MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the amendment of 24.138.206 dental hygienist committee, 24.138.301 definitions, 24.138.406 functions for dental auxiliaries, 24.138.502 initial licensure of dentists by examination, 24.138.503 initial licensure of dental hygienists by examination, 24.138.2302 unprofessional conduct for denturists, and the adoption of New Rule I denturist scope of practice – dentures over implants	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 7, 2020, at 10:00 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 and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry no later than 5:00 p.m., on January 30, 2020, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.206 DENTAL HYGIENIST COMMITTEE (1) remains the same.

(2) The committee shall meet ~~at least once a year and~~ as needed to review issues pertaining to dental hygienists and make recommendations to the full board.

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

REASON: In reviewing the requirements for standing committees, the board noticed that a specific requirement for a yearly meeting existed for the hygienist committee, although the committee did not always have business to discuss. The board is amending this rule to minimize costs to licensees that result from a required meeting

and to create uniform committee standards.

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Certified dental assistant" is a dental auxiliary who has successfully completed all of the following exams and holds current certification from the Dental Assisting National Board:

(a) general chairside assisting (GC);

(b) radiation health and safety (RHS); and

(c) infection control (ICE).

(3) through (10) remain the same but are renumbered (4) through (11).

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA
IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: The 2019 Montana Legislature enacted Chapter 157, Laws of 2019 (Senate Bill 157), an act revising the supervision requirements for dental auxiliaries/assistants who have the dental assisting national board (DANB) certification. While the bill is codified at 37-4-408, MCA, the legislature did not define the criteria for DANB certification in statute. DANB currently offers multiple exams and certifications such as "certified orthodontic assistant," which could be misunderstood to be a type of "certified dental assistant." To prevent any confusion, the board determined it is reasonably necessary to amend this rule and clarify that a DANB certified dental assistant will have successfully taken the three exams listed.

To implement the bill and allow auxiliaries to work under general supervision while ensuring adequate public protection, the board concluded that certified dental assistants must maintain current certification. The statute now requires that DANB certified assistants "hold[s]" certification, which the board interprets to mean maintains current certification, not simply being certified at a point in time. Since 37-4-408, MCA, allows DANB certified auxiliaries to practice, in certain circumstances, with less supervision by a dentist than a non-DANB certified auxiliary, the board believes that the continued education and training required for an auxiliary to maintain certification is necessary to help the auxiliary maintain the skills needed to safely treat dental patients. As a result, to implement the legislation and protect public safety, the board is amending this rule to clarify what constitutes DANB dental assistant certification and specify that DANB certification must be maintained by the auxiliary/assistant to continue practicing under general supervision. The board determined that providing a definition of a certified dental assistant in this rule is more efficient than continued explanations in ARM 24.138.406. The clarification is necessary since the board allows for non-certified auxiliaries to perform certain functions as well and no specific definition of a certified auxiliary exists.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) ~~Allowable functions for a dental auxiliary practicing~~ Dental auxiliaries may work under the direct supervision of a licensed dentist ~~shall include dental procedures as allowed by board rule and subject to (2), in which~~ per ARM 24.138.301 if the auxiliary:

(a) ~~the auxiliary~~ was instructed and qualified to perform in a dental assisting program accredited by the Commission on Dental Accreditation or its successor; or

(b) ~~the auxiliary~~ was instructed and trained by a licensed dentist; or

(c) ~~the auxiliary~~ was instructed and trained in a board-approved continuing education course.

(2) A certified dental assistant may work under the general supervision of a licensed dentist per ARM 24.138.301.

~~(2)~~ (3) A dental auxiliary ~~will be allowed to~~ working under the direct supervision of a licensed dentist per ARM 24.138.301 may perform the following dental procedures including, but not limited to:

(a) making radiographic exposures as prescribed by the supervising dentist as referenced in (12); ~~and~~

(b) remains the same.

(c) taking impressions for study ~~or working~~ casts;

(d) through (o) remain the same.

(4) A certified dental assistant working under the general supervision of a licensed dentist per ARM 24.138.301 is prohibited from performing the following functions:

(a) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;

(b) applying silver diamine fluoride agents;

(c) placing and removing rubber dams;

(d) placing and removing matrices;

(e) polishing amalgam restorations; and

(f) applying topical anesthetic agents.

(5) A certified dental assistant working under the general supervision of a licensed dentist may place pit and fissure sealants following an in-person comprehensive oral examination or periodic examination within the preceding 30 days.

~~(3)~~ (6) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist, except that a certified dental assistant may work under the general supervision of a licensed dentist.

(7) No dentist shall allow any dental auxiliary to perform the following:

(a) through (f) remain the same.

(g) taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial dentures, ~~or~~ complete dentures, orthodontic appliances, sleep apnea appliances, or bruxism appliances;

(h) through (k) remain the same.

(l) air polishing; or

(m) prophylaxis as ~~per~~ defined in ARM 24.138.301.

~~(4)~~ (8) Dentists shall ~~refrain from delegating~~ not delegate to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental auxiliaries under 37-4-408, MCA, and board rules.

(5) and (6) remain the same but are renumbered (9) and (10).

~~(7)~~ (11) ~~It shall be the responsibility of the~~ The employing dentist ~~to~~ shall verify that a dental auxiliary's qualifications ~~are in compliance~~ comply with the statutes and rules of the ~~Board of Dentistry~~ board.

~~(8)~~ (12) A dentist licensed to use or direct the use of an x-ray producing device must ~~assure~~ ensure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it, as per ARM 37.14.1003. Only a licensed dentist ~~is allowed to~~ may prescribe radiation dosage and exposure.

(a) ~~The~~ A dental auxiliary, under the direct supervision of a licensed dentist, ~~will qualify to~~ may expose radiographs only if the auxiliary:

(a) remains the same but is renumbered (i).

~~(b)~~ (ii) has been certified in dental radiology ~~by the U.S.~~ as a result of military experience; or

~~(c)~~ (iii) has successfully completed a board-approved radiology written examination. ~~The written examination must be passed prior to the dentist allowing the auxiliary to expose radiographs.~~

(b) A certified dental assistant may expose radiographs under the general supervision of a licensed dentist.

(d) remains the same but is renumbered (c).

~~(9) A list of board-approved examinations will be kept on file in the board office.~~

~~(10) The board will accept documentation of (8)(a) through (d) as certification for radiographic exposure.~~

(13) Proof of current certification must be readily available for review by the public or the board upon request.

AUTH: 37-4-205, 37-4-408, MCA
IMP: 37-4-408, MCA

REASON: In September of 2019, the board published MAR Notice No. 24-138-76 containing proposed changes to this rule to implement Senate Bill 157. After considering the comments and concerns regarding the proposed changes, the board did not proceed with any amendments to this rule in that notice, but instead discussed the concerns and suggestions at the December 6, 2019 full board meeting.

Senate Bill 157 revised the supervision requirements for DANB certified assistants but did not specifically provide the functions allowed under general supervision of a licensed dentist, nor any prohibited functions. Following consideration of comments in MAR Notice No. 24-138-76, the board is now amending this rule to implement the bill by clarifying both allowable and forbidden functions for DANB certified assistants working under general supervision. The board is adding (4)(a) through (f) to clearly delineate the functions the board concluded are outside the expertise of a DANB certified assistant and prohibited under general supervision.

The board is adding (5) to recognize that DANB certified assistants may place pit and fissure sealants for patients with a recent comprehensive or periodic oral examination. This amendment ensures public safety while acknowledging that DANB certified assistants are skilled enough to undertake this procedure in conjunction with a diagnosis from a licensed dentist.

While reviewing and amending this rule, the board determined it is reasonably necessary to amend (7)(g) to clarify those functions prohibited for all dental

auxiliaries. The amendments recognize the complexity of creating certain impressions and devices while ensuring proper fit and safety. The board is amending (12)(a)(ii) to ensure the rule includes all types of relevant military experience that may qualify an auxiliary to expose radiographs. It is reasonably necessary to amend (12)(b) to align with the new definition in ARM 24.138.301 that requires DANB certified assistants to have completed the radiographical requirement to expose patients to radiation. Non-certified assistants' completion of the RHS course is optional. The board is adding (13) to specify that proof of DANB certification must be available for patient and board review. In discussing the requirement, the board decided to impose the least restrictive alternative to actual board registration to better streamline regulation while ensuring adequate public safety.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

(1) through (1)(b) remain the same.

~~(c) affidavits from three persons not related to the candidate, of the candidate's good moral character;~~

(d) through (i) remain the same but are renumbered (c) through (h).

(2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-301, MCA

REASON: While reviewing the rules, staff observed that the dentist and dental hygienist licensure rules had not been updated to current processes. The board agreed and is amending this rule and ARM 24.138.503 to no longer require good moral character affidavits. The board concluded that adequate information to demonstrate character is obtained through the application's disciplinary/criminal history questions, the results of each applicant's National Practitioner Data Bank (NPDB) self-query, and Professional Background Information Services (PBIS) background checks. The changes will align with current standardized application procedures and facilitate initial licensure of dentists and hygienists.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) through (1)(b) remain the same.

~~(c) affidavits from two persons not related to the candidate, of the candidate's good moral character;~~

(d) through (i) remain the same but are renumbered (c) through (h).

(2) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-401, 37-4-402, MCA

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

(1) through (1)(b) remain the same.

(c) ~~failure~~ failing to maintain an office(s) in sanitary condition consistent with current accepted sterilization and disinfection protocols for treatment rooms,

sterilization and laboratory areas, or operating under unsanitary conditions after a warning from the board;

(d) through (i) remain the same.

~~(j) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant;~~

~~(k)~~ (j) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of denturitry; ~~and~~

~~(l)~~ (k) ~~failure~~ failing to respond to correspondence from the board, or ~~failure~~ failing to comply with final orders of the board~~.~~; and

(l) making and fitting dentures over dental implants in violation of board rules.

AUTH: 37-1-136, 37-1-319, 37-29-201, MCA
IMP: 37-1-316, 37-1-319, 37-29-402, 37-29-403, MCA

REASON: In 2018, as a result of litigation, the board agreed to strike (1)(j) which provides that a denturist "fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant" is unprofessional conduct. After reconsideration and multiple discussions, the board proposed in September of 2019 to amend this rule and adopt a new rule in MAR Notice No. 24-138-76. After considering the comments and concerns received on the proposed changes, the board did not proceed at that time with any amendments to this rule and did not adopt the new rule. The board instead discussed the concerns and suggestions at the December 6, 2019 full board meeting and decided to proceed with the changes in this notice.

The board is adopting NEW RULE I to recognize that denturists can safely fit dentures over implants with a written referral from a licensed dentist among other requirements. To align with the provisions of NEW RULE I, the board determined it is reasonably necessary to amend this rule by striking (1)(j) and adding (1)(l) to establish that it is unprofessional conduct for a denturist to make and fit dentures over implants in violation of the requirements in board rules.

4. The proposed new rule is as follows:

NEW RULE I DENTURIST SCOPE OF PRACTICE – DENTURES OVER IMPLANTS (1) A denturist may make and fit dentures over implants under the following conditions:

(a) the fitting must be performed after written referral from a Montana-licensed dentist;

(b) the denturist may not refer directly for implant placement;

(c) the denture must be fully soft-tissue supported; and

(d) the denture must be manually removable without tools.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or natural teeth in the process of making and fitting an implant-retained denture.

(3) A denturist may not fit or adjust any abutment or otherwise adjust any appurtenance to a dental implant, except on the denture itself.

(4) A denturist may reline or rebase the original implant-retained denture.

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-102, 37-29-103, MCA

REASON: In 2018, as a result of litigation, the board agreed to revise ARM 24.138.2302(1)(j). After extensive consideration, a public hearing, and receiving significant public comment in MAR Notice No. 24-138-76, the board is proposing to adopt NEW RULE I. This new rule recognizes that denturists can safely fit dentures over implants if a treating dentist first examined the denture candidate to ensure that the implants are stable enough to support a denture. The board determined that, to ensure the safety of this process, a medical diagnosis from a dentist is first required to begin a referral. The board also determined that a denturist can safely fit a denture over an implant first deemed in stable condition by a dentist if the denture itself is not a fixed denture, but is soft-tissue supported and manually removable. The board determined that (2) is necessary to clarify that only a dentist can safely cut tissue or natural teeth as part of the fitting process, because any necessary cutting would first require a medical diagnosis. The board also concluded that only a treating dentist can safely adjust an abutment prior to fitting the denture because of possible concerns regarding over-torqueing the abutment, and possible resulting damage to the underlying bone structure. Finally, the board determined that a denturist can safely reline or rebase a denture, which the denturist initially fitted, because such a reline or rebase would not necessarily require additional consultation from the treating dentist if the patient was otherwise receiving needed care and maintenance for the supporting implants from their treating dentist. The board is proposing NEW RULE I to allow denturists to work with a patient's treating dentist when making and fitting dentures over implants to help ensure public safety while expanding accessibility for Montana consumers.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

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

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

whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 14, 2019, by telephone and on December 4, 2019, by e-mail.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.206, 24.138.301, 24.138.406, 24.138.502, 24.138.503, and 24.138.2302 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.

Documentation of the board's above-stated determinations is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to dlibsdden@mt.gov.

10. Kevin Bragg, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
AIMEE AMELINE, DDS
PRESIDENT

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.155.608 licensure of out-of-state applicants, 24.155.901 unprofessional conduct, and the adoption of New Rules I records, and II standards of practice	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 11, 2020, at 11:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Massage Therapy no later than 5:00 p.m., on February 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdlmt@mt.gov (board's e-mail).

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

24.155.608 LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (2)(c) remain the same.

(d) verification of an active license, certification, or registration in good standing from another state or jurisdiction, whose current requirements ~~include each of the following~~ are substantially equivalent to Montana requirements for licensure, including:

(i) proof of completing a massage therapy program demanding a course of studies that includes, at a minimum, ~~each of the following:~~ 500 hours; and

~~(A) 200 hours of in-class and instructor-supervised massage and bodywork assessment, theory, and application instruction;~~

~~(B) 150 hours combined of instruction on the body systems (anatomy, physiology, and kinesiology) and pathology; and~~

~~(C) 150 hours combined of business and ethics instruction and instruction in an area or related field that completes the massage program of study; and~~

(ii) remains the same.

AUTH: 37-1-131, ~~37-33-405,~~ MCA

IMP: 37-1-131, 37-1-304, ~~37-33-502,~~ MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with the department's standardized application procedures and facilitate effective and timely processing of applications. By repealing the requirements of proof of education in specific areas, staff may assess substantial equivalency with a broader comparison of licensing standards in various states where applicants hold a current, active license. The board concluded the amendments will remove an unnecessary obstacle to timely licensure while still ensuring licensure of qualified applicants. Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.155.901 UNPROFESSIONAL CONDUCT (1) The following conduct is unprofessional conduct justifying disciplinary action against a licensee:

(a) and (b) remain the same.

(c) engaging in or soliciting sexual contact or sexual intercourse, as those terms are defined in 45-2-101, MCA, with a client, when such act or solicitation is related to the practice of massage therapy, or failing to refrain from any provision of [NEW RULE II(6)];

(d) through (g) remain the same.

(h) failing to maintain records in accordance with [NEW RULE I];

(h) and (i) remain the same but are renumbered (i) and (j).

~~(2) Upon a finding of unprofessional conduct as defined in (1), and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed pursuant to 37-1-136 and 37-1-312, MCA. Any additional cost or expense incurred by a licensee as a result of a sanction is the burden of the licensee. As additional forms of sanction, and without limiting the availability of any other sanction, the board may:~~

~~(a) require supervision, inspections, reports, additional continuing education or other training;~~

~~(b) limit the licensee's scope of practice in any reasonable manner considering the circumstances; and~~

~~(c) impose any other condition of licensure, probation, reinstatement, or relicensure the board deems necessary or appropriate to protect the health, safety, or welfare of the public or to rehabilitate the licensee.~~

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by updating the behavior the board considers to be unprofessional conduct in conjunction with the adoption of NEW RULES I and II. Upon enacting professional conduct standards similar to (1)(c), other states have reported decreases in human trafficking and other illegal activities under the guise of the massage therapy profession. The board further concluded that maintaining adequate records is necessary to enhance public safety and welfare and is adding (1)(h) to clearly

establish that violating NEW RULE I is also unprofessional conduct. The board is striking the provisions of (2) as an unnecessary duplication of statutory language.

4. The proposed new rules are as follows:

NEW RULE I RECORDS (1) Licensees must maintain the following records for each client:

(a) an initial intake form which includes:

(i) name of client;

(ii) health history;

(iii) current health status;

(iv) consent of the client to treat;

(v) date; and

(vi) client signature; and

(b) session notes, including:

(i) date;

(ii) services provided;

(iii) comments from licensed therapist; and

(iv) signature or initials of licensed therapist.

(2) Licensees must document in the client's records, at the time the initial intake form is required, if the client refuses to complete the client intake form.

(3) Licensees are required to maintain records for four years from the last date of service to the client.

(4) Any violation of this rule is considered unprofessional conduct.

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA
IMP: 37-1-131, 37-1-136, 37-1-319, MCA

REASON: The board is adopting this new rule to clearly establish requirements for licensee recordkeeping. The board concluded that requiring licensees to maintain certain records will facilitate more effective complaint processing and assist both the public and licensees throughout the process. Furthermore, the board determined it is reasonably necessary to require that licensees collect and maintain certain data to elevate professionalism and enhance client protection.

NEW RULE II STANDARDS OF PRACTICE AND CODE OF ETHICS

(1) PROFESSIONALISM. The licensee must provide optimal levels of professional therapeutic massage and bodywork services and demonstrate excellence in practice by promoting healing and well-being through responsible, compassionate, and respectful touch. In the licensee's professional role, the licensee shall:

(a) treat each client with respect, dignity, and worth;

(b) use professional verbal, nonverbal, and written communications;

(c) provide an environment that is safe and comfortable for the client and which, at a minimum, meets all legal requirements for health and safety;

(d) use standard precautions to ensure professional hygienic practices and maintain a level of personal hygiene appropriate for practitioners in the therapeutic setting;

(e) wear clothing that is clean, modest, and professional;

(f) obtain voluntary and informed consent from the client prior to initiating the session;

(g) if applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed;

(h) use appropriate draping to protect the client's physical and emotional privacy;

(i) be knowledgeable of the licensee's scope of practice and practice only within these limitations;

(j) refer to other professionals when in the best interest of the client and practitioner;

(k) seek other professional advice when needed;

(l) respect the traditions and practices of other professionals and foster collegial relationships; and

(m) not falsely impugn the reputation of any colleague.

(2) LEGAL AND ETHICAL REQUIREMENTS. The licensee must comply with all the legal requirements in applicable jurisdictions regulating the profession of therapeutic massage and bodywork. In the licensee's professional role, the licensee shall:

(a) obey all local, state, and federal laws;

(b) refrain from any behavior that results in illegal, discriminatory, or unethical actions;

(c) accept responsibility for the licensee's own actions;

(d) report to the proper massage therapy regulatory body within 30 days of discovery of any evidence, such as first-hand knowledge, indicating any unethical, incompetent, or illegal act committed by other licensees;

(e) maintain accurate and truthful records.

(3) CONFIDENTIALITY. The licensee shall respect the confidentiality of client information and safeguard all records. In the licensee's professional role, the licensee shall:

(a) protect the confidentiality of the client's identity and information in all conversations, advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, or is required by law;

(b) protect the interests of clients who are minors or clients who are unable to give voluntary and informed consent by obtaining prior written permission from a legal guardian;

(c) solicit only information that is relevant to the professional client/therapist relationship;

(d) securely retain client files for a minimum period of four years from the termination of the therapeutic relationship; and

(e) dispose of client files in a secure manner.

(4) BUSINESS PRACTICES. The licensee shall practice with honesty, integrity, and lawfulness in the business of therapeutic massage and bodywork. In the licensee's professional role, the licensee shall:

(a) provide a physical setting that is safe and meets all applicable legal requirements for health and safety;

(b) maintain adequate progress notes for each client session, if applicable;

(c) accurately and truthfully inform the public of services provided;

(d) honestly represent all professional qualifications and affiliations;

(e) promote the licensee's business with integrity and avoid potential and actual conflicts of interest;

(f) advertise in a manner that is honest, dignified, accurate and representative of services provided and remains consistent with board statutes and rules;

(g) advertise in a manner that is not misleading to the public and shall never use sensational, sexual, or provocative language and/or pictures to promote the licensee's business;

(h) comply with all laws regarding sexual harassment;

(i) not exploit the trust and dependency of others, including clients and employees/co-workers;

(j) disclose a schedule of fees in advance of the session;

(k) make financial arrangements in advance which are clearly understood by, and safeguard the best interests of, the client or consumer;

(l) follow Generally Accepted Accounting Principles;

(m) file all applicable municipal, state, and federal taxes;

(n) maintain accurate financial records, contracts and legal obligations, appointment records, tax reports, and receipts for the most recent three fiscal years;

(o) act in a manner that justifies public trust and confidence, enhances the reputation of the profession, and safeguards the interest of individual clients. The licensee will:

(i) have a sincere commitment to provide the highest quality of care to those who seek their professional services;

(ii) represent their qualifications honestly, including education and professional affiliations, and provide only those services that they are qualified to perform;

(iii) accurately inform clients, other health care practitioners, and the public of the scope and limitations of their discipline;

(iv) acknowledge the limitations of and contraindications for massage and bodywork and refer clients to appropriate health professionals;

(v) provide treatment only where there is reasonable expectation that it will be advantageous to the client;

(vi) consistently maintain and improve professional knowledge and competence, striving for professional excellence through regular assessment of personal and professional strengths and weaknesses and through continued education training;

(vii) conduct their business and professional activities with honesty and integrity, and respect the inherent worth of all persons;

(viii) refuse to unjustly discriminate against clients and/or health professionals;

(ix) safeguard the confidentiality of the client's identity and information in all conversations, advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, or is required by law;

(x) respect the client's right to treatment with informed and voluntary consent. The licensee will obtain and record the informed consent of the client, or client's advocate, before providing treatment. This consent may be written or verbal;

(xi) respect the client's right to refuse, modify, or terminate treatment regardless of prior consent given;

(xii) provide draping and treatment in a way that ensures the safety, comfort, and privacy of the client;

(xiii) exercise the right to refuse to treat any person or part of the body for just and reasonable cause;

(xiv) refrain, under all circumstances, from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client therapist relationship, unless an ongoing current sexual relationship existed prior to the date the therapeutic relationship began;

(xv) avoid any interest, activity, or influence which might be in conflict with the practitioner's obligation to act in the best interests of the client or the profession;

(xvi) respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and the client's reasonable expectations of professional behavior. Practitioners will respect the client's autonomy; and

(xvii) refuse any gifts or benefits that are intended to influence a referral, decision or treatment, or that are purely for personal gain and not for the good of the client.

(5) ROLES AND BOUNDARIES. The licensee shall adhere to ethical boundaries and perform the professional roles designed to protect both the client and the practitioner, and safeguard the therapeutic value of the relationship. In the licensee's professional role, the licensee shall:

(a) recognize the licensee's personal limitations and practice only within these limitations;

(b) recognize the licensee's influential position with the client and not exploit the relationship for personal or other gain;

(c) recognize and limit the impact of transference and counter-transference between the client and the licensee;

(d) avoid dual or multidimensional relationships that could impair professional judgment or result in exploitation of a client, student, employee, supervisee, mentee, trainee, or anyone else with whom a power differential exists;

(e) acknowledge and respect the client's freedom of choice in the therapeutic session;

(f) respect the client's right to refuse the therapeutic session or any part of the therapeutic session;

(g) refrain from practicing under the influence of alcohol, drugs, or any illegal substances, with the exception of a prescribed dosage of prescription medication which does not impair the licensee;

(h) have the right to refuse and/or terminate the service to a client who is abusive or under the influence of alcohol, drugs, or any illegal substance; and

(i) have the right to refuse and/or terminate the service to a client who exhibits language or behavior which the therapist deems as an immediate or potential risk to the safety of the client, the licensee, or the therapeutic relationship.

(6) PREVENTION OF SEXUAL MISCONDUCT AND INAPPROPRIATE TOUCH. The licensee shall refrain from any behavior that sexualizes, or appears to sexualize, the client/therapist relationship. The licensee recognizes the intimacy of the therapeutic relationship may activate practitioner and/or client needs and/or desires that weaken boundaries which may lead to sexualizing the therapeutic relationship. In the licensee's professional role, the licensee shall:

(a) refrain from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client/therapist relationship, unless an ongoing current sexual relationship existed prior to the date the therapeutic relationship began. In the case of a pre-existing ongoing sexual relationship, providing therapeutic massage and bodywork on such a person is discouraged, but may be done with informed consent which acknowledges the power differential in a therapeutic relationship and the complexities of dual relationships;

(b) in the event the client initiates sexual behavior, interrupt therapy to clarify the purpose of the therapeutic session. Provided that the client's initial sexual behavior ceases, the licensee may, at the licensee's discretion, take action to terminate or continue the session. The licensee shall terminate the session if the sexual conduct continues;

(c) with the exception of a pre-existing ongoing sexual relationship, as set forth in (a), recognize that sexual activity with clients, students, employees, supervisees, mentees, trainees, or anyone else with whom a power differential exists, is prohibited even if consensual;

(d) not touch the genitalia;

(e) only perform therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages:

(i) as indicated in the plan of care;

(ii) after receiving informed voluntary written consent; and

(iii) only if the licensee is expressly authorized under state law;

(f) only perform therapeutic treatments in the oral cavity:

(i) as indicated in the plan of care;

(ii) after receiving informed voluntary written consent; and

(iii) only if the licensee is permitted to do so under state law;

(g) only perform therapeutic treatments into the anal canal:

(i) as indicated in the plan of care;

(ii) after receiving informed voluntary written consent; and

(iii) only if the licensee is expressly authorized under state law; and

(h) only provide therapeutic breast massage:

(i) as indicated in the plan of care;
(ii) after receiving informed voluntary written consent; and
(iii) only if the licensee is permitted to do so under state law.
(7) Any violation of this rule is unprofessional conduct and may subject a licensee to disciplinary proceedings.

AUTH: 37-1-131, 37-1-136, 37-1-319, MCA
IMP: 37-1-131, 37-1-136, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and clearly establish licensee standards of practice and ethical guidelines to enhance the profession and elevate public health, safety, and welfare. The board notes that this rule incorporates an amended version of a nationally accepted standard that is accessible and comprehensible to readers. While adopting this rule, the board is also incorporating the violation of certain standards and ethics into the unprofessional conduct rule at ARM 24.155.901 in this notice.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdlmt@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

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

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Massage Therapy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdlmt@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.155.608 and 24.155.901 will not significantly and directly impact small businesses.

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

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

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

BOARD OF MASSAGE THERAPY
TAMARA LEACH, CHAIRPERSON

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.1304 and 24.156.1404 application for licensure, 24.156.1623 chart review, 24.156.2701 definitions, 24.156.2711 ECP licensure qualifications, 24.156.2713 ECP license application, 24.156.2718 continuing education and refresher requirements, 24.156.2720 ECP training courses, 24.156.2732 medical direction, 24.156.2751 levels of ECP licensure including endorsements, 24.156.2771 ECP scope of practice, and the adoption of New Rule I CIHC endorsement	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 11, 2020, at 2:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on February 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Samuel Hunthausen, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdmed@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to amend the rules throughout to provide consistency, simplicity, better organization, and ease of use for the reader and update out-of-date processes with current, standardized department procedures.

The 2019 Montana Legislature enacted Chapter 220, Laws of 2019 (Senate Bill 38), an act generally revising emergency care provider laws and allowing emergency care providers to be involved in community-integrated health care services. The bill was signed by the Governor on May 1, 2019 and became effective July 1, 2019. Department staff, with collaboration from the Department of Public Health and Human Services, recommended new rules and rule amendments to the board. The board is now proposing to amend certain rules and adopt one new rule

to implement the legislation by establishing the qualifications and process for licensees to obtain the emergency care provider endorsement for community-integrated health care. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

24.156.1304 APPLICATION FOR LICENSURE (1) and (1)(a) remain the same.

(b) the initial license fee; and

(c) a copy of the registration by the commission~~; and~~.

~~(d) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report.~~

(2) The board or its designee will obtain a query from the National Practitioner Data Bank for each applicant.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-1-131, 37-25-302, MCA

REASON: Submitting a "self-query" from the National Practitioner Data Bank (NPDB) involves an applicant seeking a report from the NPDB, waiting to receive the report via the U.S. Postal Service, then mailing the unopened envelope containing the report to the board. If an applicant accidentally or intentionally opens the envelope prior to mailing it to the board, the board cannot accept the report and must seek a new one, which delays the licensure process.

Previously, the board removed the requirement for physicians, physician assistants, podiatrists, and emergency care providers to request and submit the unopened paper NPDB self-queries. Currently, only nutritionist and acupuncturist license applicants are still required by rule to obtain self-queries. The board is amending this rule and ARM 24.156.1404 to remove the self-query requirement for nutritionist and acupuncturist licensees for consistency and to reduce licensure processing time.

Department staff are trained and prepared to obtain NPDB reports for all applicants and the financial cost to the board and department will be minimal. Further, the applications will be processed faster and with less effort by applicants.

24.156.1404 APPLICATION FOR LICENSURE (1) An applicant for an acupuncture license shall submit an application, ~~on a form prescribed by the department. The application must be complete and accompanied by~~ the appropriate fees, and ~~the following information and/or documentation~~:

~~(a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;~~

(b) remains the same but is renumbered (a).

~~(c)~~ (b) applicant's clean needle exam results from the Council of Colleges of Acupuncture and Oriental Medicine or its successor; and

~~(d)~~ (c) acupuncture certification examination results provided by the National Commission for the Certification of Acupuncture and Oriental Medicine~~; and~~.

~~(e) copy of birth certificate or driver's license.~~

(2) The board or its designee will obtain a query from the National Practitioner Data Bank for each applicant.

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

~~(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies which may include, but not be limited to, appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. An incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies and submit missing or additionally requested information or documentation necessary to complete the application within one year from the date the initial application is received in the board office.~~

(4) The applicant may voluntarily withdraw the application prior to ~~the one-year deadline set forth in (3)~~ being placed on a board agenda by submitting a written request ~~for withdrawal in writing~~ to the board ~~office. All application fees submitted will be forfeited~~.

~~(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees, to begin the licensing and verification process again.~~

~~(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.~~

AUTH: 37-13-201, MCA
IMP: 37-13-201, 37-13-302, MCA

REASON: See REASON for ARM 24.156.1304.

Additionally, board legal counsel recommended the board strike several provisions from this rule since application processing for all boards is addressed in the department's standardized application and licensure procedures. To align with the standardized procedures, the board is also simplifying (4) regarding voluntary application withdrawal.

24.156.1623 CHART REVIEW (1) Chart review for a physician assistant having less than one year of full-time practice experience from the date of initial licensure in Montana must be 20 percent for the first six months of practice, and then may be reduced to 10 percent for the next six months, on a monthly basis, for each supervision agreement.

(2) remains the same.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, MCA

REASON: At the June 2019 meeting of the Montana Academy of Physician Assistants (MTAPA) the board's executive officer was questioned about whether ARM 24.156.1623(1) applied to all newly licensed PAs in Montana, or whether "initial licensure" could mean licensure in other states, in which case (1) would not apply to PAs with more than one year of full-time experience outside of Montana prior to Montana licensure. The board concluded that all PAs who receive a Montana license must be subject to the minimums stated in (1) regardless of other licensure or experience in other states prior to Montana licensure. The board determined that the rule could be clearer in this regard and is amending the rule to specify that initial licensure in Montana is the trigger for the minimums stated in (1).

24.156.2701 DEFINITIONS (1) through (1)(b) remain the same.

(c) "CIHC" means community-integrated health care as defined under 37-3-102, MCA.

(c) through (s) remain the same but are renumbered (d) through (t).

AUTH: 37-3-203, 50-6-203, MCA
IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) and (1)(a) remain the same.

(b) possesses a current active or inactive NREMT certification equal to or greater than the level applied for, or successfully completes a written and practical third-party examination approved by the board, or provides a current unrestricted ~~EMR, EMT, AEMT, or paramedic~~ substantially equivalent ECP license or certification in another state ~~in which the applicant was originally tested and~~ which has a complaint process;

~~(c) provides all the information necessary to establish eligibility for licensure according to the board's requirements;~~

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

AUTH: 37-1-131, 50-6-203, MCA
IMP: 37-1-304, 50-6-203, MCA

REASON: Following a request by the department's licensing bureau, board legal counsel recommended the board amend this rule to allow ECP licensees without NREMT registration to provide a "substantially equivalent" license or certification from another state as their credential for licensure rather than a specified type of license. This amendment reflects the 2019 Legislature's passage of House Bill 105, which requires boards to issue licenses to out-of-state applicants if the out-of-state licensure standards are substantially equivalent to Montana's. Following staff recommendations to address unnecessary licensure delays, the board is deleting the requirement from (1)(b) that out-of-state applicants must have tested for that

credential in that licensure state. The board is striking (1)(c) as it is addressed in the department's standardized application procedures.

24.156.2713 ECP LICENSE APPLICATION (1) remains the same.

(2) The board or its designee will obtain a query from the NPDB for each applicant.

(3) and (4) remain the same.

(5) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license or certification to submit a current verification of licensure directly to the board on behalf of the applicant.

(6) remains the same.

AUTH: 37-1-131, 50-6-203, MCA
IMP: ~~37-1-104,~~ 37-1-131, 50-6-203, MCA

REASON: The board is amending (2) to ensure that designated department staff can request the NPDB query for an ECP applicant. The department's licensing bureau requested this change following the adoption and implementation of amendments in MAR Notice No. 24-156-85 in 2019. Additionally, the licensing bureau suggested the board amend (5) to add "or certification" because some jurisdictions issue a certificate as opposed to a license.

24.156.2718 CONTINUING EDUCATION AND REFRESHER REQUIREMENTS (1) All licensed ECPs are required to complete continuing education (CE) and refresher requirements prior to their license expiration date.

(a) through (4) remain the same.

(5) The lead instructor is responsible for the quality, consistency, and management of the refresher training at the EMR and EMT levels and shall maintain records of all courses conducted including an agenda and detailed student performances that document the licensee's ability demonstrated during the refresher.

(6) The medical director is responsible for the quality, consistency, and management of the refresher training at the EMT with endorsement(s), AEMT, and paramedic levels. The medical director may assign duties as appropriate, but retains the overall responsibility for the refresher.

(7) All ECPs shall ~~submit upon renewal an affidavit stating that the ECP is competent in the licensure level skills, including endorsement skills~~ affirm understanding of their recurring duty to comply with CE requirements as part of license renewal.

~~(a) Affidavits of EMR and EMT levels shall be signed by both the ECP and a lead instructor or medical director.~~

~~(b) Affidavits of EMT with endorsement(s), AEMT, and paramedic levels shall be signed by both the ECP and their medical director.~~

(a) The ECP is responsible for maintaining documentation of completed CE and refresher and their medical director's authorization/attestation of continued

competence (including endorsement skills) on a board-approved form which shall be made available to the board upon request.

(c) remains the same but is renumbered (b).

~~(8) Documentation of all CE and continued competence must be retained by the ECP, and made available to the board upon request.~~

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: Following the 2019 rule amendments of MAR Notice No. 24-156-85, licensing staff recommended several changes to this rule to address potential confusion during future ECP renewal periods and continuing education audits. Board counsel concurred, and the board is now amending (1) to specify that "expiration date" means the license expiration date and not a different date. Further, the board is amending (5) and (6) to clarify the responsibilities of lead instructors and medical directors for refresher trainings and mirror the provisions of ARM 24.156.2720.

Following a recommendation by department legal staff, the board is amending (7) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion. Other amendments to (7) clarify that licensees must maintain CE documentation and provide it to the board upon request. With these amendments, the board is striking (8) as unnecessarily duplicative.

24.156.2720 ECP TRAINING COURSES (1) through (1)(c) remain the same.

(d) a final competency evaluation including a practical skill evaluation; and

(e) certificate of successful completion which states:

(i) full name of student;

(i) through (iii) remain the same but are renumbered (ii) through (iv).

(2) remains the same.

~~(3) All EMR and EMT level courses must designate a lead instructor who shall maintain overall responsibility for the quality, consistency, and management of the course.~~

~~(4)~~ (3) All ~~AEMT and paramedic level~~ levels of ECP courses must designate a lead instructor and a medical director. The lead instructor is under the supervision of the board and medical director for these courses.

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

~~(6)~~ (5) The lead instructor of an EMR course shall:

(a) ~~document student skill and proficiency on board-approved forms~~ issue a certificate as provided under (1)(e);

(b) remains the same.

(c) provide at least one instructor per six students when practical skills are taught or evaluated.

~~(7)~~ (6) The lead instructor of an EMT course shall:

(a) ~~document student skill and proficiency on board-approved forms~~ issue a certificate as provided under (1)(e);

(b) remains the same.

(c) provide at least one instructor per six students when practical skills are taught or evaluated; and

(d) provide the clinical experience as specified under (2)(a)~~; and~~.

~~(e) have access to a medical director who is available for consult.~~

~~(8)~~ (7) The lead instructor and medical director of an AEMT or paramedic course shall:

(a) ~~document student skill and proficiency on board-approved forms~~ issue a certificate as provided under (1)(e);

(b) through (d) remain the same.

(e) provide sufficient patient ~~volume~~ accessibility to allow students to complete all clinical experiences within the course dates.

~~(9)~~ (8) Requests for extension of required course completion times stated in ~~(8)(c)~~ (7)(c) must be submitted in writing and may be granted by the board or its designee.

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: Since this rule's April 27, 2019 effective date, licensing staff provided several suggested amendments to board legal counsel to clarify the reporting requirements of this rule and avoid potential licensee confusion. Following the recommendations and additional discussion, the board is amending several sections to increase clarity and reduce staff and licensee questions.

The board is amending (1)(d) to require a practical skill evaluation to ensure licensure applicants have appropriate practical skills that may not be evaluated by NREMT during that organization's certification process. Further, the board is amending (1)(e) per board counsel recommendation to require that certificates of successful ECP course completion include the student's full name. Because this is not currently required, licensing staff has received certificates with no name.

The board is amending (6) regarding the responsibilities of lead instructors for EMR and EMT courses in evaluating practical skills and issuing certificates. Board counsel recommended the changes to address questions and confusion in this area.

24.156.2732 MEDICAL DIRECTION (1) through (10) remain the same.

(11) A medical director may not unilaterally alter a patient care plan developed by a physician, PA, or APRN for care provided by an ECP with a CIHC endorsement.

AUTH: 37-3-203, 50-6-203, MCA
IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS (1) through (1)(a)(i) remain the same.

(ii) naloxone; ~~and~~
(iii) lead instructor~~.~~; and
(iv) CIHC.
(b) through (b)(iv) remain the same.
(v) naloxone; ~~and~~
(vi) lead instructor~~.~~; and
(vii) CIHC.
(c) and (c)(i) remain the same.
(ii) AEMT-99; ~~and~~
(iii) lead instructor~~.~~; and
(iv) CIHC.
(d) remains the same.
(i) critical care paramedic; ~~and~~
(ii) lead instructor~~.~~; and
(iii) CIHC.

AUTH: 37-3-203, 50-6-203, MCA
IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

24.156.2771 ECP SCOPE OF PRACTICE (1) through (7)(b) remain the same.

(c) practice at the EMR level, even if the ECP is licensed at a higher level in another state, unless the individual is licensed at an EMT with endorsement(s), AEMT, or paramedic level, and the federally managed incident has medical direction provided by a Montana licensed physician approved by the board as a medical director, and the physician authorizes the individual to function beyond the ~~basic~~ EMR level;

(d) through (8) remain the same.

~~(9) In the event of an emergency response in which chemical agents are used or suspected as being used, ECPs at all levels who are appropriately trained are authorized by the board to carry antidote auto-injector kits and administer them as instructed to themselves and any others. Instruction in the use of antidote kits is required in all ECP initial and refresher courses.~~

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: When the board eliminated all references to the "basic" level of ECP licensure in MAR Notice No. 24-156-85, a reference in this rule was overlooked. The board is now removing the remaining reference from (7)(c). Additionally, public comments received in that rulemaking project indicated that (9) is unnecessary and already addressed through statewide practice guidelines. The board was unable to make such a substantial change in that project's final notice and is now amending the rule accordingly.

5. The proposed new rule is as follows:

NEW RULE I CIHC ENDORSEMENT (1) An applicant for CIHC endorsement shall submit an application, the appropriate fees, and:

(a) verification of completion of a board-approved curriculum in community-integrated health care provided by an accredited institution of higher learning, which must include 48 hours of clinical experience; and

(b) attestation of a minimum of one year of experience at the applicant's current level of licensure.

(2) An ECP acting under a current CIHC endorsement shall:

(a) act within their scope of practice according to the Montana ECP Practice Guidelines;

(b) follow the patient care plan developed by the physician, PA, or APRN directing the CIHC to their patient, which may not be unilaterally altered by the ECP's medical director; and

(c) consult their medical director regarding scope of practice.

AUTH: 37-3-203, 50-6-203, MCA
IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

7. An electronic copy of this notice of public hearing is available at www.medicalboard.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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdmed@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, apply and have been fulfilled. The primary bill sponsor was contacted on December 2, 2019, by electronic mail and December 5, 2019, by telephone and U.S. Postal Service mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.1304, 24.156.1404, 24.156.1623, 24.156.2701, 24.156.2711, 24.156.2713, 24.156.2718, 24.156.2720, 24.156.2732, 24.156.2751, and 24.156.2771 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.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to dlibsdmed@mt.gov.

11. Samuel Hunthausen, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ANA DIAZ, Ph.D.
PRESIDENT

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

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

In the matter of the amendment of ARM 24.171.408 outfitter records, 24.171.412 safety and first aid provisions, 24.171.520 operations plans and amendments, and 24.171.2301 unprofessional conduct and misconduct	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 11, 2020, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., on February 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdout@mt.gov (board's e-mail).

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

24.171.408 OUTFITTER RECORDS (1) through (3) remain the same.

(4) In general, outfitter records, including, but not limited to the operations plans, shall be maintained as confidential information and shall not be released to any person or organization without written permission of the outfitter, subpoena or order of a court, or written request of a state or federal agency for law enforcement purposes. A specific outfitter's number of NCHU is confidential information, but whether an outfitter has NCHU of a particular category is public information. Also, while total acreage of private lands where any outfitter is authorized to operate is a matter of public record, where a particular outfitter is authorized to operate is a confidential matter between the landowner and the outfitter. The Department of Fish, Wildlife and Parks or the Private Land/Public Wildlife Council may use board data to create a map depicting all private land where any outfitter is authorized to operate, excluding private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands. All inquiries for outfitter records shall be reviewed and considered in relation to this rule and the

competing interests between the public's right to know and the rights of privacy involved in the particular records requested.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-301, 37-47-304, MCA

REASON: The 2019 Montana Legislature enacted Chapter 236, Laws of 2019 (Senate Bill 222), an act revising the board's rulemaking authority. The bill became effective October 1, 2019. The board is amending ARM 24.171.408 and 24.171.520 to implement the bill and reflect the changes to 37-47-201 and 37-47-304, MCA, regarding reporting requirements for certain private lands.

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

24.171.412 SAFETY AND FIRST AID PROVISIONS (1) through (6) remain the same.

(7) Each watercraft or vessel shall contain a serviceable U.S. Coast Guard approved personal floatation device for each person onboard and a rescue throw line measuring at least 55 feet in length. Children under 12 are required to wear a personal floatation device. Watercraft 16 feet and longer are required to be equipped with a throwable Type IV floatation device. Personal floatation devices must be readily accessible at all times.

(8) remains the same.

AUTH: 37-47-201, MCA
IMP: 37-47-201, MCA

REASON: Following recent news stories involving client deaths from drowning, and at the request of associations that represent fishing outfitters and guides, the board has determined it is reasonably necessary to amend this rule to impose a higher duty on guides and outfitters to protect clients consistent with its mission to protect public health, safety, and welfare. Many other states require safety throw lines, and federal law requires PFDs to be readily accessible. The board is amending this rule to adopt these standards for the board's licensees.

24.171.520 OPERATIONS PLANS AND AMENDMENTS (1) through (1)(c) remain the same.

(i) the name of each public land agency, and owners of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

(ii) remains the same.

(iii) total acreage on a per-owner basis of the private land where the outfitter is authorized to operate for any duration of time and for any species of game; ~~and~~

(iv) the legal description of the private acreage where the outfitter is authorized to operate, either by geo-code number assigned by the Montana Department of Revenue, or by aliquot parts. If less than the entire section or parcel

is reported, then the boundary shall be described down to the quarter-quarter section or the government lot number; and

(v) with respect to (ii) through (iv), outfitters are not required to report private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands;

(d) through (5) remain the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-1-131, 37-47-201, 37-47-304, MCA

REASON: See REASON for ARM 24.171.408.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (3)(d) remain the same.

(e) not use alcohol or any other controlled substance as defined in Title 50, chapter 32, MCA, including marijuana and marijuana derivatives, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) through (j) remain the same.

(k) not have hunting or fishing privileges or a wildlife conservation license suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;

(l) have a valid wildlife conservation license before providing guiding services;

(l) through (q) remain the same but are renumbered (m) through (r).

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA
IMP: 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341, MCA

REASON: The board has determined it is reasonably necessary to amend (3)(e) to clarify that impairment from any controlled substance while performing job-related functions is unprofessional conduct. Board members have received anecdotal reports that outfitters and guides are performing services for clients while impaired by marijuana. Although the board recognizes that, under the Montana Medical Marijuana Act, 50-46-301, MCA, et. seq., registered card holders may use marijuana, it is necessary for the public's protection to prohibit all outfitters and guides from using marijuana to the extent the use impairs the outfitter or guide while engaged in professional duties.

The board is also amending (3)(k) and adding (3)(l) because board staff noticed that, while 37-47-304, MCA, requires outfitters and guides to have a wildlife conservation license at the time of application, board statutes and rules do not clearly state this as a continuing requirement. The board recognizes the legislative intent to require all licensees to maintain a valid wildlife conservation license before providing guiding services and is amending this rule to clarify that requirement.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

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

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on December 19, 2019, by telephone.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.408, 24.171.412, 24.171.520, and 24.171.2301 will not significantly and directly impact small businesses.

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

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

BOARD OF OUTFITTERS
JOHN WAY, CHAIRPERSON

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

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

In the matter of the amendment of ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.316, 37.80.317, and 37.80.501, and the repeal of 37.80.206 pertaining to child care	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 6, 2020 at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal 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 January 30, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain the same.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual, dated ~~July 1, 2018~~ June 1, 2020, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

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

~~(1) "Absent days" means a payment to assist households when a child care provider requires payment for a child's absence.~~

(2) through (32) remain the same but are renumbered (1) through (31).

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (6) remain the same.

~~(7) Payment may only be made for care listed on the authorization plan.~~

(8) through (12) remain the same but are renumbered (7) through (11).

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) through (9) remain the same.

(10) Persons providing child care services subsidized under this chapter are paid at the lesser of the provider's usual and customary rate or the rates specified in ARM 37.80.205. ~~This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter.~~ The portion of the total monthly payment that the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

(11) through (13) remain the same.

~~(14) Benefits are only paid for actual care provided during the authorization and corresponding certification period, except as provided in ARM 37.80.205 and 37.80.206.~~

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

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

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS (1) The department calculates provider rates based on market rate surveys required by the Child Care and Development Block Grant Act of 2014. A half-time day rate is calculated for ~~six~~ five or less hours of care during a calendar day. A full-time day rate is calculated for more than ~~six~~ five hours and up to 12 hours during a calendar day.

(2) and (3) remain the same.

(4) Providers are paid for ~~child care provided~~ actual attendance when the child is present if a child attends less than 85% of the authorized time listed on the authorization plan. ~~Payment for child care when the child is absent is only allowed as described in ARM 37.80.206.~~

(5) Providers are paid the entire monthly amount listed on the authorization plan when a child attends at least 85% of the authorized time listed on the authorization plan.

(5) through (7) remain the same but are renumbered (6) through (8).

(9) The department has the discretion to adjust rates for child care provided during non-traditional hours as defined in ARM 37.80.102.

(a) In order for an adjusted rate to be paid, the approved care must be provided for at least one hour between 6 p.m. to 6 a.m. Monday through Friday or after 6 p.m. Friday to 6 a.m. Monday.

(8) and (9) remain the same but are renumbered (10) and (11).

(12) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days unless the child has been attached to a different provider. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) through (4) remain the same.

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

(a) remains the same.

(b) ~~The claim must indicate the child's actual attendance accurately, within one half hour. The provider's claim may be rounded to the nearest half hour of total daily attendance~~. The claim must accurately reflect the child's time in and time out as indicated on the provider's sign-in/sign-out records.

(c) through (7) remain the same.

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

37.80.317 AUTHORIZATION OF SERVICES – AUTHORIZATION PLANS

(1) Child care assistance is provided for through an authorization of services and an authorization plan. The authorization of services and authorization plan include the following information:

(a) through (c) remain the same.

(d) name of the child care provider; ~~and~~

(e) amount of child care payment based on the number of hours per week authorized; and

(e) remains the same but is renumbered (f).

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

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

(a) remains the same.

(b) a parent has been given a grace period and does not meet the activity requirement or is not participating in the TANF funded case assistance program at the end of the grace period;

~~(c) the parent no longer needs child care to allow the parent to participate in an activity specified in ARM 37.80.201;~~

(d) remains the same but is renumbered (c).

(d) a family moves outside of the state of Montana; or

~~(e) a parent who was participating in the TANF funded cash assistance program is no longer a participant in that program and is not otherwise eligible for child care assistance under the provisions of ARM 37.80.201;~~

~~(f) the child no longer meets the age requirements of ARM 37.80.102.~~

(g) remains the same but is renumbered (e).

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), ~~(e)~~ (d), or ~~(f)~~ (e), notice of termination must be sent to both the parent and the provider at least 15 calendar days prior to the effective date of termination, except for ~~(1)(e)~~ TANF cases in which a ten-calendar-day notice is required. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a)~~, (d), or (g)~~.

(a) through (4) remain the same.

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

4. The department proposes to repeal the following rule:

37.80.206 ABSENT DAYS is found on page 37-17807 of the Administrative Rules of Montana.

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

5. STATEMENT OF REASONABLE NECESSITY

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

The proposed administrative rule changes are necessary to revise the department's policy manual for the program and to conform the department's rules for the administration of the BBCCS Program to federal regulations at 45 CFR Part 98.

ARM 37.80.101

This proposed rule amendment would adopt and incorporate by reference proposed revisions to the Early Childhood Services Bureau (ECBS) Child Care Policy Manual (manual) effective February 1, 2020. The proposed rule amendment is necessary to incorporate the manual revisions described below.

Policy Section 1-1: Table of Contents
The department proposes changes to revise the subheading to proposed changes to policy sections 6-3 and 6-6.

Policy Section 1-10: Timely Notices and Termination
The department proposes to remove the term "certification plan" because it is no longer an accurate term. A family on the Best Beginnings Child Care Scholarship is given a 12-month eligibility period. The department proposes to remove examples of when a 15-day notice and no advance notice would be given. These are redundant and do not reflect all possible examples.

Policy Section 3-1: OPA, Pathways, CCR&R Coordination
The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 3-2: Tribal TANF Coordination
The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 3-3: Working Caretaker Relative Child Care
The department proposes to remove language about a case closing due to an unpaid copayment. This language must be removed to meet federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 6-3: Issuing the Authorization of Services and Certification Plan
The department proposes to rename the Policy Section to "Issuing the Authorization of Services and Authorization Plan." The term "certification plan" is no longer used. The department proposes to allow the parent to determine the child care needs for their child after the family is determined eligible for the Best Beginnings Child Care Scholarship. This promotes continuity of care for a child because the parent knows the child's needs. The department proposes to put a limit on the weekly maximum number of hours a child can be authorized for payment by the Best Beginnings Child Care Scholarship to avoid abuse of this policy.

Policy Section 6-4: Copayment Requirements
The department proposes to remove language about a family's case closing due to an unpaid copayment. A family has a monthly copayment as an eligibility requirement, and this will be reviewed at an initial application or at annual re-determination. The case will not close during a 12-month eligibility period. Current policy is contrary to federal regulations, 45 CFR Part 98.21(a)(5).

Policy Section 6-6: Absent Days and Continuity of Care
The department proposes to rename the Policy Section to "Continuity of Care." The department proposes to remove all language about Absent Days to align with payment practices in ARM 37.80.205. The department proposes in ARM 37.80.205 to pay the monthly authorized amount when a child attends a child care provider for 85% of the authorized time. Absent Days were used as payment practice to pay child care providers for occasional absences. The department proposes changes to ARM 37.80.205 that will pay for occasional absences because only 85% attendance for a month is required.

Policy Section 6-7: Invoice and Payment Processes
The department proposes to revise language about how invoices are used in the payment process. The department proposes to require a child's actual time in and time out of a child care facility. A child care provider providing care for a child receiving the Best Beginnings Child Care Scholarship is required to keep sign-in/sign-out records where a parent signs actual time in and time out of a child. The department will be able to increase program integrity by aligning how sign-in/sign-out records are maintained and what information is found on invoices. The department proposes to remove the term "Absent Days" following proposed changes to Policy Section 6-6.

ARM 37.80.102
The department proposes to remove the definition for "Absent Days" following proposed changes to ARM 37.80.205. The department proposes payment practices changes that will include payment for occasional absences.

ARM 37.80.201

The department proposes to remove language about payments based on an authorization plan. The department proposes changes to ARM 37.80.205 to include payment practices.

ARM 37.80.202
The department proposes to remove redundant language. The department proposes to move language to ARM 37.80.205 because payment practices are included in this rule.

ARM 37.80.205
The department proposes to revise language to clarify payment practices on how child care providers are paid for child care services under the Best Beginnings Child Care Scholarship program. The department proposes to revise the definition for payment of a half-time day from six hours to five hours. The department has received feedback from child care providers that a half-time day is defined by most as less than five hours per day. The department proposes to align with the business practices of child care providers.

ARM 37.80.206
The department proposes to repeal this rule to align with ARM 37.80.205 proposed changes.

ARM 37.80.316
The department proposes to change how a child care provider indicates the time a child attends the facility. By receiving actual time a child enters and leaves a child care facility, the department will improve program integrity. Actual time on the invoice can be compared to the times signed off by the parent on sign-in/sign-out records kept by the child care provider.

ARM 37.80.317
The department proposes to add the amount of a child care payment to an authorization plan. By providing this information, a child care provider will be able to determine what a monthly payment would be for a child if he or she attended 85% of the authorized time during a month.

ARM 37.80.501
The department proposes to revise the reasons a case can be terminated to align with federal regulations, 45 CFR Part 98, 98.21(a)(5). Federal regulations allow a case to be closed in the following circumstances: excessive unexplained absences, a change in residency outside of the state, and if a parent has not met an activity requirement after being given a grace period. The department allows a parent to choose to close a case with a written request.

Fiscal Impact

The Best Beginnings Child Care Scholarship (BBCCS) Program is administered by the department using funds through the federal Child Care Development Fund

(CCDF), matching state general fund, and required state Maintenance of Effort (MOE). The department expects the proposed rules will have a fiscal impact to the state.

The BBCCS Program offers child care assistance for families with parents attending school and/or working under the Non-TANF Program, families referred by Temporary Assistance for Needy Families (TANF), and children from Child Protective Services (CPS). In State Fiscal Year (SFY) 2019, 4,956 children from Non-TANF families, 1,737 children referred by TANF, 193 children referred by the Working Caretaker Relative Program, 45 children referred by Tribal IV-E, and 1,881 children referred by CPS were receiving child care assistance. There was a total of 8,043 unduplicated children.

The Child Care Development Fund requires that not less than 70% must be used to fund direct services, child care assistance payments to providers for eligible children. The BBCCS did not meet the direct fund requirement in Federal Fiscal Year (FFY) 2017. In order to exceed this fiscal requirement, the department proposes to pay a child care provider the total monthly authorized amount when a child attends 85% of the authorized time.

Absent Days have an average annual expenditure of $940,000. The department proposes to eliminate Absent Days, and the resulting savings of approximately $1,000,000 will be applied to meeting full payments for children that attend 85% of the authorized time.

The department proposes to pay an additional percentage for child care provided during hours that fall outside of traditional child care hours of 6:00 a.m. to 6:00 p.m., Monday through Friday. It is estimated the proposed rulemaking will cost the department $112,000.

As of August 2019, there were 259 licensed child care centers, 199 licensed family providers, 366 licensed group providers, 55 Family, Friend, and Neighbor (FFN) providers, and 116 Relative Care Exempt (RCE) providers. Child care providers may be small businesses. The department expects child care providers who have children receiving child care assistance and attending full-time will see a benefit because the provider will receive the entire month's authorized payment. The impact on an individual small business will be based on the number of children with child care assistance served by the child care provider, the number of child care hours each child with child care assistance is authorized for, and the number of hours each child attends at the child care provider's facility per month.

The department intends to apply these amendments June 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: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744;

or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., February 14, 2020.

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 and repeal of the above-referenced rules will significantly and directly impact small businesses.

/s/ Robert Lishman for Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State January 7, 2020.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE

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

TO: All Concerned Persons

1. On September 20, 2019, the Classification Review Committee published MAR Notice No. 6-260 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1548 of the 2019 Montana Administrative Register, Issue Number 18. On December 27, 2019, the committee published the notice of amendment of the above-stated rule at page 2339 of the 2019 Montana Administrative Register, Issue Number 24.

2. This corrected notice is necessary because the July 1, 2020 effective date for the rule was not included in the notice of amendment. The effective date was included in the notice of proposed amendment.

3. The effective date of the rule amendment is July 1, 2020.

/s/ Michael Winsor
Michael Winsor
Rule Reviewer

/s/ Greg Roadifer
Greg Roadifer
Committee Chair

Certified to the Secretary of State January 7, 2020.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3816 pertaining to the administration of the 2021 and 2023 Biennia Treasure State Endowment Program – Emergency Grants	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 6, 2019, the Department of Commerce published MAR Notice No. 8-94-176 pertaining to the proposed amendment of the above-stated rule at page 2182 of the 2019 Montana Administrative Register, Issue Number 23.

2. No comments or testimony were received.

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

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State January 7, 2020.

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

In the matter of the adoption of New Rule I pertaining to positive identification for controlled substance prescriptions	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 8, 2019, the Board of Pharmacy published MAR Notice No. 24-174-73 regarding the public hearing on the proposed adoption of the above-stated rule, at page 1954 of the 2019 Montana Administrative Register, Issue No. 21.

2. On December 6, 2019, a public hearing was held on the proposed adoption of the above-stated rule in Helena. One comment was received by the December 6, 2019 deadline.

3. A summary of the comment and the board response are as follows:

COMMENT 1: One commenter expressed support for the entirety of the proposed rule in MAR Notice No. 24-174-73.

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

4. The board has adopted New Rule I (24.174.842) exactly as proposed.

BOARD OF PHARMACY
TONY KING, PharmD
PRESIDENT

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

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

In the matter of the amendment of ARM 24.101.413 and the repeal of ARM 24.181.301, 24.181.402, 24.181.403, 24.181.404, 24.181.501, 24.181.505, 24.181.601, 24.181.603, 24.181.605, 24.181.607, 24.181.608, 24.181.609, 24.181.610, 24.181.611, 24.181.612, 24.181.613, 24.181.615, 24.181.616, 24.181.620, 24.181.621, 24.181.622, 24.181.623, 24.181.624, 24.181.625, 24.181.626, 24.181.627, 24.181.628, 24.181.701, 24.181.704, 24.181.706, 24.181.708, 24.181.710, 24.181.711, 24.181.716, 24.181.717, 24.181.718, 24.181.719, 24.181.722, 24.181.723, 24.181.724, 24.181.728, 24.181.730, 24.181.802, 24.181.803, 24.181.807, 24.181.810, and 24.181.2101, pertaining to private alternative adolescent residential or outdoor programs obsolete rules	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 6, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-181-7 regarding the proposed amendment and repeal of the above-stated rules, at page 2192 of the 2019 Montana Administrative Register, Issue No. 23.

2. No comments were received by the January 3, 2020 deadline.

3. The department has amended and repealed the above-stated rules as proposed.

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

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

In the matter of the amendment of ARM 24.189.301 definitions, 24.189.607 required supervised 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	))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On September 20, 2019, the Board of Psychologists (board) published MAR Notice No. 24-189-40 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1567 of the 2019 Montana Administrative Register, Issue No. 18.

2. On October 16, 2019, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments were received by the October 18, 2019 deadline.

3. The board has amended ARM 24.189.301, 24.189.607, and 24.189.2107 exactly as proposed.

4. The board has adopted New Rule I (24.189.415) exactly as proposed.

5. The board has repealed ARM 24.189.620 exactly as proposed.

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, Ph.D.
CHAIRPERSON

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

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.

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 ARM 36.22.1242 pertaining to the Board of Oil and Gas Conservation privilege and license tax	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 20, 2019, the Department of Natural Resources and Conservation and the Board of Oil and Gas Conservation published MAR Notice No. 36-22-201 pertaining to the proposed amendment of the above-stated rule at page 1601 of the 2019 Montana Administrative Register, Issue Number 18.

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

3. The department received no comments on the proposed amendment.

/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 January 7, 2020.

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

In the matter of the adoption of New Rules I through IV, the amendment of ARM 37.111.801, 37.111.804, 37.111.805, 37.111.810, 37.111.811, 37.111.812, 37.111.825, 37.111.832, 37.111.833, 37.111.834, 37.111.840, 37.111.841, 37.111.842, 37.111.846, and the repeal of 37.111.831 pertaining to healthy learning environments in Montana public schools	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 21, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-873 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 795 of the 2019 Montana Administrative Register, Issue Number 12. On July 26, 2019, the department published a notice of extension of comment period until September 16, 2019, at page 1016 of the Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 37.111.834 and 37.111.842. The department has repealed the following rule as proposed: ARM 37.111.831.

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

NEW RULE I (37.111.826) INDOOR AIR QUALITY (1) remains as proposed.

(2) Air filters ~~shall~~ must have a minimum efficiency reporting value of between 8 and 13 as recommended by the National Air Filtration Association and the Environmental Protection Agency (EPA) unless other types of non-MERV rated filters are used.

(a) The department recommends that schools with ventilation systems using MERV rated air filters change their filters to MERV 13 or greater during times of poor outdoor air quality.

(b) Schools using electrostatic air filters must clean the filters according to manufacturer specifications.

(3) The school facility manager, school administrator, lead teacher, or other administrator-approved staff ~~Indoor air quality inspections~~ must ~~be~~ complete~~d~~ ~~annually~~ annual indoor air quality inspections using the Walk Through Inspection

Checklist from EPA's Indoor Air Quality Tools for Schools or other department-approved inspection form.

(a) Schools must maintain records of indoor air quality inspection on site for no less than three years and the records must be made available to the local health authority and the department upon request.

AUTH: 50-1-206, MCA
IMP: 50-1-206, MCA

NEW RULE II (37.111.827) OUTDOOR AIR QUALITY (1) Schools ~~shall~~ must reference the Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities developed by the Montana Department of Public Health and Human Services and the Montana Department of Environmental Quality to determine local air quality conditions and choose to cancel outdoor recess and delay or not delay outdoor school-sponsored events.

(2) Schools must have a protocol in place on how to limit the infiltration of ~~seal school buildings to~~ outside air into the school during poor air quality conditions.

AUTH: 50-1-206, MCA
IMP: 50-1-206, MCA

NEW RULE III (37.111.813) SCIENCE, ~~SHOP~~ INDUSTRIAL ARTS, AND ART LABORATORY SAFETY (1) remains as proposed.

(2) Schools containing science labs, ~~shop~~ industrial arts classrooms or buildings, and art labs that use and store hazardous chemicals must maintain a Chemical Hygiene Plan (CHP) and designate a ~~school and district~~ Chemical Hygiene Officer (dCHO) in accordance with the requirements of the Occupational Safety and Health Administration (OSHA) Occupational Exposure to Hazardous Chemicals in Laboratories standard 29 CFR 1910.1450.

(3) ~~Chemical Hygiene Plans~~ CHPs must include plans for appropriate selection, storage, inventory, use, and disposal of hazardous chemicals, and biological materials.

(a) The dCHO has primary responsibility for ensuring the implementation of all components of the ~~Chemical Hygiene Plan (~~CHP~~)~~.

(b) The school Chemical Hygiene Officer (sCHO) must oversee the implementation and enforcement of the schools' CHP at their school(s). A science chairperson, ~~or~~ equivalently qualified faculty member, or staff member with knowledge of the chemicals used in the school may be ~~designed~~ designated as the sCHO.

(4) ~~Material~~ Safety Data Sheets (SDS) for all materials in science labs, ~~shop~~ industrial arts classrooms or buildings, ~~and~~ art labs, and lab storage rooms will be stored in those rooms and be accessible at all times.

(a) The SDS must also be kept in a secure, remote site outside of the science labs, ~~shop~~ industrial arts classroom or buildings, ~~and~~ art labs, and lab storage rooms.

~~(b) The SDS must be made publicly available online.~~

(5) remains as proposed.

(6) Unused hazardous materials must be disposed of in a timely manner as stated by the manufacturer and approved by the ~~Department of Environmental Quality (~~DEQ~~)~~. Schools must consult with the DEQ and the department for additional information about how they can properly discard hazardous material.

~~(7) The department may work with the Department of Labor and Industry to determine if stop work orders are necessary to protect the safety of school employees and students.~~

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

NEW RULE IV (37.111.802) INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference the following:

(a) Department of Public Health and Human Services and Department of Environmental Quality "Recommendations for Outdoor Activities Based on Air Quality for School and Child Care Facilities" (~~2016~~ 2018 edition).

(b) through (2) remain as proposed.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

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

37.111.801 DEFINITIONS (1) through (6) remain as proposed.

(7) "First-draw sample" means a ~~one-liter~~ 250 milliliter sample of tap water that has stood motionless in the plumbing pipes for at least six hours and is collected without flushing the tap.

(8) through (15) remain as proposed.

(16) "Local education agency (LEA)" means the local school district board of trustees recognized as the administrative agency for a public elementary or secondary school.

(16) remains as proposed but is renumbered (17)

(18) "Pest" means any animal, plant, or other organism which has a harmful effect on humans, their food, or the conditions of their school, workplace, home, or recreation sites.

(19) "Radon" is a colorless, odorless, tasteless gas and comes from the natural breakdown of uranium in the ground.

~~(17)~~ (20) "Sanitarian" means a person, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, who is qualified ~~under Title 37, chapter 40, part 1, MCA, and represents the health officer~~ to practice the profession of sanitarian.

~~(18)~~ (21) "School" means a building or structure or portion thereof occupied ~~or used at least 180 days per year~~ for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the Board of Public Education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(2)(e), MCA.

(19) and (20) remain as proposed but are renumbered (22) and (23).

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.804 PRECONSTRUCTION REVIEW (1) Before construction commences, plans for construction of a new school or an addition to or an alteration of an existing school must be submitted to the department or local health authority for review and approval. Plans must include the following where applicable:

(a) location and detail of classrooms used for science or science laboratories, ~~home economics~~ consumer science, art classrooms, art supply rooms, mechanic/carpentry, and ~~shops~~ industrial arts, including location and ~~venting~~ ventilation detail of lockable storage area of chemicals and other hazardous products;

(b) through (2) remain as proposed.

(3) Schools ~~will~~ must be constructed in locations which present the least risk of exposure to pollutants or other health hazards originating onsite or offsite. If potential environmental concerns are identified during the preconstruction process, and the Local Education Agency (LEA) still desires to consider the site, a more comprehensive environmental review must be performed with the help of the department, ~~or~~ the local health authority, or DEQ.

(4) The topography of the site must permit good drainage of surface water away from the school building to eliminate significant areas of standing water and infiltration of surface water into the school building.

~~(4)~~ (5) All chemical storage areas in new construction ~~should~~ must be constructed to maintain negative air pressure to eliminate contamination of the school's indoor air quality by being vented to the outside of the building.

~~(5)~~ (6) Gas supply lines serving science laboratories, ~~home economics~~ consumer science, ~~shops~~ industrial arts, and other rooms utilizing multiple outlets must have a master shut-off valve that is readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

~~(6)~~ (7) ~~Shops~~ Industrial arts classrooms or buildings and other rooms using electrically operated instruction equipment which presents a significant safety hazard to the student utilizing such equipment must be supplied with a master electric switch readily accessible to the instructor or instructors-in-charge without leaving the classroom or storage area.

(8) Janitorial storage spaces must be constructed to meet the following requirements:

(a) must be lockable;

(b) must include a storage area for equipment and chemicals; and

(c) must be vented to the outside of the building.

(9) Hot and cold water must be provided to handwashing sinks and shower facilities. Hot water must not be below 100° F nor exceed a temperature of 120° F.

(10) The department recommends the use of radon prevention strategies in new construction.

~~(7)~~ (11) Construction may not commence until all plans required by (1) through ~~(6)~~(9) have been approved by the department or local health authority. The department or local health authority ~~shall~~ must complete this review within 60 days after submission to them of complete plans and specifications. Construction must be in accordance with the plans as approved unless permission is granted in writing by the department or local health authority to make changes.

(8) remains as proposed but is renumbered (12).

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.805 EXISTING BUILDING: CHANGE OF USE (1) An existing building not currently used as a school may not be used as a school without the prior approval of the department or local health authority.

(a) When a proposal to use an existing building as a school involves physical modification, plans meeting the requirements of ARM 37.111.804(1) through ~~(6)~~(9) must be submitted to the department or local health authority for review and approval. If no physical modification is involved, the department or local health authority may waive the requirement for submission of plans if an inspection by the department or local health authority indicates that the proposed school meets the requirements of this subchapter.

(b) The use of modular or mobile buildings in response to temporary or permanent closure of the existing school facility, segments thereof, or classroom overflow may be granted a one-year written exemption from the requirements of ARM 37.111.804 by the department or local health authority. Plans to continue use of modular or mobile buildings past one year must be shared with the local health authority or department.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.810 INSPECTION (1) Representatives of the department or local health authority must be permitted to enter any school at any reasonable time for the purpose of making inspections to determine compliance with this subchapter. Annual ~~internal~~ inspections must be conducted by a school administrator, facility manager, or other staff member approved by the school administration, as well as having a department or local health authority inspection once a year, or as ~~more often if~~ necessary. The department or local health authority may determine that special circumstances or local conditions warrant inspections with greater or less frequency. Upon receiving a complaint, the local health authority may determine if more inspections are necessary.

(2) and (3) remain as proposed.

(4) Following each inspection, representatives of the department or local health authority ~~shall~~ must give the school administration a copy of an inspection report which notes any deficiencies and sets a time schedule for compliance. The report must document deficiencies ~~include written citations for every rule violation~~.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.811 PHYSICAL REQUIREMENTS (1) A school must comply with the following physical requirements:

~~(a) Adequate lockable, vented, and convenient janitorial facilities including a sink and storage area for equipment and chemicals must be provided.~~

(b) remains as proposed but is renumbered (a).

~~(c)~~ (b) Adequate coat/jacket and book storage for each ~~pupil~~ student must be provided.

~~(d)~~ (c) Beginning September 1, 2021, ~~The~~ the school shall have and follow written policies and procedures regarding the storage, administration, and lawful disposal of prescription, nonprescription, and over-the-counter medication.

~~(e)~~ (d) All non-emergency medication must be kept in a locked, nonportable container, stored in its original container with the original prescription label. Epinephrine, naloxone, and student emergency medication may be kept in portable containers and transported by the school nurse or other authorized school personnel.

(e) Food is not allowed to be stored in refrigeration units with medications.

(f) ~~The school~~ Schools must comply with the applicable requirements of Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C 207) and 39-2-215, MCA, requiring employers to provide a nursing mother reasonable break time and a place to express breast milk after the birth of her child. ~~The school must provide a place for an employee to express breast milk.~~

(g) The school must provide reasonable accommodations for ~~lactating pupils~~ students and staff on the school campus to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding. Reasonable accommodations include, but are not limited to~~, all the following~~:

(i) access to a ~~private and secure room~~ place, that is shielded from view and free from intrusion from the public, students, and other staff, ~~other than a toilet room or sick room,~~ to express breast milk or breastfeed an infant child;

(ii) through (iv) remain as proposed.

(h) The school must take measures consistent with the programmatic and developmental needs of its students to ensure the safe use and secure storage of any equipment including but not limited to: kitchen appliances, ~~shop~~ industrial arts equipment, maintenance tools, and hazardous art supplies.

(i) To reduce the spread of animal-borne diseases, livestock and poultry must be located more than 50 feet from food service areas, offices, or classrooms except those offices and classrooms associated with animal husbandry activities or other demonstrations as approved by the school administration. In classrooms, offices, or food service areas where livestock and poultry are approved by the administrator, animals must not have contact with eating or serving surfaces.

(2) remains as proposed.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.812 SAFETY REQUIREMENTS (1) Janitorial and other storage areas that contain toxic or hazardous materials must be kept locked between periods of use. Custodial closets, boiler rooms, and other areas where hazardous or poisonous compounds are stored ~~should~~ must be inaccessible to students.

(2) and (3) remain as proposed.

~~(4) Water Hot and cold water must be provided to handsinks handwashing sinks and shower facilities. Hot water may must not be below 100°F not nor exceed a temperature of 120°F.~~

(5) remains as proposed but is renumbered (4).

~~(6) The topography of the site must permit good drainage of surface water away from the school building to eliminate significant areas of standing water and infiltration of surface water into the school building.~~

(7) and (8) remain as proposed but are renumbered (5) and (6).

~~(9)~~ (7) Playground inspection results must be made available for review by the local health authority or the department upon request.

~~(10)~~ (8) Periodic maintenance and repair ~~is~~ must be performed on playground equipment according to the manufacturer's specifications. Repairs, not including the leveling of fall protection material, must be documented.

(11) remains as proposed but is renumbered (9).

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.825 HEALTH SUPERVISION AND MAINTENANCE (1) and (2) remain as proposed.

(3) If a ~~child~~ student or a staff member develops symptoms of any reportable communicable or infectious illness as defined by ARM 37.114.203 while at school, the responsible school officials shall do the following:

(a) isolate the ~~child~~ student or staff member immediately from other ~~children~~ students or staff;

(b) if the individual is a student, inform the parent or guardian as soon as possible about the illness and request him or her to pick up the ~~child~~ student; and

(c) consult with a physician, other qualified medical professional, or the local county health department to determine if ~~report~~ the case should be reported to the local health officer pursuant to 37-2-301, MCA.

(4) Schools shall develop and enforce policies on first aid which include, at a minimum, the following:

(a) and (b) remain as proposed.

(c) emergency coverage, including the presence of a person with a ~~currently~~ valid American Red Cross, ~~or~~ American Heart Association, or American Health and Safety Institute CPR and first aid certification from an equivalent first aid course, during school-sponsored activities, including field trips, athletic, and other off-

campus events. Recommendations for first aid supplies, health history tracking, emergency contact forms, chronic disease management training, and policies may be secured from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section and the Chronic Disease Prevention and Health Promotion Bureau, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951.

(5) In addition to the requirements of 50-40-104 and 20-1-220, MCA, "no tobacco use/electronic cigarette" signs must be posted at school building entrances and should be clearly visible ~~in each hallway, entryway, gymnasium, lunchroom, and restroom, though not in each classroom~~. ~~Smoking~~ Tobacco/electronic cigarette use must be prohibited in school vehicles at all times ~~while used by children for school-related functions~~.

(6) In addition to the requirements of this rule, school officials should also be aware of the need to comply with the laws and rules relating to the immunization of children in ARM Title 37, chapter 114 and communicable disease reporting in 37-2-301, MCA. Copies of these requirements may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, ~~Office of Epidemiology and Scientific Support~~ Communicable Disease and Epidemiology Section, 1400 Broadway, P.O. Box 202951, Helena, Montana 59620-2951, or by visiting the website at https://dphhs.mt.gov/publichealth/epidemiology.

(7) remains as proposed.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.832 WATER SUPPLY SYSTEM (1) through (7) remain as proposed.

(8) ~~Starting October 1, 2019, schools~~ Schools must sample all water fountains and sinks used for food preparation. All other potential human consumption fixtures (HCF) must be sampled, unless the school or school district submits a testing plan to the DEQ to test a representative sample of potential HCFs in the school ~~for lead~~. Proposed testing plans will be approved or denied by the DEQ. Initial samples must be taken ~~within one year of the start date~~ by December 31, 2021. All samples must be analyzed by a Montana certified lab using EPA-approved standard drinking water methods for the detection and quantification of lead.

(a) Schools ~~shall~~ must submit to the department a basic schematic and inventory identifying plumbing materials, all fixture locations, and those fixtures meeting the definition of a HCF. Templates for creating the schematic and inventory are available from the department or the Montana Department of Environmental Quality (DEQ) and ~~should~~ can be used to complete this requirement. Lead service lines must be clearly identified in the inventory and should be considered for replacement.

(b) The schematic and inventory ~~shall~~ must be maintained by the school and shall record any repair, modification, or change in water source that may result in a change in lead exposure from water. Sample results for each HCF must also be maintained in conjunction with the plan and inventory.

(c) remains as proposed.

(d) Each first-draw sample for lead must be ~~one liter~~ 250 milliliters in volume and must have stood motionless in the plumbing system of each sampling site for at least six hours. For fixtures with hot and cold water, first-draw samples ~~shall~~ must only be collected from the cold water. First-draw samples may be collected by a school representative instructed in the proper sampling procedures specified in this rule.

(e) All sample results must be submitted electronically to DEQ in a format approved by the department. All sample results must be submitted to DEQ no later than ~~48~~ 72 hours after the school has received the results. Sample results may be submitted to DEQ by certified labs on behalf of the school.

(f) through (h) remain as proposed.

(9) By September 1, 2021, ~~All~~ all schools ~~shall~~ must create and implement a flushing program unless the school meets the waiver requirements indicated under (9)(c).

(a) Schools ~~shall~~ must use the template provided by the department to produce their flushing program.

(b) Flushing will be required following any period of time during which the school is inactive.

(c) remains as proposed.

Table 1.

Bin Placement	Lead Detection	Follow-up Actions
1	Above 15.0 ug/L	Immediately discontinue use of the affected HCF by physical removal or plumbing disconnection. Remediation is required before the school can resume use of the HCF, subject to the follow-up sampling requirements of Table 2. ~~Remedial action must be completed within 6 months of the bin determination.~~
2	5.0 ug/L up to 15.0 ug/L	Evaluate the conditions at the affected HCF. Determine appropriate remedial action(s) to reduce lead concentration(s) to below 5.0 ug/L. ~~Remedial action must be completed within 6 months of the bin determination.~~ Remediation is required before the school can resume use of the HCF, subject to the follow-up sampling requirements of Table 2. Schools may continue to use the HCF until remediation has occurred only if a daily flushing program for the HCF is implemented.
3	Below 5.0 ug/L	HCF below 5.0 ug/L does not require remedial action but routine monitoring must be ~~sampled according to~~ conducted as stated in Bin 3 of Table 2.

Table 2.

Bin Placement	Routine and Follow-up Sampling Requirement
1	Each Bin 1 HCF will be required to be resampled after remediation to show effectiveness of the remediation effort before it is returned to service. The HCF must be resampled within one year of the sample taken after the remediation that returned the fixture to service to confirm that the HCF continues to deliver water below 5.0 ug/L.
2	Each Bin 2 HCF must be resampled after remediation. The HCF must be resampled within one year of the HCF's last sample.
3	Routine Monitoring - Each Bin 3 HCF must be sampled ~~within every 3 years~~ once every 3 calendar years ~~of the last sample date~~ to confirm that the HCFs continue to deliver water below 5.0 ug/L. Schools may submit a waiver to sample HCFs on an alternative frequency. Waivers must be submitted to the DEQ in writing using a form approved by the department. Sampling frequency may be adjusted by the DEQ based on test results and inventory.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.833 ~~SEWAGE~~ WASTE WATER SYSTEM (1) In order to ensure ~~sewage~~ waste water is completely and safely disposed of, a school must:

(a) connect to a public ~~sewage~~ waste water system meeting the requirements of ARM Title 17, chapter 38, subchapter 1; or

(b) if the school is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including staff and students, and an adequate public ~~sewage~~ waste water system satisfying the requirements of ARM Title 17, chapter 38, subchapter 1 is not available, utilize a non-public system whose construction and use meet the construction and operation standards contained in DEQ Circular 4.

(2) remains as proposed.

(3) A ~~sewage~~ waste water system design of a type other than described in this rule may be utilized only if it is designed by a professional engineer and offers equivalent sanitary protection as determined by the department, DEQ, or local health authority.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.840 LAUNDRY FACILITIES (1) remains as proposed.

(2) Towels and other laundry items must be machine washed at a minimum temperature of 120°F for a minimum time of ten minutes and dried to greater or equal to 130°F for ten minutes in a hot air tumble dryer.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.841 CLEANING AND MAINTENANCE (1) A school must comply with the following cleaning and maintenance requirements:

(a) through (l) remain as proposed.

(m) All cleaning supplies need to have an ~~EOA~~ EPA registration number, a "use by" reading letter, be stored with approved ventilation, and ~~stored~~ out of the reach of ~~children~~ students.

(n) and (o) remain as proposed.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

37.111.846 NOXIOUS PLANT AND ANIMAL CONTROL (1) through (4) remain as proposed.

(5) Schools must develop and implement an approved Integrated Pest Management (IPM) program beginning September 1, ~~2020~~ 2021. Students, parents, and staff ~~will~~ must be notified when chemicals for IPM are going to be used.

(6) and (7) remain as proposed.

(8) Except as provided in (9)(c), at least 24 hours before the application of a pesticide to an area of the school that is used by or is accessible to ~~children~~ students, the school administrator must notify parents or guardians of ~~children~~ students of the application. A notice of application must include:

(a) through (i) remain as proposed.

(9) During the school term the required notification must be made by individual notice delivered by phone, face-to-face oral communication, electronic mail, postal mail, or facsimile. A school or school district may also develop a registration system to provide this notification only to those parents who wish to receive the notification. If the school or school district develops a registration system, the school administrator must provide written notice to the parents or guardians of the ~~children~~ students at the beginning of the school year, or upon a ~~child's~~ student's enrollment, that pesticides may be used in or around the school, and must explain to each parent or guardian how to register to be notified at least 24 hours before a pesticide treatment.

(a) remains as proposed.

(b) Immediately before starting the application of a pesticide, the certified applicator must post in the area of the school where the pesticide is to be applied, a sign 8.5x11-inch in size, or greater. ~~The department recommends that the print f~~Fonts must be no smaller than 26 point (one-fourth inch). The school administrator must ensure the sign remains posted and ~~children~~ students are kept out of the treated area until the reentry interval on the label, if any, has expired, or, if the label does not specify a reentry interval, for at least 24 hours.

(c) A school administrator may authorize an immediate pesticide treatment without prior notification if the school administrator determines an emergency exists. An emergency includes an immediate and unanticipated threat to the health and safety of the individuals at the school. An emergency does not exempt the school from the requirements of ~~(9)(f)~~ (10).

(d) through (d)(ii) remain as proposed.

(iii) applications of rodenticides in tamper-resistant bait stations or in areas inaccessible to ~~children~~ students; and

(iv) applications of silica gels and other ready-to-use pastes, foams, or gels that will be used in areas inaccessible to ~~children~~ students.

(10) and (10)(a) remain as proposed.

(b) If a school administrator authorizes a pesticide application under (9)(c), all the information that is required in a notice under ~~(9)(e)~~ (8) must be included in the record.

(c) Records ~~required to~~ must be kept for at least five years~~,~~ and must be made available to the local health authority, the department, or the public for review upon request.

AUTH: 50-1-206, MCA
IMP: 50-1-203, 50-1-206, MCA

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

COMMENT #1: A commenter submitted a comment in support of the proposed rules and expressed concern for their grandchildren who attend Montana schools.

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

COMMENT #2: A commenter expressed concern with the transparency of the rule revision process and requested an extension of the public comment period.

RESPONSE #2: The department developed the proposed rules with input from partners and provided stakeholders multiple opportunities to participate. Stakeholders from whom the department solicited feedback on the draft proposal of the rules included the Office of Public Instruction (OPI), School Administrators of Montana, Montana School Boards Association, Montana Association of School Nurses, Department of Labor and Industry, MEA-MFT, Quality Education Association, Montana Rural Education Association, Montana Indian Education Association, Montana Small School Alliance, Montana Association of School Business Officials, and the Montana Board of Public Education. Additionally, all stakeholders have had the opportunity to participate in the rulemaking through the public hearing and comment period provided for under the Montana Administrative Procedure Act (MAPA). The department extended the public comment period to September 16, 2019.

COMMENT #3: Multiple commenters expressed a concern that it may be difficult for schools to comply with all the rule changes at the same time. Commenters suggested a staggered implementation of the rules.

RESPONSE #3: The department has set staggered implementation dates for the rules.

COMMENT #4: A commenter expressed concern about the rules and asked the department to reconsider the rules, as the commenter felt that they are onerous, will be another unfunded mandate that will burden schools financially, and are unnecessary as schools already have policies and procedures necessary for these safety issues.

REPSONSE #4: The department disagrees with the commenter on multiple points. While some schools may have policies in place that address different aspects of the proposed rule amendments, many schools do not have sufficient policies in place to fully protect their students and staff by providing safe and healthy learning environments. Many of the rule changes are updates meant to align with current laws and best practices. The rule changes which will result in significant fiscal impact will be supported by funding from the department and partner organizations like the DEQ.

COMMENT #5: A commenter offered the opinion that the rules are not clear or concise and left many open questions. The commenter's general stance was that the proposed rule amendments should not be approved for multiple reasons. The commenter felt that it is not possible for their school district or other districts to comply with the rules by October 1, 2019. The commenter also stated that the proposed rules would create a funding crisis and a new district position would be needed, as adding this work load onto an already busy employee would not be prudent.

The commenter requested that the department go back and work with school districts across the state to discuss how schools can improve safety procedures in Montana schools.

RESPONSE #5: Due to the extended comment period, schools will not be required to comply with any additions or changes to the rules by October 1, 2019. The department has included additional language in the rule that allows for staggered implementation of the rules over multiple years. The department has added language to emphasize school district local control. The majority of proposed rule changes allow for individual schools to set policies that work best for them while still meeting the rule requirements.

The department disagrees that the rules would create a funding crisis. Many school districts are already meeting various rule requirements that have been added to this rule to match current laws and best practices. Schools will have multiple years to

comply with the rules to the best of their ability. The department and other partners will provide technical assistance.

COMMENT #6: A commenter questioned whether implementing the water lead testing requirement on October 1, 2019 is feasible for schools.

RESPONSE #6: Due to the extended comment period, schools will not be required to comply with any additions or changes to the rules by October 1, 2019. The department has included additional language in the rules that allow for staggered implementation of the rules over multiple years.

COMMENT #7: A commenter requested that the lighting and heating sections in the current rules be kept because they are necessary to protect the health and safety of students and staff. The commenter also maintains that the sections help the department collaborate with state and federal regulatory authorities.

RESPONSE #7: The department is not proposing to amend the lighting standards set forth in ARM 37.111.830. Heating requirements were removed because they are addressed in the international building code applicable through Department of Labor and Industry administrative rules.

COMMENT #8: Multiple comments from the OPI disagreed that the only significant fiscal impact for schools would be from lead testing requirements. The commenters shared information from a survey of schools that indicated a need for training, technical assistance, and financial resources. Commenters also stated that schools expressed concern they would not be able to meet multiple rule requirements due to staff limitations. Surveyed schools were unable to determine potential financial impacts based on information provided by the surveyor. Some schools felt that there would not be significant fiscal impacts based on the information they have been given.

RESPONSE #8: The department disagrees that there will be additional significant, measurable fiscal impact. The department has included staggered implementation dates for multiple subsections of the rules to ease any administrative burden on schools. The department also plans to provide training and technical assistance to assist schools in implementing the rules. Multiple rule provisions have been moved to the pre-construction section so that current schools may be grandfathered in.

COMMENT #9: Multiple commenters from the OPI requested that the department develop guides, checklists, and sample policies for districts which can be customizable by district size. The commenters state these resources will be instrumental in assisting schools with implementation of these rules.

RESPONSE #9: The department will develop guides, checklists, and sample policies for districts. These materials will be distributed to schools in 2020 and on an ongoing basis as new guidance is developed.

COMMENT #10: A commenter felt that the number of changes placed on schools at one time creates an implementation burden. The commenter would like to understand the timeline as well as the resources available to support school districts of various sizes. The commenter would also like to know the expectations of their involvement.

RESPONSE #10: The department added staggered implementation dates throughout the rules to address the concerns expressed by this commenter and others. The department will work with schools, local health authorities, the DEQ, education partners, and other government and non-profit organizations to inform and support school districts as they work towards creating and maintaining healthy learning environments.

COMMENT #11: Multiple commenters expressed that tasks required of schools under the proposed rules are outside the scope of educator training and may require specialized training and support. Due to this, the commenters requested a staggered implementation to allow schools to effectively implement each new change.

RESPONSE #11: See Response #5.

COMMENT #12: A commenter expressed concern about jurisdiction over Hutterite colonies and who is responsible for ensuring these schools are compliant.

RESPONSE #12: The school districts responsible for the oversight of Hutterite colony schools are ultimately responsible for ensuring these schools comply with these rules to the best of their ability. If Hutterite schools are nonpublic and nonaccredited, the school rules would not apply to them.

COMMENT #13: Multiple commenters requested the department extend the comment period on the proposed rulemaking to the end of September 2019 because schools are not currently in session.

RESPONSE #13: The department extended the comment period to September 16, 2019.

COMMENT #14: A commenter requested the department and DEQ include stakeholders in the rulemaking process in a meaningful way.

RESPONSE #14: See Response #2. The department has carefully considered all comments received, which has led to the revision of the proposed rules as set forth in the final adoption notice.

COMMENT #15: A commenter requested the department provide a list of which education advocates and persons at the OPI the department contacted as part of the proposed rulemaking.

RESPONSE #15: The department has provided the list of individuals and organizations to the commenter.

COMMENT #16: A commenter requested the department participate in informal discussions about the proposed rulemaking with stakeholders and asked the department to be more transparent and collaborative during the rulemaking process.

RESPONSE #16: See Response #2. The department has been transparent and worked collaboratively with stakeholders throughout development of the rules.

COMMENT #17: A commenter stated the majority of the proposed rules will negate local control of Montana's school systems.

RESPONSE #17: The department disagrees. Schools are responsible for providing safe learning environments for their students and staff. The majority of these rules allow schools to determine school and district policies and procedures to comply with these fundamental health and safety rules.

COMMENT #18: A commenter stated she opposes the rules as currently written and the process leading to the proposed rules. The commenter also stated the rules need to be revised to ensure they are not an "empty mandate" to schools.

RESPONSE #18: The response to comment # 2 addresses involvement of stakeholders as part of the rulemaking process. The department disagrees the rules are an "empty mandate."

COMMENT #19: Multiple commenters stated the OPI was not meaningfully included in the rulemaking process. The commenters stated the copy of the draft rules provided in August of 2018 to OPI was significantly different from the proposed rulemaking notice.

RESPONSE #19: The department disagrees. The response to Comment # 2 addresses involvement of stakeholders as part of the rulemaking process. The OPI was afforded the opportunity to provide public comment like any other individual or organization and has done so. The proposed rules, as filed, are not substantively different from the draft that was shared with OPI in August of 2018.

COMMENT #20: A commenter stated the department failed to follow through with its commitment to continue to consult with stakeholders on the proposed rules following the August 2018 draft copy of the rules.

RESPONSE #20: The department disagrees. After receiving feedback from a fraction of the consulted stakeholder organizations, the department offered to share a final draft with stakeholders when the draft was ready to be submitted. The department notified stakeholders when the proposed rulemaking notice was filed.

COMMENT #21: Multiple commenters from OPI stated that the department's fiscal impact statement is inadequate because the rule will have a significant fiscal cost beyond just lead testing, such as record keeping, administrative expenses, training, and technical assistance costs of implementing the rules. The commenters further stated that school staff will have to spend significant time to implement new requirements within the rules, which will take time away from educating students.

RESPONSE #21: The department disagrees and believes the fiscal impact statement was appropriately drafted. The rules can be successfully implemented with limited additional time investment on the part of current school staff. The department has included staggered implementation dates and is committed to providing guidance and technical assistance to schools to reduce any perceived administrative burden.

COMMENT #22: A commenter stated that persons directly affected by the rules have not had an opportunity, or been afforded the opportunity by the department, to meaningfully participate in the rulemaking process.

REPSONSE #22: See Response #2.

COMMENT #23: A commenter requested the department communicate with schools about potential sources of funding available to implement the rules.

RESPONSE #23: The department will continue to communicate with schools about available funding to assist with the rule implementation.

COMMENT #24: A commenter stated that all schools are not the same and the proposed rules need to take into account the unique nature of rural schools. The commenter noted there are 92 one-teacher schools in Montana and many of these school systems have no administrator onsite, at most a "lead teacher." The commenter referenced prior comments which included a breakdown of enrollment by school system size. The commenter pointed out lead teachers at these schools will be responsible for implementing the rules within their respective schools.

RESPONSE #24: The department has revised the rules to address challenges faced by rural schools. The department has added staggered implementation dates to allow schools multiple years to establish and implement policies required by the rules. The department has also moved several requirements to the pre-construction rule (ARM 37.111.804) to avoid imposing structural alterations for existing schools that may not have the resources to make changes.

COMMENT #25: A commenter stated the impact of the proposed rules should be considered not just in the context of individual schools, but on school systems.

RESPONSE #25: The department considered the impact on school systems in the course of developing and proposing these rules.

COMMENT #26: A commenter stated the statement of reasonable necessity should address the number of students in Montana who have asthma rather than using nationwide data. The commenter stated Montana data, rather than nationwide data, should be the driving force behind the rules.

RESPONSE #26: Nationwide and Montana data on the number of school children who have asthma is nearly identical. Nearly 1 in 12 Montana children and nearly 1 in 13 children nationwide have asthma.

COMMENT #27: A commenter stated the data behind the proposed rules is compelling.

RESPONSE #27: The department thanks the commenter for their support.

COMMENT #28: A commenter suggested the department consider a 2008 study conducted for the Montana legislature on schools.

RESPONSE #28: The department has reviewed the 2008 study.

COMMENT #29: A commenter stated the department should consider how schools will actually implement the proposed rules.

RESPONSE #29: The department has considered this throughout development of the proposed rules and will provide example policies, checklists, forms, technical assistance, and guidance to assist schools with implementation of the adopted rules.

COMMENT #30: A commenter proposed that the department add the American Health and Safety Institute First Aid and CPR certification to a list of accepted valid first aid and CPR certifications that must be maintained by staff members present at school events.

RESPONSE #30: The department agrees. Language has been added to ARM 37.111.825 that qualifies the American Health and Safety Institute first aid and CPR certification as a valid first aid and CPR certification.

COMMENT #31: A commenter remarked that the new requirement to have a CPR certified person attending all activities and field trips could be a difficult task.

RESPONSE #31: The requirement to have a CPR certified person attending all activities and field trips already exists under ARM 37.111.825 and is not a new requirement under the proposed rules.

COMMENT #32: A commenter asked if the requirements under ARM 37.111.805, EXISTING BUILDING: CHANGE OF USE, apply to a new or used mobile/portable modular building brought on premises that is intended to be a temporary or permanent setting for additional office, storage, classroom, or other extra functional space.

RESPONSE #32: Language was added to the rule allowing schools to apply for an annual exemption of up to one year for modular or mobile buildings. Exemptions must be approved by the department.

COMMENT #33: Several commenters requested that the department address what they view as a threshold issue involving application of 1-2-113, MCA et seq. The commenters stated these statutory provisions prohibit adoption of the rules or require an extension of the implementation date until such time as the legislature provides a means to fund implementation of the rules. The commenters requested that the department either provide a direct source of funding to allow schools to comply with those new mandates out of its own state and federal sources of revenue, or, in the alternative, that the department delay the effective date of its rules as required by 1-2-113, MCA.

RESPONSE #33: The rules have been proposed in compliance with the MAPA and the department's rulemaking authority under 50-1-206, MCA. The department does not believe the provisions of 1-2-113, MCA, et seq, are applicable. Funding has been secured to cover the initial cost of lead testing required under ARM 37.111.832. The department will continue to work with schools to locate additional sources of funding to assist with implementation of the rules.

COMMENT #34: A commenter asked what is to be done with inspection forms used by the school to conduct indoor air quality inspections.

RESPONSE #34: The department has revised the rules to clarify that schools are required to maintain these records on site for no less than three years under New Rule I (37.111.826).

COMMENT #35: A commenter asked how administrators will be trained on conducting annual ventilation system checks to ensure they operate within manufacturers' parameters.

RESPONSE #35: The department will provide a brief checklist for schools to use to assist with ventilation system checks. Ventilation system manufacturers provide operating and maintenance instructions. Schools may contact system manufacturers or HVAC maintenance professionals for system specifications.

COMMENT #36: A commenter asked how much time it takes to complete the annual indoor air quality inspection including the inspection, potential staff training, and finalizing the report.

RESPONSE #36: The annual internal inspection checklist, to be provided by the department, is two pages in length. The overall time spent on the inspection depends on the size of the school building or buildings. The inspection may take as little as 30 minutes to 2 hours in small to medium-sized schools and anywhere from

1 to 5 hours in larger schools with multiple buildings. Inspections can be conducted at any time through the calendar year.

Training is not required, though the department will explore opportunities to provide indoor air quality trainings for interested facility managers, lead teachers, and administrators.

There is no additional reporting required beyond completion of the checklist and no additional significant time is needed to finalize or file the report. The school must maintain records of the checklist but is not required to post the results online.

COMMENT #37: A commenter asked how the department determined there would be no anticipated fiscal impact from New Rule I (37.111.826) on indoor air quality.

RESPONSE #37: The department determined that several components of internal air quality inspections are already conducted by maintenance or facility management staff in many schools. Schools are being asked to assess the condition of the roof and attic, ground level air intakes and outtakes, exhaust vents, bathroom drains, chemical usage and ventilation, radon levels, combustion appliances, and the condition of interior paint. Schools should complete the checklist to the best of their ability.

The inspection may take as little as 30 minutes to 2 hours in small to medium-sized schools and anywhere from 1 to 5 hours in larger schools with multiple buildings. Inspections can be conducted at any time throughout the calendar year. Schools not performing the basic components of an indoor air quality inspection may be putting the health of their students and staff at risk.

COMMENT #38: A commenter recommended that indoor air quality inspections and ventilation system checks be performed by staff at the local health department who are trained on air ventilation systems to reduce the burden on schools.

RESPONSE #38: Inspections can be easily conducted by facility managers or other school staff approved by the administrator using the two-page checklist to be provided by the department. Schools are welcome to request assistance from the local health department to perform indoor air quality inspections, but these inspections and ventilation system checks are ultimately the responsibility of the school.

COMMENT #39: Multiple commenters requested that schools with air filters be required to use filters rated between MERV 8 and 13 as recommended by the National Air Filtration Association and the Environmental Protection Agency. Commenters also proposed changes to the rule language which would require schools to use MERV 13 or greater efficiency filters during wildfire smoke events.

RESPONSE #39: Changes have been made to require that schools with air filters must use filters rated between MERV 8 and 13 if their HVAC system is capable. It is

recommended that schools use filters with greater efficiency during wildfire smoke events, but the department will not require this.

COMMENT #40: A commenter suggested revising New Rule I (37.111.826) and provided language to correct grammar and improve language clarity.

RESPONSE #40: The department has revised New Rule I (37.111.826) in response to this comment and others received during the comment period.

COMMENT #41: A commenter suggested adding a requirement that schools must address asthma prevention by developing a comprehensive school program based on the most current medical guidelines. The commenter indicates that this is needed to help schools effectively protect the rising levels of asthma, and related effects, in children.

RESPONSE #41: While asthma is a leading cause of school absenteeism, the department believes it is best to let the schools determine their chronic disease policies.

COMMENT #42: Multiple commenters suggested adding a requirement for radon testing and provided evidence supporting the health risks of elevated radon levels, as well as proposed testing and a mitigation plan.

RESPONSE #42: The department understands the risk of radon and has added language recommending new construction use radon prevention strategies. The department will provide guidance on what these techniques include. Schools will not be required to test for radon at this time. The department will continue to work with schools and local partners to encourage radon testing.

COMMENT #43: A commenter expressed concern that there is no deadline for compliance with New Rule I (37.111.826) "Indoor Air Quality." The commenter also asked if there is a recommendation for electrostatic filters that do not have MERV ratings.

RESPONSE #43: The department has set an effective date of September 1, 2020, for implementation of this rule. The rule has been revised to clarify that HVAC filter efficiency requirements only apply to HVAC systems with these types of filters. Language was also added to the rule requiring schools using electrostatic air filters to clean the filters according to manufacturer specifications.

COMMENT #44: A commenter recommended the department develop a notification system for administrators, so they do not have to search for and monitor the changing air quality standards from the department.

RESPONSE #44: Air quality standards do not change. Air quality standards and health effect categories embraced by the department are based on the National Ambient Air Quality Standards. The recommended outdoor air quality and activity

guidelines were developed by the department and the DEQ with input from the OPI. School administrators are responsible for assessing air quality using ambient air quality readings from the DEQ, other local air quality monitors, or visibility guidelines. The DEQ maintains the Today's Air website, which houses links to air quality guidelines and standards along with hourly air quality data for making decisions. Upon assessing air quality, the school and district have authority to cancel or proceed with outdoor events.

COMMENT #45: Multiple commenters stated New Rule II (37.111.827) "Outdoor Air Quality" is vague and asked what the best practices are for sealing a school building to outside air during poor air quality.

RESPONSE #45: The department will provide a sample protocol schools can modify to fit their school campus. The department is requesting that schools close the building off to outside air to the best of their ability. Actions will vary from school to school, but some simple steps may include closing windows, keeping exterior doors closed as much as possible, posting signage asking students, staff, and visitors to not prop open exterior doors, setting HVAC system air conditioners to recirculate if possible, changing HEPA filters to MERV 13 or greater efficiency in HVAC systems, and using portable air cleaners. The rule has been revised for clarity.

COMMENT #46: A commenter asked how training and technical assistance will be provided to schools regarding the best practices of sealing a school building.

RESPONSE #46: No training is needed to understand how to limit infiltration of outside air into a school during times of poor air quality. A sample protocol will be provided to schools and technical assistance will be provided as necessary.

COMMENT #47: A commenter asked how the department determined there would be no fiscal impact to schools to perform protocol development and implementation under New Rule II (37.111.827) "Outdoor Air Quality."

RESPONSE #47: The department determined that there would be no anticipated fiscal impact because a sample modifiable protocol will be provided for schools and schools can determine their protocol during regularly scheduled school board meetings.

Implementation will vary from school to school based on building specifics and staff capacity. The department is asking schools to determine which strategies will work for their individual situation. The strategies a school chooses will determine whether additional funds will be spent on things like more efficient HEPA filters or portable air cleaners. Schools will have until September 1, 2020 to add a protocol to their school policies and begin implementing the protocol.

COMMENT #48: A commenter asked if the department will provide schools a sample of the protocol, so it can be adopted without each district being required to write their own protocol.

RESPONSE #48: The department will provide a sample protocol that schools can modify to their school campus.

COMMENT #49: A commenter recommended changing the language in New Rule II (1) (37.111.827) from "shall" to "must."

RESPONSE #49: The department agrees. Schools are not required to follow the outdoor activity guidelines, but they are required to consult the guidelines as part of their decision-making process. Schools are encouraged to follow the guidelines and develop policies that will work best for them.

COMMENT #50: A commenter noted that the term "shop" is not current terminology used in education. "Industrial Arts" is the correct terminology to be used in the rules.

RESPONSE #50: The department agrees and has revised the rules accordingly.

COMMENT #51: A commenter asked how it was determined that the development and maintenance of a Chemical Hygiene Plan (CHP) and the designation of a Chemical Hygiene Officer (CHO) would not have a fiscal impact.

RESPONSE #51: The department determined that the development of a CHP could be completed in schools, where applicable, with the help of staff and administrators. Many districts with these types of laboratories are aware of the hazardous chemicals they use. This requirement simply asks schools to establish a more formal method of tracking the storage, use, and disposal of these hazardous chemicals. Schools do not need to dedicate additional FTE in order to designate a CHO. A CHO can be a teacher or administrator with knowledge of the chemicals the school is using. Schools with science, art, and industrial art laboratories will be given multiple years to develop a CHP. The department will provide examples of school CHPs to assist schools with implementing the rule.

COMMENT #52: A commenter asked who will provide the annual training and cover the training costs for someone in the district to be trained as the CHO.

RESPONSE #52: Free laboratory safety and CHO training is available through the Occupational Safety and Health Administration's online OSHAcademy. Additional training may be obtained at the cost of the school district if they feel it is necessary. The department will explore opportunities to bring chemical hygiene trainings to Montana.

COMMENT #53: A commenter stated that one-teacher schools will fail to meet the requirements of the rules if their teacher is not a certified science teacher.

RESPONSE #53: The department disagrees. The department is aware that most one-teacher schools may not have a certified science teacher. The rules do not require that the CHO must be a certified science teacher. The rules require a qualified faculty member. This faculty member should be someone with knowledge of the hazardous chemicals on school grounds. The requirement does not apply to schools that do not have science, industrial, or art laboratories.

COMMENT #54: Multiple commenters expressed concern and sought clarity on application of language in New Rule III (37.111.813) stating, "the department may work with the Department of Labor and Industry to determine if stop work orders are necessary."

RESPONSE #54: The department has revised the rules to remove language referencing stop work orders.

COMMENT #55: A commenter recommended that the department include the acronym for Chemical Hygiene Plan, CHP, to allow for space and cost savings in the rule, and ease of readability.

RESPONSE #55: The department agrees and has revised the rule accordingly.

COMMENT #56: A commenter recommended that Material Safety Data Sheets be changed to Safety Data Sheets to meet current chemical safety convention.

RESPONSE #56: The department agrees and has revised the rules to reflect current chemical safety convention.

COMMENT #57: A commenter recommended alternative language in New Rule III(6) (37.111.813) that would allow for space and cost savings in the rule, and to correctly provide for the oversight of states with jurisdiction over these areas.

RESPONSE #57: The department agrees and has revised the rule to address this recommendation.

COMMENT #58: A commenter asked why SDS sheets must be available to the public online. The commenter stated that SDS need to be available to people working with the chemicals.

RESPONSE #58: The department agrees and has revised the rule language accordingly.

COMMENT #59: A commenter expressed support for New Rule III (37.111.813), but stated the change will require funding to implement as that was a barrier for voluntary changes in prior discussions with schools.

RESPONSE #59: To ease any administrative burden on schools, the department has included a staggered implementation of the rules to allow schools more time to come into compliance.

COMMENT #60: A commenter proposed adding a starting date of September 1, 2020, for New Rule III (37.111.813).

RESPONSE #60: Based on this comment and other comments, the department has revised the rule to establish an effective date of September 1, 2021.

COMMENT #61: A commenter suggested editing the term "designed" to "designated" in (3)(b) of New Rule III (37.111.813).

RESPONSE #61: The department agrees and has corrected this typographical error.

COMMENT #62: A commenter stated that the rules as a whole are difficult to read and when references to external documents are mentioned, it seems laborious to ask school administrators to cross reference citations to understand the requirements. The commenter stated that all requirements should be spelled out in the rule in which they apply without the expectation of school staff doing research to find referenced regulations.

RESPONSE #62: The department disagrees. The publications referenced within the rules have been adopted and incorporated by reference under New Rule IV (37.111.802) in accordance with 2-4-307, MCA. As set forth in New Rule IV (37.111.802), copies of the publications may be obtained from the department.

COMMENT #63: A commenter asked if it is appropriate to put guidelines and handbooks in the rule. The commenter goes on to say that when a new version of the handbook is produced, the rules become outdated.

RESPONSE #63: The publications referenced within the rules have been adopted and incorporated by reference under New Rule IV (37.111.802) in accordance with 2-4-307, MCA. In the event the referenced publications become obsolete or outdated, the department can revise the rules through a future rulemaking process.

COMMENT #64: A commenter stated that districts who run a 4-day school week may not meet the definition of a school as defined in the rules because they are not used at least 180 days per year.

RESPONSE #64: The definition of "school" has been revised to include all schools independent of the number of days the building or buildings are used for instruction throughout the year.

COMMENT #65: A commenter suggested that definitions for the terms "bin placement" and "bin placement sample" be revised so that they are more easily understood by those who are not water quality specialists.

RESPONSE #65: The terms "bin placement" and "bin placement sample" refer to the categories in the table under ARM 37.111.832. The department does not believe that someone must be a water quality specialist to understand the table categories.

COMMENT #66: A commenter recommended including "radon" in the definitions and provided an example definition.

REPSONSE #66: Radon has been added to the definitions section of the rules.

COMMENT #67: A commenter recommended including "sanitarian" in the definitions and provided an example definition.

RESPONSE #67: The definition of sanitarian has been revised.

COMMENT #68: A commenter recommended including "LUX" in the definitions and provided an example definition.

RESPONSE #68: The department disagrees because this proposed rulemaking does not alter lighting standards for schools.

COMMENT #69: A commenter pointed out that the correct term for "home economics" is now "consumer science."

RESPONSE #69: The department agrees and has revised the rules accordingly.

COMMENT #70: A commenter asked how it was determined that the new additions to districts for construction will not have increased economic costs to a school/community. The commenter noted that ARM 37.111.804(4), (5), and (6) appear to add to the cost of constructing a new building.

RESPONSE #70: The department disagrees with the commenter's assessment that this will have a significant economic impact beyond what is already required under existing building code regulations.

All new requirements under (4), (5), and (6) can be easily added into the building plans for any new construction or renovation at a minimal cost.

COMMENT #71: A commenter recommended a revision to ARM 37.111.804(1)(a) to change "venting" to "ventilation" to use current mechanical systems vernacular.

RESPONSE #71: The department agrees and has revised the rule accordingly.

COMMENT #72: A commenter recommended a language change in ARM 37.111.804(3) from "Schools will be constructed" to "Schools must be constructed" to replace false imperative language. The commenter also suggests defining Local Education Agency.

RESPONSE #72: The department agrees. The rule has been revised to correct false imperative language and "Local Education Agency" was added to the definition rule.

COMMENT #73: A commenter recommended a language change in ARM 37.111.804(4) from "All chemical storage areas should be" to "All chemical storage areas must be" to replace false imperative language.

RESPONSE #73: The department agrees and has revised the rule to correct false imperative language.

COMMENT #74: A commenter recommended a language change in ARM 37.111.804(7) from "The department or local health authority shall" to "The department or local health authority must" to replace false imperative language.

RESPONSE #74: The department agrees and has revised the rule to correct false imperative language.

COMMENT #75: In the event, the local health authority is being requested to complete the pre-construction review, a commenter asked that consideration be given regarding local authority capacity. The commenter believes that the activity may require increased local training and funding. The commenter requested that a default clause be included to add the department if the local health authority does not have capacity.

RESPONSE #75: The existing rules require schools to submit plans for construction of a new school or an addition to or an alteration of an existing school. The established rule language already stipulates that schools must submit their plans to the department or local health authority. The department will provide training to sanitarians and other local county health department officials on the various amendments to these rules that will impact their work.

COMMENT #76: A commenter asked if subsections in ARM 37.111.804 are optional because of the term "should." The commenter requests that training and funding be provided if the local health authority is being identified to complete preconstruction reviews.

RESPONSE #76: Rule language has been changed from "should" to "must" to correct false imperative language. Local health authorities and the department are identified as the authorities to perform pre-construction reviews in the existing rules.

COMMENT #77: A commenter asked if a local health authority can charge a time and effort fee for review of a submitted plan review application with regard to new school construction or renovation of an existing school and/or charge a separate site visit fee to perform a pre-operational inspection of the completed new construction or renovations.

RESPONSE #77: Fees that may be charged are outside the scope of this rulemaking process.

COMMENT #78: A commenter suggested ARM 37.111.804 be revised to correct grammar in (1) and to replace false imperative language in (4).

RESPONSE #78: The department agrees and has revised the rule accordingly.

COMMENT #79: A commenter asked what the nature of complaints may be under ARM 37.111.810. The commenter indicated that, as the local health authority in their area, they do not currently respond to complaints, but instead they assess and refer complaints to organizations that can respond based on the type and level of concern.

RESPONSE #79: The department cannot predict the nature of individual complaints that may be submitted to local health authorities. The rule simply states that upon receiving a complaint, the local health authority may determine if more inspections are necessary. If the local health authority determines it is unnecessary to provide additional follow-up, they have the authority to refer the complaint to other local partner organizations.

COMMENT #80: A commenter stated that ARM 37.111.810(4) is awkwardly worded.

RESPONSE #80: The department has revised the rule to provide more clarity.

COMMENT #81: A commenter asked the department to clarify if the school administration would use the same type of department-approved form referred to in ARM 37.111.810 as the local health authority.

RESPONSE #81: Different forms will be created for schools and local health authorities. The internal inspection form will be a brief checklist that follows the requirements of the administrative rules. The department will work with local health authorities to incorporate different aspects of the rule requirements into existing forms used to inspect school food services and other areas of the school.

COMMENT #82: Multiple commenters asked if there will be a mechanism such as a cooperative agreement that establishes the duties and responsibilities of the local health jurisdiction to qualify for reimbursement of time and effort from the department under ARM 37.111.810.

RESPONSE #82: The department will explore funding opportunities to help offset local health authority expenses when performing inspections. Existing rule requirements encourage local health authorities to perform school inspections and require them to conduct plan reviews.

The rule has been revised to allow schools and districts to determine alternative inspection frequency if the local board of health and the local health authority deem it necessary.

COMMENT #83: A commenter suggested ARM 37.111.810 be revised by removing the term "internal" from (1) requiring annual internal inspections by the administrator, facility manager, or other school staff member. The commenter indicated it is redundant to spell out internal when the rule goes on to describe the school staff who must conduct inspections.

RESPONSE #83: The department agrees and has revised the rule accordingly.

COMMENT #84: A commenter suggested removing the language "more often if necessary" and changing it to "as necessary" in ARM 37.111.810. The commenter states this will allow the department and local health authorities more flexibility.

RESPONSE #84: The department agrees with the reasoning provided by the commenter and has revised the rule accordingly.

COMMENT #85: A commenter asked how the department determined there would be no fiscal impact to schools who need to add locks or ventilation to janitorial facilities under ARM 37.111.811.

RESPONSE #85: The existing rules already require janitorial and other storage areas containing toxic or hazardous materials to be kept locked between periods of use. The department has moved the requirement for all janitorial facilities to be locked and ventilated to the pre-construction section of the rules so it will apply only to new construction or additions.

COMMENT #86: A commenter asked how the department will define "adequate" coat/jacket storage under ARM 37.111.811 and if this requirement will impact schools that have students double on locker space.

RESPONSE #86: This requirement is in the existing rules. The department defines adequate coat/jacket storage as sufficient space to hang a coat or jacket without coming in contact with the coat or jacket of another student. All schools must provide "adequate" coat/jacket storage to the best of their ability.

COMMENT #87: A commenter asked if the department will provide a draft policy and procedure to all schools regarding the storage, administration, and lawful disposal of prescription, nonprescription, and over-the-counter medication to assist with the implementation of ARM 37.111.811.

RESPONSE #87: The department will provide example policies and procedures to schools. Schools will be given until the start of the 2021 school year to establish and implement medication policies. The department will provide technical assistance when necessary.

COMMENT #88: A commenter asked if the department can provide an implementation plan for how schools with one staff member will be able to provide a nursing mother reasonable break time to express breast milk and how they can provide a place for the employee to express breast milk under ARM 37.111.811.

RESPONSE #88: The department will not provide an implementation plan for schools to comply with established state and federal law. This section of the rule requires schools comply with existing federal law (29 U.S.C. 207) and state law (39-2-215, MCA) to the extent it is applicable. The department notes that reasonable break time for nursing mothers provided for under 29 U.S.C. 207 does not apply to an employer that employs less than 50 employees. 29 U.S.C. 207(r)(3).

COMMENT #89: A commenter asked if the department will consider an exemption to the requirement under ARM 37.111.811 for schools to provide reasonable accommodations for lactating pupils on the school campus to express breast milk, breastfeed an infant child, or address other needs related to breastfeeding. The commenter suggests an exemption should apply to one room school houses or other buildings where a private and secure room other than the bathroom is not available for breastfeeding. The commenter goes on to ask if a school would need to construct an addition to the facility to meet this requirement, which may have substantial fiscal impacts not addressed in the statement of reasonable necessity.

RESPONSE #89: The department has added an exception to the rule for schools where no such space other than a bathroom is available. Schools are not required to construct additions to the facility in order to comply with the rule.

COMMENT #90: A commenter asked if schools will be found in violation of the rule requiring that all livestock and poultry must be located more than 50 feet from food services areas, offices, or classrooms, if a classroom pet, that is also considered as poultry or livestock, is in the classroom during times of food service.

RESPONSE #90: Poultry or livestock housed in the classroom and approved by the administrator must be caged or contained away from food service areas and the animal must not contact eating or serving surfaces at any time. Additional clarifying language has been added to the rule to account for meals in the classroom.

COMMENT #91: A commenter suggested adding the following provision to ARM 37.111.811: "Medication requiring refrigeration must be kept in a locked, non-portable, mechanical refrigeration unit, manufactured to hold medications at required safe temperatures, and approved by the department. Food is not allowed to be

stored in a unit with medications." The commenter stated that this language should be added to ensure students and staff medications are safely stored on site.

RESPONSE #91: The department partially agrees and has revised the rule to include a portion of the proposed language. The department does not believe it is reasonable to require all schools to purchase new refrigeration units when the systems currently in place for most schools are sufficient for the most commonly used medications. Additional language has been added allowing authorized personnel to carry medication for off-site events.

COMMENT #92: A commenter suggested a language change to ARM 37.111.811 to correct and update language to current conventional language.

RESPONSE #92: The department has revised the rule to reflect modern conventional language.

COMMENT #93: A commenter suggested ARM 37.111.811 include over-the-counter medication in the original package with manufacturer label and instructions.

RESPONSE #93: The rule includes over-the-counter medication.

COMMENT #94: A commenter suggested that ARM 37.111.811 be revised to address that medication must be accessible and portable to leave the school with the school nurse. The commenter states this is needed in response to medication administration needs of individual students.

RESPONSE #94: The department has revised the rule to add language to allow for lockable, portable medication containers, that may be transported by the school nurse or other personnel authorized by the school administrator.

COMMENT #95: A commenter suggested adding the following language to ARM 37.111.811: "Shower and bathing facilities must be provided with anti-slip surface mats." The commenter indicates that this is to prevent accidental falls from walking on wet surfaces.

RESPONSE #95: The department recommends that schools use anti-slip surfaces or mats in shower and bathing facilities but will not require it.

COMMENT #96: A commenter asked if other animals, such as birds, turtles, lizards, snakes, frogs, and other types of reptiles or amphibian species, should be added to ARM 37.111.811(1)(i) because they are known to carry Salmonella and E. coli.

RESPONSE #96: The department recognizes the potential for the spread of other diseases by the animals listed, but this rule is directed specifically at livestock and poultry. The department will not adopt additional language to include these animals at this time but recommends that schools prevent contact between all animals and eating surfaces.

COMMENT #97: A commenter asked how it was determined that the provision requiring hot water be provided at handwashing sinks would not have a fiscal impact.

RESPONSE #97: While many schools already have hot water provided at handwashing sinks, the department has moved this language to the pre-construction rule so it will apply only to new construction or additions.

COMMENT #98: A commenter asked how it was determined that the provision under ARM 37.111.812 requiring the topography of the site must permit good drainage of surface water away from the school building to eliminate areas of standing water and infiltration of surface water into the school building would not have a fiscal impact.

RESPONSE #98: This requirement is in the existing rule. The department added clarifying language that surface water must drain away from the building to prevent water infiltration into the building. The department has moved this provision to the pre-construction section of the rules to ensure that only new constructed schools or new construction additions must account for drainage away from the school.

COMMENT #99: A commenter asked if there will be training for staff on how to conduct playground inspections under ARM 37.111.812. The commenter asked how the department determined that playground inspections would not have any fiscal impact.

RESPONSE #99: A brief playground inspection checklist will be provided by the department to school districts. This playground inspection checklist does not require training to accurately complete. Any school staff may complete the playground inspection over the course of multiple days. The majority of schools typically have staff members or volunteers who supervise recess. These employees or volunteers can conduct a playground inspection with relative ease. Inspections should take less than one hour to complete and can be done during recess or any other time. Small schools with very limited staff likely have a very small playground to inspect. These inspections will take significantly less time to complete.

COMMENT #100: Multiple commenters suggested a language change to ARM 37.111.812(1) to replace false imperative language.

RESPONSE #100: The language has been revised to correct false imperative language.

COMMENT #101: A commenter suggested revising ARM 37.111.812(4) to simplify the intended meaning of the requirement.

RESPONSE #101: This language has been moved to the pre-construction rule.

COMMENT #102: A commenter asked how often testing of water temperature will be conducted. The commenter stated that even if this is required monthly, this is a huge task to verify and calibrate to comply. The commenter then asked if this is meant to be tested once and then anytime there may be an issue.

RESPONSE #102: The temperature parameters for hot water are an existing requirement in the current rules. There is no water temperature testing requirement in the rules. If a complaint is received, a school may need to test water temperature.

COMMENT #103: A commenter asked if the rules require school districts to hire or have a Certified Playground Safety Inspector (CPSI) on staff.

RESPONSE #103: School districts are not required to hire or maintain a CPSI on staff. Monthly playground inspections are simple and can be conducted in a short period of time by any number of staff members. A brief playground inspection checklist will be provided by the department.

COMMENT #104: A commenter asked if school districts are required under ARM 37.111.812 to document all repairs, including leveling fall protection material each time.

RESPONSE #104: Schools are required to document all repairs to playground equipment. Fall protection material is a necessary component of student safety, but it does not constitute playground equipment. Therefore, leveling fall protection material does not require documentation. The department has revised the rule for clarity.

COMMENT #105: A commenter indicated that if the local health authority is identified to complete the playground inspection review then training and funding is needed for the increased capacity. The commenter requested that a default clause be included to add the department if the local health authority does not have the capacity.

RESPONSE #105: Local health authorities are not required to complete playground inspections. As part of their inspections with a school, the local health authority should verify that the school has records of monthly internal playground inspections and repair records.

COMMENT #106: A commenter asked if the removal of ARM 37.111.812(4) and (5) apply to new construction.

RESPONSE #106: These sections were moved to the preconstruction rule and apply to new construction.

COMMENT #107: A commenter suggested adding the department to the language under ARM 37.111.812(9).

RESPONSE #107: Language has been added requiring playground inspections results be made available to the department or local health authority upon request.

COMMENT #108: A commenter suggested removing the word "Material" from "Material Safety Data Sheets" in ARM 37.111.812(4).

RESPONSE #108: The department has revised the rule accordingly.

COMMENT #109: Multiple commenters recommended that staff members be included in the requirement to isolate individuals with reportable communicable or infectious illness under ARM 37.111.825.

RESPONSE #109: The department agrees and has revised the rule accordingly.

COMMENT #110: A commenter requested that the department add language to ARM 37.111.825 clearly identifying who is responsible for reporting the disease when no health professional is present.

RESPONSE #110: The department has added clarifying language to the rule.

COMMENT #111: A commenter asked where schools go to get chronic disease management training under ARM 37.111.825 and who covers the cost.

RESPONSE #111: Schools may obtain chronic disease training from multiple places. The OPI features three online chronic disease trainings for school staff on their Teacher Learning Hub. Current trainings focus on Asthma, Diabetes, and Allergies and Anaphylaxis. These trainings are free to anyone who signs up for a free learning hub account.

In many counties and in many school districts, school nurses and local county public health nurses are capable of providing training to schools on common chronic conditions free of charge. These trainings can be done as stand-alone events or included as part of pupil instruction related (PIR) days. Schools may also be able to work creatively with healthcare providers in their community to bring training to their staff.

COMMENT #112: Several comments were received relating to the tobacco signage requirement under ARM 37.111.825. A commenter recommended updating language to reflect recent changes to tobacco laws and asks how signs will be provided to schools. A commenter stated tobacco signage is currently posted only at the entryway to each building and that the new signage requirement imposes significant fiscal costs due to additional signage cost and labor to install the signs. Several commenters suggested adding language to address vaping/e-cigarette usage.

RESPONSE #112: The rule has been revised to address the prohibition against e-cigarette usage. The existing rules already require that no smoking signs be posted

in each hallway, entryway, gymnasium, lunchroom, and restroom, though not in each classroom. Metal signs are available free of charge from the Montana Tobacco Use Prevention Program. Schools can order as many signs as needed and the signs will be shipped to the school free of charge. Schools must go to the Montana Tobacco Use Prevention Program's online storefront to order signs at http://mtupp.allegrahelena.com/.

COMMENT #113: A commenter suggested revising ARM 37.111.825 to correct and update language to current convention such as by referring to children as students. The commenter also suggested changes to correct false imperative language.

RESPONSE #113: The department has revised the rule to reflect current convention and to correct false imperative language.

COMMENT #114: A commenter suggested changing child to individual in ARM 37.111.825(3)(a). The commenter also suggested adding the following language to (3)(b) of the rule: "if the individual is a student,…"

RESPONSE #114: The department agrees and has revised the rule accordingly.

COMMENT #115: A commenter requested that the report of "symptoms" to the local health officer be removed from ARM 37.111.825. The commenter explained that the request surrounds the commonality of signs and symptoms and believes that the rule language is not consistent with the reporting requirements in 37-2-201, MCA, where the report is required to be made by physicians or practitioners of the healing arts, not school personnel.

RESPONSE #115: The rule has been revised to address the potential for the over-reporting of common symptoms. Schools without healthcare personnel on staff will be asked to consult with a physician, other qualified medical professional, or the local health authority if they suspect symptoms of reportable communicable or infectious illnesses.

COMMENT #116: A commenter advocated for keeping scoliosis screening in the rules. The commenter provided a joint opinion from the American Academy of Orthopedic Surgeons, the Scoliosis Research Society, the Pediatric Orthopedic Society of North America, and the American Academy of Pediatrics based on a literature review that concluded there is a lack of evidence for or against screening and the benefits outweigh the harm, because scoliosis screening is inexpensive.

RESPONSE #116: Schools may continue to conduct scoliosis screenings, but the department will no longer recommend it because the best available evidence does not support continuation of the recommendation.

COMMENT #117: A commenter asked what the criteria are for mental health screenings under ARM 37.111.825 and if the department will provide guidelines.

RESPONSE #117: The department has not yet determined criteria for mental health screenings. As this is only recommended and not required, schools may determine the criteria they would like to use if they choose to conduct mental health screenings.

COMMENT #118: A commenter asked if a continuous towel system that supplies the user with a clean towel would be considered "common-use" as described in ARM 37.111.825(1).

RESPONSE #118: Common-use towels refer to non-disposable towels that are meant to be used more than once. A continuous towel system or paper towel dispenser would not be considered as common-use because separate individuals would not be using the same piece of paper towel.

COMMENT #119: Multiple commenters expressed support of the provisions requiring schools to test their water supply system for lead. The commenters agreed that lead is a serious threat to children's health and acknowledge that the rule will help to identify and remediate the worst cases of lead contamination in Montana schools.

RESPONSE #119: The department agrees and thanks the commenters for their support of the proposed rule.

COMMENT #120: A commenter expressed support for the provision requiring schools to test their water supplies for lead. The commenter is pleased that funding has been identified to assist schools with the cost of lead testing and is confident that if a school is found to need significant remediation, those funds will be found also.

RESPONSE #120: The department thanks the commenter for their support of the proposed rule.

COMMENT #121: A commenter is concerned that funding could become a barrier in the future if all schools are required to test their water supply for lead every three years with no exceptions. The commenter recommended longer times between testing under certain circumstances. The commenter would support more frequent lead testing if a school's water supply changed. The commenter also supports testing every three years in any school where lead levels in the water supply were found to be above 5µg/L.

RESPONSE #121: The rule has been revised to provide additional flexibility regarding routine monitoring frequency. Sampling frequency may be adjusted on a case-by-case basis depending on test results and inventory.

COMMENT #122: A commenter expressed uncertainty around the flushing and remediation requirements for water sources that reveal lead levels between 5µg/L and 15µg/L. The commenter would like to know if fixtures in this range are going to

require follow-up testing to ensure that the flushing or other remediation successfully brought lead down to a safe level.

RESPONSE #122: The rule has been revised to include flushing as a temporary remediation option. Table 2 in ARM 37.111.832 outlines the sampling that is required to be performed after remediation.

COMMENT #123: A commenter suggested the department start a new rulemaking process under which it only moves forward with the lead water testing and abatement rule.

RESPONSE #123: The department disagrees with the suggestion. The department views all requirements in the proposed rules as priorities.

COMMENT #124: A commenter indicated that historically water testing has been a function of other departments, not schools or OPI. The commenter asked that testing be conducted not by school personnel, but by trained individuals with experience in water quality. The commenter stated the amount of training and technical assistance needed appears insurmountable.

RESPONSE #124: Historically OPI and schools have not been asked to consistently sample all human consumption fixtures (HCF) in the facility. However, there are schools that have worked with the DEQ to test their water supply as part of the public water supply system. Multiple school systems around the state also voluntarily test their water for lead. The process of collecting water samples is simple and does not require training. Sampling guidance documents will be provided to show the step-by-step procedure.

COMMENT #125: A commenter stated that they assume the lead testing timeline will be adjusted due to the extended public comment period.

RESPONSE #125: The department has adjusted the lead testing compliance date.

COMMENT #126: Multiple commenters stated that plumbing schematics and inventories may be difficult to create if records do not exist for many older and rural school buildings in Montana. The commenters asked how the department would advise schools to research the information and how the department determined there would be no fiscal impact for the time it will take to create a schematic and inventory.

RESPONSE #126: The department is not in a position to estimate the costs for each individual school of varying size and staff capability. Many schools may already have this information while others will need to review their system. Blueprints are not required, and the department will not require schools to use engineers or plumbers to draw their schematic and complete an inventory. The schematic can be a simple aerial photo or hand drawn sketch showing the fixtures and sample locations at the school. The DEQ will provide a template schools can

use to create basic schematics to the best of their ability. This can be completed by facility managers, administrators, or lead teachers.

COMMENT #127: A commenter felt that the sampling and remediation schedule proposed in Table 1 of ARM 37.111.832 is unreasonable for Montana schools. The commenter cited the enforceable EPA maximum contaminant level of 15 ppb from the Lead and Copper Rule. According to the commenter there is no recommendation or directive backing the required follow-up action in bins 2 and 3 of Table 1. The commenter stated that the requirements are entirely arbitrary and imposing sampling and remediation actions on the part of the school will provide little benefit to students.

RESPONSE #127: Language has been removed requiring schools to remediate within a six-month time frame. Schools must not use HCFs that test high for lead until remediation and additional testing has occurred. The level of 5 ppb was selected as the action level based on the Practical Quantitation Limit (PQL) for lead. The proposed regulation is separate from the EPA Lead and Copper Rule. The current standard for lead in bottled water set by the Food and Drug Administration (FDA) is also 5 ppb.

Guidance and technical assistance on the various remediation options will be provided to schools by the DEQ. The department disagrees that sampling and remediating high levels of lead in the school water system will provide little benefit to students. The evidence of how lead impacts child development is clear and is addressed in the statement of reasonable necessity.

COMMENT #128: A commenter stated that drinking water is not the sole source of lead exposure in children and gave examples of other common sources of exposure. The commenter cited study results from the Journal of Public Health Management and Practice that examined blood lead exposure sources among Alaska children. The commenter said that Montana students spend just 23% of their week in school, or as low as 18.5% in districts with a 4-day school week, meaning that the large majority of lead exposure would happen outside of school.

RESPONSE #128: The department disagrees with the sentiment expressed by the commenter. The commenter is correct that drinking water is not the sole source of lead exposure in children. However, the department cannot neglect a potential significant source of lead in schools. Reducing lead in school drinking water systems is one way to reduce lead exposure to children.

COMMENT #129: A commenter expressed that local data does not show elevated blood lead levels are a problem of imminent public health importance, making extensive testing of potential lead sources an inefficient use of limited resources. The commenter recommended the department avoid reacting to national water quality stories and would like the department to use funding to help Montana health care providers establish baseline lead levels in Montana children.

RESPONSE #129: The department disagrees. Blood lead levels are not widely and frequently tested in Montana and therefore it is currently impossible to know how many children have been exposed to high levels of lead from various sources. The department cannot assume that because school-aged children are rarely tested for lead that they are not exposed to lead. By addressing a likely source of exposure to lead, we can help eliminate the risk of exposure in schools. Lead testing in schools is a priority for the EPA and federal funding is available to support testing.

COMMENT #130: A commenter suggested that the words "should," "shall," "will," and "must" in ARM 37.111.832(8)(a), (b), (d), and (9)(a) and (b) be updated to "must" to replace false imperative language.

RESPONSE #130: The department agrees and has revised the rule accordingly.

COMMENT #131: A commenter asked how school water supply systems that fall under the EPA's jurisdiction will be addressed. The commenter supports the proposed rule requirement and shared opinions on how the department may consider distributing funding, as well as the importance of reporting transparency and support for schools who do find elevated levels of lead.

RESPONSE #131: Schools in which the water supply system falls under the jurisdiction of the EPA will still be required to test their water supply systems for lead. School administrators will be responsible for working with the EPA to ensure compliance with this rule.

The DEQ will determine the best way to distribute federal EPA funding to support testing. The department and DEQ will continue to work together to identify other funding opportunities to help with on-going testing and remediation costs.

COMMENT #132: A commenter stated that the new requirement to test every HCF in each building would become very costly, unless a new funding source has been identified by the department. The commenter added that testing HCF in all 36 schools in the district could cost thousands of dollars.

RESPONSE #132: The department will work with the DEQ to determine the best way to distribute federal funding to support testing. The department and DEQ will continue to work together to identify other funding opportunities to help with on-going testing and remediation costs.

COMMENT #133: A commenter questioned the decision to sample all HCF and asked if the water is the concern or the fixtures are the concern. The commenter stated if the pH of the water is correctly regulated then the fixtures should not be a concern. The commenter suggested the following language to clarify what is being tested: "test the water that passes through the fixtures."

RESPONSE #133: Water quality at the schools is a concern. The chemistry of the water, along with the composition of the plumbing (piping, fixtures, and fittings), can

affect the quality of the water served. pH is only one of many factors in determining whether water is corrosive. Water temperature and alkalinity can also contribute to water corrosivity. Lead may also be released during the physical disruption to lead containing materials; i.e., pipe/fixture repair/replacement. The preferred remedy is lead source removal (i.e., removal of the lead containing fixtures, fittings, or piping).

Corrosion control treatment alters water chemistry, but does not eliminate the lead containing fixtures, fittings, or piping. This treatment can be more expansive to install and maintain and it may fail. Corrosion control treatment would also change a school's classification from a "service connection" (not regulated as PWS) to a "Public Water Supply" that would be subject to all of the PWS rules and regulations.

Schools must test all drinking fountains and sinks used in food preparation. The rule has been revised so that schools must test all other potential HCF unless the school or school district submits a plan to the DEQ to test a representative sample of the HCF in their facilities. Proposed testing plans will be approved or denied by the DEQ.

COMMENT #134: A commenter suggested that schools must report samples to the department as well as the DEQ.

RESPONSE #134: The DEQ and the department will coordinate to review testing results and contact schools that need additional assistance.

COMMENT #135: A commenter asked what the rationale is for 3 days as the inactive period under the water lead testing rule.

RESPONSE #135: The potential for lead to leach into water can increase the longer water is in contact with plumbing fixtures. Water of acidic or corrosive nature that has sat motionless in the interior plumbing will leach out metals in as few as 6 hours. Unidirectional flushing and reservoir turnover can be used to encourage fluid movement, minimize residence time, and replace stagnant water. Flushing does not suppress the process of leaching, but the movement of fluid helps to prevent the accumulation of contaminants in a localized area.

COMMENT #136: A commenter suggested the department revise the language in ARM 37.111.832(8)(b) to the following: "The schematic and inventory shall be maintained by the school and shall record any repair, modification, or change in water source that may result in a change."

RESPONSE #136: The rule has been revised to include the proposed language.

COMMENT #137: A commenter suggested adding the following descriptive language to ARM 37.111.832(7): "a suitable faucet apparatus for filling individual cups shall be designed to prevent contact with the lip-contact surface of glasses or cups."

RESPONSE #137: The department has chosen not to include this additional language at this time as it may place additional fiscal costs on schools.

COMMENT #138: A commenter suggested adding the clarifying term "tight-fitting lids" to ARM 37.111.833(1)(a).

RESPONSE #138: The department does not believe it is necessary to require tight fitting garbage lids. This may be included as part of a quality integrated pest management program that schools are required to develop. These type of program details are to be determined by the schools and not the department.

COMMENT #139: A commenter suggested changing the word "sewage" to "wastewater" to align with modern public health terminology.

RESPONSE #139: The department agrees and has revised the rule.

COMMENT #140: A commenter suggested revising ARM 37.111.840 to read "dried to greater or equal to 130°F for 10 minutes…" in order to be consistent with existing public accommodation rules.

RESPONSE #140: The department agrees and has revised the rule.

COMMENT #141: A commenter asked who approves properly vented storage areas under ARM 37.111.841. The commenter also asked how the department determined there would be no fiscal impact to schools needing to add ventilation to their storage closets.

RESPONSE #141: The requirement for janitor rooms to be ventilated already exists under the current rules. It is not a new requirement under the proposed rules.

COMMENT #142: A commenter stated that the requirements of ARM 37.111.841(1)(a), (b), (f), (g), and (h) may limit a custodian's ability to provide their professional services in the best way necessary by limiting the tools necessary to clean.

RESPONSE #142: The department disagrees. The department does not believe that ensuring janitorial storage rooms are lockable will impede a custodian's ability to provide professional services or limit the tools necessary to clean.

The department also does not believe that using toilet bowl and urinal cleaning materials for that purpose alone and separately storing these materials will impede the work of custodians. Storing materials separately simply means that these cleaning supplies must not come in contact with other cleaning supplies meant for other purposes.

COMMENT #143: A commenter asked if "EOA" registration number in ARM 37.111.841(1)(m) is a typo and should be "EPA."

RESPONSE #143: The department has corrected this typographical error.

COMMENT #144: A commenter suggested adding the following descriptive language to ARM 37.111.841(1)(c): "after use, mops shall be placed in a position that allows them to air dry without soiling walls, equipment, or supplies."

RESPONSE #144: At this time, no additional language will be added to this subsection of the rule.

COMMENT #145: A commenter stated that the language in ARM 37.111.842 is nebulous and creates confusion with schools. The commenter recommends the following language: "Licensure as a food establishment is required."

RESPONSE #145: The language is established in a current rule and is not a new proposal. Under 50-50-202, MCA, a retail food establishment is exempt from the licensure requirement if it is operated by a political subdivision of the state and the political subdivision employs a full-time sanitarian. Such establishments are still required to comply with the retail food establishment statutes in Title 50, chapter 50, MCA, and the department rules adopted under the statutes.

COMMENT #146: A commenter holds the position that ARM 37.111.842 conflicts with 50-50-102, MCA requiring food establishments to be licensed by the department. The commenter recommended that (1) should be written to state that according to 50-50-102, MCA schools must obtain a health department food establishment license. The commenter also recommended that (2) be reinserted.

RESPONSE #146: Please see Response #145. The department removed (2) of the rule because it is unnecessary for the department to adopt and incorporate by reference its own rules.

COMMENT #147: A commenter expressed that, as the local health authority, they are overseeing inspections and the specifications for food services.

RESPONSE #147: The department will continue to support the work of local health authorities performing food services inspections in schools and other establishments.

COMMENT #148: A commenter asked who approves integrated pest management programs and if there will be sample plans available for schools to use. The commenter expressed that the amount of detail and steps required to mitigate for pests appears to put an undue burden on schools, creating a situation where they may not have the resources to efficiently and effectively manage pests.

RESPONSE #148: Integrated pest management (IPM) programs do not need to be approved by any authority outside of the school. The local health authority will

check with the school when conducting inspections to ensure that the school has established and is implementing an IPM.

The department will provide example IPM programs to schools. Each school should tailor their IPM to their facility and situation. Many of the common steps identified in well-established IPM programs are already followed by schools.

COMMENT #149: A commenter pointed out that ARM 37.111.846(9)(c) references (9)(f) and the commenter cannot find (9)(f) within the proposed rules.

RESPONSE #149: The department has corrected this typographical error.

COMMENT #150: A commenter suggested that language be updated to replace false imperative language in ARM 37.111.846(5).

RESPONSE #150: The department has revised the rule to correct false imperative language.

COMMENT #151: A commenter recommended that the department change the language in ARM 37.111.846(9)(b) from "The department recommends that the print…" to "The department requires that the print…." The commenter stated that 26-point font is determined as readable font, so it must be required to provide health and safety.

RESPONSE #151: The rule has been revised to require at least 26-point font on pesticide application notices posted in the area where the pesticide is to be applied.

COMMENT #152: A commenter noted that it seems unnecessary and cumbersome to notify students, staff, and parents of pesticide use during summer months when school is not in session. The commenter suggested that a better method to identify and warn of areas where pesticide for weed mitigation has been applied would be to post signage at the site directing the public to contact the responsible party if any questions or concerns arise. The commenter also asked if a blanket warning that pesticide may be applied during the summer months would suffice as a warning.

RESPONSE #152: The department partially disagrees. The rule stated, "If pesticides are used outside the school term and the school is open or to be accessible by the public, the notification required must be prominently posted in a conspicuous location on the school premises at least 24 hours before the pesticide treatment is scheduled to begin."

If a school is not in session and not accessible to the public, no notification is required. If a school is not in session but is accessible to the public, signage must be posted. There is no provision that would require the school to notify students, staff, and parents of pesticide use beyond the signage near the area of use.

COMMENT #153: A commenter requested that the department include a definition of "pest" and asked if that includes bedbugs, lice, rodents, and pets.

RESPONSE #153: A definition of "pests" has been added to the definition section of the rules.

6. The department intends the following rules to be effective on the dates listed below:

New Rule I (37.111.826) INDOOR AIR QUALITY and New Rule II (37.111.827) OUTDOOR AIR QUALITY are effective September 1, 2020.

New Rule III (37.111.813) SCIENCE, INDUSTRIAL ARTS, AND ART LABORATORY SAFETY is effective September 1, 2021.

All other rules adopted and amended are effective upon publication unless specifically stated otherwise within a rule.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State January 7, 2020.

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

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

TO: All Concerned Persons

1. On November 8, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-899 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1973 of the 2019 Montana Administrative Register, Issue Number 21. On December 27, 2019, the department published a notice of extension of comment period on the proposed amendment at page 2314 of the 2019 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: A provider association commented they did not have enough time to fully evaluate the department's proposed rule because the proposed fee schedule was not available during the comment period.

RESPONSE #1: In response to the comment the department extended the comment period to January 3, 2020, by filing a notice of extension of comment period on the proposed amendment. The department was able to provide and publish updated fee schedules to its website on December 27, 2019, allowing for public comment of the posted fee schedules.

COMMENT #2: A provider association commented that providing an extended comment period of six calendar days was inadequate and imposed a hardship on parties wishing to analyze the proposed amendment and prepare and submit comments.

RESPONSE #2: The department recognizes the extended comment period was for six days; however, the rule notice had already been open for public comment for 28 days, as required by 2-4-302, MCA. Each year, the department is obligated to adopt new codes that the federal government issues late in the year and which are to be implemented by the start of the following year. This process, including establishing rates and fee schedules to reflect the federal government's new procedure codes, is dependent on the federal government issuing the new codes and other pertinent

information. The department was able to provide and publish updated fee schedules to its website on December 27, 2019. The department made every effort to provide timely information about rates and fee schedules to providers and the public; however, the department was limited by the timing of the federal government's issuance of the new procedure codes.

COMMENT #3: A provider association commented that it supported the proposed rule amendment because it adopts increased reimbursement fees for providers effective January 1, 2020. The association, however, asserted that optometrists should be reimbursed a fee equal to the rate physicians are paid for performing the same services.

RESPONSE #3: The department appreciates the support. As provided in 53-6-125, MCA, the legislature has directed the department to establish a conversion factor for physicians with doctor of medicine or doctor of osteopathy degrees relative to the increase in the consumer price index for medical care for the previous year. The department uses the same resource-based relative value scale (RBRVS) methodology in determining reimbursement rates for physicians who are ophthalmologists and optometrists, and thus the professions are reimbursed in the same manner.

4. The department intends to apply this rule retroactively to January 1, 2020. A retroactive application of the rule does not result in a negative impact to any affected party.

/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 January 7, 2020.

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

In the matter of the amendment of ARM 37.40.815, 37.40.816, and 37.40.830 pertaining to hospice rate increase	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 6, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-900 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2200 of the 2019 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

4. The department intends to apply increases in the hospice reimbursement rates retroactively to October 1, 2019. Decreases in hospice rates will not be applied retroactively, but will be effective upon adoption of the proposed rule amendments.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State January 7, 2020.

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

In the matter of the amendment of ARM 37.81.304 pertaining to Big Sky Rx premium change	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 6, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-903 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2204 of the 2019 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

4. These rule amendments are effective upon publication of this notice of amendment.

/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 January 7, 2020.

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

In the matter of the amendment of ARM 37.85.204 pertaining to member copayment	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 22, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-905 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2084 of the 2019 Montana Administrative Register, Issue Number 22.

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

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

COMMENT #1: The department received a comment expressing support for eliminating copayment for Medicaid members.

RESPONSE #1: The department values the support from providers on the rule amendment.

4. The department intends to apply these rule amendments retroactively to January 1, 2020. A retroactive application of the rule does not result in a negative impact to any affected party.

/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 January 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.173 pertaining to statutory deadlines for request for informal classification and appraisal reviews	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 22, 2019, the Department of Revenue published MAR Notice No. 42-1006 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2092 of the 2019 Montana Administrative Register, Issue Number 22.

2. The department has amended ARM 42.20.173 as proposed.

3. No comments or testimony were received.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State January 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.154, 42.21.155, 42.21.158, and 42.22.1311 pertaining to trended depreciation schedules for valuing personal property	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 18, 2019, the Department of Revenue published MAR Notice No. 42-1007 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1838 of the 2019 Montana Administrative Register, Issue Number 20.

2. On November 13, 2019, a public hearing was held to consider the proposed amendment. No proponents or opponents were present, no proponent or opponent oral testimony was received, and the department received no written comments in support. The following person appeared as an interested person to the rulemaking and provided oral and written comments: Bob Story, Montana Taxpayer's Association (Montax). A written comment was also received by the department from State Representative Llew Jones, which the department answered directly to Representative Jones and is summarized in this adoption notice.

3. On December 27, 2019, the department filed an Amended Notice of Public Hearing on Proposed Amendment to address errors in the Industrial Machinery and Equipment Trend Table Lookup located on page 18 of the Proposed 2020 Personal Property Depreciation Schedules and Trend Tables publication. In accordance with 2-4-305(8)(c), MCA, the department allowed additional time for the public to provide oral or written comment to the rulemaking until January 3, 2020.

4. The department amends ARM 42.21.154, 42.21.155, 42.21.158, and 42.22.1311 as proposed.

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

COMMENT 1: Mr. Story comments that Montax concurs with the department's plan to move the actual trended depreciation schedules (schedules) from the body of the ARM and placing them on the department's website with the caveat that schedules are placed so they are easily accessed, and the previous year's schedule is placed so comparisons can be made. The current placement of the schedules should be maintained, at least. The department may consider using the same format as was used when the schedules were contained in previous rule notices where old numbers were crossed out and the new numbers inserted.

RESPONSE 1: The department thanks Mr. Story for the comment. The department understands Mr. Story's formatting request pertaining to past rulemakings; using interline and underline to distinguish what is proposed for amendment and assures Montax that this will be the only instance of this type of formatting. Since the 2020 schedules are new - in this independent format - and the 2019 schedules are in rule, the department determined it best to propose the adoption and incorporation of the 2020 schedules as a new document; this would show all text without editing. The department feels this more accurately reflects the requirements of 2-4-307, MCA.

COMMENT 2: Mr. Story questioned whether it is the department's intention that an annual rule notice will be posted to notify the public of the adoption of the new schedules or are they automatically adopted once they are posted on the department's website? Or in other words, will ARM 42.21.155 be amended each year as the new schedules come into play?

Representative Jones forwarded similar comments from an individual who is an accountant and member of the tax review group asking about the department's intention in publishing the trend tables.

RESPONSE 2: The department followed the requirements of 2-4-307, MCA, and ARM 1.2.210 pertaining to the adoption and incorporation by reference of a resource or publication. In doing so, the department intentionally titled the schedules and their placement in ARM 42.21.155 to keep the annual amendment of the schedules subject to the posting, notification, and public comments requirements of the Montana Administrative Procedure Act (MAPA).

In approximately September of each year, the department will prepare the upcoming year's schedules and valuation tables and will interline and underline the prior year's version to illustrate what changes are being made and will watermark the schedules as "Proposed." The department will initiate a MAPA-compliant rulemaking to propose adoption of the new schedules and will follow MAPA and its internal procedures as it has done in the past with other rule proposals.

COMMENT 3: Mr. Story commented that Montax has concerns with the department's proposed amendments in ARM 42.21.154(7). While Montax agrees with the changes represented in (7)(a) through (c), it questions in (d) whether there should be some due process practice in place if the property owner has certified the value, but the filing amounts to providing a false statement if the certified value is not accurate.

RESPONSE 3: The department's proposed amendments in (7)(d) address situations where a taxpayer fails to provide the required information needed for the department to fairly value the equipment, or the department believes the information provided was not indicative of fair market value based upon an open arm's length transaction between a willing buyer and willing seller. Due process is provided through the normal appeals and AB-26 - Request for Informal Classification and Appraisal Review processes when taxpayers disagree with the department's

assessment or classification. If the taxpayer still feels aggrieved with the department's appraisal after the informal review, they can file a formal review with the county tax appeal board and then the state tax appeal board as outlined in 15-7-102, MCA.

COMMENT 4: The last of Montax's comments concern the actual trended depreciation schedules and trend factor tables. Mr. Story comments that like 2018, Montax does not see the logic in the numbers that appear in many of the new schedules compared to the old schedules. The pertinent changes appear to be in the trend factors. This results in a change in the final wholesale trended good number. Some of these trend factors are increasing, some are decreasing, and some stay the same for the same type of equipment depending on the age of the equipment. Some of the changes are small, less than 1%, and some are large at 4 or 5%. The whole process is complicated and seems not very transparent. It seems that there would be a benefit in a simpler process where there are not so many moving parts, some of which cancel the others out.

RESPONSE 4: Trending is a common and accepted appraisal practice and is part of the cost approach to valuation for personal property.

Trending is a method of estimating a property's current cost, as if new, where a trend factor is applied to the property's historical cost to convert it into an indication of current cost. Trending is intended to reflect the movement of prices over time. This "trended" cost is then depreciated to recognize the subject property is not new and has a lesser value than a new item of the same type of property.

The department uses cost index information from Marshal & Swift to develop its trend factors. Cost indexes allow for comparisons of costs between two years - a prior year to the current year. Each year's trend is an independent value and reflects the difference in cost for each year compared to the current year. Different market forces in one year compared to another year can result in non-linear trends.

To simplify the calculations, the department applies the trend factor to the depreciation percentage for each year instead of trending the acquired cost of each of the thousands of individual personal property items reported annually.

Support for the trending and depreciating methodology employed by the department can be found in authoritative appraisal texts such as "Appraising Machinery and Equipment" sponsored by the American Society of Appraisers.

COMMENT 5: Representative Jones' forwarded comment described in Comment 2 also states that the schedules the department changed for 2019 raised personal property taxes. The commenter contends that many taxpayers are unhappy about the increases.

RESPONSE 5: The department did receive feedback from taxpayers concerned with the original proposed trended depreciation table updates for the 2019 tax year. Based upon public comment and feedback, the department extended the rulemaking process and revised the schedules' values, where appropriate, to help alleviate these concerns. The department observed that property owners were generally very understanding once the issues were identified and the revisions were made.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State January 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.13.1202 pertaining to beer wholesaler and table wine distributor limited delivery exceptions	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 18, 2019, the Department of Revenue published MAR Notice No. 42-1008 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1855 of the 2019 Montana Administrative Register, Issue Number 20.

2. On November 8, 2019, a public hearing was held to consider the proposed amendment. No proponents were present, no proponent oral testimony was received, and the department received no written comments in support. The following persons appeared as opponents to the rulemaking and provided oral comments: Brad Griffin, Montana Restaurant Association; Dan Graves, Whitefish Mountain Resort; Brian Clark, Fun Beverage; Jim Walker and Bob Petitt, Bridger Bowl, Inc.; Wayne Driscoll, Cardinal Distributing; Kristi Blazer, Montana Beer and Wine Distributor's Association (MBWDA); and Bob Riso, Hellroaring Saloon. Written comments were also received at the hearing from Brad Griffin, Brian Clark, and Kristi Blazer.

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

42.13.1202 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR - CONDITIONS FOR OPERATING (1) remains as proposed.

(2) When a beer wholesaler or table wine distributor's trucks and equipment are incapable of delivering alcoholic beverages to a retail licensee's premises due to the unique physical location of the retail licensee's premises - examples of which are premises located on an island or atop a mountain - ~~the beer wholesaler or table wine distributor may request the assistance of the retail licensee to deliver the alcoholic beverages if:~~ the beer wholesaler or table wine distributor and retail licensee may seek prior department approval for an alternative delivery arrangement on a form provided by the department. If the department approves the alternative delivery arrangement request, the department shall provide the beer wholesaler or table wine distributor and the retail licensee a written summary of the conditions of the approved delivery arrangement. Failure to comply with the approved alternative delivery arrangement may subject the beer wholesaler, table wine distributor, or retail licensee to administrative action.

~~(a) the beer wholesaler or table wine distributor's employee remains with the alcoholic beverages to be delivered until delivery has occurred at the licensed~~

~~premises; and~~

~~(b) the beer wholesaler or table wine distributor seeks prior department approval on a form provided by the department.~~

(3) and (4) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-212, 16-3-231, 16-3-232, 16-3-242, 16-3-301, 16-3-404, 16-3-406, 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

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

COMMENT 1: All opposition commenters provided general testimony as to their respective wholesaler and retailer experiences regarding what they referred to as "servicing difficult to reach locations," which are premises in dangerous or difficult to reach locations for distributors, such as a mountain top bar or restaurant. All commenters testified about alcoholic beverage product delivery and the logistics of resupplying mountaintop bars and restaurants, and that the delivery of beer and wine is being made to alternate secured storage areas through which the retail licensee resupplies the hard-to-reach premises.

Mr. Graves supplemented his testimony with a brief video taken from a remote-controlled drone, which was shown to the hearing's attendants to illustrate Whitefish Mountain Resort, the handful of retail licensees operating on the mountain, and the route a distributor must take - in season and off-season - to deliver alcoholic beverages to the area's licensees.

RESPONSE 1: The department thanks the commenters for the comments. Mr. Graves' video and testimony showing the difficulties of delivering alcoholic beverages to Whitefish Mountain Resort is a good representation as to why the department is pursuing a rule amendment. The department understands that certain licensed retailer premises are in areas where a beer wholesaler or table wine distributor's trucks and equipment are unable to deliver, such as premises located on an island or premises situated atop a mountain with no road access.

COMMENT 2: Several commenters testified that their own delivery compliance concerns arose following the results of some recent alcoholic beverage code violations involving a high-profile retail licensee, its wholesale distributors, and the department.

Mr. Graves commented that he is wary whether the department is attempting to consider the commenting distributors and licensees in the same vein of non-compliance as the other recent violating licensees and offered that the commenters' circumstances are different.

RESPONSE 2: The department appreciates the retailers, wholesalers, and distributors bringing examples of their delivery concerns to the department's attention. For these hard to reach retail premises, the department has exercised its discretion to defer administrative action until a solution could be provided in rule. The department has further amended ARM 42.13.1202 to allow for retailers, wholesalers, and distributors to request an alternative delivery arrangement.

COMMENT 3: Some commenters stated that the current licensing requirement for the delivery and storage of alcoholic beverages to occur only at the licensed premises is impractical because it cannot be applied to all retail licensees, some of which conduct business through hard-to-reach premises.

Messrs. Graves, Clark, Walker, and Petitt commented their opinions that the distributor delivery rules and policy enforcement issues were created by the department when it approved and issued on-premises consumption licenses in these hard-to-reach locations, and the department should have known that distribution of product to the licensed premises might not be possible given the hard-to-reach location of the premises.

Mr. Clark commended the department's willingness to propose a solution to address a ". . . '[c]atch 22' of mutually conflicting administrative rules that by their current enforcement, after three decades of non-enforcement, cannot be fully complied without some reasonable and appropriate changes."

RESPONSE 3: The Montana Alcoholic Beverage Code requires beer and wine to be delivered to a licensed retailer's premises. Section 16-3-219, MCA. The department recognizes that throughout the years certain licensed retail premises with unique physical characteristics making deliveries not possible have been approved. As such, the department has made a commitment to address deliveries to these locations by rule.

The department's original proposal to require the wholesaler or distributor's employees to remain with the product until delivered at the retailer's licensed premises was not an unreasonable solution and is an option that was presented to the department by members of the alcoholic beverage industry. However, the department realizes this is not an ideal solution for all hard-to-reach retailers and has further amended ARM 42.13.1202. Those amendments are described in Responses 4, 6, and 7.

COMMENT 4: Mr. Griffin commented that the law regarding these difficult to reach locations needs to be changed and proposed working on legislation to fix this situation. However, since legislation won't take effect until May of 2021 at the earliest, Mr. Griffin believes the administrative rules need to allow businesses to function "…[i]n the same way that they have for decades - without fear of administrative actions."

Mr. Graves stated that until now the non-enforcement of the delivery laws amounted to prosecutorial discretion, and the department should continue this policy of discretion until the 2021 Legislature can address the situation, as Mr. Griffin recommends. Mr. Clark and Ms. Blazer concurred with these comments.

RESPONSE 4: The department believes the amendment of ARM 42.13.1202 will provide licensees with the flexibility to continue operation with minimal burden. The department proposes to further amend ARM 42.13.1202 to allow wholesalers/distributors and retailers the ability to request department approval for an alternative delivery arrangement. The department encourages the interested parties to seek legislation to address deliveries to premises with unique physical locations.

COMMENT 5: Several commenters expressed concern over the timing of the effective date of proposed rule changes because the 2019-2020 ski season starts in November and runs through April. If the rules become effective during this time, affected distributors and retail licensees may suffer substantial financial losses.

Messrs. Graves and Clark concurred with these comments, but stressed the economic impacts they feel the proposed rules would have on Whitefish Mountain Resort and the surrounding community.

Messrs. Walker and Petitt similarly commented with respect to Bridger Bowl ski area.

RESPONSE 5: The department understands the urgency for the retailers, wholesalers, and distributors impacted by these situations to have a solution in place for the upcoming 2019-2020 ski season. While rulemaking has progressed, the department has exercised its discretion to defer administrative action until a solution could be provided in rule. As the rule has now been amended, the department urges each affected retailer, wholesaler, and distributor to request an alternative delivery arrangement. Each instance will be evaluated on a case-by-case basis.

COMMENT 6: Messrs. Graves, Clark, Driscoll, Petitt, and Walker testified that the department's proposed rulemaking requirement that a distributor's employee remain with the alcoholic beverages to be delivered to a licensee is logistically unworkable because some licensees, like those at Whitefish Mountain Resort and Bridger Bowl, conduct product restocking by snowcat, snowmobile, or other specialized means - often after normal operating hours - and safety, worker's compensation insurance, and liability issues arise.

Mr. Riso commented that staffing issues for licensees are often impacted because restocking of these bars and restaurants has to be accomplished outside of normal operating hours. The result of keeping these establishments adequately stocked with available staff sometimes means that business hours are shortened, and several restaurants opt for a less than full meal service.

RESPONSE 6: As mentioned in Response 4, the department has further amended ARM 42.13.1202. The amended language no longer requires the distributor or wholesaler's employee to accompany the product to the retailer's licensed premises. Rather, the wholesaler/distributor and retailer will need to submit a request for approval, on a form provided by the department that explains how the alcoholic beverages will be delivered to the retailer's licensed premises.

COMMENT 7: Messrs. Graves, Clark, Driscoll, Petitt, and Walker commented that the proposed rule would create unintended consequences where distributors would be forced to discontinue service to their customers or the hard-to-reach bars would go out of business because of the administrative burden and increased cost of purchasing, delivering, and resupplying the alcoholic beverage inventories to the premises.

Mr. Driscoll commented his belief that should the rulemaking be adopted as proposed, the interruption of delivery services to these licensees may put distributors in violation of their brewery contracts.

RESPONSE 7: The department's additional amendments to ARM 42.13.1202, as described in Responses 4 and 6, should address the concerns of the commenters. The department has further amended ARM 42.13.1202 to allow for alternative delivery arrangements if the entities involved request approval from the department and can demonstrate that adequate safeguards are in place to control the accessibility of the alcoholic beverages until they are ultimately delivered to the retailer's licensed premises.

COMMENT 8: Mr. Clark also provided an alternate proposal to the rulemaking, via his comments, which would involve the creation and department approval of a temporary storage location, which would constitute part of a single retail licensee's licensed premises, exclusively for the alternative and secure delivery of alcoholic beverages. The proposed temporary storage location would also have other restrictions and would not replace storage areas on a licensee's primary licensed premises.

RESPONSE 8: The department appreciates Mr. Clark offering a proposal for the department to consider. The department has further amended ARM 42.13.1202 to allow for alternative delivery arrangements if the entities involved request approval from the department and can demonstrate that adequate safeguards are in place to control the accessibility of the alcoholic beverages until they are ultimately delivered to the retailer's licensed premises.

COMMENT 9: Ms. Blazer provided background commentary regarding four proposals discussed by the MBWDA board of directors and forwarded to the department that constituted preliminary industry input. Ms. Blazer also commented that the MBWDA did not sufficiently discuss the amendments in proposed (2) with retail licensees.

Ms. Blazer also proposed alternatives to the rulemaking that reflect other options contemplated and supported by the MBWDA:

1. Similar to Comment 3, the department should exercise prosecutorial discretion and not prosecute distributors for failure to deliver to the actual licensed premises (where difficult, dangerous, or impractical) until the legislature has had the opportunity to be informed and act in the 2021 legislative session. Ms. Blazer opines that there is authority for prosecutorial discretion and provided information of an occurrence where the federal government exercised discretion in the deferral of penalties against wholesale distributors for past unreported ownership changes.

2. Use the administrative rule process, not to contravene 16-3-219, MCA, but to consider transitional rulemaking that would define "licensed premises" to permit alternate delivery methods until the 2021 Montana Legislature is able to pass legislation to provide for delivery restrictions exceptions. Ms. Blazer provided draft text amendments to ARM 42.13.111 and 42.13.1202 in support of this concept.

3. The department notifies and requires all hard-to-reach retailers to submit new floor plans to include the storage areas where deliveries are currently being made. This would expand the licensed premises, making current deliveries legal.

RESPONSE 9: The department appreciates Ms. Blazer offering proposals for the department to consider. While rulemaking has progressed, the department has exercised its discretion to defer administrative action until a solution could be provided in rule. The department has further amended ARM 42.13.1202 to provide beer wholesalers, table wine distributors, and retailers more flexibility in delivering to premises with unique physical locations.

COMMENT 10: Messrs. Riso and Petitt also commented their disagreement with the department's small business impact disclosure in #9 of the proposal notice. Mr. Riso believes if the proposed amendments were adopted, there will be significant impact to his small business.

RESPONSE 10: The department appreciates Messrs. Riso and Petitt's comments regarding the impact of the proposed rules on their business. The department's original proposal allowed hard-to-reach retailers the ability to continue to get deliveries from wholesalers and distributors which justified the small business impact statement. However, as the commenters presented at the hearing, that original proposal still created some unexpected or unavoidable burdens on the hard-to-reach retailers. The department has further amended ARM 42.13.1202 to better account for these unavoidable burdens.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State January 7, 2020.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.683 pertaining to specialty and unique crops; additional requirements for agricultural land classification	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 8, 2019, the Department of Revenue published MAR Notice No. 42-1011 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2006 of the 2019 Montana Administrative Register, Issue Number 21.

2. On December 5, 2019, a public hearing was held to consider the proposed amendment. No proponents or opponents were present and no proponent or opponent oral testimony was received. The department received written comments requesting an additional change to the rule from an interested person.

3. The department has amended ARM 42.20.683 as proposed.

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

COMMENT 1: The sole commenter to the rulemaking requested a change to ARM 42.20.683(2)(c) to remove the words "marketing of" and "results," as well as changing the cited authority at the end of the subsection from ARM 42.20.683 to 15-7-202, MCA. The commenter believes the proposed additional amendments are necessary to eliminate unnecessary, inconsistent, and potentially confusing language with 15-7-202, MCA, as amended by Senate Bill 69 (2019), as it relates to the gross income requirement for agricultural parcels of less than 20 acres. Further, the commenter offers that a landowner does not market gross income which is what the current rule text implies.

The commenter also states that (2)(c) is not consistent with tax appeal board precedent which determined the department could not impose an acreage requirement in rule where statute did not contain such a requirement.

The commenter contends that the provisions of 15-7-202(1)(b), MCA, apply only to parcels of 20 to 160 acres and not to parcels of less than 20 acres, which are instead subject to the different provisions of 15-7-202(2), MCA.

RESPONSE 1: The department thanks the commenter for his comments. The department agrees that the provisions of 15-7-202(1)(b), MCA, apply to contiguous parcels of land 20 acres or more but less than 160 acres; however, the department's proposed rule amendment is not inconsistent with the statutory requirements for classification as agricultural. The department's proposed rule

amendments in (2) summarize the statutory requirements for agricultural classification for both parcels of land 20 acres or more but less than 160 acres and parcels of land totaling less than 20 acres. Section 15-7-202(1)(b)(i)(A) and (2)(a), MCA similarly state that " . . .[t]he owner. . . . markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land." The department will leave in references to 'marketing' because this is consistent with the language in statute.

The department also disagrees with the commenter that the rule amendments run contrary to previous case decisions made by the Montana Tax Appeal Board since the department is not instituting an acreage requirement by rule. Although, the department acknowledges those case decisions were the basis for prior department rulemaking to remove such requirements from its rules.

The department also believes that it correctly cites to ARM 42.20.620 in the amendments to (2)(c), which is necessary to cross-reference the rule that provides the acceptable proof of gross income requirements because those standards are not found in 15-7-202, MCA.

Based on the foregoing, the department declines to make further amendment to ARM 42.20.683 and adopts the rule amendments as proposed.

/s/ Todd Olson	/s/ Gene Walborn
Todd Olson	Gene Walborn
Rule Reviewer	Director of Revenue

Certified to the Secretary of State January 7, 2020.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2019. This table includes notices in which those rules adopted during the period July 26, 2019, through December 27, 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 September 30, 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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