a) remains the same.
- (b) failure of a Montana firm or a firm using practice privilege to comply with the peer review rules of subchapter 11;
- (c) through (e) remain the same.
- (f) noncompliance with the basic CPE requirement established in ARM 24.201.2106, prior to the department administering the provisions of 37-1-321, MCA, for more than one audit in a five-year period;
- (f) remains the same but is renumbered (g).
- (h) failure of a Montana firm or a firm using practice privilege to comply with ownership requirements;
- (g) through (i) remain the same but are renumbered (i) through (k).
- ~~(j)~~ (l) failure of any firm or individual using the practice privilege in Montana to qualify for such practice privilege;
- ~~(k)~~ (m) failure of any firm or individual using the practice privilege in Montana to notify this board of any suspension, revocation, termination, or discipline of the license in any jurisdiction in which the firm or individual practices;
- ~~(l)~~ (n) failure of a Montana firm or licensee who is using the practice privilege in another jurisdiction to cooperate with another jurisdiction's board of accountancy's investigation into acts of the licensee in that other jurisdiction; or
- (m) remains the same but is renumbered (o).
- (i) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, 37-1-321, 37-50-203, 37-50-325, 37-50-330, 37-50-335, MCA

REASON: The board is amending (1)(b), (h), and (l) through (n) to include failure to comply with statutory requirements by registered firms or firms practicing in Montana through mobility as a basis for board disciplinary action. Montana requires peer review for performing certain levels of services and specific ownership requirements of all firms practicing in the state. The board concluded it is reasonably necessary to amend this rule to align with the 2017 statutory changes on firm mobility in House Bill 500 that relieved certain out-of-state firms from registering but did not relieve them from complying with Montana firm requirements. The board concluded these changes will enhance public protection by having the same enforcement ability over firms practicing here through practice privilege as with Montana registered firms.

The board is adding new (1)(f) to allow disciplinary action against licensees who repeatedly fail a CPE audit within a five-year period. Recent CPE audits demonstrated that large numbers of licensees were noncompliant with CPE requirements. Based on the audits, the board determined it is reasonably necessary to amend this rule to outline the specific circumstances when the department may refer a CPE deficiency for disciplinary proceedings per 37-1-321(7), MCA.

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

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpac@mt.gov, and must be received no later than 5:00 p.m., September 6, 2019.

5. An electronic copy of this notice of public hearing is available at publicaccountant.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 Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpac@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, apply and have been fulfilled. Regarding 2017 House Bill 500, Representative Hertz was contacted by e-mail on July 3, 2018 and May 16, 2019, by telephone on May 16, 2019, and by regular mail on May 17, 2019. Regarding 2019 Senate Bill 75, Senator Vuckovich was contacted by telephone and by e-mail on May 16, 2019, and by regular mail on May 17, 2019.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.201.1108, 24.201.2148, 24.201.2402, and 24.201.2410 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; facsimile (406) 841-2305; or to dlibsdpac@mt.gov.

9. Grace Berger, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS
RANETTA JONES, CPA
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 July 30, 2019.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.27.902, 37.85.104,) PROPOSED AMENDMENT
37.85.105, 37.86.1006, and)
37.88.101 pertaining to Medicaid)
rates, services, and benefit changes)

TO: All Concerned Persons

1. On August 29, 2019, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 22, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, 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:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~July 1, 2019~~ October 1, 2019, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

(3) remains the same.

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

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

- (a) through (c) remain the same.
- (d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~July 1, 2019~~ October 1, 2019.
- (2) remains the same.

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

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

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

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

(a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907, effective ~~January 1, 2019~~ October 1, 2019; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~35~~ 36 are contained in the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2018~~ October 1, 2019. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2018~~ October 1, 2019.

(b) and (c) remain the same.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2019 resulting in a dental conversion factor of \$34.09 and fee schedule is effective ~~July 1, 2019~~ October 1, 2019.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~October 1, 2018~~ October 1, 2019.

(f) through (4) remain the same.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~July 1, 2019~~ October 1, 2019.

(b) remains the same.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~July 1, 2019~~ October 1, 2019.

(6) remains the same.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (4) remain the same.

(5) Covered services for adults age 21 and over include:

(a) through (d) remain the same.

(e) porcelain fused to base ~~metal~~ metal crowns, and porcelain/ceramic crowns are limited to two per person per year, total. For second molars, base metal crowns only.

(6) through (17) remain the same.

(18) ~~Porcelain/ceramic crowns, noble~~ Nobel metal crowns, and bridges are not covered benefits of the Medicaid program for individuals age 21 and over.

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

IMP: 53-6-101, 53-6-113, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~July 1, 2019~~ October 1, 2019, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

(3) through (5) remain the same.

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) administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The department proposes to change the effective date of the following fee schedules from July 1, 2019 to October 1, 2019, for the reasons explained in detail below: APR-DRG fee schedule for inpatient hospital, dental fee schedule, substance use disorder services fee schedule, and Medicaid mental health center services for adults fee schedule.

ARM 37.85.105(3)(a) - Inpatient Hospital

The department proposes to adopt a new version of the APR-DRG grouper effective October 1, 2019. Version 36 of the grouper contains changes to DRG relative weights and average length of stays. The most notable updates within Version 36 are the relative weight changes for adult DRGs and neonate DRGs. Overall the relative DRG weights for adult DRGs decreased by 12.6% and the relative weights for neonate DRGs increased by 24.4%. With adoption of Version 36 of the grouper, the department proposes to increase the adult policy adjustor to 0.95 and decrease the neonate policy adjustor to 1.2. These adjustments are necessary to offset some of the grouper changes to the relative weights for neonate and adult DRGs. In addition, the department proposes to increase the base rate for Long Term Acute Care (LTAC) hospitals to \$7,250. The increased LTAC base rate is intended to maintain access to LTAC services for Montana Medicaid members. All proposed changes for inpatient hospital reimbursement are necessary to establish reimbursement within appropriations.

ARM 37.85.105(3)(d) and (e), and 37.86.1006 – Dental Services, Covered Procedures

Providers and the Montana Dental Association have requested the department add zirconium porcelain ceramic crowns, D2740 as a covered service for adults age 21 and over. Advances in technology allow providers to mill porcelain ceramic crowns in their own facilities on the same day at relatively the same cost as porcelain fused to base metal crowns. Same day service would allow providers to eliminate additional appointments, administrative burden, and outside lab work. The current crown limits of two crowns per person per year, total, and for second molars, base metal crowns only, will continue to apply to adults. Porcelain ceramic crowns D2740, will be reimbursed at the same rate as porcelain fused to base metal crowns D2751. Therefore, a policy adjuster will be placed on the payment calculation for D2740 in accordance with ARM 37.86.1004, ensuring reimbursement will be the same rate as D2751 regardless of the member's age.

The fee schedule for dental services will be effective October 1, 2019, reflecting the addition of zirconium porcelain ceramic crowns as a covered benefit for adults age 21 and over.

In addition, the department proposes to amend the effective date of the Dental and Denturist Program Provider Manual to October 1, 2019, to reflect the addition of zirconium porcelain ceramic crowns as covered benefits for adults age 21 and over. In addition, the manual is being amended to include additional information regarding members who are Qualified Medicare Beneficiaries.

Provider Manual Update

To incorporate the addition of porcelain and ceramic crowns to the dental benefit for adults, the Dental Provider manual is proposed to be amended, effective October 1, 2019. In addition, the dental provider manual is proposed to include additional information regarding members who are Qualified Medicare Beneficiaries.

Amendments to ARM 37.86.1006 are proposed to include added language to (5)(e) stating porcelain ceramic crowns are covered benefit for adults over the age of 21. The language in (18) stating porcelain ceramic crowns are not covered benefits for adults is proposed to be removed.

The department has posted the proposed fee schedule and manual at <https://Medicaidprovider/mt.gov/proposedfs>.

ARM 37.85.104(1)(d)

The department's Addictive and Mental Disorders Division (AMDD) proposes to amend the Substance Use Disorder Non-Medicaid Provider Fee Schedule to:

(1) Add non-Medicaid Group Peer Support Services, in the section titled Individuals 0-200% FPL, as this service will be added to the block grant contracts effective October 1, 2019.

(2) Add bundled rates for Medication Assisted Treatment (MAT) services, in the section titled Individuals 139-200% FPL, due to the addition of MAT bundled rates to Montana's array of substance use disorder treatment services.

(3) Add a modified HH to Individual Peer Support, H0038, in the section titled Individuals 139-200% FPL, to enable reporting on delivery of Individual Peer Support Services to the co-occurring substance use disorder and severe disabling mental illness population.

(4) For general housekeeping purposes for consistency and clarity in the organization of the fee schedules.

ARM 37.85.105(5)(a) and (c)

The department's AMDD proposes to amend the Medicaid Mental Health Individuals 18 years of age and older fee schedule in ARM 37.85.105(5)(a) and (c) to:

(1) add a modifier HH to Individual Peer Support, H0038 to enable reporting on delivery of Individual Peer Support Services to the co-occurring substance use disorder and severe disabling mental illness population;

(2) add bundled rates for MAT services due to the addition of MAT bundled rates to Montana's array of substance use disorder treatment services; and

(3) for general housekeeping purposes for consistency and clarity in the organization of the fee schedules.

Manual Amendments

ARM 37.27.902 and 37.88.101

The department proposes to amend ARM 37.27.902 to update the date of the AMDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Medicaid Manual) to October 1, 2019, and to amend the Medicaid Manual as follows:

(1) Add requirements to align the MAT program with federal requirements and clinical standards for the medical management of chronic substance use disorders and outline the service requirements for the bundled rates for provider types 27, 44, and 65.

(2) Remove the continued stay review criteria for Intensive Community Based Services to ensure continuity of care to this very high-needs population.

The department proposes the following amendment for general housekeeping purposes for clarity and consistency in content.

(1) Remove PA for ASAM 3.7 requirement based on 8/6/18 provider notice.

(2) In section 4, under Certified Behavioral Health Peer Support Services, Provider Requirements (2), remove "to bill Medicaid, the agency must" and replace with "Mental Health Centers must."

(3) State clearly that transportation is not a billable component of peer support services.

(4) For unbundled IOP services, add billing requirements consistent with bundled IOP services.

(5) Miscellaneous formatting changes such as: removing missing spaces, fixing periods at the end of sentences, numbering, and alignment.

The department proposes to amend the date of the Addictive and Mental Disorders Division, non-Medicaid Services Provider Manual for Substance Use Disorder (Non-Medicaid Manual) to October 1, 2019, and add MAT services for a service whose authorization process is outlined in the Medicaid Manual.

Fiscal Impact Changes

There is no anticipated fiscal impact pertaining to the amendments of the fee schedules and manuals for the Medicaid and non-Medicaid programs within AMDD related to the addition of Medication Assisted Treatment bundled services. Providers are currently billing the service components of MAT through the applicable Current Procedural Terminology (CPT) codes. The department does not expect the proposed billing changes to affect the level of MAT services Medicaid members receive.

For the remaining fee schedules, the proposed amendments are anticipated to be budget neutral.

The proposed rulemaking is estimated to affect 262,243 Medicaid members.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 6, 2019.

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

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

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

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

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

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

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

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

Certified to the Secretary of State July 30, 2019.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.11.226 and 44.11.227,	)	AMENDMENT
pertaining to contribution limits)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices proposes to amend the above-stated rules.

2. The Office of the Commissioner of Political Practices (COPP) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Commissioner of Political Practices no later than 5:00 p.m. on August 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail Scook3@mt.gov.

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

44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to candidates for the state legislature are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~\$1,750~~ \$1,850;

(b) a candidate for the state senate may receive no more than ~~\$2,850~~ \$3,050.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2018~~ 2020.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, 13-37-218, MCA

IMP: 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits for candidates from political committees for the 2020 election cycle.

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

- (a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$680~~ \$710;
 - (b) a candidate for other statewide office may receive no more than ~~\$340~~ \$360;
 - (c) a candidate for all other public offices may receive no more than \$180.
- (2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:
- (a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$24,500~~ \$25,600;
 - (b) a candidate for other statewide offices may receive no more than ~~\$8,850~~ \$9,250;
 - (c) a candidate for Public Service Commission may receive no more than ~~\$3,550~~ \$3,700;
 - (d) a candidate for senate may receive no more than ~~\$1,450~~ \$1,500;
 - (e) a candidate for all other public offices may receive no more than \$900.
- (3) and (4) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-216, 13-37-218, MCA

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits to candidates from individuals or political parties for the 2020 election cycle.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Scott Cook, Office of the Commissioner of Political Practices, 1209 Eighth Avenue, P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail Scook3@mt.gov, and must be received no later than 5:00 p.m., September 6, 2019.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., September 6, 2019.

6. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 153 persons based on the number of candidates in the 2018 and 2019 election cycles (1,538).

7. The COPP 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 COPP.

8. For ARM 44.11.226 and 44.11.227, 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 COPP has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State July 26, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.12.106, 4.12.109, and)
4.12.113 pertaining to apiary fees)

TO: All Concerned Persons

1. On June 21, 2019, the Department of Agriculture published MAR Notice No. 4-19-260 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 782 of the 2019 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rules 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 commenter requested the department complete the web-based registration and payment process.

RESPONSE #1: The department intends to complete online registration to streamline apiary applications.

COMMENT #2: The commenter requested the department implement email notifications to show the benefits of apiary registration.

RESPONSE #2: It is the department's goal to use email as much as possible.

COMMENT #3: The commenter requested the department define apiary location flexibility and develop procedures for the public to report unregistered sites.

RESPONSE #3: The department plans to allow the same flexibility for site placement as it previously has.

COMMENT #4: The commenter requested the department notify registered landowners of reported presence of unregistered beehives and allow 60 days for landowners to comply with apiary registration requirements. The notification letter from the department should clarify that it is possible the report of unregistered hives was erroneous.

RESPONSE #4: The department attempts to notify landowners in this manner when ownership of the land is clear.

COMMENT #5: Two generally negative comments were received regarding House Bill 443 but were not specific to the proposed rules.

RESPONSE #5: The department supported House Bill 443 in the 2019 Legislative Session at the request of commercial beekeepers. Hobbyist beekeeper registrations allow the department to track apiary locations to better communicate bee health hazards and prevent widespread economic harm. Protecting commercial beekeepers fits under the department's mission.

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State July 30, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.301 and 8.99.304)
pertaining to the Certified Regional)
Development Corporation Program)

TO: All Concerned Persons

1. On June 21, 2019, the Department of Commerce published MAR Notice No. 8-99-167 pertaining to the proposed amendment of the above-stated rules at page 785 of the 2019 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State on July 30, 2019.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.917 pertaining to the)
implementation of the Big Sky)
Economic Development Trust)
Program)

TO: All Concerned Persons

1. On June 21, 2019, the Department of Commerce published MAR Notice No. 8-99-168 pertaining to the proposed amendment of the above-stated rule at page 788 of the 2019 Montana Administrative Register, Issue Number 12.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State on July 30, 2019.

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 37.104.3001 pertaining to)
Montana Trauma System Plan 2019)

TO: All Concerned Persons

1. On June 21, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-880 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 822 of the 2019 Montana Administrative Register, Issue Number 12.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective upon publication.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State July 30, 2019.

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 37.34.3005 pertaining to)
migrating billing to Medicaid)
Management Information System)
(MMIS))

TO: All Concerned Persons

1. On June 7, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-886 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 723 of the 2019 Montana Administrative Register, Issue Number 11.

2. The department has amended the above-stated rule 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: A commenter expressed confusion about how the .91% rate increase was calculated and what the total projected spending in the 0208 Waiver is projected to be for the coming fiscal year.

RESPONSE #1: The department appreciates the commenter's question. The department incorrectly identified the state general fund dollars in the fiscal impact section of the proposed rule. The total provider rate increases are estimated to cost \$1,654,209 in state general fund dollars and \$3,041,996 in federal dollars. The fiscal impact was calculated by multiplying the total cost plan amounts for impacted services by .91%. The total projected spending in the 0208 Waiver was not utilized to calculate the estimated fiscal impact of this rule change as it contains items that are not impacted by provider rate increases such as individual goods and services.

COMMENT #2: A commenter asked how the Federal Medical Assistance Percentages (FMAP) in the proposed rule is higher than Montana's FMAP.

RESPONSE #2: The discrepancy in the FMAP is the result of the miscalculation noted in Response #1.

COMMENT #3: A commenter asked how the 3.46% weighted average as published in the proposed changes to the DDP Services Manual were determined. Further the commenter expressed concern that physiological, therapy, and nutrition services received the highest percentage increase.

RESPONSE #3: The Developmental Disabilities Program does not price the extended state plan rates for RN, LPN, Psychological Services, Nutritionist, Speech Therapy, PT, or OT. We use established RBRVS rates for these services. These rates were not included in averaging.

The .91% appropriation was applied across-the-board to existing rates for applicable services. The \$3.4 million was allocated by applying an equal wage increase to each applicable rate. Based on the allocation available, the Developmental Disabilities Program determined that a \$.27 increase could be applied within the available appropriation. For services that are not calculated that way, an additional average percent of 2.5% was used to increase those rates (self-direct services, transportation, remote monitoring).

COMMENT #4: A commenter requested a 3.46% increase for each waiver service.

RESPONSE #4: Please see Response #3 for details on how the funds were allocated. House Bill 2 did not indicate how the additional \$3.4 million should be allocated. Based on provider feedback during the last two sessions about employee wages, the department chose to apply the additional funds to the wage component of the rate.

COMMENT #5: A commenter asked how providers can track the additional 100 slots in the 0208 Waiver.

RESPONSE #5: The department believes this question is outside the scope of MAR Notice No. 37-886.

4. Effective June 30, 2019, the department terminated the Montana Developmental Disabilities Program Manual of Service Rates and Procedures for Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and Waiver Program, and will reference the Montana Developmental Disabilities Program Services Manual, effective July 1, 2019.

/s/ Jennifer C. Kaleczyc
Jennifer C. Kaleczyc
Rule Reviewer

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

Certified to the Secretary of State July 30, 2019.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and the amendment of ARM) AMENDMENT
42.12.106 and 42.12.128 pertaining)
to industry trade shows, catering)
endorsements, and catered events)

TO: All Concerned Persons

1. On June 7, 2019, the Department of Revenue published MAR Notice No. 42-1000 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 727 of the 2019 Montana Administrative Register, Issue Number 11.

2. On June 28, 2019, a public hearing was held to consider the proposed adoption and amendment. John Iverson, Montana Tavern Association (MTA); Robin Blazer, Willie's Distillery; and Mike Green, Crowley Fleck, PLLP, appeared and testified at the hearing. The department also received written comments from Michael Lawlor, Lawlor & Co., PLLC; Shane Reely, Goodrich Reely, PLLC; Mike Green, Crowley Fleck, PLLP; and Nick Checota, Logjam Presents.

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

NEW RULE I (42.12.150) ALCOHOLIC BEVERAGE INDUSTRY TRADE SHOWS (1) An all-beverage licensee or on-premises consumption beer licensee may host an industry trade show at the licensee's licensed premises or may cater an industry trade show pursuant to ARM 42.12.128. Alcoholic beverages provided at an industry trade show are limited by the hosting or catering licensee's type of license.

(2) For the purpose of this rule, an industry trade show means an event sponsored by a nonprofit association representing an alcoholic beverage industry, and where alcoholic beverages are provided to attendees for promotional purposes. An industry trade show shall not be open to the public. A nonprofit association may not sponsor more than ~~one~~ two industry trade shows per year.

(3) All attendees of an industry trade show must be admitted by the event sponsor and ~~have an affiliation to the~~ must be a licensee, a person employed in the alcoholic beverage industry or a related industry, or are a family member or partner of such persons and may include public office holders officers, and candidates for public office, and public employees involved in the alcoholic beverage industry. A related industry includes but is not limited to gambling, food preparation, and other professional services provided to alcoholic beverages licensees.

(4) A vendor, as defined in ARM 42.11.105, with a current vendor permit, as provided in ARM 42.11.213, may request a trade show case from the department for

use at an industry trade show. A trade show case means a case of liquor product used by a registered vendor representative for promoting a vendor's liquor products to attendees of an industry trade show. A liquor product that has not been approved by the department may not be included in a trade show case. For the purposes of this rule, product means a liquor item identified by a unique identification number or stock-keeping unit.

(a) through (c) remain as proposed.

(d) A vendor is limited to providing a maximum of nine ~~liters~~ thousand milliliters of each liquor product per ~~calendar year~~ industry trade show.

(5) ~~An alcoholic beverage~~ A beer manufacturer or a beer manufacturer's employees or agents who intends to provide beer at an industry trade show or a table wine manufacturer or the table wine manufacturer's employees or agents who intend to provide table wine at an industry trade show must purchase the beer or table wine from the licensee hosting the trade show for no more than the ordinary retail price.

(6) and (7) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-107, 16-4-201, 16-4-204, 16-4-311, MCA

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (7) remain as proposed.

(8) "Catered event" means a special event ~~for which there is an outcome, conclusion, or result, and~~ where the sale and service of alcoholic beverages is conducted by a licensee who has obtained a catering endorsement.

(9) "Catered event service area" means the area in which the licensee with a catering endorsement may sell and serve alcoholic beverages at retail.

(9) through (14) remain as proposed but are renumbered (10) through (15).

~~(15)~~ (16) "Event barrier" means a barrier enclosing the perimeter of a catered event service area. The construction, installation, and use criteria of an event barrier is provided in ARM 42.12.128.

(16) through (45) remain as proposed but are renumbered (17) through (46).

AUTH: 16-1-303, MCA

IMP: 16-1-302, MCA

42.12.128 CATERING ENDORSEMENT; CATERED EVENTS; EVENT BARRIERS (1) and (2) remain as proposed.

(3) A catered event may have more than one licensee cater the event. Licensees shall prevent the consumption of alcoholic beverages ~~that were not sold or provided at the catered event~~ within their catered event service area that they did not sell or provide.

(4) A catered event may last for a maximum of three days, except a licensee may have one catered event per year that lasts up to seven days for a fair, as defined in ARM 42.12.106. ~~For catered events lasting more than one day, the~~ The storage of alcoholic beverages may occur at the catered event one day prior to the catered event until one day following the conclusion of the catered event if the

alcoholic beverages are in a secured location that prevents ~~service~~ access by anyone other than the licensee or licensee's employees.

(5) remains as proposed.

(6) ~~When a licensee conducts a catered event outdoors, when the indoor venue is an open floorplan where the licensee has no control or limited control of patron access in the venue, or when two or more licensees are catering the same event, If there is not an existing boundary defining the catered event service area, an event barrier shall be required to clearly mark where the sale and service and consumption of each licensee's alcoholic beverages are is allowed. The event barrier:~~

(a) shall be constructed in a manner that directs or impedes ordinary foot traffic and clearly defines the boundary of the catered event service area;

(b) remains as proposed.

(c) shall have a clearly defined entrance permitting access to the catered event service area;

(d) and (e) remain as proposed.

(7) When a licensee caters an event that is within 15 feet of its licensed premises, patrons may take alcoholic beverages between the licensed premises and the area authorized for the catered event if the licensee:

~~(a) notifies the department at least ten days prior to the start of the catered event;~~

(b) and (c) remain as proposed but are renumbered (a) and (b).

~~(d) (c)~~ obtains approval from local government officials for the use of the path or paths, if:

(i) the licensee does not already have possessory interest for the area;

(ii) the licensee does not already have conditional use approval from local government officials for the area; or

(iii) there is an ordinance in place prohibiting open containers of alcoholic beverages.

(8) remains as proposed.

(9) On or before the 15th day of each month, the licensee shall electronically report, on a form provided by the department, those events the licensee catered in the previous month and shall include a copy of the notification form signed by local law enforcement ~~and a copy of the executed written agreement between the licensee and event sponsor for each catered event.~~

(10) A copy of the executed written agreement between the licensee and event sponsor for each event catered shall be maintained by the licensee for a period of three years from the date of the event. The department may make an examination of any such agreement at any time.

(10) remains as proposed but is renumbered (11).

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-4-111, 16-4-204, MCA

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

COMMENT #1: Mr. Iverson states that the MTA supports the overall goal of New Rule I and the rule reflects the types of events in which the MTA engages. New Rule I adds value to industry members. Ms. Blazer also commented overall support for what New Rule I attempts to accomplish.

RESPONSE #1: The department thanks the MTA and Ms. Blazer for their comments and support of New Rule I.

COMMENT #2: Mr. Lawlor commented that New Rule I(1) should extend hosting and catering to beer/wine licensees. Mr. Lawlor contends that organizations representing breweries or wineries may desire to hold a trade show featuring only their product, so it is unnecessary to limit such events to all-beverage licensees.

RESPONSE #2: Based on the comments received, the department has amended New Rule I(1) to allow on-premises consumption beer licensees the ability to host or cater an industry trade show. Further, necessary clarification was added which mirrors existing law that only the alcoholic beverage types for which the licensee is licensed may be provided at an industry trade show.

COMMENT #3: Ms. Blazer requests the department expand the number of industry trade shows in New Rule I(2) to two events to accommodate regional (i.e., East and West) industry trade shows.

RESPONSE #3: Based on the comments received, the department has amended New Rule I(2) to allow a nonprofit association representing an alcoholic beverage industry to host no more than two industry trade shows per year.

COMMENT #4: Mr. Lawlor requests the department clarify "related industry" in New Rule I(3) as the term is overly broad and comments that the department's use of the term "affiliation" is confusing as the term is defined in ARM 42.12.106. Ms. Blazer also commented that "related industry" is overly broad and she believes more specific verbiage is necessary to achieve consistent, long term interpretation and application of the rule.

RESPONSE #4: Based on the comments received, the department has amended New Rule I(3) by removing the phrase that includes the word "affiliation." In its place, the department has clarified the attendees must be employed in the alcoholic beverage industry or related industry. The department has also provided a non-exhaustive list of related industries.

COMMENT #5: Mr. Lawlor commented that public office holders admitted to industry trade shows should include department and Department of Justice employees.

RESPONSE #5: Based on the comments received, the department has amended New Rule I(3) to clarify that public officers and public employees who are involved in

the alcoholic beverage industry may attend industry trade shows. The terms "public officer" and "public employee" are defined in 2-2-102, MCA. The use of these terms would include employees of the department and Department of Justice.

COMMENT #6: Mr. Lawlor and Ms. Blazer both commented on the proposed trade show case provisions in New Rule I(4).

Mr. Lawlor asks whether a vendor is limited to one trade show case total, regardless of the size of the event. Is the limit of one case of each product?

Ms. Blazer requests the department clarify or revise trade show case to be based by volume; case sizes are not uniform. The department should specify liter or other volume amount. Ms. Blazer comments in New Rule I(4)(d) that the vendor limit for liquor product should be increased from nine liters per year to 18 liters per event.

RESPONSE #6: Regarding Mr. Lawlor's question pertaining to the trade show cases, New Rule I(4) does not limit the total number of trade show cases allowed. Rather, it limits the amount of product that can be requested for trade show purposes. Based on the comments received, the department has amended New Rule I(4) by defining the term "product" as a liquor item and striking three unnecessary references to "liquor" before the word "product."

The department does not object to Ms. Blazer's request to clarify the amount of product that can be used as a trade show case, and based on these comments, the department has amended (4)(d) to 9,000 milliliters per product, which is the equivalent of a 9-liter case. The department is not prescribing the required size of the trade show case, but is prescribing the per product volume that can be requested. A trade show case can contain as many bottles of a product desired but may not exceed 9,000 milliliters for each product.

Based on the comments received, the department has also amended (4)(d) to reflect the industry trade show product limitation is per trade show event, not a calendar year.

COMMENT #7: Ms. Blazer asks if the department needs to clarify whether the tied-house sample restriction for a licensee who purchased product in the last 12 months applies. Is a waiver of that requirement necessary?

RESPONSE #7: The department declines to implement a waiver of the federal tied-house sample restrictions by administrative rule. In providing product at an industry trade show, as with other interactions between industry members and retailers, the registered vendor representative and other industry members must be aware of and comply with federal tied-house provisions. The federal regulations provide an exception in 27 CFR § 6.91 for furnishing or giving samples to retailers who have not purchased the brand within the last 12 months.

COMMENT #8: Mr. Iverson commented that the MTA agrees with the creation of a trade show case and its cost and approach of procurement for industry trade shows.

RESPONSE #8: The department thanks the MTA for its comment.

COMMENT #9: Ms. Blazer comments in New Rule I(5) that the word "manufacturer" is incorrect; and she states it should be "vendor" or "distributor."

RESPONSE #9: Based on the comments received, the department has amended New Rule I(5) to clarify this section applies to beer and table wine manufacturers and their employees and agents.

COMMENT #10: Mr. Iverson commented to New Rule I(7) that the MTA agrees and is in support of the provision reiterating that ultimate responsibility lies with the licensee.

RESPONSE #10: The department thanks the MTA for its comment.

COMMENT #11: Ms. Blazer comments on the department's language in its statement of reasonable necessity about a DOR goal to limit trade shows to prevent overuse. She thinks this is a poor choice of wording for justification of the rule.

RESPONSE #11: The department thanks Ms. Blazer for the comment but disagrees that it should not be a department goal to prevent overuse of industry trade shows or that the department's wording in its statement of reasonable necessity is incorrect.

In its statement of reasonable necessity for New Rule I, the department justifies proposing certain limitations on industry trade show events because industry trade shows are not currently provided in either statute or administrative rule and operating similar events in a fully-compliant manner has proven to be logistically difficult. The department wants to accommodate industry trade events but in a way that does not violate federal regulations or Montana law regarding vendor/manufacture and retailer relationships, or catering.

The department directs Ms. Blazer to her oral hearing comment of general support summarized in Comment # 1, and further directs her to Comment ## 3, 6, and 7. These comments, and the department's responses and additional changes, support necessity for the rule's provisions. The department believes New Rule I, as amended, addresses only those areas of operating an industry trade show that could be subject to overuse or violate federal and state laws if these restrictions were not present.

COMMENT #12: The department received comments regarding the proposed amendment of ARM 42.12.106(8). Ms. Blazer commented that the words 'special event' should be stricken. Mr. Green comments that the language ". . . for which there is an outcome, conclusion, or result, and. . ." should be stricken as it is unnecessarily duplicative of (40). Mr. Lawlor comments that the language is incorrect. Events that have an outcome, etc. are sporting events. Similar to Mr. Green's comment, Mr. Lawlor recommends striking redundant language in (8).

RESPONSE #12: Based on the comments received, the department has amended the definition of catered event in ARM 42.12.106(8) to remove the redundant language.

COMMENT #13: Mr. Iverson and Ms. Blazer both commented that proposed ARM 42.12.128(3) which provides that a licensee shall prevent the consumption of alcoholic beverages that were not sold or provided at the catered event places an unrealistic and undue hardship on a licensee.

Mr. Iverson also commented that the department does not take into consideration that many towns do not have open container laws, which extends into the proposed (6), which the MTA infers is overreaching.

Mr. Iverson suggests a rule text edit to (3) to bring the intent of the rule into a realistic application.

RESPONSE #13: Based on the comments received, the department has amended ARM 42.12.128(3) to clarify that preventing the consumption of outside alcohol is only the licensee's responsibility within their own catered event service area.

COMMENT #14: Mr. Reely and Mr. Checota comment on proposed ARM 42.12.108(4) that it is common for licensees to cater multiple events at the same location and current requirements for alcoholic beverage storage are burdensome and costly - in the form of increased labor and transportation costs. Mr. Reely and Mr. Checota both propose similar amendments to proposed (4) that would permit a licensee the ability to securely store alcohol inventory at a frequented event location.

Mr. Iverson also questioned whether under (4) if licensees can store alcohol in their trailer, if secured, given the late hours and manual nature of inventory movement to and from catered events.

RESPONSE #14: Unlike a licensed premises, locations where catered events are conducted do not go through an investigation and approval process. Ensuring alcoholic beverages are properly stored and not accessible to unauthorized individuals is important for public safety and the department contends the extended storage of alcoholic beverages should remain prohibited. However, based on the comments received, the department has amended ARM 42.12.128(4) further to allow the storage of alcoholic beverages one day prior to the catered event starting through one day following the conclusion of the catered event. This additional storage time should reduce the burden on licensees that may have occurred the day the catered event would have started or would have ended.

COMMENT #15: Mr. Iverson commented on ARM 42.12.128(4) recommending replacing ". . . the licensee or licensee's employees" with ". . . those authorized" which is more consistent with the proposed expansion of proposed alcoholic beverages servers described in (8).

RESPONSE #15: Based on the comments received, the department has amended ARM 42.12.128(4) to clarify the storage of alcohol at the catered event shall only be accessible by the licensee or licensee's employees. Although the department has expanded the list of individuals who may serve alcoholic beverages at the catered event, access to stored alcoholic beverages remains with the licensee and licensee's employees as it is the licensee who is ultimately responsible for complying with all alcoholic beverage laws and regulations.

COMMENT #16: The department received the following comments to proposed ARM 42.12.128(6):

Mr. Green commented that barrier requirements create confusion with multiple licensees—for example, a barrier within a barrier or where local government has approved open containers for the event. Event barriers are not required by law, although there may be circumstances where local government requires it because of open container laws. In all other applications, this proposed requirement exceeds the department's authority and (6) should be removed in its entirety.

Mr. Lawlor commented that event barriers create an unnecessary, burdensome requirement that would even apply at an outdoor wedding on private property. Event barriers for large events with multiple licensees create logistical complications and encourage overdrinking because the public will feel required to stay within the perimeter versus mingling through the event grounds. This requirement is not based in law.

RESPONSE #16: Based on the comments received, the department has amended ARM 42.12.128(6) to clarify that if there is an existing boundary defining the catered service event area, no additional event barrier is required. This should ease the concern about events such as outdoor weddings on private property needing an additional barrier. The department has further amended the rule to clarify that the event barrier or other existing barrier defines the boundaries of the area in which a licensee's alcoholic beverages are sold and served by defining "catered event service area." Licensees are still required to prevent the consumption of alcoholic beverages they did not sell or serve within the licensee's catered event service area, and current law provides that it is the licensee who catered the event that is ultimately responsible for ensuring compliance with all alcoholic beverage laws and regulations, including any local ordinances restricting the consumption of alcoholic beverages.

COMMENT #17: Mr. Iverson and Mr. Green both commented positively on the department's proposed ARM 42.12.128(7). Mr. Green additionally commented that in contrast to (6), this application of an event barrier concept is appropriate as the licensee is temporarily expanding its service area beyond the licensed premises.

RESPONSE #17: The department thanks the MTA and Mr. Green for their comments.

COMMENT #18: Mr. Lawlor made multiple comments on the department's proposed ARM 42.12.128(7). The substance of the comments are that the provisions in (7)(a) and (7)(d) are another burden placed on local government and the licensee. As an example, the notification requirements in (7)(a) prevent event scheduling on short notice or rescheduling of a catered event. Finally, the proposed requirements not required under statute are unnecessary.

RESPONSE #18: Based on the comments received, the department has amended ARM 42.12.128(7)(a) to remove the advanced department notification for these types of catered events. Additionally, the department has amended (7)(d) to only require a licensee obtain local law enforcement approval when the licensee does not already have possessory interest in the catered event area, the licensee does not already have conditional use approval for the catered event area, or there is an ordinance prohibiting open containers of alcoholic beverages.

COMMENT #19: Mr. Iverson and Mr. Green both commented positively on the department's proposed ARM 42.12.128(8).

RESPONSE #19: The department thanks the MTA and Mr. Green for their comments.

COMMENT #20: The department received the following comments to proposed ARM 42.12.128(9):

Mr. Iverson and Ms. Blazer commented that electronic notification is undue hardship on licensees. Mr. Iverson commented that this proposed requirement impacts rural licensees who cannot file electronically and that the value of this regulation is not worth the burden.

Mr. Iverson also commented that the MTA does not agree with the signed notification of local law enforcement and providing a copy of the signed contract between the licensee and its customer.

Mr. Green comments that he has concerns over notification; whether DOR is looking to adopt and incorporate the catering reporting form by reference. He questions the department's authority because the proposed rule seeks to add substantive requirements that are not included in the governing statutes and they create substantial practical and compliance challenges for event sponsors and licensees.

Mr. Green also comments about the legal basis for catering form and even reporting catering to the department. Mr. Green requests citation for legal authority for imposing these requirements. Mr. Green contends that requiring licensees to file copies of their event contracts violates the rights of event sponsors as the document submission will improperly convert private contracts into public documents. Mr. Green suggests removal of proposed (9).

Mr. Lawlor comments that proposed ARM 42.12.128(9) is another burden placed on local government and the licensee. It is not required under statute and is unnecessary. DOR already has authority to request and inspect supporting documentation for a licensee's monthly catering report. The requested information for every caterer's catered event will be burdensome for the licensee and for the department to review, process, and store in its files.

RESPONSE #20: Based on the comments received, the department has amended ARM 42.12.128(9) to remove the requirement that a licensee submit a copy of each written catering agreement. Rather, the department will require the licensee to maintain these agreements for a period of three years and make them available to the department as they are requested.

Regarding the electronic submittal of the catering report and notification form, the department adopts this requirement as originally proposed. Avenues exist for licensees to use electronic platforms for doing business. The department's electronic platform is safe, secure, and already being used by many licensees.

Regarding the authority of the department to require the reporting of catering events on a department form, the department has general rulemaking authority, as provided for in 16-1-303, MCA, to efficiently administer the Montana Alcoholic Beverage Code. This authority includes ". . . prescribing forms to be used for the purpose of this [C]ode or the [department's] rules and the terms and conditions for permits and licenses issued and granted under the code." 16-1-303, MCA. Requiring the use of a form provided by the department is a uniform means for the department to receive the catering information needed to comply with the Montana Alcoholic Beverage Code and department rule. The department declines to amend the rule to remove the requirement that licensees report catered events to the department on a department form.

Regarding the local law enforcement signed notification form, both 16-4-111 and 16-4-204, MCA, require the licensee to notify local law enforcement of the catered event. To confirm this statutory requirement was completed, the form provides for an authorized representative of the local law enforcement agency to verify in writing that the local law enforcement agency was notified of the catered event. The department declines to amend the rule to remove the requirement that licensees notify local law enforcement where the catered event will be held using a form provided by the department.

COMMENT #21: Mr. Iverson made comments regarding the general state of catering, as viewed by the MTA, regarding burdensome regulation and increased costs of doing business that lead to fewer caterers. Mr. Iverson commented that the Montana Gambling Industry Association concurs in the substance of the MTA's comments.

RESPONSE #21: The department understands the importance of a catering endorsement to a licensee and does not want to place burdensome regulations on

licensees. However, some regulations are necessary and important to ensure public safety. The department has amended ARM 42.12.128, where warranted, when specific comments were provided.

COMMENT #22: Mr. Checota commented that the department should change its catering rules to allow catering up to a distance of 250 miles from the licensee's licensed premises, or even permit catering statewide.

RESPONSE #22: The department thanks Mr. Checota for his comment, however, a licensee's 100-mile catering restriction is in statute - 16-4-204(11)(c), MCA. Amending the distance restriction is outside the rulemaking authority of the department and requires enactment of legislation by the Montana Legislature.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State July 30, 2019.

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 March 31, 2019. This table includes notices in which those rules adopted during the period February 22, 2019, through July 26, 2019, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2019, 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 2019 Montana Administrative Registers.

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SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620