

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 2.59.1738 regarding renewal fees ) AMENDMENT  
for mortgage brokers, lenders, )  
servicers, and originators ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On November 9, 2019, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

(a) Mortgage Broker Entity, ~~\$500.00~~ \$375.00, (except as provided in 32-9-117(1)(b), MCA);

(b) Mortgage Broker Branch, ~~\$250.00~~ \$187.50;

(c) Mortgage Lender Entity, ~~\$750.00~~ \$562.50;

(d) Mortgage Lender Branch, ~~\$250.00~~ \$187.50;

(e) Mortgage Loan Originator, ~~\$400.00~~ \$300.00;

(f) Mortgage Servicer Entity, ~~\$750.00~~ \$562.50;

(g) Mortgage Servicer Branch, ~~\$250.00~~ \$187.50.

~~(2) The renewal fees listed in (1) are reduced by 75 percent for 2019. This section sunsets on March 1, 2019.~~

AUTH: 32-9-117, 32-9-134, MCA

IMP: 32-9-117, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY:

The Division of Banking and Financial Institutions (division) is funded through licensing fees and strives to keep licensing fees consistent with each licensing program's expenditures. The mortgage program is currently generating more revenue than it is spending, and the revenue generated exceeded estimates. Under 32-9-117, MCA, renewal fees must be commensurate with program costs. A 25 percent permanent reduction will reduce the financial burden of license fees while providing sufficient revenue to cover division expenditures for the immediate and foreseeable future.

The division will continue to monitor its revenue and expenses and, if necessary, increase or decrease the renewal fees to keep revenues in line with expenses.

In Montana, there are currently licensed:

- 165 mortgage broker entities;
- 171 mortgage broker branches;
- 198 mortgage lender entities;
- 382 mortgage lender branches;
- 160 mortgage servicer entities;
- 113 mortgage servicer branches; and
- 3,206 mortgage loan originators.

The proposed changes will reduce cumulative costs to licensees by approximately \$449,975.00.

The division is deleting (2) because this provision sunsetted on March 1, 2019.

4. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., October 21, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., October 18, 2019.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those



directly affected has been determined to be 439 persons based on the 4,395 existing mortgage licensees.

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

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [banking@mt.gov](mailto:banking@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. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

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

By: /s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State September 10, 2019.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.8301 pertaining to	)	PROPOSED AMENDMENT
establishment, deletion, or revision of	)	
classifications for various industries	)	
for supplementing the NCCI Basic	)	
Manual for Workers' Compensation	)	
and Employers Liability	)	

TO: All Concerned Persons

1. On October 16, 2019, at 11:00 a.m., the Classification Review Committee will hold a public hearing in the basement conference room of the Montana Commissioner of Securities and Insurance, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Classification Review Committee 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 Classification Review Committee no later than 5:00 p.m. on October 1, 2019, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail [rbidon@mt.gov](mailto:rbidon@mt.gov).

3. The affected rule is shown below and no changes will be made to that rule. However, the Basic Manual for Workers' Compensation and Employers Liability (Basic Manual) incorporated by reference in this rule is supplemented by classification codes that are established, deleted, or revised in accordance with (2) of the rule and 33-16-1023(3), MCA.

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION  
PLAN NO. 2 AND PLAN NO. 3 (1) and (2) remain the same.

AUTH: 33-16-1012, MCA  
IMP: 2-4-103, 33-1-115, 33-16-1012, MCA

REASON: It is necessary to supplement the NCCI Basic Manual incorporated by reference in ARM 6.6.8301 by establishing, deleting, or revising classification codes in the Basic Manual that apply to various industries, through rulemaking procedures. The Classification Review Committee approved proceeding to rulemaking to supplement the Basic Manual with Item Filing B-1437- Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, including Aircraft Maintenance; Wool Spinning and Weaving; Yarn Manufacturing; Glove Manufacturing; Motion Picture Negative Development, Printing, and Subsequent Operations; Duplication and Replication of Prerecorded Audio, Video or

Data; Cottonseed Oil Manufacturing; Street or Road Construction, Rock Excavation and Drivers; proposed to be effective July 1, 2020.

For additional details, see the filing, executive summary, and the classifications to be established, deleted, or revised in the filing as approved by the Montana Workers Compensation Classification Review Committee, at: [https://csimt.gov/wp-content/uploads/MT-Item-B-1437-Revised-Exhibit\\_Final-004.xlsx](https://csimt.gov/wp-content/uploads/MT-Item-B-1437-Revised-Exhibit_Final-004.xlsx).

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 CR Committee attention of: Michael Craddock, Regulatory Disputes Consultant, NCCI, c/o Regulatory Operations Department, 901 Peninsula Corporate Circle, Boca Raton FL 33487-1362; telephone (561) 893-3820; fax (561) 893-5365; or e-mail [Michael\\_Craddock@NCCI.com](mailto:Michael_Craddock@NCCI.com), and must be received no later than 5:00 p.m. MST, October 24, 2019.

5. Mike Winsor, State Auditor's Office, has been designated to preside over and conduct this hearing.

6. The Classification Review Committee maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this committee. 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 committee.

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 Classification Review Committee has determined that the supplementing of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Mike Winsor  
Mike Winsor  
Rule Reviewer

/s/ Greg Roadifer  
Greg Roadifer  
Committee Chair

Certified to the Secretary of State September 10, 2019.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III, the amendment of	)	PROPOSED ADOPTION,
ARM 24.29.804, 24.29.813,	)	AMENDMENT, AND REPEAL
24.29.821, 24.29.824, 24.29.831,	)	
24.29.834, 24.29.837, and 24.29.847,	)	
and the repeal of ARM 24.29.811,	)	
24.29.817, and 24.29.827, pertaining	)	
to certification of workers'	)	
compensation claims examiners	)	

TO: All Concerned Persons

1. On October 11, 2019, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-6451; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JSwant@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt New Rules I through III, amend eight existing rules, and repeal three rules related to certified claims examiners to implement the provisions of Chapter 371, Laws of 2019 (House Bill 757). The rules reflect the change from a voluntary system of certification for workers' compensation claims examiner to a mandatory system, as provided for by House Bill 757. The combination of the proposed new rules, proposed amendments, and proposed repeals are reasonably necessary to help ensure that all the rules related to certified workers' compensation claims examiners are consistent and complete for the mandatory claims examiner certification process. Additional statements of reasonable necessity are provided below addressing each of the proposed rule changes.

4. The proposed new rules are as follows:

NEW RULE I DECISIONS WHICH MUST BE MADE BY A CERTIFIED CLAIMS EXAMINER (1) Except as provided by [NEW RULE II] and this rule, only a certified claims examiner may perform the tasks identified by 39-71-116, MCA, as

being the responsibility of a claims examiner. As provided by 39-71-116, MCA, those tasks are to:

- (a) determine liability;
- (b) apply the requirements of the Workers' Compensation Act;
- (c) settle workers' compensation or occupational disease claims; and
- (d) determine survivor benefits.

(2) After an insurer or its agent has accepted liability for the claim or has begun paying benefits under a reservation of rights (including pursuant to 39-71-608, MCA), a certified claims examiner is responsible for making any decision that denies, reduces, or changes the type or level of benefits being provided to an injured worker or the survivors of an injured worker.

(3) Examples of decisions made under (2) include, but are not necessarily limited to:

- (a) changing the disability status of a worker; and
- (b) denying medical benefits.

(4) A person does not violate this rule if under the following circumstances, a person not certified as a claims examiner denies initial liability on a new claim, when the first report of injury clearly shows that the alleged incident has not resulted in:

- (a) professional medical evaluation or treatment;
- (b) loss of work exceeding the shift during which the accident occurred; or
- (c) anything other than mere notice of a possible exposure to a potentially harmful substance or condition.

(5) A claim denied under the circumstances described in (4) must identify in the denial letter the certified claims examiner who is accountable for the decision to deny the claim.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-107, 39-71-116, 39-71-320, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to describe what actions in handling a workers' compensation claim must be performed by a certified claims examiner. By exclusion, other tasks related to claim handling may be performed by a person who is not a certified claims examiner (e.g., a "claims assistant" or "claims technician").

NEW RULE II NEW HIRES AND CLAIMS EXAMINER TRAINEES –  
DESIGNATION OF CERTIFIED CLAIMS EXAMINER TO BE ACCOUNTABLE FOR  
DECISIONS

(1) A new hire may, for a period of not more than 60 days, perform tasks otherwise required to be performed by a certified claims examiner, if the employer has designated a certified claims examiner as being accountable for the decisions made by the new hire.

(2) A claims examiner trainee may, for a period of not more than 180 days, perform tasks otherwise required to be performed by a certified claims examiner, if the employer has designated a certified claims examiner as being accountable for the decisions made by the claims examiner trainee.

(3) The employer of a new hire or claims examiner trainee must maintain documentation for each claim being handled by a new hire or claims examiner

trainee, of the certified claims examiner who is accountable for the decisions made by that new hire or claims examiner trainee.

(a) The employer may change the certified claims examiner designated as being accountable for decisions on a claim being handled by a new hire or claims examiner trainee at any time, so long as that change is appropriately documented within the insurer's records.

(b) The documentation required by this section must be promptly made available to the department, the injured worker, or the attorney of an injured worker, if that information is requested in writing.

(4) A person who is a new hire or claims examiner trainee that does not timely become a certified claims examiner is not allowed to perform tasks that are required to be performed by a certified claims examiner.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to adopt NEW RULE II to implement the provisions of House Bill 757 that provide for new hires and training positions. The department considered, but rejected, providing a specific list of topics or curricula for an insurer's training program, and has concluded that each insurer should be free to implement whatever training program it deems appropriate. To ensure that new hires and trainees are appropriately handling claims, the department is requiring that each insurer (or third-party administrator) designate a certified claims examiner who will be accountable for the claims decisions made by a new hire or trainee. The amount or level of oversight required by the designated certified claims examiner is not specified by rule, but each insurer or third-party administrator (TPA) has an obvious self-interest in making sure that its claims are handled in an appropriate manner, lest it incur liability for unreasonable handling in a specific claim, or as a general claims handling practice.

NEW RULE III REPORTING OF EMPLOYMENT STATUS OR CHANGE OF ADDRESS TO THE DEPARTMENT (1) A certified claims examiner must report to the department, within 20 days of the event:

(a) the name and address of an insurer or third-party administrator who has hired the person to be employed as a certified claims examiner, and the date of hire;

(b) the date of separation of employment from that employer; and

(c) a change of address or other contact information for the certified claims examiner.

(2) An insurer or third-party administrator must report to the department, within 20 days of the event, the name and date of hire of any person who will be working as a claims examiner for the employer as either a:

(a) new hire; or

(b) claims examiner trainee.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to adopt NEW RULE III to clarify who has the responsibility of notifying the department of a certified claims examiner's contact information and employment status. Insurers or TPAs have the responsibility to notify the department when the insurer or TPA hires a person who will perform claims examiner tasks as a new hire or trainee.

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

24.29.804 EXAMINERS AND THIRD-PARTY ADMINISTRATORS IN MONTANA (1) All workers' compensation and occupational disease claims filed pursuant to the Montana Workers' Compensation and Occupational Disease Acts must be adjusted by a ~~person~~ certified claims examiner in Montana. For the purposes of this rule, ~~a claim is deemed to be "adjusted by a person in Montana" if the person who can determine entitlement to benefits, authorize payment of all benefits due, manage the claim and has authority to settle the claim, maintains a~~ certified claims examiner must maintain an office that is located in Montana and ~~adjusts~~ adjust Montana claims from that office. The office may be in the examiner's personal residence located in Montana. The sole use of a mail box or mail drop located in Montana does not constitute maintaining an office in Montana.

(2) An insurer must maintain the documents related to each claim filed with the insurer under the Montana Workers' Compensation and Occupational Disease Acts at the office of the person adjusting the claim in Montana until the claim is settled. The documents may either be original documents, or duplicates of the original documents, and must be maintained in a manner which allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the certified claims examiner's office must be made available by the insurer within 48 hours of a request for a file. Electronic or optically imaged documents are permitted by this rule.

(3) and (4) remain the same.

(5) The insurer may delegate the duty to notify the department to a third-party administrator ~~or policyholder~~.

(6) remains the same.

AUTH: 39-71-107, 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.804 to reference the obligation of an insurer to use a certified claims examiner for compliance with the in-state adjuster statute, and to add 39-71-320, MCA, to the implementing citations. Certain terms are being deleted because the subject of those terms is addressed elsewhere in the certified claims examiner rules. In addition, there is reasonable necessity to add 39-71-320, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

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

(1) and (2) remain the same.

(3) "Certified claims examiner" means a claims examiner who is in compliance with the requirements of 39-71-320, MCA.

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

~~(4) "Classroom setting" means a course format in which a body of students meets to study the same course materials under the direction of the same approved instructor.~~

(5) remains the same.

(6) "Hour," for the purposes of continuing education credits, means a 50-minute period.

(6) remains the same but is renumbered (7).

(8) "New hire" means a person who has:

(a) not been previously employed by the insurer or third-party administrator as a claims examiner;

(b) been separated from employment with the insurer or third-party administrator for at least 60 days and is required to complete new hire paperwork such as a Form I-9 or Form W-4; or

(c) received an internal promotion or transfer to a claims examiner position. The term includes a temporary employee.

(7) and (8) remain the same but are renumbered (9) and (10).

~~(9) (11) "Self-study" means those independent study methods taught outside the classroom setting through approved text, audiotape materials, videotape materials or prerecorded audio or video content, or another method of information exchange where both the means and content are approved by the department.~~

(10) and (11) remain the same but are renumbered (12) and (13).

(14) "Trainee" means an employee who has no prior claims examiner experience and is participating in a program by which the employer prepares the trainee to carry out the essential functions of a certified claims examiner.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.813 to define various terms related to the provisions of House Bill 757, and to update existing language to better reflect current continuing education technology. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

24.29.821 CERTIFICATION OF CLAIMS EXAMINERS (1) through (1)(c) remain the same.

~~(d) satisfactory completion of either an examination or meeting the waiver requirements as provided in ARM 24.29.827.~~

(2) remains the same.



(3) Certification ~~will be~~ is for a two-year period. The certification date ~~shall be~~ is the date of the successfully completed examination ~~or the date the department issues a certification to an applicant that meets the examination waiver requirements.~~

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.821 to delete the reference to waiver of examination, and to remove now-redundant language in the rule to implement the provisions of House Bill 757. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

24.29.824 EXAMINATION FOR CLAIMS EXAMINERS (1) Each applicant for certification as a workers' compensation claims examiner shall, prior to the issuance of such certification, personally take and pass an examination given by the department or a department-approved agent as a test of qualifications and competency, ~~except as provided by a waiver in ARM 24.29.827.~~

(2) through (2)(b) remain the same.

(c) knowledge of workers' compensation definitions and concepts ~~including for example, course and scope, coverage, liability, subrogation, claims for benefits, compensation and medical benefits, settlements, subsequent injury fund, vocational rehabilitation, mediation, and due process.~~

(3) remains the same.

(4) A passing score on an examination ~~shall be~~ is at least 80 percent or greater.

(a) An applicant for claims examiner certification may ~~retake an~~ take the examination as many times as necessary to pass the examination with a score of 80 percent or greater up to three times in a 180-day period. If an applicant does not pass the examination within that 180-day period, the applicant must wait 60 days before taking the examination again.

(b) The examination fee must be paid for each examination taken.

(5) Any examination completed through dishonest or fraudulent means ~~shall be considered invalid~~ is given a score of 0.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.824 to delete the reference to waiver of examination, remove a sample list of appropriate topics for study, and to add provisions regarding how often a person may re-test after failing the examination, because under the former voluntary certification program, certification was not required to perform claims adjuster tasks. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims

examiners for those tasks which may only be performed by a certified claims examiner.

24.29.831 LAPSE IN CERTIFICATION (1) If a certification has lapsed ~~past the renewal date,~~ but application for renewal is received within ~~42~~ 24 months from the renewal date, the claims examiner must pay the application fee and provide evidence of sufficient continuing education credits received during the lapsed period.

(2) If a certification has lapsed greater than ~~42~~ 24 months from the renewal date, the claims examiner ~~must~~ shall submit an initial application for certification; ~~pay the fee;~~ required fees, and successfully pass an examination to become a certified claims examiner. The continuing education credit requirement for renewal starts over with the new certification period.

(3) A person may not perform the functions of a certified claims examiner with a lapsed certification.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.831 to revise the conditions for reviving a lapsed certification and identifying at what point a person must reapply for certification and re-test, to reflect the change from a voluntary certification system to a mandatory certification system. There is reasonable necessity to amend the rule to further specify that a person with a lapsed certification is not authorized to perform tasks required to be performed by a certified claims examiner, because prior to the enactment of House Bill 757, those tasks did not have to be performed by a certified claims examiner. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

24.29.834 CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL

(1) and (1)(a) remain the same.

(b) completion of the renewal form provided by the department at any time during the certification period, but no later than the expiration of the ~~renewal date~~ certification period;

(c) through (3) remain the same.

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.834 to harmonize the use of certain terminology within the rules. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

24.29.837 REVIEW AND APPROVAL OF CONTINUING EDUCATION COURSES BY DEPARTMENT (1) and (2) remain the same.

~~(3) "Hour" as used in this subchapter, means 50 minutes of instruction.~~

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

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-107, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.837 to remove a definition that has moved to the definitions rule ARM 24.29.813. In addition, there is reasonable necessity to add 39-71-107, MCA, to the implementing citations to reflect the integration of the need for insurers and TPAs to only use certified claims examiners for those tasks which may only be performed by a certified claims examiner.

24.29.847 FEES FOR CERTIFICATION, EXAMINATION, RENEWAL, AND COURSE APPROVAL SUBMISSION (1) The following fees apply to the certified claims examiner program:

(a) initial application for certification	\$100
(b) examination	75
(c) renewal application	75
(d) renewal application for lapsed certification	100
(e) approval of a continuing education course	75

(2) All fees are payable in advance.

(3) All fees are nonrefundable.

~~(1) The fees for processing an initial two-year certification shall be \$100 per applicant payable at the time of the application.~~

~~(2) Each examination fee will not exceed \$75 payable prior to the examination.~~

~~(3) The certification renewal fee shall be \$75 per applicant payable at the time of renewal. If there is a lapse in certification, the fee for renewal will be \$100 payable at the time of the application.~~

~~(4) The fee for course submissions shall be \$75 per application.~~

AUTH: 39-71-203, 39-71-320, MCA

IMP: 39-71-105, 39-71-320, MCA

REASON: There is reasonable necessity to amend ARM 24.29.847 while similar rules are being amended, to improve the readability of the rule. The department notes that the fees are not being changed from the existing amounts, and that the fee justification provisions of 2-4-302, MCA, are not required. The department estimates that approximately 50 individuals who are performing the work of a claims examiner will become certified in the next 12 months.

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

24.29.811 PURPOSE OF RULES

AUTH: 39-71-203, 39-71-320, MCA  
IMP: 39-71-105, 39-71-320, MCA

REASON: There is reasonable necessity to repeal ARM 24.29.811 and 24.29.817 as they are now unnecessary, as the scope of the rules no longer needs any explanation and the applicability provisions are obsolete.

#### 24.29.817 APPLICABILITY OF RULES

AUTH: 39-71-203, 39-71-320, MCA  
IMP: 39-71-105, 39-71-320, MCA

#### 24.29.827 WAIVER OF EXAMINATION

AUTH: 39-71-203, 39-71-320, MCA  
IMP: 39-71-105, 39-71-320, MCA

REASON: There is reasonable necessity to repeal ARM 24.29.827 because House Bill 757 eliminated the provisions allowing waiver of the examination under certain circumstances.

7. 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 Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail to JSwant@mt.gov, and must be received no later than 5:00 p.m., on October 18, 2019.

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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. An electronic copy of this notice of public hearing is available through the Secretary of State's web site at <https://sosmt.gov/arm/>. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on July 3, 2019, by telephone.

11. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State September 10, 2019.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.111.301 definitions,	)	PROPOSED AMENDMENT,
24.111.510 certification for specialty	)	ADOPTION, AND REPEAL
practice of naturopathic childbirth	)	
attendance, 24.111.605 licensure of	)	
out-of-state applicants, 24.111.2103	)	
midwives continuing education	)	
requirements; the adoption of New	)	
Rule I minimum education and	)	
experience requirements for midwife	)	
and midwife apprentice applicants	)	
after January 1, 2020, New Rule II	)	
direct-entry midwife apprenticeship	)	
requirements for midwife apprentice	)	
applicants after January 1, 2020; and	)	
the repeal of 24.111.2101 renewals	)	

TO: All Concerned Persons

1. On October 16, 2019, at 10:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care no later than 5:00 p.m., on October 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; or dlibsdahc@mt.gov (board's e-mail).

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

24.111.301 DEFINITIONS (1) "Continuous care" as defined in 37-27-103, MCA, includes at least five prenatal visits spanning two trimesters, the birth, newborn exam, and two postpartum visits.

(1) through (4) remain the same but are renumbered (2) through (5).

(6) "MEAC" means the Midwifery Education Accreditation Council.

(5) remains the same but is renumbered (7).

(8) "NARM" means the North American Registry of Midwives.

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

(10) "Primary birth attendant" means the person responsible for providing primary care to a woman in labor.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-1-131, 37-26-304, 37-27-103, 37-27-201, 37-27-205, 37-27-311, 37-27-320, MCA

REASON: Board staff recommended the board add a definition of "continuous care" after receiving questions from applicants and noticing inconsistent usages of the term in the board's rules. The new definition at (1) is also consistent with NARM's terminology and requirements and existing statutory language.

The board is adding a definition of "primary birth attendant" as the term is used in both statute and rule for direct-entry midwives and naturopathic doctors. Staff receives numerous questions from midwife applicants and midwife supervisors regarding the term's meaning for purposes of meeting the experience requirements for licensing for direct-entry midwifery. The board also determined it is reasonably necessary to define "MEAC" and "NARM" to align with and facilitate the adoption of NEW RULES I and II in this notice.

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

24.111.510 CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE (1) through (1)(c)(v)(A) remain the same.

(B) the applicant has observed and assisted with the intrapartum care and delivery in 50 natural childbirths in a hospital or alternative birth setting, including 25 births that document the applicant as the primary birth attendant. Of the 25 births for which the applicant was the primary birth attendant, three of the births must have occurred within the two years immediately preceding the submission of the application and in at least one of those three births, the applicant must have provided continuous care. ~~For purposes of this rule, "continuous care" means at least five prenatal visits occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and one postnatal visit.~~

(d) provide proof of having passed a specialty examination in obstetrics ~~given by or~~ approved by the board, or the American College of Naturopathic Obstetrics' (ACNO) obstetrics specialty examination, or the Naturopathic Physician Licensing Examination's (NPLEX) obstetrics specialty examination.

AUTH: 37-26-201, MCA

IMP: 37-26-201, 37-26-304, MCA

REASON: Because the board is adding a new definition of "continuous care" to ARM 24.111.301, the board is amending this rule to strike unnecessary and repetitive language. The board determined it is reasonably necessary to amend (1)(d) to update to current processes as the board no longer administers exams.

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

24.111.605 LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a direct-entry midwife in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. ~~Applications for licensure from out-of-state applicants shall expire one year from the date of receipt of the application.~~ The candidate must meet the following requirements:

(a) The candidate holds a current, valid, and unrestricted license to practice as a direct-entry midwife in another state or jurisdiction, ~~which was issued under that~~ has current standards substantially equivalent to or greater than current standards in this state as established in 37-27-201 or 37-27-203, MCA, and the administrative rules.

(i) Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

~~(b) The candidate shall supply certified transcripts sent directly from an institute of higher education, or certificates of completion from other courses of study, indicating the candidate has successfully completed educational requirements in pregnancy and natural childbirth, approved by the board as per ARM 24.111.601;~~

~~(c) The candidate shall supply proof of successful completion of all parts of the North American Registry of Midwives (NARM) examination with a scaled score of 75 or higher. Candidate scores on the examination must be forwarded by the exam agency directly to the board;~~

~~(d) Candidates who were licensed without sitting for the NARM examination shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license;~~

~~(e) The candidate shall supply written documentation of good moral character consisting of three letters of reference, at least one of which must be from a licensed direct-entry midwife;~~

~~(f) (ii) The candidate shall must supply a copy of the current laws and rules from the state of licensure, which were in effect at the time the license was granted in the other state.~~

~~(2) Out-of-state applicants for direct-entry midwife licensure who do not meet the experience qualifications in (1)(a) and 37-27-201 or 37-27-203, MCA, whichever is applicable at the time of application, through an apprenticeship or other supervisory setting, but who participated as the primary birth attendant at 25 births, 15 of which included continuous care, may be approved by the board to enter directly into direct-entry midwife apprenticeship license Level III-B.~~

~~(a) The applicant must submit for board review and approval: a proposed supervisor agreement; a formal outline of the indirect supervision communication; and proof of the 25 births including 15 continuous care births.~~

~~(i) The 25 births and 15 continuous care births shall be evidenced by:~~

~~(A) the signed birth certificate as primary birth attendant;~~

~~(B) an affidavit from the birth mother; or~~



~~(C) documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.~~

~~(ii) Documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must include at least five prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam.~~

~~(iii) Ten of the 15 continuous care births must have been performed under the direct supervision of a qualified supervisor.~~

~~(b) To complete Level III-B, at least eight continuous care births must be supervised by a Montana-licensed direct-entry midwife.~~

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-1-304, 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with current application procedures and provide a simpler and more efficient avenue for qualified applicants with existing licenses in good standing to achieve Montana licensure. Further, staff suggested the changes to (1)(a) regarding substantial equivalency after determining current language contradicts statute. The board is amending this rule to specify the requirements for licensure by endorsement as allowed by 37-1-304, MCA.

The board is deleting (2) because the board has current rules regarding applicants who do not meet experience requirements, and both applicants and licensing staff reported confusion in completing and processing applications.

24.111.2103 DIRECT-ENTRY MIDWIVES CONTINUING EDUCATION REQUIREMENTS (1) through (5) remain the same.

~~(6) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the midwife on the renewal application. The board will conduct random audits after each renewal period closes of 20 percent of all midwives with renewed licenses, for documentary verification of compliance. Documentary evidence of completion of nonlive programs (e.g., internet, videotape, audiotape, DVD) may be in the form of proof that the midwife passed an exam on the program content, a certificate of completion, or the midwife's notes summarizing the program content. Documentary evidence of program completion must be maintained by the midwife for a period of two years for audit purposes.~~

~~(7) and (8) remain the same.~~

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: Following a recommendation by department legal staff, the board is amending (6) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The change aligns with standardized department procedure in which licensees with mandatory CE affirm an understanding of the CE requirement at renewal and are then subject to random audit.

The board also determined it is reasonably necessary to no longer require a specific audit percentage following a department recommendation to all boards to allow the board flexibility in conducting CE audits of renewed licensees. The board is amending the title to align with the rest of the direct-entry midwifery rules.

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

4. The proposed new rules are as follows:

NEW RULE I MINIMUM EDUCATION AND EXPERIENCE REQUIREMENTS FOR DIRECT-ENTRY MIDWIFE APPLICANTS AFTER JANUARY 1, 2020 (1) An applicant must be a NARM Certified Professional Midwife, demonstrated by:

- (a) graduation from a MEAC-accredited program; or
- (b) completing the Portfolio Evaluation Process through NARM; and
- (c) passing the NARM examination with a scaled score of 75.

(i) Applicants must have the examination score reported to the board from NARM.

(ii) Applicants who have failed the examination twice must file a remedial plan with the board, which includes arrangements for securing further professional training and experience prior to each examination attempt.

(2) In addition to NARM certification, applicants must show:

- (a) observation of ten births; and
- (b) participation as the primary birth attendant at five continuous care births, shown by the signed birth certificate as primary birth attendant, an affidavit from the birth mother; or documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-202, MCA

REASON: After extensive board discussion and comments from applicants as to the difficulty of obtaining licensure in Montana as a direct-entry midwife, the board is adopting NEW RULES I and II to provide a better avenue for qualified students and applicants to achieve licensure in Montana. The board determined it is reasonably necessary to align licensure of midwife apprenticeships and direct-entry midwives with national licensing standards. Therefore, after the January 1, 2020, effective dates of NEW RULES I and II, the board will utilize the NARM (North American Registry of Midwives) Certified Professional Midwife program for all new applicants.

NEW RULE II DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS AFTER JANUARY 1, 2020 (1) Applicants who are acquiring practical experience shall apply for an apprentice license.

(2) Applicants must provide proof of enrollment in a MEAC-accredited program or enrollment in NARM's Portfolio Evaluation Process at the time of application.

(3) Midwife apprentices must work under the supervision of a currently licensed direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance, or a physician.

(a) Apprenticeship supervisors must be registered with NARM as preceptors.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, MCA

REASON: See REASON for NEW RULE I.

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

24.111.2101 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

IMP: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards. Additionally, the rule referenced in (1) was repealed in 2015.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to [dlibsdahc@mt.gov](mailto:dlibsdahc@mt.gov), and must be received no later than 5:00 p.m., October 18, 2019.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to [dlibsdahc@mt.gov](mailto:dlibsdahc@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.111.301, 24.111.510, 24.111.605, and 24.111.2103 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.111.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2323; or to dlibsdahc@mt.gov.

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

BOARD OF ALTERNATIVE HEALTH CARE  
NANCY PATTERSON, ND  
PRESIDING OFFICER

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

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

Certified to the Secretary of State September 10, 2019.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.189.301 definitions,	)	PROPOSED AMENDMENT,
24.189.607 required supervised	)	ADOPTION, AND REPEAL
experience, 24.189.2107 continuing	)	
education implementation, the	)	
adoption of New Rule I requirements	)	
for licensees providing telehealth	)	
services, and the repeal of 24.189.620	)	
licensees from other states or	)	
Canadian jurisdictions	)	

TO: All Concerned Persons

1. On October 16, 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, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists no later than 5:00 p.m., on October 9, 2019, to advise us of the nature of the accommodation that you need. Please contact the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdpsy@mt.gov](mailto:dlibsdpsy@mt.gov) (board's e-mail).

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

24.189.301 DEFINITIONS (1) remains the same.

(2) "Asynchronous store-and-forward" means the transmission, via store-and-forward technology as defined in 33-22-138, MCA, of a patient's medical information from an originating site to a health care provider at a distant site without the presence of the patient.

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

(6) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(7) "Health care provider" means health care provider as defined in 33-22-138, MCA.

(8) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the licensee-patient encounter.

(9) "Licensee" means the holder of a current license issued under 37-17-302 or 37-17-403, MCA.

(10) "Licensee-patient relationship" means that:

(a) the licensee agrees to undertake diagnosis and/or treatment of a person seeking services from the licensee; and

(b) the person agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter between the licensee and the person.

(5) and (6) remain the same but are renumbered (11) and (12).

(13) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where an asynchronous store-and-forward service originates.

(7) remains the same but is renumbered (14).

(15) "Synchronous interaction" means a real-time interaction between a patient located at an originating site and a health care provider located at a distant site.

(16) "Telehealth" means the mode of delivering health care services via electronic information and communication technologies while a patient is at an originating site and a licensee is at a distant site, with or without an intervening health care provider. Telehealth includes synchronous interactions and asynchronous store-and-forward transfers delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission.

AUTH: 37-1-131, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-17-101, 37-17-302, 37-17-402, 37-17-403, 37-17-404, 37-17-406, MCA

REASON: The board determined it is reasonably necessary to amend this rule to add several definitions that appear in NEW RULE I as proposed in this notice. Additionally, the board is defining several terms that are used in the broader definition of "telehealth" at (16). The board intends to locate all pertinent definitions in this single location.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) through (6) remain the same.

(7) An acceptable postdoctoral training setting shall have ~~two~~ at least one other board-approved licensed mental health ~~professionals~~ professional, in addition to the supervisor, participating in the training of the supervisee. ~~The two additional~~ At least one mental health ~~professionals~~ professional must be on-site when the supervisor is not on-site.

(8) through (13) remain the same.

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

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

REASON: The board is amending this rule to address a perceived barrier to licensees obtaining postdoctoral supervision in rural Montana. Supervisors and postdoctoral applicants for rural clinic settings contacted board staff when they were unable to comply with the current requirements. Following consideration, the board determined that allowing one mental health professional on-site when an applicant's supervisor is off-site addresses the issue while still ensuring the public's protection.

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

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) remains the same.

(2) A Starting November 1, 2019, a licensed psychologist must earn, within a two-year renewal cycle, a minimum of 40 continuing education credits on or before the renewal date set by ARM 24.101.413. Continuing education credits may not be carried over from one two-year cycle to another. at least 40 continuing education credits during two consecutive calendar years. Continuing education credit shall be reported as follows:

~~(a) Licensees with even-numbered licenses shall obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.~~

~~(b) Licensees with odd-numbered licenses shall obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.~~

~~(c) through (e) remain the same but are renumbered (a) through (c).~~

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, ~~37-17-202~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address licensee questions by simplifying and clarifying continuing education (CE) requirements. The amendments also align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

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

4. The proposed new rule is as follows:

NEW RULE I REQUIREMENTS FOR LICENSEES PROVIDING TELEHEALTH SERVICES (1) A licensee who provides psychology or behavior analysis services via telehealth shall:

(a) maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on patients, supervisees, or other professionals;

(b) maintain compliance with Title 37, chapter 17, MCA, ARM Title 24, chapter 189, and all other applicable federal, state, and local laws;

(c) adhere to the same standards of care required for in-person encounters;

(d) at the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the patient so that those contacts shall be readily accessible in the event of an emergency;

(e) protect and maintain the confidentiality of data and information; and

(f) dispose of data and information only in a manner that protects the data and information from unauthorized access.

(2) Licensees shall not commence a licensee-patient relationship via telehealth without an initial meeting for the licensee and patient who prospectively utilize telehealth. The licensee shall, at that initial meeting with the patient:

(a) verify the identity of the patient;

(b) make available to the patient verification of the licensee's identity and credentials;

(c) obtain alternative means of contacting the patient other than electronically;

(d) provide to the patient alternative means of contacting the licensee other than electronically;

(e) document if the patient has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and

(f) inform the patient in writing about and obtain the patient's informed written consent regarding:

(i) the limitations of using technology in the provision of services;

(ii) potential risk to confidentiality of information due to technology in the provision of services;

(iii) potential risks of disruption in the use of telehealth technology;

(iv) when and how the licensee will respond to routine electronic messages;

(v) in what circumstances the licensee will use alternative communications for emergency purposes;

(vi) who else may have access to patient communications with the licensee;

(vii) how communications can be directed to a specific licensee;

(viii) how the licensee stores electronic communications from the patient; and

(ix) that the licensee or patient may elect to discontinue the provision of services through telehealth at any time.

(3) A licensee-patient relationship may be established for purposes of telehealth:

(a) by an in-person interview and examination when the standard of care requires an in-person encounter;

(b) by consultation with another licensee or health care provider who has a documented relationship with the patient and who agrees to participate in, or supervise, the patient's care; or

(c) through telehealth if the standard of care does not require an in-person encounter.



(4) A person providing services via telehealth to a person physically located in Montana while services are provided shall be licensed by the board.

(5) A person providing services via telehealth from a physical location in Montana shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the patient.

AUTH: 37-1-131, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-17-102, 37-17-402, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to clearly set forth the standards for practicing psychology and behavior analysis services via telehealth methods. Noting that telephonic communications have long been an integral part of the practice of psychology, the board is proposing this new rule to acknowledge the development of other electronic communication methods. The board has been researching and discussing telehealth delivery for several years and has determined it is reasonably necessary to now adopt the standards to address the ever-increasing need for effective mental health services in Montana, most critically in the more rural areas of our state.

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

24.189.620 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS

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

IMP: 37-1-304, 37-17-304, MCA

REASON: The board is repealing this unnecessary rule because it is outdated, confusing to applicants and licensing staff, and the subject matter is adequately addressed in existing statutes.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov), and must be received no later than 5:00 p.m., October 18, 2019.

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

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

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

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.301, 24.189.607, and 24.189.2107 will not significantly and directly impact small businesses.

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

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.189.620 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; facsimile (406) 841-2305; or to [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov).

11. Jeff Sealey, board counsel, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS  
LORETTA BOLYARD, Ph.D.  
CHAIRPERSON

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

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

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 32.2.403 pertaining to ) AMENDMENT  
diagnostic laboratory fees )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m., October 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

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

32.2.403 DIAGNOSTIC LABORATORY FEES (1) ~~Test services~~ Services available through the Montana Department of Livestock Veterinary Diagnostic Laboratory (MVDL) are listed in the chart in ~~(4)~~ (3), entitled MVDL Services and Fees.

(a) A 50 percent surcharge will be assessed on accessions from out-of-state submitters ~~for tests conducted on nonresident animals.~~

(b) Mailing costs:

(i) all submissions must have shipping cost or postage prepaid;

(ii) "collect on delivery" shipments are not accepted;

(iii) any mailing costs incurred by the laboratory will be billed to the submitter.

(c) Delinquent accounts:

(i) A 1.5 percent monthly interest rate will be charged on accounts over 30 days.

(ii) Laboratory results on any account 90 days delinquent will be withheld until the entire payment is received.

(d) A 50 percent surcharge will be assessed when expedited processing is requested on a case.

~~(2) A minimum laboratory fee of \$8.00 will be charged on all accessions.~~

(3) (2) Accession An accession is defined as the an MVDL case number assigned to specimens from animals that are submitted by a veterinarian, owner, or other agent to the laboratory for diagnostic or surveillance testing.

(a) A fee of ~~\$5.00~~ 4.00 will be assessed for each accession except those that are exempted. Exempted accessions are Equine Infectious Anemia (EIA) tests.

~~(4)~~ (3) MVDL services and fees:

(a) Clinical Microbiology/Bacteriology:

Test	Fee
aerobic culture	<del>\$20.00</del> 17.60
aerobic <u>culture</u> - additional isolate	<del>\$10.00</del> 8.80 each
anaerobic culture	<del>\$24.00</del> 20.90 each
anaerobic <u>culture</u> - each additional isolate	<del>\$10.00</del> 8.80 each
antibiotic sensitivity - per isolate	<del>\$15.00</del> 11.55
brucella culture	<del>\$20.00</del> 17.60
campylobacter culture	<del>\$16.00</del> 14.30
<del>clostridium perfringens</del> genotyping	referral lab fee + shipping/handling
dermatophyte culture & PAS	<del>\$30.00</del> 28.87
direct microscopy	<del>\$10.00</del> 9.35
<del>environmental culture</del>	<del>\$20.90</del> each
fecal occult blood	<del>\$11.00</del> 9.35
fungus culture	<del>\$30.00</del> 25.57

listeria culture	<del>\$24.00</del> 18.70
<del>milk culture</del>	<del>\$17.60</del>
mycoplasma culture	<del>\$20.00</del> 17.60
<del>non-dermatophyte</del> fungal culture	<del>\$25.57</del>
salmonella culture	<del>\$20.00</del> 17.32
salmonella enteritidis <u>confirmatory culture</u> /if negative	<del>\$28.00</del> 23.10
<del>salmonella enteritidis</del> /additional testing	<del>\$26.95</del>
special requests	contact lab
trichomonas foetus culture:	<del>\$7.00</del>
1-100	<del>\$6.50</del> each
101-500	<del>\$6.00</del> each
501 or more	<del>\$5.50</del> each

(b) Clinical Microbiology/Parasitology

Test	Fee
cryptosporidia exam	<del>\$10.00</del> 9.35
dirofilaria immitis (canine heartworm) ELISA	<del>\$12.00</del> 10.45
dirofilaria immitis microfilaria filtration	<del>\$12.00</del> 9.50
fecal flotation	<del>\$15.00</del> 11.55
giardia ELISA	<del>\$34.00</del> 32.45
parasite or arthropod identification	<del>\$28.00</del> 31.35

special parasite identification procedures	contact lab
liver fluke sedimentation	<u>\$30.00</u> 28.50
trichinella – pepsin degradation:	<u>\$84.00</u>
1-4 samples	<u>\$80.00</u> each
5-10 samples	<u>\$65.00</u> each

(c) Clinical Pathology

Test	Fee
Clinical profiles:	
small animal health screen	<u>\$58.00</u> 46.25
large animal health screen	<u>\$60.00</u> 46.25
small animal clinical profile	<u>\$43.00</u> 35.00
large animal clinical profile	<u>\$46.00</u> 35.00
small animal pre-anesthetic profile	<u>\$30.00</u> 25.25
feline profile	<u>\$80.00</u> 69.50
equine fitness profile	<u>\$40.00</u> 34.00
Endocrinology:	
canine thyroid panel	<u>\$35.00</u> 29.50
thyroid panel - feline	<u>\$30.00</u> 25.25
canine total T4	<u>\$12.00</u> 10.50
total T4	<u>\$12.00</u> 10.50
canine TSH	<u>\$12.00</u> 10.50
free T4 – canine & feline	<u>\$12.00</u> 10.50
total T3	<u>\$12.00</u> 10.50
cortisol: canine, feline, equine	<u>\$18.00</u> 16.00 each
ACTH stimulation	<u>\$35.00</u> 31.50
cortisol: pre & post	<u>\$35.00</u> 31.50
dexamethasone suppression: pre & post	<u>\$50.00</u> 47.25
Biochemistry panels:	
small animal panel	<u>\$30.00</u> 26.25
large animal panel	<u>\$30.00</u> 26.25
small animal hepatic panel	<u>\$24.00</u> 21.00
small animal renal panel	<u>\$24.00</u> 21.00
canine endocrine panel	<u>\$28.00</u> 24.25
feline geriatric panel	<u>\$18.00</u> 15.00
electrolyte panel	<u>\$13.00</u> 10.50
expanded electrolyte panel	<u>\$18.00</u> 15.75
Other serum chemistry:	
PLI: canine, feline	<u>\$28.00</u> 23.75
bile acids: canine, feline, equine	<u>\$30.00</u> 25.25
bile acids: pre & post	<u>\$42.00</u> 35.75

phenobarbital	<del>\$28.00</del> 25.25
individual biochemical test	contact lab
Hematology:	
<u>small animal</u> CBC/differential	<del>\$18.00</del> 15.75
large animal CBC/differential	<del>\$18.00</del> 15.75
small animal CBC/without differential	<del>\$10.00</del> 7.00
large animal CBC/without differential	<del>\$10.00</del> 7.00
reticulocyte count	<del>\$8.00</del> 7.00
feline anemia panel	<del>\$48.00</del> 38.00
fibrinogen	<del>\$6.00</del> 4.25
hemotropic parasite screen	<del>\$6.00</del> 4.25
urinalysis	<del>\$15.00</del> 12.75
<del>urinalysis with culture &amp; sensitivity</del>	<del>\$35.75</del>
Miscellaneous clinical pathology tests:	
blood cross match	<del>\$18.00</del> 15.75
buffy coat exam	<del>\$32.00</del> 31.50
canine direct coombs	<del>\$32.00</del> 31.50
individual coagulation test – PT & APTT only	<del>\$24.00</del> 21.00
IgG RID – bovine & equine	<del>\$18.00</del> 15.75
ocular nitrate	<del>\$16.00</del> 14.75

(d) Cytology

Test	Fee
<del>bone marrow cytology</del>	<del>\$46.20</del>
CSF analysis: SG, microprotein, cytospin, cytology	<del>\$60.00</del> 27.77 plus microprotein referral fee
<del>cytology with culture</del>	<del>\$39.32 + culture</del>
fluid analysis: total cell count, TP, SG, cytology	<del>\$47.00</del> 41.80
FNA: imprint, smear, stained, or unstained	<del>\$45.00</del> 39.32 + culture

(e) Histopathology ~~Histology~~/Immunohistochemistry

biopsy standard, per <u>site</u> biopsy (1-3 slides) ( <u>includes special stains, as needed</u> )	<del>\$55.00</del> 39.32
<u>mail-in necropsy (includes special stains, as needed)</u>	<del>\$55.00</del>
<del>per biopsy or necropsy (4-6 slides)</del>	<del>\$46.20</del>
<del>per biopsy or necropsy (7-10 slides)</del>	<del>\$53.35</del>
<del>per biopsy or necropsy (11 or more slides)</del>	<del>\$60.22</del>
decalcification/keratin	<del>\$11.00</del> 9.35
<u>margin inking/evaluation</u>	<del>\$10.00</del>
hematoxylin & eosin (H & E):	
<del>duplicate H &amp; E (up to 3 slides)</del>	<del>\$19.80</del>
<del>additional H &amp; E (4 or more slides)</del>	<del>\$5.77 each</del>

immunohistochemistry (IHC)	<u>\$32.00</u> 28.87
special stains ( <u>additional request</u> )	<u>\$10.00</u> 9.35 each
<u>Duplicate/research/other slide processing (H&amp;E) bulk</u> <del>research – slide prep staining only</del>	<u>\$7.00 per slide</u> 4.40/slide + <u>\$26.40/hour</u>

(f) Milk Testing

Test	Fee
added water	<u>\$5.00</u> 3.25
antibiotic	\$25.00 24.25
brucella ring	<u>\$8.00</u> 2.25
coliform count	<u>\$10.00</u> 5.25
component	<u>\$5.00</u> 4.25
gerber	<u>\$5.00</u> 3.25
<del>laboratory certification review</del>	contact milk lab
<del>listeria environmental culture</del>	\$11.75/swab site
majonnier	<u>\$15.00</u> 13.25
<del>pesticide:</del>	
<del>organophosphate &amp; carbamates</del>	\$25.25 minimum
<del>chlorinated hydrocarbons</del>	\$220.50 minimum
phosphatase	<u>\$8.00</u> 6.50
somatic cell count:	
direct	<u>\$7.50</u> 5.25
electronic	<u>\$4.00</u> 1.25
standard plate count	<u>\$8.00</u> 6.00
yeast & mold	<u>\$8.00</u> 6.00

(g) Molecular Diagnostics (PCR)

Test	Fee
<del>new tests as implemented</del>	contact lab
avian influenza (AI)	<u>\$40.00</u> 34.65
Bovine coronavirus/rotavirus multiplex	<u>\$45.00</u> 37.77
bovine virus diarrhea (BVD):	
individual samples ( <u>ear notch samples</u> )	<u>\$40.00</u> 34.65
MVDL pooled (ear notch samples)	up to 24 samples for <u>\$65.00</u> 57.75
<del>retest in positive pools/antigen capture ELISA</del>	\$4.40/sample
E. coli - K99	<u>\$40.00</u> 34.65
<del>Infectious bovine rhinotracheitis (IBR) Call lab first</del>	\$40.42
<u>bovine respiratory disease viral PCR panel</u>	<u>\$50.00</u>
National Animal Health Laboratory Network (NAHLN) tests performed: Classical Swine Fever, Foot & Mouth Disease, Vesicular Stomatitis Virus, Swine Influenza Virus, <u>or and</u> Avian Paramyxovirus <u>PCR</u>	<u>\$40.00 each</u> contact lab
mycobacterium <u>avium</u> paratuberculosis (Johne's):	

individual sample	\$ <u>36.00</u> 34.65
MVDL pooled (up to 5 feces samples)	\$ <u>42.00</u> 40.42
<del>retest in positive pools</del>	\$34.65/sample
salmonella enteritidis PCR	\$ <u>36.00</u> 32.45
<del>suspect culture confirmation</del>	\$36.30
tritrichomonas foetus:	
individual sample	\$ <u>30.00</u> 28.50
MVDL pooled (up to 5 samples)	\$ <u>55.00</u> 52.50/pool
<del>retest in positive pools</del>	\$28.50/sample

(h) Pathology

Test	Fee
abortion workup, livestock – <del>MVDL kits only</del>	\$ <u>65.00</u> 57.75
neonatal diarrhea workup - livestock, <del>MVDL kits only</del>	\$ <u>125.00</u> 110.00
carcass disposal (CD) – incineration ( <u>livestock</u> )(per lb)	\$ <u>0.50</u> 40.00 per 100 lbs
<u>carcass disposal – incineration (other species)(per lb)</u>	\$ <u>1.00</u>
Animal remains return/transfer	\$25.00
Pathologist time (after hours/)-insurance/legal cases)	\$ <u>200.00</u> 173.25/hour
<u>after hours carcass receiving</u>	\$ <u>25.00</u>
<del>necropsy – bovine &amp; equine:</del>	
<del>fetus</del>	\$80.85 + CD
<del>less than 150 lbs</del>	\$98.17 + CD
<del>150 to 500 lbs</del>	\$127.05 + CD
<del>more than 500 lbs</del>	\$173.25 + CD
<del>necropsy – canine &amp; feline:</del>	\$127.05 + CD
<del>necropsy – porcine (swine):</del>	
<del>fetus (same litter)</del>	\$80.85 + CD
<del>less than 25 lbs</del>	\$80.85 + CD
<del>25 to 250 lbs</del>	\$98.17 + CD
<del>more than 250 lbs</del>	\$127.05 + CD
<del>necropsy – small ruminant:</del>	
<del>fetus (same dam)</del>	\$80.85 + CD
<del>up to 20 lbs</del>	\$80.85 + CD
<del>more than 20 lbs</del>	\$98.17 + CD
<u>necropsy - livestock</u>	\$ <u>120.00</u>
necropsy - other species	\$ <u>150.00</u> 46.20 minimum CD
<del>research</del>	contact lab
spinal cord removal (in addition to necropsy fee):	
small animal	\$ <u>75.00</u> 57.75



	large animal	<del>\$125.00</del> 115.50
	transmissible encephalopathies:	
	brain removal only	<del>\$34.65</del> minimum
	immunohistochemistry and ELISA test	referral + shipping/handling

(i) Rabies

Test	Fee
small animal	<del>\$35.00</del> 31.50
livestock with histopathology	<del>\$65.00</del> 58.00
entire carcass disposal (excluding bats & small rodents):	
Up to 30 lbs	\$55.00
31-60 lbs	\$85.00
61-90 lbs	\$115.00

(j) Serology

Test	Fee
anaplasmosis cELISA	<del>\$10.00</del> 8.80
avian influenza (AI) AGID:	<del>\$8.00</del>
1-9	<del>\$6.60</del> each
10-24	<del>\$5.50</del> each
25-49	<del>\$3.30</del> each
50 or more	<del>\$2.20</del> each
bluetongue (BT) AGID – contact laboratory	<del>\$7.15</del> minimum
bluetongue cELISA:	<del>\$10.00</del>
1-100	<del>\$9.62</del> each
101-500	<del>\$7.15</del> each
501 or more	<del>\$4.40</del> each
bovine leukemia virus (BLV) ELISA:	<del>\$8.00</del>
1-100	<del>\$7.70</del> each
101-500	<del>\$6.60</del> each
501 or more	<del>\$4.40</del> each
bovine leukemia virus (BLV) AGID	<del>\$10.00</del> 8.00 each
bovine respiratory syncytial virus (BRSV) – SN	<del>\$10.00</del> 7.70
bovine virus diarrhea type I, II – SN	<del>\$18.00</del> 15.12
bovine virus diarrhea (BVD) ELISA:	<del>\$6.00</del>
1-100	<del>\$5.77</del> each
101-500	<del>\$4.67</del> each
501 or more	<del>\$4.12</del> each
brucella abortus:	
card, BAPA, FP, or RAP	<del>\$2.50</del> 1.60 each
FP	<del>\$3.50</del>
rivanol, SPT, CF, STT	<del>\$3.50</del> 2.65 each
brucella ovis ELISA	<del>\$9.00</del> 8.00

caprine arthritis encephalitis (CAE) <u>cELISA</u> :	<u>\$9.00</u>
AGID	<u>\$7.15</u>
cELISA	<u>\$7.15</u>
epizootic hemorrhagic disease (EHD) – AGID	<u>\$13.00</u> 11.55
equine infectious anemia (EIA) AGID individual sample	<u>\$10.00</u> 8.00
equine infectious anemia (EIA) AGID – same owner:	
1-15	<u>\$8.00</u> each
16-50	<u>\$6.00</u> each
51 or more	<u>\$4.75</u> each
equine infectious anemia (EIA) cELISA individual sample	<u>\$14.00</u> 13.00 each
EIA Global Vet Link <u>surcharge</u> submissions (per animal)	<u>\$2.00</u> 1.40
equine infectious anemia (EIA) cELISA same owner:	
1-15	<u>\$13.00</u> each
16-50	<u>\$10.50</u> each
51 or more	<u>\$9.50</u> each
infectious bovine rhinotracheitis (IBR)-SN	<u>\$9.00</u> 7.70
leptospirosis MAT:	
(routine) L. canicola, L. grippo, L. hardjo, L. ictero, L. pomona	<u>\$15.00</u> 11.55
L. autumnalis, L. bratislava/per each	<u>\$3.00/serovar</u> 2.47/sample
mycobacterium paratuberculosis (PTB) ELISA:	<u>\$9.00</u>
1-100	<u>\$8.80</u> each
101-500	<u>\$6.60</u> each
501 or more	<u>\$4.40</u> each
ovine progressive pneumonia (OPP):	
AGID or cELISA	<u>\$8.00</u> 7.15
parainfluenza 3 (PI3) - HAI	<u>\$7.00</u> 5.77
pseudorabies - gB ELISA	<u>\$7.50</u> 6.60
salmonella pullorum MAT	<u>\$6.50</u> 5.22
vesicular stomatitis (VS):	
CF	<u>\$55.00</u> 51.97
NJ & Ind - SN	<u>\$18.00</u> 15.12
west nile virus <u>IgM ELISA</u> (WNV):	<u>\$26.00</u>
July 1 – Oct 15 IgM ELISA	<u>\$23.10</u>
off season	referral lab fee + shipping/handling

(k) Serology - Small Animal

Test	Fee
brucella canis - RSAT screen, 2ME-TAT confirmation	<u>\$26.00</u> 23.00

feline infectious peritonitis (FIP) ELISA	<u>\$35.00</u> 31.35
feline leukemia virus (FeLV) <u>SNAP</u> ELISA	<u>\$24.00</u> 19.80
feline leukemia/feline immunodeficiency virus/ <u>heartworm</u> <u>SNAP</u> (FeIV, FIV) ELISA	<u>\$32.00</u> 31.35

(l) Virology

Test	Fee
<del>bovine virus diarrhea – cELISA</del>	<del>see serology section</del>
canine parvovirus <u>SNAP</u> ELISA	<u>\$30.00</u> 27.77
electron microscopy (EM)	\$34.65
fluorescent antibody (FA) testing - per agent:	
bovine coronavirus (BCV)	<u>\$11.00</u> 9.35
bovine respiratory syncytial virus (BRSV) SN	<u>\$11.00</u> 9.35
bovine virus diarrhea (BVD)	<u>\$11.00</u> 9.35
canine distemper (CDV)	<u>\$11.00</u> 9.35
canine parvovirus (CPV)	<u>\$11.00</u> 9.35
equine herpesvirus (EHV)	<u>\$11.00</u> 9.35
feline panleukopenia (FPLV)	<u>\$11.00</u> 9.35
feline infectious peritonitis (FIP)	<u>\$11.00</u> 9.35
feline herpes (FHV)	<u>\$11.00</u> 9.35
infectious bovine rhinotracheitis (IBR)	<u>\$11.00</u> 9.35
leptospira	<u>\$11.00</u> 9.35
parainfluenza - 3 Virus (PI-3)	<u>\$11.00</u> 9.35
porcine parvovirus (PPV)	<u>\$11.00</u> 9.35
<del>rotavirus ELISA</del>	<del>\$28.87</del>
<u>chronic wasting disease IHC</u>	<u>\$34.00</u>
<u>chronic wasting disease ELISA</u>	<u>\$14.00</u>
virus isolation (livestock only)	<u>\$34.00</u> 28.87

(m) Miscellaneous Tests/Fees

Test	Fee
duplicate test result reporting ( <u>hard copy</u> )	<u>\$4.00</u> 3.30
organization fee	<u>\$75.00</u> 69.30/hour
<del>referral testing</del>	<del>referral lab fee + shipping/handling</del>
<del>stat/</del> after hours reporting fee	<u>\$20.00</u> 17.32
<u>shipping and handling (referrals)</u>	<u>\$20.00</u>
<u>incoming shipping (web submissions)</u>	<u>\$7.00</u>
<u>neospora ELISA</u>	<u>\$8.00</u>
<u>pregnancy ELISA</u>	<u>\$6.00</u>
<u>kits (abortion, diarrhea, necropsy, biopsy)</u>	<u>\$5.00</u>
<u>pads of forms</u>	<u>\$5.00</u>

<u>rabies shippers</u>	<u>\$22.00</u>
<u>blood tube mailers (small)</u>	<u>\$2.50</u>
<u>blood tube mailers (medium)</u>	<u>\$5.00</u>
<u>blood tube mailers (large)</u>	<u>\$7.50</u>
<u>40 tube blood mailers</u>	<u>\$5.00</u>
<u>trich pouches</u>	<u>\$7.50</u>
<u>campylobacter tube</u>	<u>\$2.00</u>

AUTH: 81-1-102, 81-2-102, MCA  
IMP: 81-1-301, 81-1-302, 81-2-102, MCA

REASON: The department proposes to amend the current fee adjustments based on market pricing for the same and similar tests at other regional competitive laboratories. The increase in the accession fee and addition of new fees for supplies and other administrative functions offsets administrative expenses that were previously unaccounted for.

Pricing for some tests, including necropsies and histopathology for biopsies and "mail-in" necropsies, has been streamlined and restructured for simplification and better client service. Several volume discounts have been eliminated, as they did not reflect the surrounding market.

The department also proposes to add new test fees for new assays and remove tests that are no longer performed.

The department estimates that the increase in fees will generate approximately \$260,000 of revenue over an entire fiscal year, based on an anticipated 20,000 accessions and similar testing numbers to previous years, though testing fluctuates significantly with the presence or absence of animal disease. Additional testing revenue of approximately \$50,000 per year is expected once test methods for Chronic Wasting Disease are instituted and validated. There are approximately 600 veterinary submitters, at least 150 nonveterinary submitters, and 100 governmental entities affected by the proposed fee adjustments.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, to be received no later than 5:00 p.m., October 18, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, and 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 they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., October 18, 2019.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those entities directly affected has been determined to be 85 based upon approximately 600 veterinary submitters, at least 150 nonveterinary submitters, and 100 governmental entities affected by the proposed fee adjustments.

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

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

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

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

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.1303 identification,	)	AMENDMENT AND REPEAL
32.4.101 definitions, 32.4.201	)	
identification of alternative livestock ,	)	NO PUBLIC HEARING
32.4.203 waivers to identification,	)	CONTEMPLATED
32.4.301 inspection of alternative	)	
livestock, 32.4.401 change of	)	
ownership testing requirements for	)	
alternative livestock, 32.4.403	)	
requirements for alternative livestock	)	
gametes (ova and semen) and	)	
embryos, 32.4.601 importation of	)	
alternative livestock,	)	
32.4.802 quarantine facility,	)	
32.4.1301 definitions, 32.4.1302	)	
requirements for mandatory	)	
surveillance of Montana alternative	)	
livestock farm cervidae for chronic	)	
wasting disease, 32.4.1303	)	
alternative livestock monitored herd	)	
status for chronic wasting disease,	)	
32.4.1309 import requirements for	)	
cervids, 32.4.1311 management of	)	
alternative livestock cervid herds	)	
identified as CWD trace herds,	)	
32.4.1313 management of CWD	)	
positive alternative livestock cervid	)	
herds and the repeal of ARM	)	
32.4.1312 management of alternative	)	
livestock cervid herds with at least	)	
one animal diagnosed with CWD and	)	
with low probability of CWD	)	
transmission	)	

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on October 11, 2019, to

advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.3.1303 IDENTIFICATION (1) and (2) remain the same.

(3) The following groups of animals are required to be officially identified:

(a) sexually intact sheep and goats, regardless of age;

(b) all sheep and goats over 18 months of age;

(c) through (e) remain the same.

(4) Animals that are exempt from the individual official identification requirement are:

(a) sheep and goats under 18 months of age in recognized slaughter channels;

(b) wethers for exhibition;

~~(c) low risk commercial goats as defined in the Scrapie Eradication Uniform Methods and Rules;~~

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

AUTH: 81-2-102, 81-2-104, MCA

IMP: 81-2-103, MCA

REASON: The department is proposing to update this rule to reflect recent changes to United States Department of Agriculture (USDA) scrapie program standards. These recent changes increase the requirements for official identification of goats.

An authorization citation is being updated accordingly.

32.4.101 DEFINITIONS In this subchapter the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA.

(1) and (2) remain the same.

(3) "Bill of sale" means the alternative livestock ~~invoice and~~ bill of sale form utilized by the Department of Livestock to document the valid transfer of ownership of alternative livestock.

(4) remains the same.

(5) "Certificate of veterinary inspection" means the Department of Livestock inspection certificate form ~~designed to fulfill the requirements of a certificate of inspection under ARM 32.3.201 and~~ conforming to the requirements of the health certificate under ARM 32.3.206, for the inspection of alternative livestock. The form must include the number, species, age, sex, individual animal identification, owner, alternative livestock farm information and the reason for the inspection.

(6) through (32) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA  
IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The department proposes these changes to the definition of bill of sale and certificate of veterinary inspection to reflect current practices regarding the inspection of alternative livestock and to be consistent with language used throughout ARM pertaining to alternative livestock.

Authorization and implementation citations are being updated.

32.4.201 IDENTIFICATION OF ALTERNATIVE LIVESTOCK (1) remains the same.

(2) Every alternative livestock animal must be marked with a whole herd mark (herd tattoo) registered to ~~the~~ an alternative livestock farm animal owner and placed in the location on the animal identified by the department's recorder of marks and brands.

(a) The herd tattoo placed in an animal born on the alternative livestock farm or imported to the alternative livestock farm from out-of-state shall be that of the owner of the animal and is recognized as the original tattoo.

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

(d) All animal identification tags retrieved from alternative livestock by the department-designated agent shall be submitted to an approved diagnostic laboratory with samples for CWD testing or to the department Helena office for animals that are not CWD test eligible.

(4) and (5) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA  
IMP: 81-2-102, 81-2-103, 87-4-422, MCA

32.4.203 WAIVERS TO IDENTIFICATION (1) Under the authority of 87-4-414(5), MCA, the department may grant a temporary waiver to identification requirements. The licensee may request a temporary waiver if the animal meets the following requirements:

(a) the animal is tattooed in compliance with 81-3-102, MCA, or 87-1-231, MCA; and

(b) for animals 12 months of age and older, the animal has one existing form of approved identification.

~~(b) the animal has been implanted with a form of microchip identification approved and accepted by the department; and~~

~~(c) cervidae must be tested annually for TB and brucellosis.~~

~~(2) The state veterinarian may require additional tests as necessary.~~

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

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA  
IMP: 81-2-102, 81-2-103, 87-4-422, MCA



REASON: The department is proposing the changes to ARM 32.4.201 and 32.4.203 to clarify language regarding the tattoo of alternative livestock born on a Montana alternative livestock premises and transferred to a second Montana alternative livestock premises. Because of limited availability of locations in which these animals can be tattooed, these animals are not re-tattooed. ARM 32.4.203 only applies to animals imported from out of state. The proposed changes pertaining to identification retrieved from alternative livestock are being updated to reflect a change in protocol for submission of tissues for CWD testing. Part of the CWD testing process is genetic verification that a CWD positive sample is a genetic match to the animal that the sample is reported to have originated from. This is done by genetic testing of the sample and a section of ear left with the official identification.

Finally, the department proposes to change the process by which an animal is eligible for a waiver to identification in order to provide a more realistic waiver option without increasing the risk associated with issuing such a waiver.

Authorization and implementation citations are being updated.

32.4.301 INSPECTION OF ALTERNATIVE LIVESTOCK (1) Prior to the sale, transfer of ownership, or transportation of a live animal from a licensed alternative livestock farm, with the exclusion of omnivores and carnivores, the animal must be inspected by the department-designated agent with the following exceptions:

- (a) and (b) remain the same.
- (c) Animals requiring emergency medical treatment may be transported without prior inspection for veterinary treatment if the following conditions are met:
  - (i) Prior to the movement of the animal, the owner must call the department (Helena office), and file an intent to transport the animal and schedule the inspection of the animal at the destination vet clinic. ~~Prior to movement of the animal, an alternative livestock veterinarian must review the animal's reported condition and determine it to be an "emergency."~~
  - (ii) An inspection must be completed by an alternative livestock veterinarian prior to movement from the vet clinic and return to the alternative livestock farm; and
  - (iii) Any untagged and untattooed alternative livestock must be tagged and marked in compliance with 87-4-414, MCA and 81-3-102, MCA prior to return to the alternative livestock farm; ~~and~~
- (d) Animals transported directly to an approved slaughter facility may be transported without prior inspection if all of the following conditions are met:
  - (i) ~~all animals on the permit are required to be~~ all animals are required to be officially identified with a Montana eartag; ~~and~~
  - (ii) prior to the movement of the animal, the alternative livestock licensee or their agent must call the department (Helena office) and request a transport permit number, provide the department the complete individual animal identification, age, sex, and species of each animal intended for shipment and the immediate destination of the animals; ~~and~~

- (iii) the department (Helena office) will issue a transport permit number that will be valid for 48 hours from the time of issue to allow movement of the animals from the alternative livestock farm to the approved slaughter facility; ~~and~~
- (iv) the transport permit number must be written on a department-approved form, a copy of which must accompany the animal(s) to the destination; ~~and~~
- (v) the alternative livestock licensee shall retrieve the alternative livestock animal head(s), all official identification tags, an official receipt for the animal(s) from the slaughter facility; and
- (A) for animals meeting test age criteria, the licensee ~~shall~~ must ensure the appropriate CWD testing samples are submitted by an alternative livestock veterinarian to an approved laboratory for testing; ~~and~~
- (vi) through (e) remain the same.
- (2) For animals that are killed by predators or die of natural causes, the animal death must be reported to the department (Helena office) within ~~one~~ five working days of the discovery of death.
- (a) through (3) remain the same.
- (4) A valid bill of sale must accompany any sale, or transfer of ownership of any alternative livestock farm animal, carcass, meat or parts.
- (a) through (7) remain the same.

AUTH: 81-2-102, 81-2-103, 81-2-104, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The department is proposing the requirement to have animals inspected by a veterinarian prior to transport to a veterinary hospital for emergency treatment be removed. By the process of the owner first obtaining a permit for transport from the department, the movement of the animal and the verification of identification will be accomplished by reconciliation with the veterinarian's records. The requirement for an additional exam could be burdensome. The proposed change to the requirements for transport of animals direct to slaughter without prior examination is to clarify the currently outlined stipulations.

Finally, to be consistent with USDA chronic wasting disease program standards, the department is proposing to increase the number of days an alternative livestock licensee has to report on-farm mortalities.

Authorization and implementation citations are being updated.

32.4.401 CHANGE OF OWNERSHIP TESTING REQUIREMENTS FOR ALTERNATIVE LIVESTOCK (1) remains the same.

(2) The department may waive change of ownership and transportation testing requirements of alternative livestock consigned for ~~sale as shooters and/or~~ slaughter on the immediate alternative livestock farm premises, or consigned to an out-of-state destination with the following conditions:

- (a) and (b) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

32.4.403 REQUIREMENTS FOR ALTERNATIVE LIVESTOCK GAMETES (OVA AND SEMEN) AND EMBRYOS (1) The use of semen within the state of Montana and the import of semen into the state, for artificial insemination of alternative livestock must meet all of the requirements of ~~81-2-403~~ 81-2-703, MCA, rules promulgated under the authority of ~~81-2-402~~ 81-2-703, MCA, and any order of the state veterinarian.

(2) remains the same.

AUTH: 81-2-102, 81-2-103, 81-2-703, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The department is proposing to strike existing language in ARM 32.4.401 and 32.4.403 referencing alternative livestock as shooters as this is a prohibited activity according to Fish, Wildlife and Parks statute. The department is also proposing to update statutory citations to reflect changes made by the 2019 Legislature.

32.4.601 IMPORTATION OF ALTERNATIVE LIVESTOCK (1) through (3) remain the same.

(4) Alternative livestock shall be accompanied by an official health certificate and a permit, which must be attached to the waybill or be in the possession of the driver of the vehicle or person in charge of the animals. When a single health certificate ~~and/or~~ permit is issued for animals being moved in more than one vehicle, the driver of each vehicle ~~shall have in his/her possession~~ must possess a copy of the health certificate or permit.

(a) The official health certificate must meet all of the requirements of ARM 32.3.206 and the accredited veterinarian issuing the health certificate must certify that the following conditions are true:

(i) All elk in the shipment have been certified free from red deer gene markers as required by ARM 32.4.402. No elk-red deer hybrid may be imported. Certification must be provided to the department prior to the issuance of an import permit;

(ii) The accredited veterinarian issuing the health certificate shall assess the herd of origin and determine if the alternative livestock have been infected by or exposed to *Mycobacterium paratuberculosis* (Johnes disease). A statement summarizing ~~his~~ the findings shall be included on the health certificate. No animal exposed to or infected with *M. paratuberculosis* may be imported;

(iii) through (10) remain the same.

AUTH: 81-2-102, 81-2-103, ~~81-2-402~~, 81-2-707, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 81-2-402, ~~81-2-403~~, 81-2-703, 81-2-707, 81-3-102, 87-4-414, 87-4-422, MCA

REASON: The department is proposing clarifying language in ARM 32.4.601 with no change to the intent or meaning of existing language. The department is also

proposing updating the authorizing an implementing statutory citation to reflect changes made by the 2019 Legislature.

32.4.802 QUARANTINE FACILITY (1) remains the same.

(2) ~~An alternative livestock farm license or the approval~~ Approval for expansion of ~~the an~~ alternative livestock farm shall not be granted by the Department of Fish, Wildlife and Parks until the licensee ~~applicant~~ receives department approval of the quarantine facility and handling facilities.

(3) ~~A licensee applying for an expansion of an alternative livestock farm~~ The applicant for an alternative livestock farm license shall submit the following to the department and the Department of Fish, Wildlife and Parks at the time the application ~~(or application for an expansion) for the alternative livestock farm license~~ is submitted to the Department of Fish, Wildlife and Parks:

(a) through (6) remain the same.

AUTH: 81-2-102, 81-2-103, 87-4-422, MCA

IMP: 81-2-102, 81-2-103, 87-4-422, MCA

REASON: The Department of Livestock is proposing to remove references to new applications for alternative livestock licenses because the issuance of new licenses under 87-4-407, MCA, has been prohibited since November 7, 2000.

Authorization and implementation citations are being updated.

32.4.1301 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA, ARM 32.4.101, and any subsequent department rule or order including 9 CFR 55 and 81.

(1) through (5) remain the same.

(6) "CWD exposed cervid" or "exposed animal" means a cervid that is from an affected herd or for which epidemiological investigation indicates contact with CWD affected cervids or contact with cervids from a CWD affected herd or contact with a contaminated premises within the last five years.

(7) "CWD exposed cervid herd" or "exposed herd" means ~~cervids that are an affected herd or herds~~ for which epidemiological investigation indicates contact with CWD affected cervids or contact with cervids from a CWD affected herd or contact with a CWD positive animal within the five years prior to the animal's diagnosis.

(8) through (10) remain the same.

(11) "CWD trace herd" or "trace herd" is a cervid herd where an affected animal resided within ~~36 months prior to its death~~ five years prior to that animal's diagnosis with CWD, or any cervid herd which received animals from a CWD affected or exposed herd within ~~36 months of the death of a CWD affected animal~~ the previous five years.

(12) through (17) remain the same.

AUTH: 81-2-103, 81-2-104, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department is proposing to update definitions for exposed and trace herds/animals, increasing the time of exposure to five years for all categories to reflect newly published USDA CWD herd certification program standards.

32.4.1302 REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA ALTERNATIVE LIVESTOCK FARM CERVIDAE FOR CHRONIC

WASTING DISEASE (1) The licensee must present ~~his~~ the entire herd ~~annually~~ every 11-13 months for visual inspection by a designated agent of the department, including verification and recording of visual identification. The department will ~~verify~~ reconcile alternative livestock game farm animal's identification and the alternative livestock inventory ~~must reconcile~~ with the department's records.

(2) The licensee must present the entire herd no more than every three years beyond the initial herd enrollment for physical inspection by a designated agent of the department, including verification and recording of all forms of identification. The department will reconcile alternative livestock game farm animal's identification and the alternative livestock inventory with the department's records.

(3) The licensee must retain a complete herd inventory of animals that shall include all forms of identification, age, species, sex, source, and death if applicable. Individual animal records must be retained for five years after a cervid has left a herd or has died. Records must be made available to department personnel upon request and at the time of each annual inspection or inventory.

~~(2)~~ (4) The licensee must report all alternative livestock deaths to the department (Helena office) within ~~one~~ five days of the discovery of death as required by 87-4-415, MCA.

~~(3)~~ (5) Upon the discovery of dead cervids, the licensee must immediately request an inspection of the alternative livestock as required by ARM 32.4.301. At the time of the inspection of the dead animal, the alternative livestock veterinarian shall remove the currently required tissue samples and/or specimens and submit them to a department-approved laboratory for testing for chronic wasting disease (CWD).

(a) and (i) remain the same.

(ii) If a licensee collects CWD samples they must submit the currently required tissue samples to an alternative livestock veterinarian along with the animal's ear(s) or cape with ears intact containing official identification tags and tattoo.

(iii) through (e) remain the same.

~~(4)~~ (6) Failure to comply with the requirements of this rule may result in the following:

(a) A requirement to replace missed or poor-quality samples with testable post-mortem samples from an equal number of animals of the same sex and species as the missed samples.

~~(a)~~ (b) The monitored status of the herd may be reclassified to "suspended-" or reduced.

~~(b)~~ (c) The cervid herd may be placed under a hold order.

~~(c)~~ (d) The department may consider failure to comply with this rule as a violation of 87-4-427, MCA.

~~(5)~~ (7) Any person having knowledge that an alternative livestock farm cervid has been diagnosed as affected with CWD or exposed to CWD must report that knowledge to the department as required by ARM 32.4.1001.

AUTH: 81-2-103, 81-2-104, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department is proposing to clarify requirements for annual herd inventories and inspections to be consistent with proposed USDA program standards. These changes include an annual visual inspection of all animals, a three-year requirement for physical inspection, and records keeping requirements for alternative livestock licensees.

The department is also proposing to increase the amount of time an alternative licensee has to report deceased cervids.

An authorization citation is being updated accordingly.

32.4.1303 ALTERNATIVE LIVESTOCK MONITORED HERD STATUS FOR CHRONIC WASTING DISEASE (1) The alternative livestock cervid herd shall be assigned a monitored herd status by the department at the conclusion of each year of mandatory CWD surveillance as follows:

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

(v) Level V is the status of a herd after completion of five years of required surveillance. For those enrolled in the voluntary federal CWD herd certification plan, one year from the date a herd is placed in Level 5 status, the herd status will be changed to Certified, and will remain in Certified status as long as it is enrolled in the program, provided its status is not lost, ~~or suspended,~~ or reduced in accordance with these rules.

(c) remains the same.

AUTH: 81-2-103, 81-2-104, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department is proposing providing an allowance to reduce the CWD status of producers who fail to comply with CWD testing requirements to reflect newly published USDA CWD herd certification program standards.

An authorization citation is being updated accordingly.

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) and (2) remain the same.

(3) The state veterinarian may deny importation from states that do not meet the following requirements:

(a) The state of origin must have the legal means of control ~~and/or~~ disposition of CWD affected, exposed or trace herds;

(b) the state of origin must have the power and authority to quarantine CWD affected, exposed or trace herds; and

(c) if CWD has been confirmed in any herds within the state of origin, the state veterinarian of that state must have completed an epidemiological investigation and identified all CWD affected, exposed or trace herds; and

(d) no confirmed cases of CWD in wildlife as established by a wildlife surveillance program that the state veterinarian determines is equivalent to or more robust than Montana's program.

(4) remains the same.

AUTH: 81-2-103, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department proposes adding a condition by which the state veterinarian can deny the importation to include presence of CWD or lack of an established surveillance program for wildlife to address the potential risk of importing a CWD positive animal in the absence of an approved ante-mortem test.

32.4.1311 MANAGEMENT OF ALTERNATIVE LIVESTOCK CERVID HERDS IDENTIFIED AS CWD TRACE HERDS (1) through (1)(d) remain the same.

(i) The entire herd shall be placed under a hold order quarantine and ~~shall be restricted from movement from the premise for a period of 12 months~~ five years from the last exposure to a CWD positive animal. ~~date of death of the CWD affected cervid traced to the herd.~~

~~(ii) The high-risk animals may be placed under an extended hold order or quarantine for a period of 48 months.~~

~~(iii)~~ (ii) High-risk animals shall be restricted from contact with other animals in the herd.

~~(iv)~~ (iii) The licensee may sacrifice all high-risk animals and submit tissue samples and/or specimens from each CWD test eligible animal in accordance to ARM 32.4.1302. If all high-risk animals are sacrificed and no CWD positive animal is identified, the ~~hold order on~~ quarantine of the remaining animals will be reviewed for release.

(e) remains the same

(f) The CWD monitored herd status will be designated as "CWD monitored, status pending" until the ~~hold order~~ quarantine is released.

AUTH: 81-2-103, 81-2-104, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department is proposing to update the duration of a quarantine for CWD trace herds to be consistent with newly published USDA program standards.

An authorization citation is being updated accordingly.

32.4.1313 MANAGEMENT OF CWD POSITIVE ALTERNATIVE LIVESTOCK CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND

WITH THE PROBABILITY OF CWD TRANSMISSION (1) Disposition of cervid herds with a CWD confirmed diagnosis and the probability of CWD transmission within the herd is as follows:

- (a) Complete depopulation and post-mortem testing of the herd; or
- (b) The entire herd shall be placed under quarantine for a period of five years since the last CWD positive case.
- ~~(a) (i) The licensee must comply with CWD surveillance of the herd as outlined in ARM 32.4.1302.~~
- ~~(b) The licensee shall present the entire herd for inspection and inventory within ten days of notification of the state veterinarian.~~
- ~~(c) The state veterinarian shall complete an epidemiological investigation of the herd.~~
- ~~(d) The state veterinarian shall identify high-risk animals within the herd.~~
- ~~(i) The entire herd shall be placed under a quarantine for a period of 36 months from the date of death of the last CWD affected animal.~~
- ~~(ii) High-risk animals shall be restricted from contact with other animals in the herd.~~
- ~~(iii) After the 36-month quarantine period, the high-risk animals may be placed under a hold order for an additional 12 months.~~
- ~~(iv) The licensee may sacrifice all high-risk animals and submit tissue samples and/or specimens from each CWD test eligible animal in accordance to ARM 32.4.1302. If all high-risk animals are sacrificed and no CWD positive animal is identified, the herd will remain under quarantine for three years from the last diagnosed case.~~
- ~~(e) (ii) The licensee shall meet with the state veterinarian and develop a herd plan within 15 30 days of the detection of CWD in the herd inventory and inspection date as required under (1)(b).~~
- ~~(f) The herd will be designated as "monitored, herd status pending."~~

AUTH: 81-2-103, 81-2-104, 87-4-422, MCA  
IMP: 81-2-103, 87-4-422, MCA

REASON: The department is proposing changes to ARM 32.4.1313 to reflect changes and updates to USDA CWD program standards. The changes reflected here are in line with existing language and current management of CWD infected and exposed premises. Additionally, the department is proposing an additional stipulation to importation of cervids to establish that an area may not be designated as free of CWD if no wildlife surveillance has been conducted.

An authorization citation is being updated accordingly.

4. The department proposes to repeal the following rule:

32.4.1312 MANAGEMENT OF ALTERNATIVE LIVESTOCK CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND WITH LOW PROBABILITY OF CWD TRANSMISSION



AUTH: 81-2-103, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: The department proposes to repeal ARM 32.4.1312 because all herds diagnosed with CWD will be managed regardless of probability of CWD transmission according to USDA program standards.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., October 18, 2019.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., October 18, 2019.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10, based upon approximately 30 current producers who hold an active alternative livestock license and 71 active veterinarians who would be required to report and quarantine animals having the diseases listed in ARM 32.3.104.

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

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

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

BY: /s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Board of Livestock  
Department of Livestock

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.202 requirements for	)	AMENDMENT
importation, 32.3.203 importation of	)	
diseased animals, 32.3.206, official	)	NO PUBLIC HEARING
health certificate documents for	)	CONTEMPLATED
importation, 32.3.207 permits, and	)	
32.3.214 special requirements for	)	
goats	)	

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on October 11, 2019, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.3.202 REQUIREMENTS FOR IMPORTATION (1) ~~Unless otherwise specifically provided in this rule all animals, animal semen, and animal biologics transported or moved into the state of Montana must be accompanied by an official health certificate and a permit~~ Animals or animal semen may not be brought into the state of Montana without a certificate of veterinary inspection or other documentation as approved by the department. For each individual shipment, the person in charge of the animals or all drivers of vehicles transporting animals must have in their possession copies of all required documentation. The driver of the vehicle or person in charge of the animals must have in their possession a copy of the official health certificate and permit number. When a single health certificate or permit is issued for animals being moved in more than one vehicle the driver of each vehicle shall have in his possession a copy of the health certificate or permit.

(2) The department may also require a permit for animals, animal semen, or animal biologics brought into the state.

AUTH: 81-2-102, ~~81-2-703~~, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, ~~81-2-703~~, 81-20-101, MCA

32.3.203 IMPORTATION OF DISEASED ANIMALS (1) ~~No permit may be issued for livestock~~ Livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease may not enter the state unless destined directly for slaughter at a slaughterhouse under USDA supervision, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under USDA supervision. In addition, all conditions for the movement of animals from a quarantined area established by the quarantining authority or U.S. Department of Agriculture must be met.

(2) remains the same.

AUTH: 81-2-102, 81-20-101, MCA

IMP: 81-2-102, 81-20-101, MCA

32.3.206 OFFICIAL HEALTH CERTIFICATE DOCUMENTS FOR IMPORTATION (1) through (5) remain the same.

AUTH: 81-2-102, 81-2-104, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, 81-2-104, 81-2-703, 81-20-101, MCA

32.3.207 PERMITS (1) through (4) remain the same.

(5) When these rules require entry by permit, at the time the permit is issued, the department may require that an official health certificate or other approved documentation be obtained either at the point of origin, the point of destination, or some other location within Montana designated by the department.

AUTH: 81-2-102, 81-2-103, 81-2-104, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-2-104, 81-2-703, 81-20-101, MCA

REASON: Historically, the Department of Livestock has required that animals, animal semen, and animal biologics have both a health certificate and an import permit for entry into Montana. Import permits allowed the department to obtain real time movement data ahead of the receipt of paper health certificates in the Helena office, a process that can take several weeks. Electronic health certificates allow for the rapid transmittal of movement data making the permitting process unnecessary. For biologics, a health certificate is not the most appropriate documentation of importation and for many biologics, there is no clear benefit of regulating importation. The screening and qualification process that these products undergo to be licensed by the USDA Center for Veterinary Biologics far exceeds the level of expertise within the Department of Livestock.

Therefore, the department is proposing amendments to ARM 32.3.202 requirements for importation, 32.3.203 importation of diseased animals, 32.3.206, official health certificate documents for importation, and 32.3.207 permits in response to HB112.

HB112 was a department-requested piece of legislation that revised the requirements for importation of animals, animal semen, and animal biologics into

Montana, clarifying documentation and permit requirements for animal movements, and repealed regulations for semen used in artificial insemination.

The changes to the MCA associated with HB112 are set to take effect October 1, 2019, and the proposed amendments to the above administrative rules reflect that house bill.

The authorization citations in ARM 32.3.202 have been updated.

32.3.214 SPECIAL REQUIREMENTS FOR GOATS (1) remains the same.

(2) Brucellosis test-eligible dairy breeds of goats may enter the state of Montana provided the animals:

(a) through (7) remain the same

AUTH: 81-2-102, 81-2-103, 81-2-707, 81-20-101, MCA

IMP: 81-2-102, 81-2-103, 81-2-701, 81-20-101, MCA

REASON: In FY19, Montana imported 737 goats; 264 of those goats were dairy breeds and 473 were meat breeds. The department is proposing the addition of clarifying language specifying that only dairy breeds of goats are required to have a negative brucellosis test prior to importation. Testing of goats for brucellosis is primarily focused on *Brucella melintensis*. This disease is considered a foreign animal disease and is not known to be present in the United States. The primary concern of the disease is spread to humans through the consumption of dairy products thus the focus on dairy breeds of goats. *Brucella abortus* rarely affects small ruminant species.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, to be received no later than 5:00 p.m., October 18, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., October 18, 2019.

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

affected has been determined to be 4, based upon approximately 46 importers of goats into Montana.

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

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

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

BY: /s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Board of Livestock  
Department of Livestock

BY: /s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State September 10, 2019.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 36.22.1242 pertaining to the	)	AMENDMENT
Board of Oil and Gas Conservation	)	
privilege and license tax	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Concerned Persons

1. On December 12, 2019, the Board of Oil and Gas Conservation and the Department of Natural Resources and Conservation propose to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Board of Oil and Gas Conservation no later than 3:00 p.m. on October 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Jim Halvorson, Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, Montana, 59102; telephone (406) 656-0040; fax (406) 655-6015; TDD/Montana Relay Service (406) 444-1421; or e-mail [jhalvorson@mt.gov](mailto:jhalvorson@mt.gov).

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

36.22.1242 REPORTS BY PRODUCERS – TAX REPORT – TAX RATE

(1) remains the same.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be ~~400~~ 83.33 percent of the rate authorized in 82-11-131, MCA, (3/10 of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after ~~October 1, 2016~~ January 1, 2020.

AUTH: 82-11-111, MCA

IMP: 82-11-123, 82-11-131, MCA

REASON: Under current forecast oil and gas prices and production, the proposed rate reduction will provide adequate income for board operations and other activities required by statute.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: James Halvorson, Board of Oil and Gas Conservation and the Department of Natural Resources and Conservation, 2535 St.

Johns Avenue, Billings, Montana, 59102; telephone (406) 656-0040; fax (406) 655-6015; or e-mail jhalvorson@mt.gov, and must be received no later than 5:00 p.m., October 18, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to James Halvorson at the above address no later than 5:00 p.m., October 18, 2019.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 persons based on the number of oil and gas producers in the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in number 2 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 rule will not significantly and directly impact small businesses.

/s/ Steve Durrett  
Steve Durrett, Chairman  
Board of Oil and Gas  
Conservation

/s/ John E. Tubbs  
John E. Tubbs  
Director  
Department of Natural Resources and  
Conservation

/s/ Robert Stutz  
Robert Stutz  
Rule Reviewer

Certified to the Secretary of State September 10, 2019.



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

In the matter of the adoption of New	)	NOTICE OF EXTENSION OF
Rules I through III, and the	)	COMMENT PERIOD ON
amendment of ARM 37.86.4401,	)	PROPOSED ADOPTION AND
37.86.4402, 37.86.4406, 37.86.4412,	)	AMENDMENT
37.86.4413, and 37.86.4420	)	
pertaining to rural health clinics and	)	
federally qualified health centers	)	

TO: All Concerned Persons

1. On July 26, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-877 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1017 of the 2019 Montana Administrative Register, Issue Number 14.

2. A public hearing was held on August 15, 2019, and the department received comments until 5:00 p.m., August 23, 2019. A comment was received asking what methodology the department will use to determine whether or not an RHC's or FQHC's change in scope of service will result in an incremental change to the facility's PPS rate. The department has determined the comment is well taken and that the calculations should be published in the administrative rules. The department now proposes the following additional amendment to ARM 37.86.4412 that includes the calculations and a reference to the alternative payment methodology. Also, the department proposes the following additional amendment to ARM 37.86.4401 to make clear that the definition of "baseline PPS rate" includes rates established pursuant to the alternative payment methodology and rates established at the conclusion of a change in scope of service application. In light of the additional proposed amendments, the department is extending the comment period on these rules to 5:00 p.m., September 27, 2019.

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

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS (1) remains as proposed.

(2) "Baseline PPS rate" is defined as an RHC's or FQHC's current the PPS rate established in accordance with ARM 37.86.4413(4), ARM 37.86.4420(2), [NEW RULE II], or [NEW RULE III], as adjusted annually by the Medicare economic index (MEI).

(3) through (18) remain as proposed.

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

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

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) through (5) remain as proposed.

(6) For RHCs or FQHCs that had their initial Medicaid prospective payment system base visit rate calculated in 2001 or starting with the third fiscal year (for "new" RHCs or FQHCs as defined at ARM 37.86.4413), the prospective payment system per-visit rate may be adjusted to take into account any increase or decrease in the scope of service. The department uses the following calculations to determine the amount of an incremental change, if any, and the resulting new PPS rate:

$$\frac{A}{B} = C$$

$$\frac{D}{E} = F$$

$$F - C = IC$$

$$\text{Current PPS rate} + IC = \text{New PPS rate}$$

- (a) "A" represents allowable costs before the change in scope of service;
- (b) "B" represents total visits before the change in scope of service;
- (c) "C" represents cost per visit before the change in scope of service;
- (d) "D" represents allowable costs after the change in scope of service;
- (e) "E" represents total visits after the change in scope of service;
- (f) "F" represents cost per visit after the change in scope of service; and
- (g) "IC" represents the incremental change due to the change in scope of services.

(7) and (8) remain as proposed.

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

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

4. 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 September 24, 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](mailto:dphhslegal@mt.gov).

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., September 27, 2019.

/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 September 10, 2019

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

In the matter of the adoption of New ) AMENDED NOTICE OF PUBLIC  
Rules I through LXI pertaining to ) HEARING ON PROPOSED  
private alternative adolescent ) ADOPTION  
residential programs or outdoor )  
programs (PAARP) )

TO: All Concerned Persons

1. On August 23, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-890 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1309 of the 2019 Montana Administrative Register, Issue Number 16.

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 September 26, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The fiscal impact statement was not included in the Notice of Public Hearing on Proposed Adoption for MAR Notice No. 37-890. This Amended Notice will provide the fiscal impact statement that was not included in the Notice of Public Hearing on Proposed Adoption and reads as follows:

Fiscal Impact

The licensing fee schedule will remain unchanged from when the program was licensed by the Department of Labor and Industry. At this time the expected cumulative total of licensing fees paid by the 17 facilities is estimated to be \$92,555 annually.

/s/ Flint Murfitt

Flint Murfitt  
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State September 10, 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 37.8.107 and 37.8.116 ) PROPOSED AMENDMENT  
pertaining to vital records )

TO: All Concerned Persons

1. On October 11, 2019, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 30, 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](mailto:dphhslegal@mt.gov).

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

37.8.107 AMENDMENT OF VITAL RECORD (1) through (7) remain the same.

(8) Except as provided in (5) and (6), Any subsequent change to information previously amended ~~through this process~~ under this rule requires an order from a court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) The fee for a certified copy (photocopy or

computer-produced) of a birth certificate, a fetal death certificate, an acknowledgment of paternity, or a delayed birth registration is \$12 ~~for the first copy of a specific request and \$5 for each additional copy of the same record requested at the same time as the first copy.~~

(2) The fee for a certified copy (photocopy or computer-produced) of a death certificate is \$15 ~~for the first copy of a specific request and \$8 for each additional copy of the same record request, at the same time, as the first copy. \$3.00 from each copy purchased from the department will be deposited into a special revenue~~

account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.

(3) The fee for an informational copy of a death certificate is \$13.00. ~~\$3.00 from each copy purchased from the department will be deposited into a special revenue account held by the Department of Labor and Industry for the general administration of the Board of Funeral Service.~~

(4) through (7) remain the same.

(8) The fee for filing a delayed registration of a vital record is \$25. A certified copy of the delayed certificate will be provided ~~to the person filing the delayed registration~~ for a fee of \$12.

(9) and (10) remain the same.

(11) The fee to provide electronic copies of index files is ~~\$25~~ \$50 per monthly update and ~~\$25~~ \$50 for an annual update.

(12) The fee for producing aggregate statistics is ~~\$25~~ \$50 per hour for programming and processing if that processing takes more than half an hour's work on existing programs.

(13) and (14) remain the same.

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA

IMP: 42-2-218, 50-15-111, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.8.107 and ARM 37.8.116 relating to the amendment of vital records and fees for vital record services. The following describes the purpose of the proposed rule amendments and necessity pertaining to the proposed amendments to the rules.

##### ARM 37.8.107

This rule sets out the process for amendment of vital records. The department is proposing to amend ARM 37.8.107(8) to clarify when a court order is necessary to amend a vital record. The proposed amendment clarifies that department supervisory staff may amend a vital record to protect the integrity, accuracy, and validity of the record without obtaining a court order. The proposed amendment also clarifies that medical certifications for cause of death may be amended without a court order when there is no dispute as to the cause of death. The proposed changes are necessary to eliminate uncertainty and confusion about when a court order is required to amend a vital record.

##### ARM 37.8.116

ARM 37.8.116 sets out fees for obtaining copies of vital records certificates; processing changes and amendments to records, e.g., adoptions; corrections; file searches; and obtaining customized analyses or research data sets based on vital records.

The department is proposing to amend the rule in two aspects. First, the department is proposing to remove an outdated reference to depositing a portion of the fee charged for copies of death certificates into a state special revenue account administered by the Board of Funeral Service. This requirement no longer exists under the law as the result of the sunset of House Bill (HB) 223 passed during the 2015 Montana Legislative Session. The rule change is necessary to ensure the rule conforms with current law.

Second, the department is proposing to modify and increase fees charged for copies of certain vital records and the fee charged for producing aggregate statistics. The fees for these services have not been revised or increased since 2002. Some of the activities involve substantial amounts of staff time, and the fees currently in effect do not cover the actual cost of these activities. Accordingly, taxpayers are presently subsidizing the cost of providing these services to the direct users of the services. The proposed fee increases will shift a greater proportion of the actual cost of the services to the individuals who directly use them.

The current fee for a certified copy of a birth certificate, fetal death certificate, acknowledgement of paternity, or delayed birth registration is \$12 for the first copy and \$5 for each additional copy. The proposed amendment would change the fee by charging \$12 per certified copy, regardless of the number of copies requested.

The current fee for a certified copy of a death certificate is \$15 for the first copy and \$8 for each additional copy. The proposed amendment would change the fee by charging \$15 per certified copy, regardless of the number of copies requested.

There is currently no fee for providing a copy of a delayed certificate to the person filing the delayed registration. The proposed amendment would impose a fee of \$12.

The fee to provide electronic copies of index files is currently \$25 per monthly update and \$25 for an annual update. The proposed amendment would increase each of these fees to \$50. The fee for producing aggregate statistics is currently \$25 per hour. The proposed amendment would increase this fee to \$50 per hour.

These proposed fee changes will better reflect the cost of providing the services and reduce the subsidy these activities receive from other Office of Vital Statistics (OVS) revenue.

#### Fiscal Impact

#### ARM 37.8.107

There is no anticipated fiscal impact associated with the proposed amendment of this rule.

ARM 37.8.116

The OVS processes approximately 1,000 requests for additional certified copies per year.

800 x \$7 = \$5,600 additional revenue (births)  
200 x \$7 = \$1,400 additional revenue (deaths)

The OVS processes approximately 20 delayed registrations of a Vital Record per year.

20 x \$12 = \$240 additional revenue

The OVS currently processes 20 monthly requests for index files.

20 x \$25 x 12 months = \$6,000 additional revenue

The OVS creates an average of five research data sets or customized analyses per year. It takes an average four hours to create each data set or analysis.

5 x 2 hours x \$25 additional fee per hour = \$250

Most citizens never have occasion to request additional copies of birth and death certificates. Those who need these services typically need only one transaction. Individuals who request research data sets and index files are usually grant-funded investigators. The increased costs are modest for the number of individuals affected.

Total estimated additional annual revenue for OVS: \$13,490.

Estimated number of persons affected: 1,045

5. The department intends to make these proposed rules effective as of January 1, 2020.

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: 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., October 18, 2019.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have



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

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

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

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

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

Certified to the Secretary of State September 10, 2019.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 38.2.3301 and the repeal of	)	PROPOSED AMENDMENT AND
ARM 38.2.4204 pertaining to	)	REPEAL
discovery and pre-filed testimony	)	
procedures, or alternatively the	)	
amendment of ARM 38.2.3301 and	)	
38.2.4204	)	

TO: All Concerned Persons

1. On October 29, 2019, at 1:30 p.m., the Department of Public Service Regulation and the Public Service Commission (commission) will hold a public hearing in the Bollinger Room, at 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment and repeal or alternatively the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on October 15, 2019. Please contact Vicki LaFond-Smith, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail vicki.lafond-smith@mt.gov.

3. The rules proposed to be amended by one of the two proposed alternatives provide as follows, new matter underlined, stricken matter interlined:

Rule Amendment Option 1:

38.2.3301 DISCOVERY AND INVESTIGATION (1) ~~Techniques of prehearing discovery permitted in state civil actions may be employed in commission contested cases, and for this purpose the commission adopts rules 26, 28 through 37 (excepting rule 37(b) (1) and 37(b) (2) (d) of the Montana rules of civil procedure thereto. In applying the rules of civil procedure to commission proceedings, all references to "court" shall be considered to refer to the commission; references to the subpoena power shall be considered references to ARM 38.2.3302 through 38.2.3305; references to "trial" shall be considered references to hearing; references to "plaintiff" shall be considered references to a party; and references to "clerk of court" shall be considered references to the staff member designated to keep the official record in commission contested cases.~~ Pre-filed written testimony, pre-filed written cross-examination, and responses to that pre-filed written cross-examination are the primary methods of inquiry and investigation prior to an evidentiary hearing in commission contested case proceedings.

(2) Nothing in (1) of this rule shall be construed to limit the free use of data requests discovery and other methods of exchanging information among the parties and the commission. The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the commission. Additional discovery methods as described in Montana Rules of Civil Procedure 26(a) are permitted with commission approval. Unless otherwise specified by the commission, Rule 26(b) of the Montana Rules of Civil Procedure (excepting Rule 26(b)(4)(C)) establish the scope of discovery. Rule 37 governs discovery abuses, motions to compel, and sanctions.

(3) Consistent with ARM 38.2.901, only parties in a docket may pre-file written testimony. However, all parties in contested case proceedings, in addition to commission staff, individual commissioners, and hearing examiners, can investigate issues through pre-filed written cross-examination prior to an evidentiary hearing. Parties can only issue pre-filed written cross-examination to the commission with commission approval.

AUTH: 2-4-602, 69-1-110(3), 69-2-101, 69-2-102, 69-3-103, 69-3-106, 69-3-203, 69-3-321, 69-12-201(2), MCA  
IMP: 2-4-601, 69-2-101, MCA

#### Rule Amendment Option 2:

38.2.3301 DISCOVERY AND INVESTIGATION (1) Techniques of prehearing discovery permitted in state civil actions may be employed in commission contested cases, and for this purpose the commission adopts rules 26, 28 through 37 (excepting rule 37(b) (1) and 37(b) (2) (d) of the Montana rules of civil procedure in effect on the date of the adoption of this rule, and any subsequent amendments thereto. In applying the rules of civil procedure to commission proceedings, all references to "court" shall be considered to refer to the commission; references to the subpoena power shall be considered references to ARM 38.2.3302 through 38.2.3305; references to "trial" shall be considered references to hearing; references to "plaintiff" shall be considered references to a party; and references to "clerk of court" shall be considered references to the staff member designated to keep the official record in commission contested cases. Pre-filed written testimony, pre-filed written cross-examination, and responses to that pre-filed written cross-examination are the primary methods of inquiry and investigation prior to an evidentiary hearing in commission contested case proceedings, consistent with ARM 38.2.4204.

(2) Nothing in (1) of this rule shall be construed to limit the free use of data requests among the parties. The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the commission. Additional discovery methods in Montana Rule of Civil Procedure 26(a) are permitted with commission approval. Unless otherwise specified by the commission, Rule 26(b) of the Montana Rules of Civil Procedure (excepting Rule 26(b)(4)(C)) establish the scope of discovery. Rule 37 governs discovery abuses, motions to compel, and sanctions.

AUTH: 2-4-602, 2-4-612, 69-1-110(3), 69-2-101, 69-2-102, 69-3-103, 69-3-106, 69-3-203, 69-3-321, 69-12-201(2), MCA

IMP: 2-4-601, 69-2-101, MCA

38.2.4204 PREPARED PRE-FILED TESTIMONY AND CROSS-EXAMINATION (1) ~~At the direction of the presiding officer, the parties shall submit copies of prepared testimony and accompanying exhibits to be presented at any hearing to all other parties within time limits prescribed by the commission. To facilitate efficient contested case proceedings, pre-filed written testimony, pre-filed written cross-examination, and pre-filed written responses to cross-examination are required.~~

(2) Consistent with ARM 38.2.901, only parties in a docket may pre-file written testimony. However, all parties in contested case proceedings, in addition to commission staff, individual commissioners, and hearing examiners, can inquire and investigate issues through pre-filed written cross-examination prior to an evidentiary hearing. Parties can only issue pre-filed written cross-examination to the commission with commission approval.

~~(2)(3) In the discretion of the presiding officer, a witness' pre-filed testimony, pre-filed cross-examination, pre-filed written responses to cross-examination, and accompanying exhibits may:~~

- ~~(a) be read into the record on direct examination;~~
- ~~(b) be copied into the record without reading; or~~
- ~~(c) be identified and offered as an exhibit.~~

~~(3) Before any pre-filed testimony is copied in, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer, the reporter, and counsel for all parties.~~

AUTH: 2-4-612, 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA

IMP: 2-4-612, 69-2-101, MCA

REASON: These amendments are necessary to clarify the commission's long-standing data request discovery practice. The commission proposes two alternative rulemakings. Option 1 amends ARM 38.2.3301 and repeals ARM 38.2.4204. The repeal for option 1 is set out in paragraph 4 below. Option 2 amends both ARM 38.2.3301 and 38.2.4204.

The commission seeks input on which is the preferred option to streamline contested case proceedings, while effectively protecting the interests of parties appearing before the commission, the consuming public, and also the commission in sufficiently investigating issues. The reasons for both options are detailed below.

#### Rule Amendment Option 1:

The Montana Administrative Procedure Act (MAPA) requires the commission to establish rules of practice for discovery in contested case hearings. 2-4-602, MCA. The commission is bound by the Montana Rules of Evidence and may receive evidence in written form. 2-4-612(2), MCA. Typically, the commission requires pre-filed testimony in contested case hearings due to the voluminous and

technical subject matter of commission proceedings. See ARM Title 38, chapter 5, subchapter 1 (discussing the commission's minimum rate case filing standards). Parties have the right to conduct cross-examination of all pre-filed testimony. 2-4-612(5), MCA. The commission has the right to investigate and present issues in any contested case hearing. 69-2-102, 69-3-106(1), 69-3-203(2), 69-12-201(2), MCA.

Typically, parties engage in discovery before the commission with data requests, a form of written interrogatories unique to the commission. Commission data requests have resembled depositions by written questions, interrogatories to parties, requests for production, and requests for admission. Data requests are tailored to the nature of the proceeding, the issues being investigated, and the witness who filed testimony. For example, data requests directed at cost of capital experts could be similar to requests for admission on their specific methodology, while requests directed at avoided cost experts could be requesting production of the underlying calculations utilized to support the expert's testimony, and vice versa.

Data requests have been broadly utilized by parties, as well as commission staff and individual commissioners for decades. However, the commission's discovery rule is outdated for several reasons. First, data requests are novel to the commission and are not discussed in either Montana's Rules of Civil Procedure or Rules of Evidence. This creates uncertainty, most importantly when there are discovery disputes prior to a hearing, or with evidentiary disputes during a hearing. Amending the commission's discovery rule will help minimize disputes and provide greater certainty and transparency to commission proceedings.

Second, because the rule tailors the Rules of Civil Procedure to commission proceedings, for example by interpreting references to "court" to refer to the commission, there is risk of misrepresenting the commission's role as exclusively quasi-judicial. This has led various parties to challenge whether the commission can engage in discovery in contested case proceedings. *But see Williamson v. Mont. PSC*, 2012 MT 32 ¶ 31, 364 Mont. 128, 272 P.3d 71 ("The PSC is specifically *not* vested with judicial powers.") (emphasis in original); *and see State Bar v. Krivec*, 193 Mont 477, 484, 632 P.2d 707 (1981) ("The Public Service Commission is an example of an agency where quasi-legislative and quasi-judicial functions may overlap."). The commission believes that amending its rule will clarify the commission's role in discovery, consistent with its quasi-legislative and quasi-judicial powers, and the Rules of Evidence.

To that end, the commission issues this notice of rulemaking to amend ARM 38.2.3301. This rule renames "data requests" as "pre-filed cross-examination." This nomenclature attempts to resolve some of the ambiguities discussed above. Because data requests are almost exclusively directed at pre-filed applications or testimony, the requests are not like typical discovery, but rather more resemble cross-examination. This amended rule reflects that reality.

This revision will clarify the commission's discovery practice. Mont. R. Evid. 611(b)(1) (Pre-filed cross "should be limited to the subject matter of the direct examination . . ."). Yet this revision also retains the ability for parties to investigate additional issues as if on direct examination. This is accomplished by two means: (1) Rule 705 indicates that experts "may in any event be required to disclose the underlying facts or data on cross-examination"; and (2) Rule 611(b)(1) indicates that the commission may, "in the exercise of discretion, permit inquiry into additional

matters as if on direct examination." These rules ensure that parties retain their current ability to investigate issues beyond the scope of pre-filed testimony when necessary. While expanding cross-examination beyond pre-filed testimony should only occur "in the exercise of discretion" by the commission, the commission believes this is largely a non-issue which does not need clarification by administrative rule. Rather where a party seeks to expand its investigation beyond pre-filed testimony or an application, and that request is not resolved by Rule 705, either the requesting or objecting party can elevate the issue to the commission. This is consistent with the commission's rule on general intervention which also limits intervention to parties who do not broaden the issues in the original proceeding. ARM 38.2.2403.

Pre-filed cross examination also does not place greater burdens on requesting parties. Arguably, disputes concerning pre-filed cross examination require application of the relevance standard from Mont. R(s). Evid. 401 through 403, as opposed to the more lenient discovery scope standard in Mont. R. Civ. Pro. 26(b). The heightened relevance standard would limit robust discovery, and prevent effective resolution of contested case proceedings. Accordingly, the commission intends discovery to continue as historically practiced, with discovery disputes occurring prior to the evidentiary hearing resolved under the commission's discretion, while evidentiary disputes which occur during the evidentiary hearing resolved under the Rules of Evidence. *Williamson v. Mont. PSC*, 2012 MT 32 n. 5, 364 Mont. 128 272 P.3d 71 ("Although the Montana Rules of Civil Procedure do not govern PSC proceedings, 'they may still serve as guidance for the agency and the parties.'") (citation omitted); 2-4-612(2), MCA.

Pre-filed cross examination also codifies the commission's historic practice of who, and to whom, discovery issues. It permits all parties to engage in discovery with each other, and for the commissioners, hearing examiners, and commission staff to engage in discovery. However it prevents parties from engaging in discovery of commissioners, hearing examiners, and commission staff without prior approval. Importantly, by referring to "parties," this rule also permits parties to engage in discovery of commission staff if they have intervened as a party or protested a proceeding.

Commissioner, commission staff, and hearing examiner discovery is consistent with Title 69, MCA, and also the Rules of Evidence. In civil proceedings, the Court may interrogate any witness, whether called by the Court or a party. Mont. R. Evid. 614(a)–(b). To the extent parties challenge the commission's ability to investigate issues in contested case proceedings—notwithstanding 69-2-102, MCA, and various other statutes which explicitly provides that power—this amendment can provide further guidance. Additionally, this language does not prevent commissioners, hearing examiners, or commission staff from additional cross-examination during evidentiary hearings, as this rule is directed at pre-evidentiary hearing practices.

This rule incorporates portions of Mont. R(s). Civ. Pro. 26, and 28 through 37, yet provides parties the opportunity to utilize additional discovery methods permitted by Rule 26(a) upon commission approval. Historically, parties almost exclusively utilized data requests for pre-hearing discovery. The commission believes that focusing discovery around one mechanism, pre-filed cross-examination, will help

facilitate efficient proceedings, while at the same time preserving the ability for additional discovery mechanisms upon request.

This rule also retains the incorporation of Mont. R. Civ. Pro. 26(b), as this provides helpful guidelines and case law to determine the scope of discovery before the commission. However, the amendment does not incorporate Rule 26(b)(4)(C), as this subsection has various requirements for expert witness compensation that would not be practical or reasonable given the commission's substantial pre-filed expert testimony. This rule also retains the incorporation of Mont. R. Civ. Pro. 37, as this provides helpful guidelines and case law to govern discovery abuses.

This rule does not include specific dispute resolution language. Recently several parties have requested that objections to commission staff discovery be resolved by the full commission. The commission has agreed with this suggestion in several instances, but has declined in others, based on the facts and circumstances at issue. At this time the commission does not think it is necessary to address whether commission staff, hearing examiners, or the full commission should resolve discovery disputes. Rather the commission believes this issue is better resolved with each docket's Procedural Order. This process permits parties, through the reconsideration process, to request a different dispute resolution process if desired. See ARM 38.2.4806.

Finally, this rule includes additional statutory references to reinforce the commission's investigatory authority in various proceedings (69-2-102), includes authority regarding pre-filed cross-examination (2-4-602, 2-4-612(2), MCA, and Mont. R(s). Evid. 611(b)(1), 614(b), and 705), reorders the authority in sequential order, and includes MAPA's requirement for the commission to create a discovery rule as an implementing statute (2-4-601, MCA).

#### Rule Amendment Option 2:

Option 2 is premised on the same justification for Option 1, which streamlines the commission's current practice of investigating issues. However, it amends the commission's prepared testimony rule to include pre-filed written cross-examination questions, outlines who can file testimony and cross-examination questions, and directs parties in the discovery rule to the prepared testimony rule.

The commission proposes this alternative because pre-filed written testimony and pre-filed cross-examination are not quite discovery, even though both function as discovery before the commission. It might not be reasonable to include in the commission's MAPA-required discovery rule, mechanisms which are not typical discovery mechanisms.

Option 2 reflects that concern. This option also deletes ARM 38.2.4204 sections (1) and (3), as all parties and the commission have access to electronic copies of testimony, exhibits, and pre-filed cross-examination questions through the commission's online system. Requiring additional copies prior to a hearing to all parties, and then again at the hearing to all parties, the court reporter, and counsel, does not assist the commission in its decision-making. Nor does it reflect current practice where parties move for admission of testimony, data requests, and exhibits, without providing a physical copy to all the parties, the commission, and the court reporter.

4. The rule proposed to be repealed for Rule Amendment Option 1 is as follows:

38.2.4204 PREPARED TESTIMONY

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA  
IMP: 69-2-101, MCA

REASON: See reason section above.

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: Vicki LaFond-Smith, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail vicki.lafond-smith@mt.gov, and must be received no later than 5:00 p.m., November 8, 2019.

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

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

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

9. With regard to the requirements of 2-4-111, MCA, the Department of Public Service Regulation has determined that the amendment and repeal or alternatively the amendment of the above-referenced rules will not significantly or directly impact small businesses.

/s/ JUSTIN KRASKE

Justin Kraske  
Rule Reviewer

/s/ BRAD JOHNSON

Brad Johnson  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State on September 10, 2019.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 42.21.165 pertaining to ) AMENDMENT  
livestock reporting per capita fee )  
payment and refund process ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue proposes to amend the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 20, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

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

42.21.165 LIVESTOCK REPORTING AND PER CAPITA FEE PAYMENT AND REFUND PROCESS (1) through (4) remain the same.

(5) Per capita livestock fee payments are due to the department by May 31 of the reporting year. Livestock owners may be entitled to a per capita fee refund from the Montana Department of Livestock (DOL), under the provisions of 15-24-922, MCA, for livestock located out of the state during the reported tax year.

(6) ~~The Montana Department of Livestock (DOL)~~ has access to the department's livestock reporting and billing/payment data for compliance purposes. If the DOL determines that a livestock owner has not been reporting their livestock counts to the department as required, the DOL may provide the department with estimated livestock type and counts and the department will use this information to bill the livestock owner for the per capita livestock fees.

AUTH: 15-1-201, MCA

IMP: ~~15-6-207~~, 15-24-903, 15-24-905, 15-24-921, 15-24-922, 15-24-925, 87-4-406, MCA

REASONABLE NECESSITY: The department proposes to amend the catchphrase of ARM 42.21.165 and (5) to reflect that the Department of Livestock (DOL) has a per capita livestock fee refund process, provided in 15-24-922, MCA, for livestock owners who move livestock between states during a reported tax year. The proposed text in (5) will provide a cross-reference to the statute. The

department's amendment to (6) reflects the relocation of the full DOL agency reference to (5), which is necessary for clarity and brevity.

The department further proposes striking 15-6-207, MCA, which is an outdated implementing statute that has not applied to this rule since 2003.

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: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., October 18, 2019.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person in number 4 above no later than 5:00 p.m., October 18, 2019.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on the total number of persons who filed the required livestock report with the department for tax years 2017 and 2018.

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 different mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this notice is available through the Secretary of State's web site at [sosmt.gov/arm/register/](http://sosmt.gov/arm/register/).

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

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

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 42.12.145 and 42.13.103 pertaining to access control systems (ACS) ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT )

TO: All Concerned Persons

1. On October 15, 2019, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on September 27, 2019. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to adopt New Rule I and amend ARM 42.12.145 and 42.13.103 to implement Senate Bill 119 (2019) (SB 119) amendments to 16-6-103, MCA, by the 66th Montana Legislature regarding access control systems (ACS) at a retail alcoholic beverage licensee's licensed premises. An ACS restricts access to a licensed premises by locking its main entrance and requires access by approval and action of a licensee or its employees.

The department believes the proposed rulemaking under New Rule I is necessary to provide licensees with a minimal and uniform process of reporting necessary information to the department and local law enforcement since a licensee's implementation of an ACS directly impacts examination of a licensed retail premises pursuant to 16-6-103, MCA. The proposed amendments to ARM 42.12.145 and 42.13.103 are necessary to provide an exception to the unrestricted access policy for licensed premises that meet the requirements of 16-6-103, MCA. If the department did not adopt the proposed amendments, it would introduce conflicting provisions between 16-6-103, MCA, New Rule I, and ARM 42.12.145 and 42.13.103 as to when a licensee is complying with use of an ACS at their premises.

The necessity for specific section proposals in New Rule I is provided at the end of the rule.

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

NEW RULE I ACCESS CONTROL SYSTEMS (ACS) (1) A licensee who uses an ACS at the licensee's licensed premises, as provided in 16-6-103, MCA, shall notify the department using a form provided by the department:

(a) at least three business days prior to the licensee implementing the ACS; and

(b) no later than July 1 of the renewal period after the licensee ceases using the ACS.

(2) Notification information shall include:

(a) the date of activation, or deactivation, of the ACS; and

(b) acknowledgment from a local law enforcement agency with jurisdiction over the licensed premises that the agency was notified.

(3) A licensee is in violation of this rule and is subject to administrative action if the licensee fails to:

(a) notify the department and local law enforcement prior to implementing an ACS;

(b) notify the department and local law enforcement when the licensee ceases to use an ACS; or

(c) provide immediate access to the licensed premises pursuant to 16-6-103, MCA.

AUTH: 16-1-303, 16-6-103, MCA

IMP: 16-6-103, MCA

**REASONABLE NECESSITY:** Section (1) proposes to require the licensee to submit the notification request on a form provided by the department to ensure the department receives the information necessary to update its license data system. The department proposes to require the form at least three days prior to implementing an ACS to allow the department adequate processing time and to notify the Department of Justice, Gambling Control Division. The department also proposes to require licensee notification to the department no later than July 1 of the renewal period after the licensee ceases to use an ACS, which is necessary for the department to efficiently process the change during the annual license renewal cycle.

Section (2) proposes to reference the information that is required on the notification form for ACS tracking purposes and local law enforcement agency notification compliance.

Section (3) proposes to include circumstances which would cause a licensee to be in violation of the rule. The proposed list includes only those statutorily required and necessary items because a licensee's implementation of an ACS, and failure to meet these reporting requirements, directly impacts the ability of the department and its agents and local law enforcement to adequately enforce 16-6-103, MCA, and New Rule I(1) and (2).

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

42.12.145 ON-PREMISES CONSUMPTION BEER AND ALL-BEVERAGE

LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

(2) The premises of an on-premises consumption beer or all-beverage retailer may be considered suitable only if:

(a) through (f) remain the same.

(g) the premises are located on regular police beats and can be properly policed by local authorities, which includes the premises being located on property to which law enforcement has unrestricted access, except as provided in 16-6-103, MCA;

(h) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-4-402, 16-4-405, MCA

42.13.103 DEPARTMENT EXAMINATIONS (1) remains the same.

(2) Any authorized representative designated in (3) shall have immediate access to all parts of the licensed premises. ~~Doors~~ Except as provided in 16-6-103, MCA, doors of licensed premises shall not be locked while persons other than the licensee or the licensee's employees are within or upon the licensed premises.

(3) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-6-103, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., October 18, 2019.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

9. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov](http://revenue.mt.gov), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 22, 2019 and September 4, 2019.

11. 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/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Gene Walborn  
Gene Walborn  
Director of Revenue

Certified to the Secretary of State September 10, 2019.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 1.2.419 pertaining to the ) PROPOSED AMENDMENT  
scheduled dates for the 2020 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On October 11, 2019, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m., October 4, 2019, to advise us of the nature of the accommodation that you need. Please contact Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5476; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail [jdefilippis@mt.gov](mailto:jdefilippis@mt.gov).

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

<del>2019 Register Publication Schedule</del>		
Issue	Filing (due by noon)	Publication
1	January 2	January 11
2	January 15	January 25
3	January 29	February 8
4	February 12	February 22
5	March 5	March 15
6	March 19	March 29
7	April 2	April 12
8	April 16	April 26
9	April 30	May 10
10	May 14	May 24
11	May 28	June 7
12	June 11	June 21



13	June 25	July 5
14	July 16	July 26
15	July 30	August 9
16	August 13	August 23
17	August 27	September 6
18	September 10	September 20
19	September 24	October 4
20	October 8	October 18
21	October 29	November 8
22	November 12	November 22
23	November 26	December 6
24	December 17	December 27

2020 Register Publication Schedule

<u>Issue</u>	<u>Filing (due by noon)</u>	<u>Publication</u>
<u>1</u>	<u>January 7</u>	<u>January 17</u>
<u>2</u>	<u>January 21</u>	<u>January 31</u>
<u>3</u>	<u>February 4</u>	<u>February 14</u>
<u>4</u>	<u>February 18</u>	<u>February 28</u>
<u>5</u>	<u>March 3</u>	<u>March 13</u>
<u>6</u>	<u>March 17</u>	<u>March 27</u>
<u>7</u>	<u>April 7</u>	<u>April 17</u>
<u>8</u>	<u>April 21</u>	<u>April 30</u>
<u>9</u>	<u>May 5</u>	<u>May 15</u>
<u>10</u>	<u>May 19</u>	<u>May 29</u>
<u>11</u>	<u>June 2</u>	<u>June 12</u>
<u>12</u>	<u>June 16</u>	<u>June 26</u>
<u>13</u>	<u>June 30</u>	<u>July 10</u>
<u>14</u>	<u>July 14</u>	<u>July 24</u>
<u>15</u>	<u>July 28</u>	<u>August 7</u>
<u>16</u>	<u>August 18</u>	<u>August 28</u>
<u>17</u>	<u>September 1</u>	<u>September 11</u>
<u>18</u>	<u>September 15</u>	<u>September 25</u>
<u>19</u>	<u>September 29</u>	<u>October 9</u>
<u>20</u>	<u>October 13</u>	<u>October 23</u>
<u>21</u>	<u>October 27</u>	<u>November 6</u>
<u>22</u>	<u>November 10</u>	<u>November 20</u>
<u>23</u>	<u>December 1</u>	<u>December 11</u>
<u>24</u>	<u>December 15</u>	<u>December 24</u>

(2) remains the same.

AUTH: 2-15-401, MCA  
IMP: 2-4-312, MCA

REASONABLE NECESSITY: ARM 1.2.419 is proposed to be amended to set dates pertinent to the twice-monthly publication of the Montana Administrative Register during 2020. The schedule is being proposed at this time in order that it may be adopted in a timely manner to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [jdefilippis@mt.gov](mailto:jdefilippis@mt.gov), and must be received no later than 5:00 p.m., October 18, 2019.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

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

/s/ AUSTIN JAMES

Austin James  
Rule Reviewer

/s/ COREY STAPLETON

Corey Stapleton  
Secretary of State

Dated this 10th day of September, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 4.10.207, 4.10.504, 4.10.1201	)	
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 August 9, 2019, the Department of Agriculture published MAR Notice No. 4-19-263 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1109 of the 2019 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 9, 2019, the Department of Commerce published MAR Notice No. 8-94-171 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1120 of the 2019 Montana Administrative Register, Issue Number 15.

2. No comments or testimony were received.

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

/s/ Garrett Norcott  
Garrett Norcott  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I through VII pertaining to the     )  
administration of the Coal Trust         )  
Multifamily Homes (CTMH) Program     )

TO: All Concerned Persons

1. On July 26, 2019, the Department of Commerce published MAR Notice No. 8-111-170 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 992 of the 2019 Montana Administrative Register, Issue Number 14.

2. No comments or testimony were received

3. The department has adopted the above-stated rules as proposed.

MONTANA BOARD OF HOUSING  
Patrick E. Melby, Chairman

/s/ Garrett Norcott  
Garrett Norcott  
Rule Reviewer

/s/ Tara Rice  
Tara Rice  
Director  
Department of Commerce

Certified to the Secretary of State September 10, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM	)	AMENDMENT, AND REPEAL
18.8.101 and 18.8.431, and the	)	
repeal of ARM 18.8.432 pertaining to	)	
Motor Carrier Services Maximum	)	
Allowable Weight and Wintertime and	)	
Durational Permits	)	

TO: All Concerned Persons

1. On July 26, 2019, the Department of Transportation published MAR Notice No. 18-176 pertaining to the proposed adoption, amendment and repeal of the above-stated rules at page 1002 of the 2019 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule I (18.8.605), amended ARM 18.8.101 and 18.8.431, and repealed ARM 18.8.432 as proposed.

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

COMMENT #1: The department received two comments in support of the new rule and the proposed changes.

RESPONSE #1: The department thanks the commenters for their support.

/s/ Valerie A. Balukas  
Valerie A. Balukas  
Alternate Rule Reviewer

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

Certified to the Secretary of State September 10, 2019.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.174.401 fee schedule,	)	REPEAL
24.174.507 military training or	)	
experience, 24.174.524 collaborative	)	
practice agreement requirements,	)	
24.174.602 internship requirements,	)	
24.174.604 preceptor requirements,	)	
24.174.612 required forms and	)	
reports, 24.174.701 registration	)	
requirements, 24.174.703 use of	)	
pharmacy technician, 24.174.711 ratio	)	
of pharmacy technicians to	)	
supervising pharmacists, 24.174.835	)	
transfer of prescriptions, 24.174.2104	)	
registered pharmacist continuing	)	
education—requirements, and the	)	
repeal of 24.174.702 qualifications of	)	
pharmacy technician, 24.174.2101	)	
pharmacies—annual renewal,	)	
24.174.2102 pharmacy technician—	)	
renewal, 24.174.2103 renewals,	)	
24.174.2107 registered pharmacist	)	
continuing education—noncompliance	)	

TO: All Concerned Persons

1. On July 5, 2019, the Board of Pharmacy (board) published MAR Notice No. 24-174-71 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 935 of the 2019 Montana Administrative Register, Issue No. 13.

2. On July 26, 2019, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the August 2, 2019, deadline.

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

COMMENT 1: Many commenters expressed support for the entirety of the proposed amendments.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Several commenters supported the amendment to the fee schedule at ARM 24.174.401 regarding how technicians-in-training are licensed and related to changes to ARM 24.174.701 and 24.174.703. The commenters suggested the board allow at least one extension request for the new license type of temporary certified pharmacy technician. This extension would allow for 24 months or more to complete the required certification before the temporary license expires.

RESPONSE 2: The board concluded that the suggested amendments to allow for an additional 12-24-month extension of the proposed 12-month temporary certified pharmacy technician license is beyond the scope of the proposed amendments and may not be accomplished in a final notice. The board previously considered the proposed 12-month expiration date and may consider additional amendments if needed in the future.

The board notes that the issuance of a temporary certified pharmacy technician license is intended to be utilized one time and is valid for no more than 12 months. If a temporary licensee successfully passes a certification exam, they must notify the board for the temporary license to be transitioned to a full certified pharmacy technician license which must be renewed annually. If a temporary licensee fails to successfully complete a pharmacy technician certification exam prior to the expiration date of the temporary license, there is no authority for an extension request. In such a case, an individual may apply for a certified pharmacy technician license once they have successfully obtained certification pursuant to ARM 24.174.701.

COMMENT 3: Several commenters expressed support for the amendments to the collaborative practice agreement requirements at ARM 24.174.524 and stated the changes will reduce administrative burden on pharmacies.

RESPONSE 3: The board appreciates all comments received during the rulemaking process.

COMMENT 4: Several commenters supported the amendment removing interns from the pharmacist to technician ratio at ARM 24.174.711. While the commenters appreciated changing the ratio from 1:3 to 1:4, they requested the board instead expand it from 1:3 to 1:6 or remove the ratio entirely. The commenters provided examples and documents from other states having either a greater ratio or no ratio and asserted that utilizing technicians more will allow pharmacists more time to provide patient care services.

RESPONSE 4: The board determined that further increasing the ratio beyond 1:4 is a substantive change that cannot be accomplished in a final notice. The board discussed expanding the ratio during multiple board meetings prior to filing the proposal to expand to 1:4. Further, the board notes that the proposed amendment expands the ratio by 1 and removes interns from the ratio, which may lead to many pharmacy locations gaining two technicians per pharmacist.



COMMENT 5: Several commenters expressed support for the proposed changes to ARM 24.174.835 and offered additional amendments, including expanding technician duties to allow completion of prescription transfers verbally, removing the requirement to keep a nonfading hardcopy record of each prescription drug order transferred, and adding "if any" or "if applicable" to the information the receiving pharmacy shall receive and maintain, in ARM 24.174.835(2) and (3).

RESPONSE 5: The board reviewed additional changes regarding transfer of prescriptions, including technician duties, hardcopy documentation requirements, and information received by a pharmacy. The board has discussed potential changes to technician duties and may consider such amendments in the future. While reviewing the information received by a pharmacy, the board offered and approved a technical correction amendment to clarify current practice. However, the board is unable to make such substantive changes in a final notice as they are beyond the scope of the proposed amendments. The board will consider additional revisions to prescription transfer requirements as amendments to general documentation and record-keeping requirements are drafted in future projects.

4. The board has amended ARM 24.174.401, 24.174.507, 24.174.524, 24.174.602, 24.174.604, 24.174.612, 24.174.701, 24.174.703, 24.174.711, 24.174.835, and 24.174.2104 exactly as proposed.

5. The board has repealed ARM 24.174.702, 24.174.2101, 24.174.2102, 24.174.2103, and 24.174.2107 exactly as proposed.

BOARD OF PHARMACY  
TONY KING, PharmD  
PRESIDENT

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

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

Certified to the Secretary of State September 10, 2019.

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

In the matter of the amendment of ) CORRECTED NOTICE OF  
ARM 37.51.203, 37.51.310, and ) AMENDMENT  
37.51.1401 pertaining to foster care )  
licensing requirements )

TO: All Concerned Persons

1. On February 23, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-830 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 394 of the 2018 Montana Administrative Register, Issue Number 4. On April 27, 2018, the department published the notice of amendment at page 849 of the 2018 Montana Administrative Register, Issue Number 8.

2. An error occurred when the word "biannual" was inserted into the text of the rule, instead of "biennial." The department's intent was that the licenses would be renewed every two years after the initial year of licensing. The department's statement of reasonable necessity stated, "[t]he department proposes the rule be amended to allow for the approval of two year licenses following an initial license, which includes completion of the pre-service training and the first year training modules." The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.51.203 YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) and (2) remain as adopted.

(3) The department shall renew a youth foster home or kinship home license ~~biannually~~ biennially on the expiration date of the initial year's license if:

(a) through (5) remain as adopted.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on September 30, 2019.

/s/ Caroline Warne  
Caroline Warne  
Rule Reviewer

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

Certified to the Secretary of State September 10, 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 37.86.1102 and 37.86.1103 )  
pertaining to updating requirements )  
to limit opioid supply for members )  
without cancer diagnosis )

TO: All Concerned Persons

1. On July 26, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-865 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1012 of the 2019 Montana Administrative Register, Issue Number 14.

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

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) through (11)  
remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, 53-6-113, ~~53-6-144~~, MCA

37.86.1103 OUTPATIENT DRUGS, FRAUD, WASTE, AND ABUSE  
(1) through (4) remain as proposed.  
(5) "Opioid naïve member" means a member has not received a prescription for an opioid within the last ~~45~~ 90 days.  
(6) through (8) remain as proposed.  
(9) ~~For~~ Except as provided in (10), for an opioid-naïve member ~~who does not have a cancer diagnosis~~, the department does not authorize payment for opioid medications in quantities greater than a 7-day supply, ~~and each day's supply must be no more than 50 morphine milligram equivalents (MME).~~  
(10) The restriction imposed under (9) does not apply if the opioid is prescribed to treat:  
(a) chronic pain, pain associated with cancer, or pain experienced while the patient is in palliative care; or  
(b) opioid abuse or dependence, including but not limited to opioid agonists and opioid antagonists.  
(10) and (11) remain the same, but are renumbered (11) and (12).

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

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

COMMENT #1: Several commenters inquired why the opioid naïve lookback period was proposed to be 45 days, which differs from the 90-day lookback period in House Bill (HB) 86, which passed in the 2019 Legislative Session. The commenters requested the rule be changed to make it consistent with the requirements in HB 86.

RESPONSE #1: The department has determined these comments are well taken and has amended the rule to align with the statutory definition of "opioid-naïve." We concur that a 90-day lookback is appropriate for Medicaid members. The department originally drafted this rule prior to the 2019 Legislative Session and notes that there is no single and generally accepted definition of "opioid-naïve." Upon receiving the comments, the department agrees that maintaining consistency with the licensing requirements in HB 86 will help ensure compliance by providers. Therefore, the definition of "opioid-naïve" will be amended as suggested.

COMMENT #2: Commenters questioned why the exceptions in ARM 37.86.1103 differed from those in HB 86. The rule as originally proposed cited only a cancer diagnosis. The statute excludes persons receiving opioids for Medicated Assisted Treatment (MAT), cancer pain, chronic pain, or pain while in palliative care.

RESPONSE #2: The department has determined these comments are well taken and has amended the rule to align it with the statutory exceptions to the 7-day prescription supply limit. We concur that the rule should include the statutory exceptions to the 7-day supply limit and thus allow longer opioid prescription supply for Medicaid members who have cancer, chronic pain, or pain while in palliative care, or if the prescription is for the treatment of opioid abuse or dependence.

COMMENT #3: Several commenters opposed the proposed 50 morphine milligram equivalents (MME) per day limit for opioid naïve members for various reasons. Some stated the limit is arbitrary and not supported by CDC 2016 guidelines, that CDC guidelines recommend starting opioids at the "lowest effective dose." Also, persons discharged from the hospital after surgery are often on higher doses than 50 MME/day, and that the limit will impede care for members being discharged on weekends or evenings.

RESPONSE #3: The department has determined these comments are well taken and has amended the rule to eliminate the 50 MME/day limit which aligns it with the provisions of HB 86. The department's primary concern is the health and safety of Medicaid members and the community, and the 50 MME/day limit was proposed for that purpose. This rule is not intended to impede patient care or hinder providers who are prescribing according to current best practice. The department will continue discussions with providers and the Medicaid Drug Use Review Board to determine appropriate limits in the future.

COMMENT #4: The department received two comments on the 7-day supply limit on an opioid prescription. One commenter requested the limit be increased. The other commenter requested it be eliminated.

RESPONSE #4: The 7-day limit is in accordance with the licensing requirements for medical practitioners in HB 86. As noted in the department's other responses, the department believes that maintaining consistency with the licensing requirements in HB 86 will help ensure compliance by providers, including out-of-state providers who may not be subject to the requirements in HB 86.

COMMENT #5: The department received a comment noting that 53-6-141, MCA, has been repealed and should not be cited as the implementation authority for ARM 37.86.1102.

RESPONSE #5: The department has determined that the comment is well taken and has stricken the reference to the repealed statute.

/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 September 10, 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 37.27.902, 37.85.104, )  
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 9, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-888 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1156 of the 2019 Montana Administrative Register, Issue Number 15.

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 department received several comments in support of expanding the dental benefit to include Current Dental Terminology Code D2740, porcelain ceramic crown coverage, to adults. Some commenters recommended allowing D2740 for all teeth including 2nd molars. A commenter cited reasons such as material strength, durability, better biocompatibility than base metal and porcelain fused to base metal crowns, lower overhead cost, and better patient compliance.

RESPONSE #1: The department values the support from providers on the rule changes and will monitor utilization of this code and decide whether to allow coverage on all teeth for adults once a fiscal impact can be determined.

COMMENT #2: Some commenters stated porcelain ceramic crowns should not be covered for adults because they are costly and not medically necessary because they are cosmetic in nature.

RESPONSE #2: The department disagrees. Cost, reimbursement, and limits for porcelain crowns are the same as porcelain fused to metal crowns. The department does not consider them cosmetic for many of the same reasons noted in the comments of support for D2740. Additionally, ceramic crowns are now one of the most common treatment modalities used when a tooth requires a medically necessary full coverage restoration (i.e., large decay, tooth fracture, post-root canal treatment). Furthermore, a 2013 systematic review published in the Journal of Prosthetic Dentistry, found the clinical survival rate of all ceramic crowns to be between 92.7% to 100% and the survival rate of metal-ceramic crowns to be 70% to

100%. Finally, the department would like to add that this process is similar to composite restorations. When composite restorations were first introduced, they were primarily used when esthetics was a top concern. However, improvements in the materials and techniques, now make these restorations as equally durable as amalgam restorations.

COMMENT #3: A commenter requested clarification regarding page 1 of the proposed Substance Use Disorder Non-Medicaid provider fee schedule. The commenter asked if providers are capped at billing 8 units of group peer support per week or is each peer support specialist capped at billing 8 units per week or is each client billable for 8 group units per week.

RESPONSE #3: The department's intent is to allow up to 8 group units per week (2 hours) per client. The department will clarify this rate in the related fee schedules.

COMMENT #4: A commenter requested adolescents be included in SUD Certified Peer Support Services. The commenter stated that adolescents are at high risk of leaving treatment unplanned or refusing treatment, and the commenter's organization has found that Peer Support Services helps many adolescents to understand the benefits of treatment through relating to someone with real life experience with addiction.

RESPONSE #4: The 2019 Montana Legislative Session made Medicaid-reimbursed Peer Support Services for adults 18 years of age and older with a diagnosis of a mental disorder as defined in 53-21-102, MCA, a permissible service. The department was able to also fund Certified Peer Support Services for adults with a SUD. The legislature did not indicate intent to fund adolescent peer support services at this time.

COMMENT #5: A commenter requested to be reimbursed for peer support with both Medicaid and grant funds due to what the commenter referred to as a "shortfall" of funding through Medicaid only. The commenter stated the current language suggested that group peer should be referred to as SUD groups rather than peer support groups and billed accordingly.

RESPONSE #5: The amount of reimbursement for individual peer support under Medicaid will not change, so the department disagrees that there is a "shortfall" in reimbursement. Under Medicaid, the department cannot use federal block grant funding. The department, however, acknowledges that providers must follow Medicaid income guidelines and ensure that individuals qualify for Medicaid in order to provide the individual peer support benefit. With regard to group peer support services, the department will be piloting a program to reimburse for group peer support services. The department intends to pilot peer support groups led by Certified Peer Support Specialists using the Substance Abuse, Prevention, and Treatment block grant for the SUD population, as currently only individual peer support services are reimbursed through Medicaid.

COMMENT #6: A commenter requested clarification on intake and established MAT bundled rates regarding billing the bundled rate for clients already receiving bundled services. The commenter further asked if providers will be able to bill both the bundled rate for treatment and the bundled rate for MAT concurrently for an individual client.

RESPONSE #6: Per the July 1, 2019 rule amendment, the department removed the concurrent services section of each service level entirely because of the unnecessary confusion it caused for providers. For MAT provision, this rule clarifies what services components are billable for the provision of MAT. If the services are not duplicative and are both medically necessary, the services can be billed concurrently.

COMMENT #7: A commenter requested to change wording on proposed manual page 58, number 5, to: "Services must be based on a complete history and physical exam and assessment described above and documented in the member's ITP." The commenter also requested to remove "comprehensive physical" as it implicates a physical that is more intrusive than is required for MAT services.

RESPONSE #7: The department will remove the word "comprehensive" and will require providers to follow federal regulation regarding the provision of MAT services.

COMMENT #8: A commenter requested clarification on the time frame of services. The commenter recommends that physical or history and physical be completed within 12 months of initiating MAT services.

RESPONSE #8: The department did not outline specific timeframes in the manual. Providers are expected to follow the federal regulations in the provision of MAT services.

COMMENT #9: A commenter requested to add additional options for selection on the Montana Healthcare Programs Medication Assisted Treatment Form. The commenter suggested:

- (a) Vivitrol/Naltrexone
- (b) Acamposate (Camprol)
- (c) Disulfiram (Antabuse)
- (d) Gabapentin (Neurontin)
- (e) Topomax (Topiramate)

RESPONSE #9: The commenter is referencing a form that is outside of the scope of this rulemaking process. The department forwarded this comment to the pharmacy department for review.

COMMENT #10: A commenter requested clarification regarding the definition of an adolescent for OP bundled services. Page 51, number 9 states that an adolescent is someone 17 years and younger. The commenter brings attention to ARM



37.106.1413 which indicates an adult is a person 21 years of age or older and an adolescent means a person under 21 years of age.

RESPONSE #10: The department acknowledges this inconsistency and will remove the language specifying that an adolescent is 17 years and under.

COMMENT #11: Two commenters asked for clarification regarding licensed addiction counselors and enrollment as provider type 80.

RESPONSE #11: Provider type 80 is no longer a requirement to bill for MAT service bundles. Physicians, mid-levels, and psychiatrists must bill the applicable procedure codes when billing for MAT services. Licensed addiction counselors providing therapeutic services would bill outside of the bundled rate using the applicable CPT codes for the service they provided.

COMMENT #12: A commenter requested "telecommunication" be allowable for patient contact and "telemedicine" be allowed for intakes rather than face-to-face visits only for Medicaid Assisted Treatment to remote areas.

RESPONSE #12: Montana Healthcare Programs do not reimburse for "telecommunication." Telemedicine is allowable under Montana Healthcare Programs. The department will consider the request to allow for telemedicine to be provided for intake for future rulemaking; however, at this time, the department will not amend the rule.

COMMENT #13: Two comments were received concerning the various formulations of "buprenorphine," including brand name and generic strips and tablets, combination and mono products, long acting injectable formulations, and any new medications for formulations that are approved in the future. Additionally, one commenter requested that bundled rates for methadone and buprenorphine to be different because the medication costs are different.

RESPONSE #13: Any medication, including "buprenorphine," that is currently covered under Montana Healthcare Programs will continue to be covered. The bundled rates proposed in the rulemaking do not include the cost of medication, which should be billed separately.

COMMENT #14: The department received one comment requesting the appropriation amount related to hospital in-patient services.

RESPONSE #14: The department considered the entire appropriation for the Health Resources Division and determined that appropriations are sufficient to support the adoption of the newly adopted APR-DRG grouper. Updating to grouper version 36 and adjusting the policy adjusters for adults and neonates is necessary to establish reimbursement within appropriations outlined in HB 2. The fiscal impact for Medicaid and Medicaid expansion will be budget neutral.

COMMENT #15: The department received one comment requesting reports for hospital-specific impact and overall hospital impact.

RESPONSE #15: The department has already provided, upon request to this commenter, in-state hospital specific and overall hospital impact reports. The reports that are available give a percentage of overall cost impacts for adult DRGs, neonate DRGs, and all other DRGs and an overall impact for each hospital. Regarding the request for specific DRG reports for each hospital in Montana, it is simply not possible to provide such detailed information in a timely manner, for the reason that there are more than 1,300 DRGs and such a report would be burdensome for the department to generate. The available hospital reports that were provided to the commenter did reflect budget neutrality and did reflect enough information for hospitals to calculate fiscal impact. The department also posted the proposed APR-DRG calculator at the following weblink: <https://medicaidprovider.mt.gov/enduserproposedfs>.

COMMENT #16: A commenter stated the department did not provide an adequate financial impact analysis in the notice of proposed rulemaking.

RESPONSE #16: The statement of reasonable necessity stated that there is no anticipated fiscal impact pertaining to the amendment of fee schedules and provider manuals. The statement of reasonable necessity stated further that the proposed changes are intended to be budget neutral.

4. These rule amendments are effective October 1, 2019.

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

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

Certified to the Secretary of State September 10, 2019.

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

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 44.11.226 and 44.11.227,                )  
pertaining to contribution limits            )

TO: All Concerned Persons

1. On August 9, 2019, the Commissioner of Political Practices published MAR Notice No. 44-2-235 pertaining to the proposed amendment of the above-stated rules at page 1163 of the 2019 Montana Administrative Register, Issue Number 15.

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

3. No comments or testimony were received.

/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 September 10, 2019.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF DECISION ON
ARM 44.14.310 and 44.14.312 and	)	PROPOSED AMENDMENT AND
the repeal of ARM 44.14.301,	)	REPEAL
44.14.302, 44.14.304 through	)	
44.14.309, and 44.14.311 pertaining	)	
to records and information	)	
management fees	)	

TO: All Concerned Persons

1. On September 6, 2019, the Secretary of State published MAR Notice No. 44-2-236 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1519 of the 2019 Montana Administrative Register, Issue Number 17.

2. The Secretary of State has decided to cancel the public hearing on the proposed amendment and repeal of the above-stated rules that was scheduled for September 26, 2019, at 10:00 a.m., at the Secretary of State's Office in Room 260, Capitol Building, Helena, Montana.

3. The Secretary of State was unable to withdraw the published notice prior to publishing due to technical requirements in the publishing of MAR. The Secretary of State originally intended to publish an Amended Notice to include statutorily required information pertaining to the proposed rules. However, the Secretary of State determined the agency would like additional time to consider the proposed rules. Therefore, the Secretary of State is not adopting the previously proposed changes.

/s/ Austin James  
Austin James  
Rule Reviewer

/s/ Corey Stapleton  
Corey Stapleton  
Secretary of State

Dated this 10th day of September, 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<br>Subject | 1. Consult ARM Topical Index.<br>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 March 29, 2019, through September 6, 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.

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

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## EXECUTIVE BRANCH APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in August 2019 appear. Potential vacancies from October 1, 2019 through December 31, 2019, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2019.

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

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>9-1-1 Advisory Council</b>			
Col. Tom Butler Helena	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): Representative of the Department of Justice			
Dr. Michael L. Doto Butte	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): Montana State Firefighters Assoc.			
Mr. Geoffrey A. Feiss Helena	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): Representative of MT Telecommunications Providers			
Mr. Burke Honzel Fort Harrison	Governor	Bruno	8/30/2019 9/1/2023
Qualifications (if required): Representative of the Department of Military Affairs			
Ms. Lisa Kelly Kalispell	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): Representative of MT telecommunications Providers			
Commissioner Gary A. Macdonald Wolf Point	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): Representative of the Montana Assoc. of Counties			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>9-1-1 Advisory Council Cont.</b>			
Mr. Quinn Ness Helena	Governor	Bottenfield	8/30/2019 9/1/2023
Qualifications (if required): Dept. of Administration Director or Designee			
Mr. Curtis Eugene Stinson Helena	Governor	Reappointed	8/30/2019 9/1/2023
Qualifications (if required): MT Assoc. of Chiefs of Police			
<b>Advisory Council on Aging</b>			
Mrs. Marianne B. Roose Eureka	Governor	Reappointed	8/30/2019 7/1/2022
Qualifications (if required): Public Representative			
Mr. Alex E. Ward Billings	Governor	Reappointed	8/30/2019 7/1/2022
Qualifications (if required): Public Representative			
<b>Board of Clinical Laboratory Science Practitioners</b>			
Mr. Matthew Charles A. Aakre Helena	Governor	Mizner	8/30/2019 4/1/2021
Qualifications (if required): Clinical laboratory science practitioners			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Clinical Laboratory Science Practitioners Cont.</b>			
Ms. Erin Kujawa Foley Butte	Governor	Donovan	8/30/2019 4/1/2023
Qualifications (if required): Public member			
Mr. Steven George Matthes Helena	Governor	Rice	8/30/2019 4/1/2023
Qualifications (if required): Clinical laboratory science practitioners			
Mr. William J. Peterman Hardin	Governor	Kalanick	8/30/2019 4/1/2023
Qualifications (if required): Holds an active license in Montana			
<b>Board of Funeral Service</b>			
Mr. Tyson K. Moore Stevensville	Governor	Amaro	8/6/2019 7/1/2024
Qualifications (if required): Licensed mortician			
<b>Board of Private Security</b>			
Mr. Dirk C. Bauwens Billings	Governor	None Stated	8/1/2019 8/1/2022
Qualifications (if required): Electronic security company			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Veterinary Medicine</b>			
Dr. Paul William McCann Havre	Governor	None Stated	8/1/2019 8/1/2024
Qualifications (if required): Licensed veterinarian			
<b>Commission on Community Service</b>			
Ms. Rebecca Harbage Helena	Governor	Reappointed	8/30/2019 7/1/2022
Qualifications (if required): Agency Representative			
Ms. Amy Unsworth Helena	Governor	Reappointed	8/30/2019 7/1/2022
Qualifications (if required): Agency Representative			
<b>Land Information Advisory Council</b>			
Dr. Robert Ahl Missoula	Governor	None Stated	8/30/2019 6/30/2021
Qualifications (if required): Member of the MT Assoc. of GIS Professionals			
Ms. Dawn Anderson Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Designee of a Department Director			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Land Information Advisory Council Cont.</b>			
Mr. Allen J. Armstrong Billings	Governor	Alexander	8/30/2019 6/30/2021
Qualifications (if required): Person employed by the U.S. Dept. of Interior (BLM)			
CIO Tim Bottenfield Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Chief Information Officer or designee			
Mr. Michael Bousliman Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Designee of a Department Director			
Mr. Gordon Conn Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Designee of a Department Director			
Ms. Janet Cornish Butte	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Active in land information systems and represents public utilities			
Mr. Frank Leo Dougher Bozeman	Governor	Fahner	8/30/2019 6/30/2021
Qualifications (if required): County or municipal government			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Land Information Advisory Council Cont.</b>			
Ms. Elaina M. Graham Great Falls	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Person employed by the U.S. Dept. of Agriculture			
Mr. Jerome Mark Grebenc Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Active in land information systems			
Mr. Matthew M. Heller Bozeman	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Person employed by the U.S. Dept. of Interior			
Ms. Molly Hirschi Bozeman	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Person who is a member of the MT Assoc. of GIS Professionals			
Mr. Valentijn Hoff Missoula	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Montana University System Representative			
Mrs. Lee Macholz Missoula	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): County or municipal government			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Land Information Advisory Council Cont.</b>			
Ms. Catherine Maynard Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Person employed by the U.S. Dept. of Agriculture			
Mr. Eric Spangenberg Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): County or municipal government			
Mr. Daniel Ray Stahly Bozeman	Governor	Cicon	8/30/2019 6/30/2021
Qualifications (if required): Person who represents the interests of the MT Assoc. of Registered Land Surveyors			
Ms. Jennie Stapp Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): State Librarian or designee			
Director John Tubbs Helena	Governor	Reappointed	8/30/2019 6/30/2021
Qualifications (if required): Department Director or designee			



**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Mental Health Ombudsman</b>			
Mr. Dennis Nyland	Governor	Reappointed	8/1/2019
Helena			8/1/2023
Qualifications (if required): Mental Health Ombudsman			
<b>Montana Poet Laureate</b>			
Ms. Melissa Kwasny	Governor	Jaeger	8/1/2019
Jefferson City			8/1/2021
Qualifications (if required): Poet Laureate			
Ms. Mandy Smoker	Governor	Jaeger	8/1/2019
Helena			8/1/2021
Qualifications (if required): Poet Laureate			
<b>Montana University System Restructuring</b>			
Mr. Llewelyn E. Jones	Governor	None Stated	8/21/2019
Conrad			6/30/2021
Qualifications (if required): Member			
<b>Montana University System Restructuring Review Commission</b>			
Dr. Sandra L. Boham	Governor	None Stated	8/21/2019
Pablo			6/30/2021
Qualifications (if required): Representative of Tribal Colleges			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Northwest Electric Power and Conservation Planning Council</b>			
Mr. Christopher Bo Downen	Governor	Baker	8/26/2019
Helena			1/1/2021
Qualifications (if required): Member of the Council			
<b>Petroleum Tank Release Compensation Board</b>			
Mr. Mark Allen Johnson	Governor	Reappointed	8/30/2019
Bozeman			7/1/2022
Qualifications (if required): Representative of the petroleum industry			
Mr. Keith Schnider	Governor	Reappointed	8/30/2019
Great Falls			7/1/2022
Qualifications (if required): Representative of the insurance industry			
Mr. Gregory Ben Taylor	Governor	Breen	8/30/2019
Shelby			7/1/2022
Qualifications (if required): Independent Petroleum Marketers			
<b>Public Safety Officer Standards and Training Council (POST)</b>			
Captain Jason R. Jarrett	Governor	Sparks	8/6/2019
Bozeman			1/1/2021
Qualifications (if required): Detention center administrator			

**EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2019**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Trauma Care Committee</b>			
Dr. David Joseph Newton	Governor	Bartoletti	8/30/2019
Ennis			11/1/2020
Qualifications (if required): Representative of the MT Medical Assoc.			
<b>Traumatic Brain Injury Advisory Council</b>			
Mr. Ian Ray Elliot	Governor	Felix	8/30/2019
Billings			1/1/2022
Qualifications (if required): Advocate for Brain Injured Persons			
Dr. Braxton Norwood	Governor	Gutierrez	8/30/2019
Kalispell			1/1/2022
Qualifications (if required): Representative of injury control			
<b>Water and Wastewater Operator's Advisory Council</b>			
Mr. Logan McInnis	Governor	Reappointed	8/30/2019
Missoula			10/1/2025
Qualifications (if required): Water Treatment Plant Operator			

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Athletic Trainers</b>		
Mr. Kaleb Birney, Dillon Qualifications (if required): Athletic trainer	Governor	10/1/2019
Ms. Nichole Borst, Havre Qualifications (if required): Athletic trainer	Governor	10/1/2019
Mr. John Curtis Weida, Missoula Qualifications (if required): Athletic trainer	Governor	10/1/2019
<b>Board of Outfitters</b>		
Mr. Todd Clifford Earp, Corvallis Qualifications (if required): Outfitter	Governor	10/1/2019
<b>Board of Speech-Language Pathologists and Audiologists</b>		
Mr. Rich Turner, Billings Qualifications (if required): Public member who is a consumer of speech-language pathology or audiology	Governor	12/31/2019
Mrs. Rachel Glazer Stransberry, Lewistown Qualifications (if required): Speech-Language Pathologists	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Historical Records Advisory Council</b>		
Ms. Heather C. Hultman, Bozeman Qualifications (if required): Research institution	Governor	10/1/2019
Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	10/1/2019
Ms. Anne L. Foster, Gardiner Qualifications (if required): Public archives	Governor	10/1/2019
Ms. Aubrey Japp, Butte Qualifications (if required): Public archives	Governor	10/1/2019
Ms. Katheryn Marie Kramer, Great Falls Qualifications (if required): Private archives	Governor	10/1/2019
Ms. Kathleen D. Mumme, Virginia City Qualifications (if required): Private archives	Governor	10/1/2019
Ms. Eileen A. Wright, Billings Qualifications (if required): Research institution	Governor	10/1/2019
<b>Judicial Nomination Commission</b>		
Mr. Karl Englund, Missoula Qualifications (if required): Elected	Supreme Court	12/31/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council</b>		
Lt. Governor Mike Cooney, Helena Qualifications (if required): None Stated	Governor	12/31/2019
Mr. Don Judge, Helena Qualifications (if required): Representing Employees	Governor	12/31/2019
Mr. Doug Buman, Seattle, WA Qualifications (if required): Representing Employees	Governor	12/31/2019
Ms. Annette Hoffman, Billings Qualifications (if required): Representing Employers	Governor	12/31/2019
Mr. Eric Strauss, Helena Qualifications (if required): Ex-officio Member	Governor	12/31/2019
Mr. Lance Zanto, Helena Qualifications (if required): Representing Employers	Governor	12/31/2019
Mr. Jim Larson, Billings Qualifications (if required): Representing Employees	Governor	12/31/2019
Mr. Al Smith, Helena Qualifications (if required): Employees chosen by the Montana Trial Lawyers Association	Governor	12/31/2019
Ms. Vicki Evans, Great Falls Qualifications (if required): Employers representing self-insurers	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council Cont.</b>		
Mr. Adam Haight, Helena Qualifications (if required): Representing Employees	Governor	12/31/2019
Mr. Bridger Mahlum, Helena Qualifications (if required): Employers representing Montana Chamber of Commerce	Governor	12/31/2019
Mr. Mike Marsh, Billings Qualifications (if required): Representing Employers	Governor	12/31/2019
<b>Montana Alfalfa Seed Committee</b>		
Mr. Tom Matchett, Billings Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2019
Mr. Tom Neibur, Malta Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2019
<b>State Emergency Response Commission</b>		
Mr. Bruce Suenram, Missoula Qualifications (if required): Department of Natural Resources and Conservation	Governor	10/1/2019
Mr. William T. Rhoads, Butte Qualifications (if required): Utility Company doing business in Montana	Governor	10/1/2019
Chief Thomas Kuntz, Red Lodge Qualifications (if required): Fire Service Association	Governor	10/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Emergency Response Commission Cont.</b>		
Commissioner Michael McGinley, Dillon Qualifications (if required): Montana Association of Counties	Governor	10/1/2019
Mr. Joe Marcotte, Billings Qualifications (if required): Montana Hospitals	Governor	10/1/2019
Mr. Jim DeTienne, Helena Qualifications (if required): DPHHS Emergency Medical Services and Trauma Systems	Governor	10/1/2019
Mr. Jim Murphy, Helena Qualifications (if required): Department of Public Health and Human Services	Governor	10/1/2019
Mr. Ron Jendro, Helena Qualifications (if required): Department of Fish, Wildlife and Parks	Governor	10/1/2019
Mr. Dale S. Nelson, Ronan Qualifications (if required): Tribal Emergency Response Commission	Governor	10/1/2019
Ms. Bonnie Lovelace, Helena Qualifications (if required): Department of Environmental Quality	Governor	10/1/2019
Col. Thomas Butler, Helena Qualifications (if required): Department of Justice	Governor	10/1/2019
Administrator Delila Bruno, Fort Harrison Qualifications (if required): Representative of the Department of Military Affairs	Governor	10/1/2019



**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Emergency Response Commission Cont.</b>		
Mr. Scott Sanders, Belgrade Qualifications (if required): Emergency Medical Services Association	Governor	10/1/2019
Chief John Turner, Fort Benton Qualifications (if required): Law Enforcement Association	Governor	10/1/2019
Ms. Judy LaPan, Sidney Qualifications (if required): Public Health related Association	Governor	10/1/2019
Mrs. Michelle L. Slyder, Billings Qualifications (if required): Montana's Petroleum Industry	Governor	10/1/2019
Captain Patrick Lonergan, Bozeman Qualifications (if required): Emergency Management Association	Governor	10/1/2019
Ms. Siri Smillie, Helena Qualifications (if required): Governor's Office Representative	Governor	10/1/2019
Mr. Walt Kerttula, Helena Qualifications (if required): Department of Transportation	Governor	10/1/2019
Ms. Tara T. Moore, Bozeman Qualifications (if required): University System	Governor	10/1/2019
Mr. Anthony Bacino, Missoula Qualifications (if required): Railroad Company doing business in Montana	Governor	10/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Emergency Response Commission Cont.</b>		
Mr. Donald Britton, Great Falls Qualifications (if required): National Weather Service	Governor	10/1/2019
Mr. Gregory Thomas Doyon, Great Falls Qualifications (if required): Representative of the Montana League of Cities and Towns	Governor	10/1/2019
Mr. Bob Habeck, Helena Qualifications (if required): Representative of the Department of Environmental Quality	Governor	10/1/2019
Mr. Brian Wilkinson, Malmstrom AFB Qualifications (if required): Malmstrom Air Force Base representative	Governor	10/1/2019
Mr. Andy Fjeseth, Helena Qualifications (if required): Department of Agriculture Representative	Governor	10/1/2019
Mr. Thomas Luhrsen, Bozeman Qualifications (if required): University Representative	Governor	10/1/2019
Mr. Chadwick Alex Messerly, Missoula Qualifications (if required): Trucking Industry Representative	Governor	10/1/2019
Mr. John Culbertson, Great Falls Qualifications (if required): Fire Services Training School	Governor	10/1/2019
MSG Larry Ganieany, Fort Harrison Qualifications (if required): National Guard	Governor	10/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Emergency Response Commission Cont.</b>		
TSgt. Jonathan D. Maas, Malmstrom AFB Qualifications (if required): Air Force	Governor	10/1/2019
Ms. Sherry Rust, Helena Qualifications (if required): Department of Agriculture	Governor	10/1/2019
Mr. Daniel Anthony Kaluza, Butte Qualifications (if required): Utility company doing business in Montana	Governor	10/1/2019
Ms. Maleen B. Olson, Helena Qualifications (if required): Insurance Industry Representative	Governor	10/1/2019
Mr. Bradley Michael Shoemaker, Billings Qualifications (if required): Montana Emergency Medical Services Assoc. Representative	Governor	10/1/2019
Mr. Raphael Graybill, Helena Qualifications (if required): Governor's Office Representative	Governor	10/1/2019
Major Jeffrey Alan Holycross, Helena Qualifications (if required): National Guard Representative	Governor	10/1/2019
Mrs. Georgia Bruski, Ekalaka Qualifications (if required): Montana Emergency Management Association Representative	Governor	10/1/2019
Ms. Hayley Tuggle, Bozeman Qualifications (if required): University Representative	Governor	10/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council</b>		
Director Sheila Hogan, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Representative Jim Keane, Butte Qualifications (if required): Legislature Representative	Governor	12/31/2019
Ms. Peggy MacEwen, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Samantha Chase, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Penny Fassett, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Diane Fladmo, Helena Qualifications (if required): State Employees and labor organizations	Governor	12/31/2019
Ms. Susan Fox, Helena Qualifications (if required): Legislative Branch	Governor	12/31/2019
Ms. Cheryl Grey, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Ms. Mandi Hinman, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council Cont.</b>		
Mr. Jim Lewis, Helena Qualifications (if required): Retired State Employees' Representative	Governor	12/31/2019
Mr. Quint Nyman, Helena Qualifications (if required): State Employees and Labor Organizations	Governor	12/31/2019
Mr. Duane Preshinger, Helena Qualifications (if required): Ex-Officio member representing the Dept. of Administration	Governor	12/31/2019
Ms. Amy Sassano, Helena Qualifications (if required): Executive Branch Representative	Governor	12/31/2019
Mr. Derek Shepherd, Helena Qualifications (if required): Judicial Branch	Governor	12/31/2019
<b>State Historical Preservation Review Board</b>		
Mr. Timothy Urbaniak, Billings Qualifications (if required): Member of the public	Governor	10/1/2019
Ms. Debra Hronek, Red Lodge Qualifications (if required): Member of the public	Governor	10/1/2019
Ms. Patti Casne, Helena Qualifications (if required): Member of the public	Governor	10/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Rehabilitation Council</b>		
Ms. Barbara Louise Davis, Missoula Qualifications (if required): Statewide Independent Living Council Representative	Governor	10/1/2019
Ms. Kathy Jean Hampton, Helena Qualifications (if required): Client Assistance Program	Governor	10/1/2019
Ms. Susan Nielson, Miles City Qualifications (if required): Community Rehabilitation Program	Governor	10/1/2019
Mr. Frank Podobnik, Helena Qualifications (if required): Office of Public Instruction Representative	Governor	10/1/2019
Ms. Diana Hawbaker-Tavary, Helena Qualifications (if required): Parent Organization Representative	Governor	10/1/2019
<b>Statewide Independent Living Council</b>		
Ms. Leanne Beers, Missoula Qualifications (if required): Person with a disability	Governor	12/1/2019
Ms. Jennifer Cleland, Billings Qualifications (if required): Person with a disability	Governor	12/1/2019
Mr. Scott Lee Birkenbuel, Bozeman Qualifications (if required):	Governor	12/1/2019

**EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2019 THROUGH DECEMBER 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Trauma Care Committee</b>		
Mr. Clinton Loss, Helena Qualifications (if required): Montana Emergency Medical Services Association	Governor	11/1/2019
Dr. Whitney Gum, Billings Qualifications (if required): Member of the American College of Emergency Physicians	Governor	11/1/2019
<b>Water and Wastewater Operators' Advisory Council</b>		
Mr. Donald Coffman, Harlem Qualifications (if required): Water Treatment Plant Operator	Governor	10/1/2019
Mr. Logan McInnis, Missoula Qualifications (if required): Water Treatment Plant Operator	Governor	10/1/2019
<b>Yellowstone River Recreation Project Advisory Council</b>		
Ms. Kathleen Aragon, Billings Qualifications (if required): Member of the public	Governor	12/31/2019
Mr. Ted Lovec, Billings Qualifications (if required): Member of the public	Governor	12/31/2019

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**COREY STAPLETON**  
SECRETARY OF STATE

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