

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 MONTANA BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.22.2301, 8.22.2401,	)	AMENDMENT
8.22.2701, 8.22.2813, 8.22.3001,)	
and 8.22.3901, pertaining to the)	
Montana Board of Horse Racing	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On March 17, 2020, the Board of Horse Racing proposes to amend the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., March 11, 2020, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov.

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

8.22.2301 BOARD ORGANIZATION (1) The Board of Horse Racing hereby adopts and incorporates the organizational rules of the ~~Department of Livestock~~ Department of Commerce as listed in chapter 1 of this title.

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

REASON: The Board of Horse Racing was transferred to the Department of Commerce during the 63rd Legislative session; therefore, the Board of Horse Racing is updating the rule to reflect the accurate agency referred to in the rule.

8.22.2401 PROCEDURAL RULES (1) The Board of Horse Racing hereby adopts and incorporates the procedural rules of the ~~Department of Livestock~~ Department of Commerce as listed in chapter 2 of this title.

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

REASON: The Board of Horse Racing was transferred to the Department of Commerce during the 63rd Legislative session; therefore, the Board of Horse Racing is updating the rule to reflect the accurate agency referred to in the rule.

8.22.2701 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (34) remain the same.

(35) Each licensee conducting a race meeting shall furnish racing colors. A color must be assigned to each post position and shall be standard for the state. The standard colors for all racetracks shall be:

- (a) red - post position #1
 - (b) white - post position #2
 - (c) blue - post position #3
 - (d) yellow - post position #4
 - (e) ~~black~~ green - post position #5
 - (f) ~~orange~~ black - post position #6
 - (g) ~~purple~~ orange - post position #7
 - (h) ~~green~~ pink - post position #8
 - (i) ~~brown~~ turquoise - post position #9
 - (j) ~~pink~~ purple - post position #10
- (36) through (47) remain the same.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The Board of Horse Racing is adhering to the national horse racing industry standardized racing colors.

8.22.2813 ASSISTANT STARTER (1) through (4) remain the same.

(5) All assistant starters must wear a properly secured safety helmet and safety vest while on the racing surface handling a horse. For the purpose of this regulation, an assistant starter is any person licensed as an assistant starter or any person who handles a horse at the starting gates.

(a) Safety helmets must comply with one of the following minimum safety standards or later revisions: (ASTM F1163), (EN 1384) and (PAS 015), (AS/NZ 3838).

(b) Safety vests must comply with the following minimum safety standard: (BETA 2000 level 1).

AUTH: 23-4-202, MCA
IMP: 23-4-201, MCA

REASON: The Montana Board of Horse Racing is updating the minimum safety equipment for any person who handles horses at or around the starting gate.

8.22.3001 GENERAL REQUIREMENTS (1) through (34) remain the same.

(35) No trainer may enter more than two horses in a purse race or overnight event. When making a double entry in the same ownership or trainership, the owner

or trainer must express a preference, and in no case may two horses start in the same ownership or trainership to the exclusion of a single entry unless that single entry is an "in today" horse.

(a) through (65) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The Montana Board of Horse Racing is clarifying an "in today" horse, which means a horse that is in the race for today or tomorrow. The rule for a trainer entering two horses cannot exclude a single entry horse but gives preference to multiple entries over the "in today" entries.

8.22.3901 DEFINITIONS (1) through (4) remain the same.

(5) "Fantasy sports coordinator" means an official hired by the ~~Department of Livestock~~ Department of Commerce (the department) to regulate, audit, approve network operating plans, approve league rules, receive point totals from network, designate point totals as "official," annually approve the information service to be used by the network, and control and supervise overall conduct and operation of parimutuel fantasy sports wagering.

(6) through (22) remain the same.

AUTH: 23-4-104, 23-4-202, MCA

IMP, 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, 23-5-806, MCA

REASON: The Board of Horse Racing was transferred to the Department of Commerce during the 63rd Legislative session; therefore, the Board of Horse Racing is updating the rule to reflect the accurate agency referred to in the rule.

4. Concerned persons may submit their data, views, or arguments in written form or a request for opportunity to submit data, views, or arguments in oral form to: Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; TDD (406) 841-2731; facsimile (406) 841-2771; or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bonnie Martello at the above address no later than 5:00 p.m., March 13, 2020.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association

having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 150 persons based on 1,500 licensees.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to docadministraiverules@mt.gov, or by completing a request form at any rules hearing held by the department.

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

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

MONTANA BOARD OF HORSE RACING
JOHN HAYES
CHAIRPERSON

/s/ Garrett Norcott
Garrett Norcott
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State February 4, 2020.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
17.86.101, 17.86.102, 17.86.105,)	ON PROPOSED AMENDMENT
17.86.106, 17.86.107, 17.86.110,)	
17.86.111, 17.86.112, 17.86.115,)	(ENERGY)
17.86.116, 17.86.117, 17.86.120,)	
17.86.121, and 17.86.122 pertaining to)	
Wind Generation Facility and Solar)	
Facility Decommissioning and Bonding)	

TO: All Concerned Persons

1. On March 12, 2020, at 1:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., March 5, 2020, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.86.101 DEFINITIONS In this subchapter, the following definitions apply:
(1) through (3) remain the same.
(4) "Commenced commercial operation" means:
(a) for a solar facility, the first date the facility's cumulative nameplate rated generating capacity is 2 megawatts or more and the facility delivers energy to the distribution or transmission system; or
(b) for a wind generation facility, the date the turbine commissioning completion certification is signed for the specific turbine whose nameplate rated capacity first brings the facility's cumulative nameplate rated generating capacity to 25 megawatts or more.
(5) "Decommission" or "decommissioning" has the same meaning as defined in 75-26-301, MCA.
(6) remains the same.
(7) "Facility" means a wind generation facility or a solar facility.
~~(7)~~(8) "Landowner" means the a person or persons who hold legal title to the real property where a facility is located.
~~(8)~~(9) "Owner" has the same meaning as ~~defined~~ in 75-26-301, MCA.

~~(9)~~(10) "Owns a 10 percent or greater share of the ~~wind generation~~ facility" means having ownership of 10 percent or greater in capital stock of the corporation that owns the facility or having a 10 percent or greater ownership interest in a partnership, or limited liability ~~corporation~~ company that owns the facility:

~~(i)~~(a) for a wind generation facility that commenced commercial operation on or before May 3, 2017, on May 3, 2017, and thereafter; ~~and~~

~~(ii)~~(b) for a wind generation facility that commenced commercial operation after May 3, 2017, at commencement of commercial operation and thereafter;

(c) for a solar facility that commenced commercial operation on or before May 7, 2019, on May 7, 2019, and thereafter; and

(d) for a solar facility that commenced commercial operation after May 7, 2019, at commencement of commercial operation and thereafter.

~~(10)~~(11) "Person" has the same meaning as ~~defined~~ in 75-26-301, MCA.

(12) "Private bonding" means the terms and conditions of a lease agreement between a landowner and an owner that incorporate bonding requirements for decommissioning a facility.

~~(14)~~(13) "Repurposed" has the same meaning as ~~defined~~ in 75-26-301, MCA.

~~(12)~~(14) "Significant investment" means a capital investment in ~~property~~ an equipment project associated with a ~~wind generation~~ facility that the owner has demonstrated to the department will extend the useful life of the ~~wind generation~~ facility by more than ~~5~~ five years. The equipment project must be completed in three years or less. ~~Should~~ If a wind generation facility removes all wind turbines and existing pads and installs new wind turbines on new pads, the facility is a new facility and not a repurposed facility. If a solar facility is removed and a new solar facility is installed in the same location, the facility is a new facility and not a repurposed facility.

(15) "Solar facility" has the same meaning as in 75-26-301, MCA.

~~(13)~~(16) "Surety bond" means an indemnity agreement in a certain sum, payable to the department, executed by the owner, that ~~which~~ is supported by the performance payment guarantee of a corporation ~~licensed~~ authorized to do business as a surety in Montana.

~~(14)~~(17) "Wind generation facility" ~~or "facility"~~ has the same meaning as ~~defined~~ in 75-26-301, MCA.

AUTH: 75-26-310, MCA

IMP: 75-26-301, 75-26-304, MCA

REASON: In the 2019 Legislative Session, the Montana Legislature enacted SB 93 to extend to solar facilities decommissioning requirements that previously applied only to wind generation facilities. Section (4) is proposed to be amended to provide a new definition of the term "commenced commercial operation" as that term applies to solar facilities and to provide that the existing definition of "commenced commercial operation" applies to wind generating facilities, implementing SB 93. The date commercial operation commences starts the clock on the 15 or 16 years a facility has before bonding must be secured in accordance with 75-26-304(6), MCA.

Proposed amendments to (5), (9), (11), and (13) more clearly state that the

terms are defined by statute.

The proposed amendment in (7) implements SB 93 by defining "facility" to include both wind generating facilities and solar facilities.

The proposed amendment in (8) is necessary to clarify the property interest that qualifies a person as a "landowner" is the ownership of the real property on which the wind generating facility or solar facility is located.

Section (10) is proposed to be amended to implement SB 93 by adding solar facilities to the exemption from bonding for facilities in which the entire facility is on a single landowner's property and the landowner owns at least 10 percent of the facility. To be eligible for the exemption, an existing solar facility owner must have met the minimum share requirement by the time SB 93 was signed into law, May 7, 2019. A solar facility built after May 7, 2019 is eligible for the exemption if it meets the ownership requirement at the time it commences commercial operation.

The proposed amendment in (12) is reasonably necessary to provide a definition of "private bonding," the existence of which exempts the owner from the requirement to submit a decommissioning bond to the department under ARM 17.86.107.

The proposed amendments to (14) are necessary to apply the definition of "significant investment" to wind generating facilities and solar facilities, implementing SB 93. In addition, a new provision would be added to distinguish between new solar facilities and repurposed solar facilities. New and repurposed solar facilities would have delayed bonding schedules under ARM 17.86.107. The existing distinction between new facilities and repurposed facilities would be amended to make the existing distinction applicable to wind generating facilities. Finally, the proposed amendment to (14) replacing "property" with "equipment project" is necessary to remove the confusion caused by the current rule's use of both terms to refer to the improvements to a facility that are subject to a significant investment.

Section (15) would be added to provide the definition of solar facilities.

In (16), the definition of "surety bond" is proposed to be amended to provide that the department accepts payment bonds only. The department's experience with performance bonds is that it can be time-consuming and difficult to negotiate performance with a surety. The department believes that on default of the owner, the department will be able to complete decommissioning more efficiently with a payment bond.

The proposed amendments would also clarify that Montana authorizes surety corporations and does not license surety corporations doing business in Montana.

17.86.102 OWNER RESPONSIBILITIES (1) ~~An owner is responsible for of a facility shall:~~

(a) decommissioning its facility according to this subchapter and pay for all costs associated with decommissioning;

(b) commence decommissioning activities within 90 days after abandonment, unless the owner receives department approval of an alternative written plan for decommissioning;

(c) complete d~~Decommissioning must be completed~~ within 24 months of after abandonment, or according to a reasonable alternative schedule proposed by the owner and approved by the department upon a showing of good cause for the

extension-;

~~(2)(d) The owner of a facility must notify the department in writing within 30 days of after abandonment-; and~~

~~(3)(e) An owner shall notify the department in writing within 30 days after beginning onsite decommissioning activities.~~

~~(4)(2) The owner of a wind-generation facility that commenced commercial operation on or before July 1, 2018 May 7, 2019, shall submit in writing the following to the department on or before July 1, 2018 2020. The department may, but is not required to, review these initial decommissioning plans and information for completeness:~~

~~(a) remains the same.~~

~~(b) a decommissioning plan in accordance with the requirements of ARM 17.86.105 regardless of any bond exemptions allowed under ARM 17.86.107(4) or (5);~~

~~(c) identification of the each landowner on which the wind-generation facility is located; and~~

~~(d) if the landowner or landowners identified pursuant to (4)(2)(c) are not governmental entities, whether the landowner or landowners have an ownership interest in the wind-generation facility and, if so, a detailed description of the interests.~~

~~(5)(3) The owner of a facility that commences commercial operation after July 1, 2018 May 7, 2019, shall submit to the department the information required in (42) within six 12 months of after commencing commercial operation. The department may, but is not required to, review these initial submissions for completeness.~~

~~(6)(4) The owner of a facility shall submit an updated decommissioning plan at least 12 months before a bond is required by ARM 17.86.107(2) or (3), and at least 12 months before a bond is reviewed by the department in ARM 17.86.112(2). Updated plans must include an updated cost estimate and address expansions and modification, if any. Within 90 days of after receipt, the department shall notify the owner of any deficiencies in the decommissioning plan. Within 90 days of after receiving the deficiency notice, the owner shall address all deficiencies and resubmit the decommissioning plan.~~

~~(5) Within 12 months after purchasing a facility, the owner shall submit an updated decommissioning plan to the department. The updated plan must include an updated cost estimate and address expansions and modifications, if any.~~

~~(7)(6) The owner shall allow access in a timely manner and accompany the department for an inspection of the facility to verify the adequacy of a new or updated decommissioning plan for purposes of determining the bond amount. The department shall propose in writing, the scope and schedule of any such inspection at least two weeks in advance of the inspection. Department representatives shall comply with site safety and general access restrictions while at the facility. The department and the owner shall confer and arrange a time for an inspection. The department shall confirm the scope, date, and time of the inspection to the owner in writing at least ten business days prior to the inspection. At the date and time arranged, a representative of the department may enter and inspect a facility to evaluate the adequacy of a new or updated decommissioning plan and the~~

associated bond amount. The owner shall allow the department's representative to inspect the facility and shall accompany the representative.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department's proposed amendment to (1) is reasonably necessary because owners must fulfill the responsibilities listed in the rule, justifying use of mandatory language. The proposed amendments to (1)(a) are reasonably necessary to tie the owner's obligation to decommission a facility to the requirements of the applicable administrative rules and affirmatively provide that the cost of doing so must be borne by the owner. The department is proposing to amend (1)(b) to include decommissioning responsibility that was previously set forth in ARM 17.86.122(3) but is more appropriately included in ARM 17.86.102. The department is proposing to amend (1)(c), (d), and (e) to create a more logical structure and eliminate the use of passive voice.

DEQ is proposing to amend (2) to conform with the enactment of SB 93. That legislation made solar facilities subject to decommissioning requirements, necessitating deletion of "wind generation" as a modifier to "facility." Additionally, the proposed amendment reflects a change in a date set forth in 75-26-304(1), MCA, that was enacted by passage of SB 93. May 7, 2019, is the date SB 93 was signed into law. Facilities operating before the law became effective are required by statute to submit their initial decommissioning plans and additional required information to the department on or before July 1, 2020, if they have not already submitted them. The proposed amendment to (2)(b) clarifies that, to be consistent with 75-26-304(8), MCA, each wind generation or solar facility is required to submit a decommissioning plan, even if it qualifies for a bond exemption.

The proposed amendment to (3) reflects amendments to 75-26-304(1), MCA, enacted by SB 93. The statutory amendments established the timeframe for a new facility to submit a decommissioning plan and the additional information required in (2) to the department.

The department is proposing to add (5) to require a new owner to submit an updated decommissioning plan that represents the new owner's practices for decommissioning and reflects the associated cost to the new owner. Submission of an updated decommissioning plan with associated cost calculations ensures that an adequate bond is in place to pay for decommissioning purposes.

Section (6) currently requires the department to provide an owner with written notice of a proposed date and scope of an inspection prior to the inspection. The proposed amendment to (6) would require the department to confer with the owner and arrange the date of an inspection and to confirm the date and scope of the inspection in writing sent to the owner prior to the inspection. This change is necessary to ensure that the owner has agreed to the date of the inspection.

17.86.105 DECOMMISSIONING PLAN (1) A decommissioning plan must include:

(a) and (b) remain the same.

(c) a detailed estimate of the cost of decommissioning the facility with

supporting calculations:

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

~~(d)~~(e) a description of the manner in which the facility will be decommissioned and a proposed decommissioning schedule, which, except as provided in (1)~~(e)~~(d), must include:

(i) dismantling and removal of all overhead electrical transmission lines and structures, transformers, buildings, and all other ancillary equipment and debris from operation of the facility that is not associated with interconnecting the ~~wind generation~~ facility into the electric grid;

(ii) remains the same.

(iii) removal of wind turbine and solar foundations and other concrete foundations and slabs to a minimum depth of 36 inches below natural grade or an alternative depth as approved by the department if appropriate for the post operation land use;

(iv) through (f) remain the same.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment adds the requirement that a decommissioning plan include a detailed cost calculation for decommissioning found in (1)(d). A decommissioning plan is a detailed plan that a qualified contractor could follow that accounts for each step required to decommission a wind generation or solar facility, with extensive calculations of the cost for each decommissioning task. The detailed cost calculation is necessary to assist the department in determining the amount of bond required under ARM 17.86.106.

17.86.106 DETERMINATION OF BOND AMOUNT (1) The department shall set the bond amount at the estimated amount for the department to perform the decommissioning ~~and reclamation~~ work required of an owner.

(2) remains the same.

(3) In determining the amount of a bond required in accordance with ARM 17.86.107, the department shall provide the owner with a preliminary bond determination, consult with the owner, and consider:

(a) remains the same.

(b) the current market salvage value of the ~~wind generation~~ facility, as ~~determined by an evaluator who is not an employee of the owner~~ as set forth in the decommissioning plan.

(4) remains the same.

(5) The department shall notify the owner of the facility by mail of any modification to the decommissioning plan and bond amount. The owner of the facility may appeal the modification of the plan to the board within 60 days after the notice of the modification of the plan was mailed.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment deletes the reference to "reclamation" in (1) because the definition of decommissioning includes reclamation.

The proposed amendment to (3)(b) deletes "wind generation" because, after the enactment of SB 93, both wind generation facilities and solar facilities are subject to the bonding requirements. Deleting "by an evaluator who is not an employee of the owner" and adding the reference to ARM 17.86.105 prevents unnecessarily repeating statutory language in the rule.

Section (5) would be added to reflect statute changes in 75-26-304(3)(b), MCA.

17.86.107 BONDING DEADLINE (1) Except as provided in (3) and (4) through (5), and in accordance with ARM 17.86.110, the owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department as provided in ARM 17.86.115 and in a sum determined by the department in accordance with ARM 17.86.106, conditioned on the faithful decommissioning of the facility an owner shall submit a bond payable to the state of Montana in a form acceptable to the department under ARM 17.86.115 and in a sum determined by the department under ARM 17.86.106, conditioned on the faithful decommissioning of the facility. The owner shall submit the bond by the applicable deadline in (2).

(2) Except as provided in (3) and (4) through (5):

(a) if a ~~wind generation~~ facility commenced commercial operation on or before January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 16th year after commencing commercial operation; or

(b) if a ~~wind generation~~ facility commenced commercial operation after January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of commencing commercial operation.

(3) If a ~~wind generation~~ facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond and any existing bond must be released until the repurposed facility reaches its fifth year of operation. The owner shall submit all revised information required in ARM 17.86.102(42)(b) within six months of finishing repurposing activities after a facility is repurposed. Within five years of repurposing after a facility is repurposed, the facility owner shall submit to the department a bond payable to the state of Montana in a form acceptable by the department ~~as provided in~~ under ARM 17.86.115 and in a sum determined by the department ~~in accordance with~~ under ARM 17.86.106, conditioned on the faithful decommissioning of the facility.

~~(4) The owner is exempt from the requirements of this rule if:~~

~~(a) the owner posts a bond with a federal agency, with a state agency for the lease of state land, or with a tribal, county, or local government; or~~

~~(b) a private landowner on whose land the wind generation facility is located owns a 10 percent or greater share of the wind generation facility, as determined by the department.~~

(4) An owner is exempt from submitting a bond when a private landowner on whose land the entire facility is located owns a 10 percent or greater share of the

facility, as determined by the department.

(5) An owner is exempt from submitting a bond for the facility or portion of the facility for which the owner:

(a) posts a bond with a federal agency, the Department of Natural Resources and Conservation for the lease of state land, or with a tribal, county, or local government; or

(b) provides documents to the department that demonstrate the owner has private bonding.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendments in (1) through (3) would expand the rule to apply to solar facilities, be more concise, and eliminate rule repetition.

The amendments proposed in (4) and (5) are necessary to clarify which exemptions apply only to an entire facility, and which exemptions apply to either an entire facility or a portion of a facility. Proposed (5) is necessary to ensure that portions of a facility that do not qualify for an exemption from bonding in (5)(a) or (5)(b) must be bonded with the department. The amendment to (5)(b) is necessary to include the new private bonding exemption allowed in 75-26-304(8), MCA.

17.86.110 PENALTIES FOR FAILURE TO SUBMIT BOND (1) If an owner does not submit the ~~full bond amount required~~ bond in the amount determined by the department within the timeframe required by under ARM 17.86.107 or replace a bond by the deadlines set forth in ARM 17.86.116 or 17.86.117, the department shall mail written notice to the owner that the bond is overdue. If the owner does not submit the bond within 30 days after the department mailed the notice, the department may assess an administrative penalty in an amount provided in 75-26-304(9)(a), MCA.

(2) An owner may appeal the department's penalty assessment to the board within 20 days after ~~receipt of~~ the department mails the owner written notice of the penalty.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) authorizes the department to take enforcement action if an owner does not timely submit a replacement bond for a surety that the department determines is unable to comply with the terms of the surety bond or for a letter of credit for which the department determines that the issuing bank is unable to fulfill the terms. The enforcement authority is necessary to ensure that facilities maintain the required decommissioning bonds. The proposed amendment also includes provisions regarding notice to reflect statutory changes to 75-26-304(9), MCA, enacted by passage of SB 93.

In (2), the proposed amendment would revise the time for filing an appeal to start on the mailing of the department's written notice of penalty. The amendment is reasonably necessary to clearly establish the date that the period for appeal begins

to run. The date of mailing is more appropriate as a starting date because some entities do not check their mail on a regular basis, and receipt can be avoided and is difficult to ascertain.

17.86.111 REPLACEMENT OF BOND (1) If the owner transfers ownership of the facility to a successor owner, the department shall release the bond posted by the owner in accordance with this rule within 90 ~~calendar~~ days. The successor owner shall, within 90 days of after the transfer, provide a bond that meets the requirements of this subchapter.

(2) remains the same.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to this rule is necessary to clarify that a new owner must submit a replacement bond within 90 days after the transfer of the ownership of a facility. As currently written, it could be read as requiring submission of a replacement bond within 90 days either before or after the transfer of ownership of a facility.

17.86.112 ADJUSTMENT OF BOND AMOUNT (1) Once every five years, an owner may request a reduction of the required bond amount by submitting to the department an amended decommissioning plan. If the department finds that the amended decommissioning plan reduces the estimated cost to the department to complete decommissioning, the department may approve reducing the bond upon submission of evidence to the department proving that decommissioning work, reclamation, or other circumstances will reduce the maximum estimated cost to the department to complete decommissioning and therefore warrant a reduction of the bond amount. Prior to denying the request in whole or in part, the department shall consult with the owner.

(2) The department shall review each decommissioning plan and bond amount every five years after a facility is bonded, or when a new owner submits a revised decommissioning plan. The department may increase the amount of the bond if the facility has expanded or the cost to decommission a facility has otherwise ~~increases~~ increased. The department shall notify the owner of any proposed bond increase and provide the owner an opportunity for an informal conference on the proposal. If the department determines that the bond amount must be increased, it shall provide mail to the owner ~~with~~ a written justification for the increase. The owner shall increase the bond amount within 90 days ~~of receiving~~ after the date the department's revised bond amount written justification was mailed.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) would incorporate changes in 75-26-304(11), MCA, enacted by the passage of SB 93. The proposed amendments to (2) would require the department to review decommissioning plans and their

associated costs every five years after a facility has been initially bonded. This would ensure that the amount of the bond would be sufficient to pay for decommissioning a facility. The proposed amendments to (2) would also require the department to review a decommissioning plan and bond amount when submitted by a new owner. This is reasonably necessary to provide a new owner with the opportunity to adjust the decommissioning plan and bond amount to reflect that owner's practices and any changed circumstances.

17.86.115 FORM OF BOND (1) ~~The form for the bond must be as provided by the department.~~ The department owner shall allow for submit either a surety bond or a collateral bond in a form acceptable to the department by the deadline in ARM 17.86.107.

(2) Liability under any bond, including separate bond increments and ~~indemnity agreements or bonds~~ applicable to a single facility, ~~must extend~~s to the owner's entire facility.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendment to (1) puts the language of the rule in active voice, affirmatively placing the bonding responsibility on the owner, including the requirement to submit a bond by the applicable deadline. Finally, the proposed amendment to (2) would replace "indemnity agreements" with "bond" because that term is redundant with "bond." Bonds are defined in ARM 17.86.101 as indemnity agreements.

17.86.116 SURETY BONDS (1) ~~Surety bonds are subject to the following requirements~~ An owner may satisfy the bonding requirements of this subchapter by submitting a surety bond that:

(a) ~~the department may not accept a surety bond is in excess of an amount that does not exceed~~ 10 percent of the surety company's surety's capital surplus account as shown on a balance sheet certified by a certified public accountant and submitted to the department;

(b) ~~the department may not accept a surety bond from a surety company for any owner is in excess an amount that does not exceed~~ of three times the surety's maximum single obligation;

(c) ~~the department may not accept a surety bond from a surety company for any owner unless that is issued by a surety is registered with~~ authorized by the Montana state auditor and is listed in the United States Department of the Treasury Circular 570 as revised;

(d) ~~has a power of attorney must be attached to the surety bond;~~ The power of attorney must state that the surety has authorized the person issuing the bond to bind it to the bond's terms;

(e) ~~the surety bond must provides~~ a requirement and a mechanism for the surety company to give prompt notice to the department and the owner of:

(i) any action alleging bankruptcy or insolvency of the surety or a violation that would result in suspension or revocation of the ~~license of the~~ surety's

authorization:

(ii) and (iii) remain the same.

(f) upon a written determination by the department that a surety is unable to comply with the terms of the bond, the owner ~~of a facility must be~~ is deemed to be without bond ~~coverage~~. The owner shall replace the bond ~~coverage~~ within 90 days ~~of notice from~~ after the written determination is mailed by the department.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The proposed amendments to (1)(a) through (c) are needed for consistency with other rules that state affirmative requirements that must be met before the department accepts a bonding instrument rather than criteria that disallows the department from accepting the bonding instrument. Proposed amendments to (1)(c) and (e) are necessary to accurately reflect that the state auditor authorizes companies to do business in Montana rather than registering them.

The proposed amendment to (1)(d) provides what must be stated in the power of attorney so that the department may rely on the signature of the surety's representative as binding the surety.

The proposed amendment to (1)(f) deletes the word "coverage" to reduce redundancy; the word "bond" already connotes coverage. Finally, proposed amendments would require the department's determination that a surety is unable to comply with the terms of a surety bond to be in writing and that the owner submit replacement bond within 90 days after the written determination is mailed by the department. These requirements are necessary to establish a clear date on which the 90-day period within which an owner is required to submit replacement bond begins.

17.86.117 LETTERS OF CREDIT (1) ~~The department may accept as a bond a letter of credit subject to the following conditions~~ An owner may satisfy the bonding requirements of this subchapter by submitting a letter of credit that:

(a) ~~the letter must be~~ is issued by a bank organized or authorized to do business in the United States;

(b) ~~the letter must be~~ is irrevocable prior to ~~the~~ being released by the department;

(c) ~~the letter must be~~ is payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued in accordance with ARM 17.86.122;

(d) ~~the letter of credit must~~ provides that, upon expiration, if the department has not notified the bank in writing that a substitute bond has been provided or is not required, the bank shall immediately pay the department the full amount of the letter of credit less any previous drafts;

(e) ~~the letter must~~ is not be for an amount in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant and submitted to the department with the letter of credit;

(f) ~~the amount of the letter of credit may~~ is for an amount that does not

exceed three times the bank's maximum single obligation; and

(g) is automatically renewable annually on the letter of credit anniversary date.

~~(g)(2)~~ The department shall review a bank's qualifications ~~must be reviewed by the department yearly prior to the time the~~ annually before a letter of credit is renewed. If the department determines that ~~the~~ a bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the owner and specify a reasonable period, not to exceed 90 days, ~~to~~ in which the owner shall replace the bond coverage.

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department is proposing to amend (1)(a) through (f) to delete redundant language. The proposed amendment to (1)(e) also would require the owner to submit a certified balance sheet to the department with a letter of credit. Submission of the balance sheet is reasonably necessary for the department to apply the financial test in (1)(e). The department is proposing a new (1)(g) to make this rule consistent with administrative rules governing letters of credit adopted by the department under other state laws. Requiring a letter of credit to be renewable annually provides the mechanism under which the issuing bank is required to provide the department with written advance notice of a decision by the bank not to renew the letter of credit for another one-year term. The department is proposing a renumbering of the current (1)(g) as (2) because it does not describe a condition that must be met for the department to accept a letter of credit as do (1)(a) through the new proposed (g). The proposed amendment to (2) uses "shall" to characterize the department's responsibility to annually evaluate the issuing bank's ability to fulfill its obligations under the letter of credit and the owner's responsibility to submit a replacement bond if the department determines the bank is unable to fulfill its obligations to be consistent with accepted rule drafting practices.

17.86.120 CERTIFICATES OF DEPOSIT (1) The department may accept as An owner may satisfy the bonding requirements of this subchapter by submitting proof acceptable to the department that the certificate of deposit (CD):

(a) bond an assignment of a certificate of deposit from was issued by a single institution in a denomination not in excess of \$250,000, or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC), whichever is less. The department may not accept a combination of certificates of deposit CDs from a facility an owner in excess of that limit from a single institution. If the issuing institution uses a system in which the issuing institution serves as custodian for the payees of multiple CDs and arranges for one or more additional institutions to issue CDs not in excess of each institution's FDIC limit, and submits those CDs to the department with proof determined acceptable to the department that the issued CDs are insured by the FDIC, the department may accept those CDs;

(2)(b) The department may only accept is automatically renewable certificates of deposit issued by a bank insured by the FDIC or a credit union insured

by the National Credit Union Administration (NCAU). annually on the CD's anniversary date:

~~(3)(c) The department shall require the owner to deposit in combination with all CDs, is in a sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by ARM 17.86.106 and 17.86.112. ensure that funds in the amount of the bond required in this subchapter will be paid to the department by the issuing bank if the department forfeits the bond and liquidates the CDs before maturity;~~

~~(4)(d) The department shall require that each certificate of deposit be is made payable to or assigned to the owner and the department, and the owner has assigned its interest in the CD to the department, both in writing and in the records of the bank or credit union issuing the certificate CD-;~~

~~(e) The certificate of deposit assignment must expressly prohibits the owner from withdrawing funds until the department has released the CD and assignment-; and~~

~~(5)(f) The department shall require banks or credit unions issuing these certificates to waive all rights of the issuer to a setoff or liens against these certificates CDs.~~

AUTH: 75-26-310, MCA

IMP: 75-26-304, MCA

REASON: The department is proposing to amend this rule to restructure it as a list of conditions that must be met in order for the department to accept a certificate of deposit as a decommissioning bond. Restructuring the rule as a list allows deletion of surplus language stating "the department may only accept," "the department shall require the owner to deposit," or similar language that is currently used throughout the current rule.

The department is proposing to amend (1) to clarify that the owner rather than the facility is the entity that must submit a CD as a decommissioning bond. In addition, the proposed amendments to (1)(a) add a mechanism under which a single issuing institution may pool CDs issued by multiple other institutions to achieve the required level of bonding. This is reasonably necessary because the amount of decommissioning bonds is likely to exceed the \$250,000 FDIC insurance limit. This system is available under the Certificate of Deposit Account Registry Service (CDARS) and is referred to for other purposes in 7-6-206(3), MCA.

The department is proposing to amend current (2), (3), and (6) to remove reference to credit unions. The Banking and Financial Services Division of the Montana Department of Administration has recently informed the department that credit unions are unable to issue certificates of deposit with a third-party obligee, so a credit union certificate of deposit may not be used as a bond that satisfies this subchapter. The proposed amendment to current (2) also deletes the FDIC insurance requirement because it is redundant to (1).

The department is proposing to amend current (3) to ensure that the amount of a CD is sufficient even if a penalty is incurred because the department causes bond forfeiture prior to the CD's maturity date.

The department is proposing to amend current (4) to remove confusion created by the current rule's use of the language "made payable to or assigned to the department." Similarly, the proposed amendment to current (5) is necessary because, to release a CD bond, the department is required to release its interest as a payee of the CD as well as the interest of the owner that has been assigned to the department.

17.86.121 FORFEITURE OF BOND (1) If an owner fails to decommission a facility in either the manner or schedule set forth in the decommissioning plan under ARM 17.86.105 and did not commence action to rectify deficiencies within 90 days after the department's notification was mailed, the department may cause the bond to be forfeited for the entire facility. The department shall notify the owner and the surety by certified mail. The department may forfeit any or all bonds deposited for an entire facility. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single owner must extend to the owner's entire facility.

(2) ~~A written determination to forfeit all or part of the bond,~~ The notification in (1):

(a) must include ~~including~~ the reasons for forfeiture and the amount to be forfeited; and

(b) is a final decision by ~~of~~ the department.

AUTH: 75-26-310, MCA

IMP: 75-26-309, MCA

REASON: The department proposes to amend (1) to state the circumstances under which the department may cause forfeiture of a decommissioning bond. Statement of the circumstances is reasonably necessary to provide DEQ clear authority for causing forfeiture of decommissioning bonds. The proposed amendment requires DEQ's determination that bond forfeiture is appropriate to be in writing in order to create a record of the bond forfeiture. The department is proposing to delete the last sentence of (1) to remove language duplicative to that in ARM 17.86.115(2). The department is proposing to amend (2) to remove duplicative language and to improve readability of the provision.

17.86.122 RELEASE OF BOND; USE OF BOND BY DEPARTMENT

(1) The department shall release a bond if the department is satisfied that an owner has ~~properly decommissioned~~ completed decommissioning of a facility in accordance with the decommissioning plan or as otherwise agreed to by the department in consultation with the ~~land owner~~ landowner.

(2) At any time, an owner or any person authorized to act on behalf of the ~~facility owner~~ may petition ~~make a written request to~~ the department for release of all or a portion of a ~~the bond or a portion thereof~~, and the department shall reply with a determination within 90 days unless the ~~weather does~~ conditions do not permit access to the facility or a representative of the owner is not available within the 90-day period. The owner ~~must~~ shall allow and accompany the department in an inspection of the facility to verify the adequacy of decommissioning ~~and reclamation~~

proposed for bond release.

~~(3) An owner shall commence decommissioning and reclamation activities within 90 days of abandonment, unless the owner receives department approval of an alternative written plan for decommissioning and reclamation.~~

~~(4) The department may forfeit a bond in part or in full if the department finds that the owner fails to decommission the facility in accordance with the decommissioning plan and has not commenced action to rectify deficiencies within 90 days after notification by the department.~~

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

~~(6)~~(4) Before decommissioning is considered complete, each wind generation facility owner shall file record a map with the local county recorder showing the location of any remaining wind turbine foundation and its depth. The owner shall submit Aa copy of the map showing that it was stamped by the recorder, and associated documents, shall be sent to the department.

AUTH: 75-26-310, MCA

IMP: 75-26-308, 75-26-309, MCA

REASON: The proposed amendments to (2) would: clarify that the owner needs to make the request for bond release in writing; replace "weather" with "conditions," which better covers possible situations that could prevent a department representative from making a site visit; and remove "reclamation" because it is included in the definition of "decommissioning." The department proposes to move the language in (3) to ARM 17.86.102(1)(b) because decommissioning is an action the owner is responsible to complete.

The department proposes to delete (4) because proposed amendments to ARM 17.86.121 address the same matter and it is unnecessary to repeat that language.

The proposed amendments to (5) would clarify that it only applies to wind generation facilities because it addresses decommissioning of wind turbine foundations. The proposed amendment places the responsibility on the owner for demonstrating that the owner has recorded the proper documents with the county recorder. That recording is a requirement for completion of decommissioning. Completion of decommissioning must occur before the department may release a bond.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., March 18, 2020. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

6. Norm Mullen, attorney for the department, has been designated to preside over and conduct the hearing.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The bill sponsor was notified by letter on October 22, 2019.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Shaun McGrath

SHAUN McGRATH

Director

Certified to the Secretary of State February 4, 2020.

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

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

TO: All Concerned Persons

1. On January 17, 2020, the Board of Massage Therapy (board) published MAR Notice No. 24-155-8 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 9 of the 2020 Montana Administrative Register, Issue No. 1. A public hearing was scheduled in the notice to be held on February 11, 2020, in Helena.

2. It was subsequently discovered that the proposal notice had not been sent to interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and is rescheduling the public hearing as shown below.

3. On March 11, 2020, at 11:00 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.

4. 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 March 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).

5. 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.

6. 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.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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., March 13, 2020.

8. 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.

9. 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.

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

11. 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.

12. 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 February 4, 2020.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.168.411 general practice	)	PROPOSED AMENDMENT AND
requirements, 24.168.2101 continuing	)	REPEAL
education requirements – audit,)	
24.168.2104 approved continuing)	
education, 24.168.2301)	
unprofessional conduct, and the)	
repeal of 24.168.203 board meetings)	

TO: All Concerned Persons

1. On March 9, 2020, at 9:00 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 repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., on March 2, 2020, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdopt@mt.gov (board's e-mail).

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

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) Optometrists may ~~conduct a practice in or at any desired Montana location, under the following conditions if:~~

(a) the practice ~~must be~~ is owned and under the direct supervision of an a Montana licensed optometrist; ~~with valid Montana license, except that a duly licensed optometrist is not prohibited from associating~~

(b) the licensee associates with other duly licensed optometrists and/or medical doctors for the purpose of practicing optometry; or

(c) the licensee is an employee of or contracts with a hospital, medical center, or other similar health care facility. in the following manners:

(i) ~~a professional partnership;~~

(ii) ~~a professional corporation, pursuant to 35-4-108, et seq., MCA;~~

(iii) ~~a professional limited liability company, pursuant to 35-8-1301, et seq., MCA, in which all managers or shareholders are licensed to practice optometry or medicine; or~~

~~(iv) a trust in which both the trustor and any trustees are licensed to practice optometry or medicine; and~~

~~(b) all professional signs and advertising, etc., must include the optometrist's name and the title "Optometrist," "Doctor of Optometry," or initials "O.D."~~

~~(2) The board will consider all advertising appearing over the signature of an individual as having been inserted and approved by that individual, and will hold the individual responsible for such advertising. If advertising appears over the signature of a company, firm, or corporation, all the individual officers or partners of the organization will be considered individually responsible for such advertising.~~

~~(3) (2) Each licensed optometrist must~~ Licensees shall maintain accurate patient records for not less than five years from the last time the patient was treated.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-202, ~~37-10-301~~, MCA

REASON: Following staff review of the rules and several board discussions, the board is amending this rule to more accurately align with modern optometry practice while still ensuring public protection. The board concluded that the public is better served when optometric health care decisions are made by optometrists and medical doctors. The board is concerned that when such health care decisions are primarily driven by non-practitioner business owners, it may result in ordering more tests and procedures than what may be necessary for each individual patient. While such owner direction may benefit a business' bottom line, the board is concerned that it would ultimately detract from quality consultation and patient care. Therefore, the board is amending this rule to no longer specify the acceptable business ownership models, but instead provide the current optometry practice situations that ensure that optometric health care decisions are directed by the appropriate health care practitioners.

The board is striking (1)(b) and (2) to eliminate the regulations on signage and advertising in optometric practice and further align with modern optometric practice. Optometrists are prohibited from engaging in misleading, deceptive, false, or fraudulent advertising or other representations in their professional conduct by 37-1-316(5), MCA. It is not necessary to repeat the prohibition in board rule.

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

24.168.2101 CONTINUING EDUCATION REQUIREMENTS - AUDIT

~~(1) Each licensed optometrist~~ Licensed optometrists shall obtain a minimum of complete 36 hours of continuing education (CE) every two years in scientific clinics, forums, or optometric educational studies ~~approved by the board~~. The board will accept:

~~(a) up to four hours of practice management continuing education credit every two years; and~~

~~(b) twelve hours of credit for approved continuing education correspondence courses or Internet courses every two years.~~

(2) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.

~~(2)~~ (3) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the ~~continuing education~~ CE requirement during the first year ~~the person is a licensee~~ applicable CE cycle.

~~(3)~~ (4) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the ~~continuing education~~ CE requirement while the licensee is in the residency program and ~~for the year in which the licensee successfully completed the residency program~~ during the first applicable CE cycle.

(4) ~~(5)~~ The board may ~~conduct random audits of~~ randomly audit up to 50 percent of all renewed licensees. It is the responsibility of each optometrist to maintain ~~the optometrist's own~~ adequate records of participation and completion, and make them available upon board request.

(a) Random audits will be conducted in odd-numbered years.

~~(b) (6) A three month extension will be provided for all licensees who fail to meet the continuing education requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.~~ Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

AUTH: 37-1-131, 37-1-319, ~~37-10-202~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

The board is relocating provisions of (1) to ARM 24.168.2104(6) as a more appropriate and logical location.

Following a recommendation by department legal staff, the board is adding (2) 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.

The board is amending (6) by removing licensees' ability to request CE extensions to align with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary.

The board is further clarifying in (6) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

24.168.2104 APPROVED CONTINUING EDUCATION PROGRAMS OR COURSES (1) Continuing education consists of educational activities designed to:

(a) review existing concepts and techniques;

(b) convey information beyond the basic professional education; and

(c) update knowledge on the practice of and advances in optometry.

(2) CE approved by the board must directly relate to the scope of practice of optometry as defined in board statutes and rules.

(3) The primary objective of CE is the protection of the health, safety, and welfare of the public, and deals primarily with the scope of practice, professional conduct, or ethical obligations of the license held. Licensees are responsible for selecting quality programs that contribute to their knowledge and competence and meet these objectives.

(a) Courses in which the principal purpose is to promote, sell, or offer goods, products, or services to optometrists, or to promote the personal interests of the licensees do not meet CE requirements.

(1) (4) Educational programs approved by the board shall be Approved CE includes courses:

(a) affiliated with national, regional, or state optometric associations, academies, or colleges of optometry; or

(b) approved by the ARBO's Council on Optometric Practitioner Education (COPE); or

(c) accredited by the Accreditation Council for Continuing Medical Education (ACCME).

~~(a) Any other continuing education course(s) not covered in (1) must be submitted by the licensee and have prior approval by the board. Any course not submitted to the board and approved prior to attendance shall not be allowed for credit. The course program or syllabus, and information on the credentials and qualifications of the course presenter must accompany the application approval form.~~

(2) (5) Continuing education CE courses offered and completed on the Internet or via other similar electronic means must comply with all the requirements in (1) this rule.

(6) The board will grant up to four hours of credit for practice management courses and up to twelve hours of credit for CE correspondence courses or Internet courses every CE cycle.

AUTH: 37-1-131, 37-1-319, ~~37-10-202~~, MCA

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

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use.

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

The board is relocating certain provisions from ARM 24.168.2101 to (6) as a more appropriate and logical location. Authority and implementation citations are

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

24.168.2301 UNPROFESSIONAL CONDUCT (1) The following constitutes unprofessional conduct by licensees or license applicants:

(a) through (e) remain the same.

(f) allowing one's professional conduct or judgment in the practice of optometry to be directed, managed, or controlled by a person who is not licensed to practice optometry in Montana;

(f) through (s) remain the same but are renumbered (g) through (t).

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board determined it is reasonably necessary to amend this rule and align with proposed changes to ARM 24.168.411 to help ensure health care decisions in modern optometry practices are made by health care practitioners. The board is amending this rule by specifying that when an optometrist allows his or her professional conduct to be controlled by someone who is not a Montana-licensed optometrist, the board will consider it unprofessional conduct which may be cause for license discipline. While this has long been the board's intent, this amendment will provide notice to licensees, so they may guide their actions accordingly. Also see REASON for ARM 24.168.411.

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

24.168.203 BOARD MEETINGS

AUTH: 37-10-201, 37-10-202, MCA

IMP: 37-10-201, MCA

REASON: The board is repealing this rule as unnecessary since written requests are now obsolete and the provisions are adequately addressed in standardized department procedures.

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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

6. An electronic copy of this notice of public hearing is available at www.optometry.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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdopt@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 24.168.411, 24.168.2101, 24.168.2104, and 24.168.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.168.203 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdopt@mt.gov.

10. Sharon Peterson, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.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 February 4, 2020.

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

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

TO: All Concerned Persons

1. On January 17, 2020, the Board of Outfitters (board) published MAR Notice No. 24-171-40 regarding the public hearing on the proposed amendment of the above-stated rules, at page 28 of the 2020 Montana Administrative Register, Issue No. 1. A public hearing was scheduled in the notice to be held on February 11, 2020.

2. It was subsequently discovered that the proposal notice had not been sent to interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice of public hearing and is rescheduling the public hearing as shown below.

3. On March 11, 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 of the above-stated rules.

4. 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 March 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 dlibsout@mt.gov (board's e-mail).

5. 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.

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 Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsout@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

7. 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.

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 Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsout@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 19, 2019, by telephone.

10. 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 dlibsout@mt.gov.

11. 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 February 4, 2020.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.177.401 fees, 24.177.504) PROPOSED AMENDMENT
temporary permit, and 24.177.2105)
continuing education)

TO: All Concerned Persons

1. On March 6, 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 Physical Therapy Examiners no later than 5:00 p.m., on February 28, 2020, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdp@mt.gov (board's e-mail).

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

24.177.401 FEES (1) through (1)(d) remain the same.
(e) Compact privilege fee – The fee has been established
by the board for services or privileges rendered by the board. This
is part of a fee paid by the applicant directly to the PT Compact
Commission.

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(e) and (f) remain the same but are renumbered (f) and (g).
(2) and (3) remain the same.

AUTH: 37-1-134, 37-11-201, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-11-304, 37-11-307,
37-11-316, MCA

REASON: In 2017, the Montana legislature passed House Bill 105 which allowed the board to join the Interstate Physical Therapy Licensure Compact (compact). Pursuant to compact terms, the board is required to conduct a fingerprint-based criminal history background check on each applicant for licensure. To be able to conduct these background checks, the U.S. Federal Bureau of Investigation must approve statutory language permitting the department to receive the confidential information involved in the background checks. Because the department could not

initially obtain the FBI's approval, the department brought Senate Bill 74 on the board's behalf in 2019. The bill addressed the FBI's concerns and lead to FBI approval for the background checks. The board is now able to move forward and complete all compact requirements. As permitted by 37-11-316, MCA, the board is proposing to amend this rule by adding (1)(f) to begin charging a fee to practice in Montana through participation in the compact.

Because the board is not issuing compact privileges currently, new applicants from out-of-state must pay the out-of-state application fee directly to the department for application processing. Once the board begins issuing compact privileges, most of the processing for those eligible applicants will be done by the PT Compact Commission (commission). The applicant will pay a commission fee determined by the commission, as well as any fee charged by the state for which the applicant is seeking a privilege to practice, to the commission. The commission will then forward all state fees, such as the one proposed here, to the relevant state.

The compact privilege fee proposed would supplant the fee that would otherwise be charged of new applicants seeking reciprocal licensure from another state, for those applicants participating in the compact.

The board is proposing this compact privilege fee to encourage potential applicants to participate in the compact, account for department staff time needed to process compact licenses at the board's expense, and offset potential lost revenue to the board from compact privilege applicants who otherwise might have applied to practice in Montana as out-of-state applicants. Currently, 16 states (Arizona, Colorado, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Washington) are actively issuing compact privileges, with fees charged by those states ranging from \$0 to \$150. The average compact privilege fee charged is approximately \$52 among all states, so the proposed fee falls within a reasonable range of what the other states are charging.

Following addition of this fee, some applicants who intend to seek licensure in Montana and are eligible to participate in the compact will likely choose to pay the \$50 compact fee, rather than the \$125 out-of-state license fee. The board recognizes the compact will more than likely result in an overall reduction of fees paid to the board by physical therapists and physical therapist assistants as out-of-state applicants. However, any reduction in licensure revenue will likely be offset by an increase of licensees who claim residency in Montana for purposes of the compact and may result in more applicants choosing to seek licensure in Montana than would do so otherwise. Because compact staff will receive and process much of the documentation otherwise required for out-of-state applications, the board believes that processing time and administrative costs for compact applications coming to the board will be reduced. These factors will help mitigate the loss to the board of implementing a compact privilege fee lower than the out-of-state licensure fee. However, the board recognizes the possibility of losing total revenue in FY 2020 from out-of-state licensees applying for licensure via the interstate compact. The board estimates that these changes will affect approximately 35 out-of-state license applicants and result in a reduction in annual revenue of \$6125.

The board is adding the compact statute, 37-11-316, MCA, to the implementation citations to reflect all statutes implemented through the rule.

24.177.504 TEMPORARY LICENSES PERMIT (1) Physical therapist or physical therapist assistant applicants for licensure by examination may be issued a temporary license permit. The temporary license permit shall identify the licensed physical therapist who shall be responsible for providing direct supervision. ~~After issuance of the temporary license, the applicant must take and pass his/her examination within 120 days of the issuance date.~~ The temporary permit is valid until the applicant either fails the first national examination for which the applicant is eligible or passes the examination and is granted a license. Only one temporary license permit will be issued per applicant.

(2) If the applicant fails the examination, the applicant may sit for the next scheduled examination. ~~Temporary licenses~~ A temporary permit will not be extended while the applicant is waiting to retake the examination.

AUTH: 37-1-131, 37-1-319, ~~37-11-201~~, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: The board determined it is reasonably necessary to amend this rule to utilize the correct terminology for temporary permits and match the language of this rule with the text of 37-1-305, MCA. The board is further amending this rule to align with the timeline provisions in the implemented statute. This amendment will not change the substantive requirements to receive a temporary permit to practice.

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

24.177.2105 CONTINUING EDUCATION (1) Continuing education (CE) is required to ensure continued competence throughout a physical therapist or physical therapist assistant career. Training for entry into the physical therapy field is not considered adequate assurance of continued competence.

~~(2) Continuing education hours/credits shall be reported as follows:~~

~~(a) Each 60 minutes of instruction equals one continuing education hour/credit;~~

~~(b) (2) All licensees, regardless of license number, shall now obtain 30 hours/credits of continuing education CE in each 24-month period prior to the renewal date in odd-numbered years. The first reporting period will be from April 1, 2015 to March 31, 2017;~~

~~(c) (3) Licensees must renew their license each year; shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(d) (4) Continuing education is not required for licensees~~ Licensees renewing their license for the first time; are exempt from CE requirements.

~~(e) (6) It is the responsibility of the licensee to~~ Licensees must establish and maintain detailed records of ~~continuing education compliance~~ completed CE in the form of programs and certificates of attendance and make ~~them~~ the records available upon board request;.

~~(f) Course work may be live, by correspondence, video conferencing, internet, or be satellite based; and~~

~~(g) (5) The board will may randomly audit continuing education hours/credits up to 50 percent of renewed licensees in each odd-numbered year.~~

~~(3) (7) Continuing education CE programs must meet the following criteria:~~

~~(a) The activity must have significant intellectual or practical content. The activity must and deal primarily with substantive physical therapy issues as physical therapy is defined in Montana;~~

~~(a) Sixty minutes of instruction equals one CE hour/credit.~~

~~(b) Coursework may be live, by correspondence, video conferencing, internet, or satellite-based.~~

~~(c) Programs promoting a company, individual, or product, or the subject of which is practicing economics are not qualifying CE, except programs specifically addressing workers' compensation, public health, Medicare, or insurance coverage.~~

~~(d) Activities excluded from CE credits include staff meetings, teaching physical therapy-related courses when teaching is the licensee's primary occupation, regularly scheduled institutional activities such as rounds or case conferences, and repeating or retaking an activity and/or coursework.~~

~~(b) (8) The board/staff does not preapprove any activities or sponsors for continuing education CE credits. All accepted continuing education CE hours/credits in category A must meet the standards set by the American Physical Therapy Association (APTA) or the Federation of State Boards of Physical Therapy (FSBPT). It is the responsibility of the licensee to select programs that contribute to their knowledge and competence in the physical therapy field, and which meet the qualifications specified in these rules this rule;~~

~~(c) All acceptable continuing education courses must issue a program and a certificate of completion. The program must contain the following information: full name and qualifications of the presenter, title of the presentations, number of hours, date and location of each presentation, name of sponsor, and description of the presentation format. The certificate must bear an official signature or verification of the program sponsor and list the course name, number of hours of continuing education obtained by the licensee, and date and location of the presentation;~~

~~(d) Programs that promote a company, individual, or product, and programs whose subject is to practice economics cannot be credited for continuing education, except those programs specifically dealing with workers' compensation, public health, Medicare, or insurance coverage issues.~~

~~(4) (9) Qualifying continuing education hours/credits:~~

~~(a) Category A activities: A minimum of 15 of the 30 continuing education CE hours/credits must be obtained in this category in each two-year cycle. Category A includes: continuing education CE courses, physical therapy clinical specialty certification coursework, physical therapy clinical residency coursework, and postgraduate physical therapy education, including, but not limited to, postdoctor of physical therapy course work. The postgraduate physical therapy course work must be passed with a grade of "C" or higher or "pass" if a "pass/fail" course. Category A activities are distinguished from category B activities in that they are approved or offered continuing education CE hours/credits by one of the following, regardless of whether the course is classroom-based, online, or home study:~~

~~(i) through (iii) remain the same.~~

(b) Category B Activities: Up to 15 of the 30 continuing education CE credits may be obtained in this category in each two-year cycle. ~~Category B includes:~~

(i) any course that ~~pertains~~ pertaining to physical therapy, but which is not approved or offered through an accredited medical, physical therapy, and/or healthcare education program as identified in ~~(4)(a)~~ (9)(a):-

(ii) teaching or lecturing principally for healthcare professionals, if teaching or lecturing is not the licensee's primary occupation. One continuing education CE credit may be granted per one hour of lecture or teaching. Max hour/credit five;

(iii) ~~being a current member of~~ current membership in the American Physical Therapy Association (APTA). Max hour/credit one;

(iv) through (ix) remain the same.

~~(5) Activities excluded from continuing education hours/credits include: staff meetings; teaching physical therapy related courses if that is the licensee's primary occupation; regularly scheduled institutional activities such as rounds or case conferences; and repeating or retaking an activity and/or coursework.~~

~~(6) (10) Failure to comply with the continuing education requirement may be grounds for disciplinary action. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is reorganizing and reformatting this rule to align with and help facilitate the department's standardized renewal, administrative suspension, and audit procedures. The amendments will streamline and simplify the rule for better organization and ease of use by licensees and department staff. Following a recommendation by department legal staff, the board is amending (3) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments align with standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is adding (5) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (10) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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 Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdptp@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

5. An electronic copy of this notice of public hearing is available at www.pt.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 Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Regarding House Bill 105 (2017), the primary bill sponsor was contacted on August 7, 2017, and November 6, 2019, by e-mail. Regarding Senate Bill 74 (2019), the primary bill sponsor was contacted on November 6, 2019, by e-mail; on December 3, 2019, by telephone; and on December 4, 2019, by postal mail.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.177.401, 24.177.504, and 24.177.2105 will not significantly and directly impact small businesses.

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

9. Linda Grief, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
KELSEY WADSWORTH, PT, DPT, OCS
PRESIDING OFFICER

/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 February 4, 2020.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.201.502 accounting and	)	PROPOSED AMENDMENT
auditing experience requirements,)	
24.201.516 granting of examination)	
credit, 24.201.723 records,)	
24.201.2106 basic continuing)	
education requirement, and)	
24.201.2138 credit for service as)	
lecturer, instructor, technical reviewer,)	
speaker, or report reviewer)	

TO: All Concerned Persons

1. On March 13, 2020, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants no later than 5:00 p.m., on March 6, 2020, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2244; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpac@mt.gov (board's e-mail).

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

24.201.502 ACCOUNTING AND AUDITING EXPERIENCE
REQUIREMENTS (1) To be issued a license, an applicant must provide evidence of acceptable accounting and/or auditing experience.
(2) Acceptable ~~accounting and auditing~~ experience is performing accounting and/or auditing functions ordinarily required in the practice of public accounting, provided this experience:
(a) is attested to by:
(i) ~~a holder of a permit to practice that~~ U.S. CPA whose license was active and current at the time of attestation; or
(ii) ~~under the supervision or direction of~~ a fully licensed individual from a professional accounting body with a MRA with NASBA and the AICPA who supervises or directs the applicant; or

- ~~(b) for military experience is evaluated by the board for military experience based on information provided by the applicant's commanding officer; and~~
- ~~(b) and (c) remain the same but are renumbered (c) and (d).~~
- ~~(3) If the attester is not the applicant's supervisor, the attester must:~~
 - ~~(a) be familiar with the applicant's work and provide a narrative of the step taken to determine the work experience meets professional standards;~~
 - ~~(b) provide an explanation of how the attested hours were verified; and~~
 - ~~(c) confirm the hours and work product with the applicant's supervisor.~~

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

IMP: 37-1-131, 37-50-203, 37-50-302, 37-50-325, MCA

REASON: The board is amending this rule to clarify that the experience to qualify for a CPA license can be obtained from accounting and/or auditing experience. Some applicants have misinterpreted the current rule to understand that both accounting and auditing experience were required to qualify. The board does not require both audit and accounting experience and is amending the rule to specify that applicants may use audit only, accounting only, or any combination of experience to qualify for a license.

The board is amending (2)(a) to update antiquated license types that attest to an applicant's experience and clarify that a MRA licensee must supervise and direct an applicant's work. While these are current requirements, the board concluded that clarification is needed to address confusion among current applicants.

The board determined it is reasonably necessary to add (3) and formalize guidance the board has provided to non-supervisor experience attesters. Attesters must explain how they verified the applicant's hours and work product. License applicants and non-supervisor attesters are often confused about the steps required to attest to experience when the attester is not the applicant's supervisor, and this has delayed application approvals.

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

24.201.516 GRANTING OF EXAMINATION CREDIT (1) remains the same.

(2) All test sections must be passed within an 18-month period, which begins on the date the first test section that was passed was taken, ~~and ends on the last day of the last month of that 18-month period.~~

~~(a) An examination candidate may take any section of the examination up to four times during a one-year period but cannot retake any failed test section in any one three-month testing period.~~

(b) If the board determines that the examination system changes necessary to eliminate the three-month testing period limitations have been implemented, (a) will no longer be effective and a candidate can retake a test section once their scores for any previous attempt of that same test section have been released.

(3) In the event all test sections are not passed in an 18-month period, credit for any test section passed outside the 18-month period will expire and that test section must be retaken.

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

AUTH: 37-50-204, MCA

IMP: 37-50-204, 37-50-302, ~~37-50-303~~, MCA

REASON: The board is amending this rule regarding the 18-month period to pass all parts of the exam. Because the timeframe currently differs in many states, the board concluded that this amendment will aid in reciprocity and remove potential barriers for Montana exam candidates and current licensees in obtaining licenses in other states.

The board is adding (2)(b) to specify that if the examination providers implement the necessary changes to allow for continuous testing, the board would eliminate the limitation of testing once in a three-month testing window. This would allow greater flexibility for exam candidates. This amendment is being proposed now as an initiative to get a majority, if not all states changed to continuous testing by July 1, 2020. Implementation citations are being amended to delete a reference to a repealed statute.

24.201.723 RECORDS (1) and (2) remain the same.

(3) Retention by a firm, licensee, or practice privilege holder of client records after a demand is made for them is an act discreditable to the profession ~~in violation of ARM 24.201.707~~.

(4) remains the same.

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

IMP: 37-1-131, 37-50-203, 37-50-325, MCA

REASON: The board is amending (3) to delete a repealed rule reference.

24.201.2106 BASIC CONTINUING EDUCATION REQUIREMENT

(1) through (3) remain the same.

(4) ~~Applicants for a license~~ New licensees must meet the basic requirement of CPE by December 31 of the third year following the year of the initial issuance of the Montana license. CPE completed during the initial licensing year does not accrue toward the first reporting period (example: If an individual received their initial license in ~~2017~~ 2020, they must meet the basic CPE requirement ~~by December 31, 2020~~ between January 1, 2021 and December 31, 2023).

(5) and (6) remain the same.

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

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

REASON: The board is amending (4) to clarify the timeframe for new licensees to complete their initial CPE requirement by specifying that any CPE completed during the initial year of licensing does not carry forward to the first three-year reporting period. Initial licensees have expressed confusion regarding their initial reporting period and many question if hours completed during their initial licensing year may be carried forward.

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

24.201.2138 CREDIT FOR SERVICE AS LECTURER, INSTRUCTOR, TECHNICAL REVIEWER, SPEAKER, OR REPORT REVIEWER (1) Lecturers, instructors, and speakers may claim continuing education credit for both preparation and presentation time for a course once during a three-year reporting period only to the extent the activities maintain or increase their professional competence and qualify for continuing education credit for participants. Credit may be claimed for actual course presentation time and for preparation time up to two times the class credit hours once in any rolling three-year period. The maximum credit for such preparation and teaching shall not exceed 50 percent (or 60 hours) of the basic requirement in any rolling three-year period.

(2) and (3) remain the same.

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

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

REASON: The board is amending this rule to clarify that instructors are limited to earning CPE credit for preparation and teaching a course once during a three-year reporting period. Instructors have been confused about their ability to claim CPE credit for a single course taught multiple times. The board's intent was always to allow instructors to receive credit for preparation and presentation time for a course only once during a reporting period and this amendment will more clearly express that intent.

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

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2244, or e-mail to dlibsdpac@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

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

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

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.201.502, 24.201.516, 24.201.723, 24.201.2106, and 24.201.2138 will not significantly and directly impact small businesses.

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

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

BOARD OF PUBLIC ACCOUNTANTS
RANETTA JONES, CPA
PRESIDING OFFICER

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

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

Certified to the Secretary of State February 4, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF BEHAVIORAL HEALTH
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.413, 24.219.301,	)	PROPOSED AMENDMENT,
24.219.401, 24.219.415, 24.219.421,	)	ADOPTION, AND REPEAL
24.219.422, 24.219.423, 24.219.501,)	
24.219.502, 24.219.504, 24.219.505,)	
24.219.512, 24.219.604, 24.219.605,)	
24.219.704, 24.219.705, 24.219.907,)	
24.219.923, 24.219.2301,)	
24.219.5008, 24.219.5013; the)	
adoption of New Rules I through IV;)	
and the repeal of 24.219.405,)	
24.219.409, 24.219.507, 24.219.509,)	
24.219.607, 24.219.609, 24.219.708,)	
24.219.709, 24.219.807, 24.219.905,)	
24.219.921, 24.219.925, 24.219.927,)	
24.219.929, 24.219.931, 24.219.2001,)	
24.219.2201, 24.219.2305,)	
24.219.2309, 24.219.5002,)	
24.219.5012, 24.219.5015,)	
24.219.5016, 24.219.5017,)	
24.219.5018, and 24.219.5019)	
pertaining to application and licensing)	
rules for licensed clinical social workers)	
(LCSW), licensed baccalaureate social)	
workers (LBSW), licensed master's)	
social workers (LMSW), licensed)	
clinical professional counselors)	
(LCPC), licensed marriage and family)	
therapists (LMFT), licensed addiction)	
counselors (LAC), and certified)	
behavioral health peer support)	
specialists (CBHPSS))	

TO: All Concerned Persons

1. On March 10, 2020, at 9:00 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, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Behavioral Health no later than 5:00 p.m., on

March 3, 2020, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdbbh@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2019 Montana Legislature enacted Chapter 390, laws of 2019 (House Bill 626), an act that revised social work laws to create licensed baccalaureate social worker (LBSW), licensed master's (nonclinical) social worker (LMSW), and candidates licenses. The bill became effective on January 1, 2020. The board is amending and adopting several rules to implement House Bill 626 by establishing licensure requirements that are consistent with national standards for the new license types, including education, examination, and supervised work experience requirements.

House Bill 626 requires that LBSW and LMSW candidates apply separately from full license applicants and submit a new application for a full LBSW or LMSW license once the candidates meet the requirements to qualify for full licensure. The board is therefore amending the existing candidate license rules for licensed clinical professional counselor (LCPC), licensed clinical social worker (LCSW), licensed marriage and family therapist (LMFT), and licensed addiction counselor (LAC) to standardize to the same application process to maintain consistency, efficiency, and a uniform licensing process for all candidates under this board. The board also concluded that with these changes, applications for full licensure following a candidacy will be a more effective protection of public health and safety as the applicants will need to obtain current background checks.

Following a review of the board's rules and recommendations from staff, the board determined it is reasonably necessary to amend existing rules pertaining to renewal, registration, continuing education, unprofessional conduct, and ethics to eliminate outdated, redundant, and unnecessary provisions, and provide consistency, simplicity, better organization, and ease of use for licensees, staff, educators, program administrators, and the public. Further, the board determined it is reasonably necessary to amend the rules throughout to align with and facilitate current standardized department application, renewal, and audit procedures.

Additionally, the board is updating the authority and implementation citations throughout to accurately reflect all statutes implemented through the rules and provide the complete and current sources of the board's rulemaking authority.

Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS

(1) through (5)(d) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(e)	Behavioral Health	Licensed Clinical Professional Counselor	Annually	December 31
		Licensed Clinical Social Worker	Annually	December 31
		<u>Licensed Master's Social Worker</u>	<u>Annually</u>	<u>December 31</u>
		<u>Licensed Baccalaureate Social Worker</u>	<u>Annually</u>	<u>December 31</u>
		Licensed Marriage and Family Therapist	Annually	December 31
		Certified Behavioral Health Peer Support Specialist	Annually	December 31
		Licensed Addiction Counselor	Annually	June 30

(f) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: It is reasonably necessary to amend this rule to establish renewal dates for the new LBSW and LMSW licenses created by House Bill 626. Since LCSW licensees renew on December 31 the department is utilizing the same date for the new social work licenses.

5. The board is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.219.301 DEFINITIONS (1) through (3)(a) remain the same.

(b) "LBSW candidate" means an individual as defined in 37-22-102, MCA;

(b) (c) "LCPC candidate" means an individual as defined in 37-23-102, MCA;
and

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

~~(d)~~ (e) "LMFT candidate" means an individual as defined in 37-37-102, MCA-
; and

(f) "LMSW candidate" means an individual as defined in 37-22-102, MCA.

(4) through (11) remain the same.

(12) "Exploit" means to manipulate or attempt to manipulate or use a professional relationship with a client, former client, student, or supervisee for:

(a) through (14) remain the same.

(15) "Independent practice" means the practice of social work by an LCSW who assumes responsibility and accountability for the nature and quality of the

services provided to the client in exchange for direct payment or third-party reimbursement.

(15) remains the same but is renumbered (16).

(17) "LBSW" means licensed baccalaureate social worker licensed under Title 37, chapter 22, MCA.

(16) through (18) remain the same but are renumbered (18) through (20).

(21) "LMSW" means licensed master's social worker licensed under Title 37, chapter 22, MCA.

(19) through (21) remain the same but are renumbered (22) through (24).

(22) (25) "Sexual contact" includes but is not limited to electronic exploitation, sexual intercourse, either genital or anal, cunnilingus, fellatio, or the handling of the breasts, genital areas, buttocks, or thighs, whether clothed or unclothed either by the licensee or the client.

(26) "Sexual harassment" includes deliberate or repeated comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient.

(23) through (25) remain the same but are renumbered (27) through (29).

AUTH: 37-1-131, 37-22-201, 37-35-103, 37-38-202, MCA

IMP: 37-1-131, 37-22-102, 37-22-103, 37-22-201, 37-22-313, 37-23-102, 37-23-202, 37-23-213, 37-35-102, 37-35-103, 37-35-202, 37-37-102, 37-37-205, 37-38-102, 37-38-202, MCA

REASON: The board is adding definitions at (3), (17), and (21) to utilize abbreviations for the new licenses created in House Bill 626. Additionally, the board is defining "independent practice" at (15) to align with the adoption of NEW RULE IV and implement provisions of House Bill 626 regarding LCSW independent practice.

The board determined it is reasonably necessary to amend certain definitions at (12) and (25) to align with the consolidation and update of the unprofessional conduct rules in this notice. The amended definitions will help ensure consistency regarding unprofessional conduct and ethics across license types and enable the board to better address issues regarding licensee and applicant conduct. The board is relocating the definition for "sexual harassment" at (26) as a more logical and reasonable location than within the unprofessional conduct and ethics rules.

24.219.401 FEE SCHEDULE FOR SOCIAL WORKERS

(1) Application fee	\$200
(a) LCSW, LMSW, LBSW, LCPC, LMFT	\$200
(b) LAC	250
(c) CBHPSS	125
(d) LCSW, LMSW, LBSW, LCPC, LMFT candidates	200
(e) LAC candidate	250
(2) Renewal fee for active status (based on annual renewal)	175
(a) LCSW, LMSW, LBSW, LCPC, LMFT	149
(b) LAC	128
(c) CBHPSS	93
(3) Renewal fee for inactive status (inactive to active)	175
(a) LCSW, LMSW, LBSW, LCPC, LMFT	75

(b) LAC	64
(c) CBHPSS	47
(4) Candidate annual registration fee (LCSW, LMSW, LBSW, LCPC, LMFT, and LAC candidates)	85
(4) Social worker licensure candidate application fee	200
(5) Social worker licensure candidate annual registration fee	100
(6) Inactive license fee (based on annual renewal)	88
(7) remains the same but is renumbered (5).	

AUTH: 37-1-134, 37-22-201, 37-22-307, 37-22-308, 37-35-103, 37-35-202, 37-37-201, 37-38-202, MCA

IMP: 37-1-134, 37-1-141, 37-22-302, 37-22-307, 37-22-308, 37-23-206, 37-35-202, 37-37-201, 37-38-202, MCA

REASON: The board is amending this rule and repealing ARM 24.219.405, 24.219.409, 24.219.905, and 24.219.5002 to consolidate all fees into one rule for simplicity, better organization, and ease of use.

The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, and ensure that the board's fees related to its program area will provide the amount of money usually needed for the operation of the board for services. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. Therefore, the board is proposing these amendments to reduce renewal fees for all license types by 15%. This reduction will allow the board to gradually reduce its cash balance and stay in compliance with statutory requirements while ensuring adequate revenue to support board activities through the next biennium. The board is also amending this rule to add application, renewal, and registration fees for the new LBSW, LMSW, and candidate licenses to adequately fund the costs of implementing House Bill 626. The board estimates the fee reductions and new fees will affect approximately 4,438 licensees and applicants and result in a \$60,000 reduction in annual revenue.

24.219.415 MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training or education toward the requirements for licensure as an LCSW, LMSW, LBSW, LCPC, LMFT, LAC, and CBHPSS, and candidates.

(2) remains the same.

(3) An applicant must submit satisfactory evidence of receiving military training or education that is equivalent to relevant licensure requirements for an LCSW, LMSW, LBSW, LCPC, LMFT, LAC, or CBHPSS, or candidates. Satisfactory evidence includes:

(a) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

24.219.421 SUPERVISOR QUALIFICATIONS (1) LCSW, LMSW, LBSW, LCPC, LMFT, and LAC licensure candidates and CBHPSS must be supervised per the requirements of this rule and ARM 24.219.504, 24.219.604, 24.219.704, and 24.219.5008. Supervisors must:

~~(a) have an active license in good standing in the jurisdiction in which the supervision is occurring; and~~

~~(b) meet one of the below criteria:~~

~~(i) have been licensed in their respective disciplines for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

~~(2) In addition to the requirements in (1):~~

~~(a) an LCSW, LCPC, or LMFT candidate supervisor must be licensed as an LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist;~~

~~(2) LCSW, LCPC, or LMFT candidate supervisors must:~~

~~(a) have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW, LCPC, LMFT, licensed psychologist, or licensed and board-certified psychiatrist; and~~

~~(b) meet one of the below criteria:~~

~~(i) have been licensed in their respective disciplines for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

~~(3) LMSW candidate supervisors must:~~

~~(a) have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW or LMSW; and~~

~~(b) meet one of the below criteria:~~

~~(i) have been licensed in their respective disciplines for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

~~(4) LBSW candidate supervisors must have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW, LMSW, or LBSW.~~

~~(a) If the supervisor is an LCSW or LMSW the supervisor must also meet one of the below criteria:~~

~~(i) have been licensed in that discipline for at least three years, excluding any period of licensure as a candidate; or~~

~~(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.~~

(b) If the supervisor is an LBSW the supervisor must have been licensed for at least three years as an LBSW. An LBSW may not take supervision courses to qualify to supervise LBSW candidates.

~~(b) an LAC candidate supervisor must be:~~

(5) LAC candidate supervisors must be:

(i) (a) licensed as an LAC and have an active license in good standing in the jurisdiction in which the supervision is occurring with a minimum of three years post-licensure experience in a qualified treatment setting as defined in ARM 24.219.5010; or

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

(A) through (C) remain the same but are renumbered (i) through (iii).

~~(3) In addition to the requirements in (1), a CBHPSS supervisor must be licensed under Title 37, MCA, as an LCSW, LCPC, LMFT, LAC, physician, psychologist, or an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing.~~

(6) CBHPSS supervisors must:

(a) have an active license in good standing in the jurisdiction in which the supervision is occurring as an LCSW, LCPC, LMFT, LAC, physician, psychologist, or an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing; and

(b) meet one of the below criteria:

(i) have been licensed in their respective discipline for at least three years, excluding any period of licensure as a candidate; or

(ii) have taken board-approved training consisting of a minimum of one semester credit graduate education focused on supervision or 20 hours of board-approved training in supervision.

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

AUTH: 37-1-131, 37-22-201, 37-35-103, MCA

IMP: 37-1-131, 37-22-102, 37-22-301, 37-22-307, 37-22-308, 37-23-102, 37-23-202, 37-35-102, 37-35-103, 37-35-202, 37-37-102, 37-37-201, 37-38-202, MCA

REASON: The board is establishing the supervisor qualifications for LBSW and LMSW candidates in (3) and (4) to implement House Bill 626. The board determined it is reasonably necessary to require in (4)(b) that to supervise an LBSW candidate, an LBSW must have been licensed for at least three years and may not take board-approved supervision training courses in place of the experience. The board concluded that education obtained at a bachelor's level, even with an additional 20 hours of supervisor training, would not be sufficient to safely and adequately supervise an LBSW candidate.

Additionally, the board is striking specific references to being licensed under Title 37, MCA, since the requirement is that the supervisor have an "active license in good standing in the jurisdiction in which supervision is occurring." Qualifying supervision could potentially be earned in other jurisdictions by applicants applying for a candidate license in Montana.

24.219.422 GENERAL SUPERVISION AND RECORDKEEPING REQUIREMENTS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, AND CANDIDATES AND CBHPSS (1) remains the same.

(2) Candidates must maintain the following records for a minimum of seven years from the date of licensure as an LCSW, LMSW, LBSW, LCPC, LMFT, or LAC or seven years from the expiration of their candidate license if they do not obtain a Montana LCSW, LMSW, LBSW, LCPC, LMFT, or LAC license:

(a) through (8) remain the same.

AUTH: 37-1-131, 37-22-201, 37-35-103, 37-35-202, MCA

IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, 37-23-202, 37-35-103, 37-35-202, 37-37-201, 37-38-202, MCA

24.219.423 CHANGE OF SUPERVISOR (1) An LCSW, LMSW, LBSW, LCPC, LMFT, or LAC candidate or CBHPSS cannot practice without a supervisor as described in this chapter.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-22-201, 37-35-103, 37-35-202, MCA

IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, 37-23-202, 37-35-103, 37-35-202, 37-37-201, 37-38-202, MCA

24.219.501 LCSW, LMSW, AND LBSW LICENSE REQUIREMENTS – ORIGINAL APPLICANTS (1) Applicants for LCSW, LMSW, and LBSW licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants for LCSW licensure must meet the following requirements:

(a) through (f) remain the same.

(3) Applicants for LMSW licensure must meet the following requirements:

(a) have a degree that meets the requirements in 37-22-308, MCA;

(b) have completed supervised post-degree work that meets the requirements in 37-22-308, MCA, and ARM 24.219.504;

(c) have passed an examination as described in ARM 24.219.502 within four years of the date of application;

(d) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-308, MCA, within six months of the application date;

(e) provide reference letters that meet the requirements in 37-22-308, MCA;
and

(f) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

(4) Applicants for LBSW licensure must meet the following requirements:

(a) have a degree that meets the requirements in 37-22-307, MCA;

(b) have completed supervised post-degree work that meets the requirements in 37-22-307, MCA, and ARM 24.219.504;

(c) have passed an examination as described in ARM 24.219.502 within four years of the date of application;

(d) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-308, MCA, within six months of the application date;

(e) provide reference letters that meet the requirements in 37-22-308, MCA;
and

(f) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

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

AUTH: 37-1-131, 37-22-201, 37-22-307, 37-22-308, MCA

IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, MCA

24.219.502 EXAMINATION – LCSW, LMSW, and LBSW (1) The following examinations are approved for licensure as an LCSW:

(a) and (b) remain the same.

(2) The following examinations are approved for licensure as an LMSW:

(a) ASWB master's examination; or

(b) other licensing examinations approved by the board.

(3) The following examinations are approved for licensure as an LBSW:

(a) ASWB bachelor's exam; or

(b) other licensing examinations approved by the board.

(2) (4) Individuals who have not already passed an approved examination will be approved by department staff to register for the appropriate ASWB examination upon:

(a) and (b) remain the same.

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

AUTH: 37-1-131, 37-22-201, 37-22-307, 37-22-308, MCA

IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, MCA

24.219.504 LCSW, LMSW, AND LBSW SUPERVISED WORK EXPERIENCE REQUIREMENTS (1) Applicants applying under ARM 24.219.501 for an LCSW license must meet the supervised work experience requirements in 37-22-301, MCA, and as defined in ARM 24.219.301.

(2) As a part of the total supervised work experience requirements in (1), at least 100 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421.

(a) Of those 100 hours, at least 50 hours must be individual and supervised face-to-face by an LCSW; ~~and~~

(b) remains the same.

(2) Applicants applying under ARM 24.219.501 for an LMSW or LBSW license must meet the supervised work experience requirements as described in ARM 24.219.301 and this rule.

(a) Applicants must complete a minimum of 2000 total hours of supervised work experience over a period of no less than 18 months.

(b) Of those 2000 hours:

(i) at least 100 hours must include individual or group supervision by a qualified supervisor under ARM 24.219.421; and

(ii) of the 100 hours in (i), at least 25 hours must be with the client populations that will be served by the LMSW or LBSW candidate (see (5) for examples of client populations).

(3) Supervisors must provide at least two hours of supervision for LCSW, LMSW, and LBSW candidates for every 160 hours of social work as defined in 37-22-102, MCA.

~~(4) Candidates must clearly indicate they are social worker licensure candidates in all professional and private communications.~~

~~(5) (4) When an LCSW, LMSW, or LBSW candidate who applied under ARM 24.219.505 completes the requirements of (1) through (3) all the supervised work experience requirements in this rule, the candidate will qualify for the appropriate examination per ARM 24.219.502. Upon proof of passage of the exam, a candidate will be issued an LCSW license without further application.~~

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

(6) Supervised work experience hours earned by LMSW and LBSW applicants who are not currently actively licensed in another jurisdiction must have been earned within five years of the date of application.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-301, 37-22-307, 37-22-308, 37-22-313, MCA

REASON: The board is amending this rule to relocate the provisions of (4) to ARM 24.219.2301 since the provisions pertain to conduct, not work experience.

24.219.505 LCSW, LMSW, AND LBSW CANDIDATE LICENSE REQUIREMENTS ~~(1) Applicants for LCSW candidate licenses apply using the same application as LCSW applicants.~~

(1) Applicants for LCSW, LMSW, and LBSW candidate licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants for LCSW, LMSW, and LBSW candidate licensure must meet the following education requirements:

(a) LCSW candidate applicants must have a degree that meets the requirements in 37-22-301, MCA;

(b) LMSW candidate applicants must have a degree that meets the requirements in 37-22-308, MCA; and

(c) LBSW candidate applicants must have a degree that meets the requirements in 37-22-307, MCA.

(2) (3) Applicants In addition to the appropriate education requirements in (2), applicants for LCSW, LMSW, and LBSW candidate licensure must:

~~(a) have a degree that meets the requirements in 37-22-301, MCA;~~

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

~~(d) (c) provide reference letters that meet the requirements in 37-22-301, 37-22-307, or 37-22-308, MCA; and~~

~~(e) remains the same but is renumbered (d).~~

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

AUTH: 37-1-131, 37-22-201, 37-22-307, 37-22-308, MCA
IMP: 37-1-131, 37-22-307, 37-22-308, 37-22-313, MCA

24.219.512 LCSW, LMSW, AND LBSW LICENSE REQUIREMENTS – OUT-OF-STATE APPLICANTS (1) Applicants for LCSW, LMSW, and LBSW licensure who are currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

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

(c) have completed a Federal Bureau of Investigation fingerprint background check per 37-22-301, 37-22-307, or 37-22-308, MCA, within six months of the application date;

(d) provide reference letters that meet the requirements in 37-22-301, 37-22-307, or 37-22-308, MCA; and

(e) and (3) remain the same.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-1-304, 37-22-301, 37-22-307, 37-22-308, MCA

24.219.604 LCPC SUPERVISED WORK EXPERIENCE REQUIREMENTS

(1) and (2) remain the same.

~~(3) Candidates must clearly indicate they are a professional counselor licensure candidate in all professional and private communications.~~

~~(4) A candidate will be issued an LCPC license without further application upon proof of:~~

~~(a) passage of the examination in ARM 24.219.602 within four years of the date of application; and~~

~~(b) completion of the requirements in (1) through (3) of this rule.~~

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-23-202, MCA

REASON: The board is moving the provisions from (3) to ARM 24.219.2301 as a more appropriate location since it pertains to conduct, not work experience.

24.219.605 LCPC CANDIDATE LICENSE REQUIREMENTS (1) Applicants for LCPC candidate licenses ~~apply using the same application as LCPC applicants not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

(2) and (3) remain the same.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-23-213, MCA

24.219.704 LMFT SUPERVISED WORK EXPERIENCE REQUIREMENTS

(1) and (2) remain the same.

~~(3) Candidates must clearly indicate they are a marriage and family therapist licensure candidate in all professional and private communications.~~

(4) When an LMFT candidate completes the requirements of (1) and (2) of this rule, the candidate will qualify for the examination per ARM 24.219.702. ~~Upon proof of passage of the examination, a candidate will be issued an LMFT license without further application.~~

AUTH: 37-1-131, 37-22-201, MCA

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

REASON: The board is relocating the provisions of (3) to ARM 24.219.2301 as a more appropriate location since it pertains to conduct, not work experience.

24.219.705 LMFT CANDIDATE LICENSE REQUIREMENTS (1) Applicants for LMFT candidate licenses ~~apply using the same application as LMFT applicants not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~

(2) through (4) remain the same.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-37-205, MCA

24.219.907 CBHPSS LICENSE REQUIREMENTS – ORIGINAL APPLICANTS (1) through (3) remain the same.

~~(4) Once certified, CBHPSS must clearly indicate their certification in all professional and private communications and may use the titles in 37-38-201, MCA.~~

AUTH: 37-1-131, 37-38-202, MCA

IMP: 37-1-131, 37-38-202, MCA

REASON: The board is relocating the provisions of (4) and ARM 24.219.923(4) to ARM 24.219.2301 as a more appropriate location as it pertains to conduct, not application requirements.

24.219.923 CBHPSS CERTIFICATION REQUIREMENTS – OUT-OF-STATE APPLICANTS (1) through (3) remain the same.

~~(4) Once certified, CBHPSS must clearly indicate their certification in all professional and private communications and may use the titles in 37-38-201, MCA.~~

AUTH: 37-1-131, 37-38-202, MCA

IMP: 37-1-131, 37-1-304, 37-38-202, MCA

24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, AND LCSW, LMSW, LBSW,

LCPC, LMFT, AND LAC CANDIDATES FOR SOCIAL WORKERS (1) remains the same.

(2) A licensee shall not:

~~(a) Misrepresent the type or status of license held by the licensee.~~

(a) commit any of the following boundary violations:

(i) provide services to a person with whom the licensee has had sexual contact at any time;

(ii) engage in or solicit sexual relations with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(iii) engage in sexual contact with a former client, within two years following termination of professional services. After two years, the licensee who engages in such activity following termination of professional services must demonstrate that there has been no exploitation, in light of all relevant factors, including:

(A) the amount of time that has passed since professional services terminated;

(B) the nature and duration of the professional services;

(C) the circumstances of termination;

(D) the client's personal history;

(E) the client's current mental status;

(F) the likelihood of adverse impact on the client; and

(G) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client;

(iv) solicit or engage in a sexual or intimate relationship with a client, a supervisee, client's family member, a client's household member, or other persons with whom a client has had a significant relationship;

(v) soliciting or engaging in sexual relations with the client of another licensee employed in the same program providing services;

(vi) condone or engage in sexual or other harassment;

(vii) engage in a dual relationship with a client or former client if the dual relationship has the potential to compromise the client's well-being, impair the licensee's objectivity and professional judgment, or creates or increases the risk of exploitation of the client. If a dual relationship arises as a result of unforeseeable and unavoidable circumstances, the licensee shall promptly take appropriate professional precautions. Appropriate professional precautions must ensure that the client's well-being is not compromised and that no exploitation occurs and should include consultation, supervision, documentation, or obtaining written informed consent of the client;

(viii) terminate a professional relationship for the purpose of beginning a personal or business relationship with a client;

(ix) participate in bartering, unless bartering is considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Licensees who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship;

(x) accept gifts or gratuities of significant monetary value or borrow money from a client or former client within two years after termination of services, except when this is a culturally accepted practice;

(xi) interfere with or encourage termination of any legitimate personal relationship of a client, or interfere with a therapeutic relationship of another professional;

(b) ~~Intentionally~~ intentionally, recklessly, or carelessly cause physical or emotional harm to a client;

(c) ~~Misrepresent~~ misrepresent or permit the misrepresentation of his or her the licensee's professional qualifications, affiliations, or purposes;

(d) perform or hold the licensee out as able to perform professional services beyond the licensee's field or fields of competence as established by the licensee's education, training, and/or experience;

(e) misrepresent the type or status of license held by the licensee;

(f) fail to indicate licensure candidate status in professional communications and documentation;

(g) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading;

(h) commit fraud or misrepresent services performed;

(i) divide a fee or accept or give anything of value for receiving or making a referral;

(j) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(k) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services;

(l) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;

(m) falsify, misrepresent, or fail to maintain supervision records as required by ARM 24.219.422;

(n) fail to appropriately supervise a licensure candidate or a CBHPSS;

(o) recommend a client seek or discontinue prescribed medication, or fail to provide a supportive environment for a client who is receiving prescribed medication;

(p) engage in the practice when the licensee's license is inactive, has expired, is terminated, or has been suspended;

(q) violate federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by Title 50, chapter 32, MCA; or

(r) be convicted of driving while under the influence of alcohol or drugs (DUI), or criminal possession of dangerous drugs at any time after issuance of a license, and within the two years preceding an application for licensure.

(3) All licensees shall:

(a) provide clients with accurate and complete information regarding the extent and nature of the services available to them, including the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

(b) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;

(c) make every effort to keep scheduled appointments;

(d) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;

(e) attempt to make appropriate referrals pursuant to the client's needs;

(f) obtain informed written consent of the client or the client's legal guardian prior to the client's involvement in any research project of the licensee that might identify the client or place them at risk;

(g) obtain informed written consent of the client or the client's legal guardian prior to taping, recording, or permitting third-party observation of the client's activities that might identify the client or place them at risk;

(h) except where required by law or court order, safeguard information provided by clients, and make reasonable efforts to limit access to client information in an agency setting to those staff whose duties require access;

(i) disclose to and obtain written acknowledgement from the client or prospective client as to the fee to be charged for professional services, and/or the basis upon which the fee will be calculated;

(j) make and maintain records of services provided to a client. At a minimum, the records shall contain:

(i) documentation verifying the identity of the client;

(ii) documentation of the assessment and/or diagnosis;

(iii) documentation of each session;

(iv) documentation of a plan, documentation of any revision of the assessment or diagnosis or of a plan;

(v) documentation of discharge summary;

(vi) any fees charged and other billing information; and

(vii) copies of all client authorization for release of information and any other legal forms pertaining to the client. These records shall be maintained by the licensee or agency employing the licensee under secure conditions and for time periods in compliance with applicable federal or state law, but in no case for fewer than seven years after the last date of service.

(4) In addition to (2) and (3), CBHPSS are subject to the following standards.

(a) CBHPSS shall:

(i) conduct themselves in a way that fosters their own recovery and take personal responsibility to seek support and manage their wellness;

(ii) as mandatory reporters, report abuse to appropriate authorities and supervisors;

(iii) disclose any pre-existing relationships, sexual or otherwise, to supervisor(s) prior to providing services to that individual; and

(iv) report risk of imminent harm to self or others to the proper authorities and to their supervisor. When reporting, the minimum amount of information necessary will be given to maintain confidentiality.

(b) CBHPSS shall not:

(i) engage or offer advice on the matters of diagnosis, treatment, or medications to the client; or

(ii) engage in or promote behaviors or activities that would jeopardize the CBHPSS's recovery or the recovery of those they serve.

~~(d) Accept as clients persons with whom he or she has engaged in sexual contact.~~

~~(e) Engage in sexual contact or a romantic relationship with current clients.~~

~~(f) Engage in sexual contact with a former client, unless the licensee who engages in such activity following termination of professional services demonstrates that there has been no exploitation, in light of all relevant factors, including:~~

~~(i) the amount of time that has passed since professional services terminated;~~

~~(ii) the nature and duration of the professional services;~~

~~(iii) the circumstances of termination;~~

~~(iv) the client's personal history;~~

~~(v) the client's current mental status;~~

~~(vi) the likelihood of adverse impact on the client; and~~

~~(vii) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.~~

~~(g) Perform or hold himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training and/or experience.~~

~~(h) Permit a person under his or her supervision or control to perform or permit such person to hold himself or herself out as competent to perform professional services beyond the level of education, training and/or experience of that person.~~

~~(i) Prior to the commencement of treatment, fail to disclose to the counselee, or prospective counselee, the fee to be charged for the professional services, or the basis upon which such fee will be computed.~~

~~(j) Engage in a dual relationship with a client or former client if the dual relationship has the potential to compromise the client's well being, impair the licensee's objectivity and professional judgment, or creates or increases the risk of exploitation of the client. If a dual relationship arises as a result of unforeseeable and unavoidable circumstances, the licensee shall promptly take appropriate professional precautions. Appropriate professional precautions must ensure that the client's well being is not compromised and that no exploitation occurs and should include consultation, supervision, documentation, or obtaining written informed consent of the client.~~

~~(k) Participate in bartering, unless bartering is considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Licensees who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.~~

~~(l) Falsify or misrepresent a record of supervision submitted in connection with an application for licensure.~~

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, 37-35-103, MCA
IMP: 37-1-131, 37-1-136, 37-1-316, 37-1-319, 37-22-201, 37-35-103, 37-38-106, MCA

REASON: The board is amending this rule to consolidate all unprofessional conduct and ethical guidelines for all licensees into one rule for consistency, better organization, and ease of use. The board is also repealing ARM 24.219.807, 24.219.925, 24.219.2305, 24.219.2309, and 24.219.5019 as no longer necessary.

Currently only LAC licensees have a specific time in rule (i.e., two years following end of services to a client) before which they cannot engage in sexual conduct or accept gifts or gratuities of significant monetary value or borrow money. Due to an increase in disciplinary actions against licensees who have engaged in these behaviors, the board concluded it is reasonably necessary to have this same requirement for all license types and is amending (2)(a)(iii) and (a)(x) accordingly.

Staff reviewed board rules for standardization and conformity with national standards and noted there was no recordkeeping rule for client records. The board is further amending this rule to provide recordkeeping guidance for licensees and assist the board in obtaining the necessary records when reviewing complaints.

24.219.5008 LAC SUPERVISED WORK EXPERIENCE REQUIREMENTS

(1) through (3) remain the same.

~~(4) Candidates must clearly indicate they are an addiction counselor licensure candidate in all professional and private communications.~~

~~(5) (4) When an LAC candidate completes the requirements of (1) and (2) of this rule, the candidate will qualify for the examination per ARM 24.219.5020. Upon proof of passage of the examination, a candidate will be issued an LAC license without further application.~~

AUTH: 37-1-131, 37-35-103, 37-35-202, MCA

IMP: 37-1-131, 37-35-103, 37-35-202, MCA

REASON: The board is relocating the provisions of (4) to ARM 24.219.2301 as a more appropriate location as it pertains to conduct, not work experience.

24.219.5013 LAC CANDIDATE LICENSE REQUIREMENTS (1) Applicants for LAC candidate licenses ~~apply using the same application as LAC applicants~~ not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-35-103, 37-35-202, MCA

IMP: 37-1-131, 37-35-103, 37-35-202, MCA

6. The board is proposing to adopt new rules as follows:

NEW RULE I ANNUAL CANDIDATE REGISTRATION – LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES (1) LCSW, LCPC, and LMFT candidates shall:

(a) register annually by no later than December 31; and
(b) only be allowed to register annually five times unless approved by the board to register more than five times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.

(2) LMSW and LBSW candidates shall:

(a) register annually by no later than December 31; and
(b) only be allowed to register annually three times unless approved by the board to register more than three times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.

(3) LAC candidates shall:

(a) register annually by no later than June 30; and
(b) only be allowed to register annually three times unless approved by the board to register more than three times. Candidates requesting an additional registration must submit a request including but not limited to an explanation as to why an additional registration is needed to complete the requisite supervised work experience.

(4) Registration procedures under this rule follow the renewal procedures described in ARM 24.101.413.

AUTH: 37-1-131, 37-22-201, 37-35-103, 37-35-202, MCA

IMP: 37-1-131, 37-22-313, 37-23-213, 37-35-202, 37-37-205, MCA

REASON: The board is adopting this new rule to consolidate all the annual candidate registration requirements into one rule for simplicity and better organization. The board is moving the candidate provisions from ARM 24.219.507, 24.219.607, 24.219.708, and 24.219.5015 and repealing these rules as well.

In (2) the board is setting the annual registration date for the new LBSW and LMSW candidate licenses created by House Bill 626. Since LCSW candidates must register annually by December 31 the board is utilizing the same date for the new social work licenses. Because LBSW and LMSW candidates only need to obtain 2000 hours of supervised work experience the board concluded that a maximum of three annual registrations is sufficient to obtain those hours unless the board approves an additional registration(s).

To address licensee confusion regarding candidate registration procedures, the board is clarifying in (4) that candidate registration follows the standard renewal procedures under division rule.

NEW RULE II INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, AND CBHPSS (1) Active status licensees may convert to inactive status on the renewal form or by informing

the department. Inactive licensees must inform the department of any change of address while on inactive status and must pay the inactive renewal fee annually to avoid license expiration or termination.

(2) Inactive licensees or certificate holders may not practice.

(3) Inactive status licensees or certificate holders may convert to active status upon request and payment of the required fee.

(4) In order to convert to active status, licensees and certificate holders:

(a) may not have been out of active practice for more than five years; and

(b) must have completed ten hours of continuing education (CE) per each year of inactive status. The CE must have been completed within the twenty-four months prior to converting to active status.

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

IMP: 37-1-319, MCA

REASON: The board is incorporating into this rule all requirements for converting licenses from active to inactive status and repealing ARM 24.219.509, 24.219.609, 24.219.709, 24.219.921, and 24.219.5012 as no longer necessary. Additionally, for consistency with other license types, the board is reducing the hours for LMFTs from 20 hours of CE for each year of inactive status to ten.

NEW RULE III CONTINUING EDUCATION REQUIREMENTS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, and CBHPSS (1) Licensees are required to obtain 20 hours of continuing education (CE) annually, prior to renewal on December 31.

(2) Licensees completing more than 20 hours of CE may carry forward those hours into the next year. The number of hours carried forward shall not exceed 20 hours.

(3) Licensees holding more than one type of license must obtain the requisite 20 hours of CE for each license.

(4) Of the 20 hours:

(a) a minimum of two hours must relate to suicide prevention; and

(b) a maximum ten hours may be for:

(i) first-time preparation of a new course, in-service training workshop, or seminar which meets the criteria in (6); or

(ii) preparation time by the author or authors of a paper which meets the criteria in (6) that is published for the first time in a recognized professional journal, or given for the first time at a statewide or national professional meeting.

(5) Continuing education requirements will not apply until after the licensee's first renewal.

(6) Licensees are responsible for selecting quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) directly relate to the licensee's scope of practice as defined in board statute or rule;

(b) review existing concepts and techniques;

(c) convey information beyond the basic professional education;

- (d) update knowledge on the practice and advances in the profession; or
- (e) reinforce professional conduct or ethical obligations of the licensee.
- (7) The department may randomly audit up to 50 percent of renewed licensees.
- (8) Licensees must maintain documentation of completed CE for three years and provide documentation to the board upon request. Documentation must include the following information:
 - (a) licensee name;
 - (b) course title and description of content;
 - (c) presenter or sponsor;
 - (d) course date(s); and
 - (e) number of CE hours earned.
- (9) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.
- (10) Any CE hours required by disciplinary order do not apply toward the 20 hours that are required annually under this rule.
- (11) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, 37-22-201, 37-35-103, 37-38-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-22-201, 37-35-103, 37-38-202, MCA

REASON: The board determined it is reasonably necessary to adopt this rule to help facilitate the department's standardized application, renewal, and audit procedures. The board is also streamlining the rule for better organization and ease of use for the reader by combining the continuing education (CE) requirements for all license types into one rule. The board is repealing the individual CE rules at ARM 24.219.927, 24.219.929, 24.219.931, 24.219.2001, 24.219.2201, 24.219.5016, 24.219.5017, and 24.219.5018 as no longer necessary.

As part of the standardization, the ability to carry over CE hours as described in (2) now applies to LAC, CBHPSS, LBSW, and LMSW as well as LCPC, LCSW, and LMFT licensees.

In (4)(a) the board is requiring that a minimum of two of the required 20 hours relate to suicide prevention. The board concluded it is reasonably necessary since all board licensees work with a client base that is at risk for suicide. The board believes that all licensees should have ongoing education in this area.

Under current rules first-year licensees must obtain a prorated amount of CE for that partial year they are licensed. The board concluded that because new licensees are generally current with their education, no CE will be required until after licensees renew the first time.

Finally, the board currently sets the annual CE audit percentage allowed under 37-1-306, MCA, by board motion. The board determined amending the process to allow the department to determine audit percentages using data gathered and analyzed by department staff is a more efficient and data-driven approach for determining the annual audit percentage as described in (7).

NEW RULE IV INDEPENDENT PRACTICE – LCSW, LMSW, AND LBSW

(1) LCSW are allowed to engage in independent practice as defined in ARM 24.219.301

(2) LMSW and LBSW are allowed to practice outside of an agency or other organized setting but may not engage in independent practice.

AUTH: 37-1-131, 37-22-201, 37-22-301, 37-22-307, 37-22-308, MCA

IMP: 37-1-131, 37-22-201, 37-22-301, 37-22-307, 37-22-308, MCA

REASON: House Bill 626 amended 37-22-301(3)(c), MCA, to provide that LCSW may engage in independent practice as defined by the board. LBSW and LMSW are not allowed to engage in independent practice under statute. The board is defining "independent practice" in ARM 24.219.301 and clarifying in this rule that LBSW, LMSW, and LCSW may all practice outside of an agency but only LCSW have the education and training necessary to engage in independent practice.

7. The board is proposing to repeal the following rules:

24.219.405 FEE SCHEDULE FOR PROFESSIONAL COUNSELORS

AUTH: 37-1-134, 37-22-201, MCA

IMP: 37-1-134, 37-1-141, 37-23-206, MCA

REASON: See REASON for ARM 24.219.401.

24.219.409 FEE SCHEDULE FOR MARRIAGE AND FAMILY THERAPISTS

AUTH: 37-1-134, 37-37-201, MCA

IMP: 37-1-134, 37-1-141, 37-37-201, MCA

REASON: See REASON for ARM 24.219.401.

24.219.507 SOCIAL WORKER LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-313, MCA

REASON: See REASON for NEW RULE I.

24.219.509 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS

AUTH: 37-1-319, 37-22-201, MCA

IMP: 37-1-319, MCA

REASON: See REASON for NEW RULE II.

24.219.607 PROFESSIONAL COUNSELOR LICENSURE CANDIDATE
ANNUAL REGISTRATION REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-23-213, MCA

REASON: See REASON for NEW RULE I.

24.219.609 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO
ACTIVE STATUS

AUTH: 37-1-319, 37-22-201, MCA

IMP: 37-1-319, MCA

REASON: See REASON for NEW RULE II.

24.219.708 MARRIAGE AND FAMILY THERAPIST LICENSURE
CANDIDATE ANNUAL REGISTRATION REQUIREMENTS

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-37-205, MCA

REASON: See REASON for NEW RULE I.

24.219.709 APPLICATION TO CONVERT AN ACTIVE STATUS LICENSE
TO AN INACTIVE STATUS LICENSE AND CONVERSION FROM INACTIVE TO
ACTIVE STATUS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-319, 37-37-101, MCA

REASON: See REASON for NEW RULE II.

24.219.807 CODE OF ETHICS

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-22-101, 37-22-201, 37-23-101, 37-37-101, MCA

REASON: See REASON for ARM 24.219.2301.

24.219.905 FEE SCHEDULE FOR BEHAVIORAL HEALTH PEER
SUPPORT SPECIALISTS

AUTH: 37-38-202, MCA

IMP: 37-38-202, MCA

REASON: See REASON for ARM 24.219.401.

24.219.921 APPLICATION TO CONVERT AN ACTIVE STATUS
CERTIFICATE TO AN INACTIVE STATUS CERTIFICATE AND CONVERSION
FROM INACTIVE TO ACTIVE STATUS

AUTH: 37-1-319, MCA

IMP: 37-1-302, 37-1-319, MCA

REASON: See REASON for NEW RULE II.

24.219.925 CODE OF ETHICS

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-38-106, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-38-106, MCA

REASON: See REASON for ARM 24.219.2301.

24.219.927 CONTINUING EDUCATION HOURS AND CREDITS

AUTH: 37-1-319, 37-38-202, MCA

IMP: 37-1-306, 37-1-319, 37-38-202, MCA

REASON: See REASON for NEW RULE III.

24.219.929 CONTINUING EDUCATION STANDARDS

AUTH: 37-1-319, 37-38-202, MCA

IMP: 37-1-306, 37-1-319, 37-38-202, MCA

REASON: See REASON for NEW RULE III.

24.219.931 REPORTING REQUIREMENTS

AUTH: 37-1-131, 37-1-319, 37-38-202, MCA

IMP: 37-1-131, 37-1-306, 37-38-202, MCA

REASON: See REASON for NEW RULE III.

24.219.2001 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-37-101, MCA

REASON: See REASON for NEW RULE III.

24.219.2201 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-22-201, MCA

REASON: See REASON for NEW RULE III.

24.219.2305 UNPROFESSIONAL CONDUCT FOR PROFESSIONAL COUNSELORS

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

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

REASON: See REASON for ARM 24.219.2301.

24.219.2309 UNPROFESSIONAL CONDUCT FOR MARRIAGE AND FAMILY THERAPISTS

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-37-101, MCA

REASON: See REASON for ARM 24.219.2301.

24.219.5002 FEE SCHEDULE

AUTH: 37-35-103, 37-35-202, MCA

IMP: 37-1-141, 37-35-103, 37-35-202, MCA

REASON: See REASON for ARM 24.219.401.

24.219.5012 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-319, 37-35-103, MCA

REASON: See REASON for NEW RULE II.

24.219.5015 ADDICTION COUNSELOR LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: See REASON for NEW RULE I.

24.219.5016 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-35-103, MCA

REASON: See REASON for NEW RULE III.

24.219.5017 COURSE CRITERIA

AUTH: 37-35-103, MCA

IMP: 37-1-131, 37-1-306, 37-35-103, MCA

REASON: See REASON for NEW RULE III.

24.219.5018 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-104, 37-1-131, 37-1-306, 37-1-319, 37-35-103, MCA

REASON: See REASON for NEW RULE III.

24.219.5019 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-35-103, 37-35-301, MCA

IMP: 37-1-316, 37-1-319, 37-35-103, MCA

REASON: See REASON for ARM 24.219.2301.

8. 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 Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdbbh@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

9. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/bbh> (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.

10. 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 Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdbbh@mt.gov; or made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 13, 2019, by e-mail.

12. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.101.413, 24.219.301, 24.219.415, 24.219.421, 24.219.422, 24.219.423, 24.219.501, 24.219.502, 24.219.504, 24.219.505, 24.219.512, 24.219.604, 24.219.605, 24.219.704, 24.219.705, 24.219.907, 24.219.923, 24.219.2301, 24.219.5008, and 24.219.5013 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 through IV will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.219.405, 24.219.409, 24.219.507, 24.219.509, 24.219.607, 24.219.609, 24.219.708, 24.219.709, 24.219.807, 24.219.905, 24.219.921, 24.219.925, 24.219.927, 24.219.929, 24.219.931, 24.219.2001, 24.219.2201, 24.219.2305, 24.219.2309, 24.219.5002, 24.219.5012, 24.219.5015, 24.219.5016, 24.219.5017, and 24.219.5018 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.219.401 will significantly and directly impact small businesses. The small businesses likely impacted are 1725 private practitioners of licensed clinical social work, licensed clinical professional counseling, licensed marriage and family therapy, and licensed addiction counselors with fewer than 50 employees. The probable and direct effects would be a benefit to small businesses due to the reduction in operating costs from the reduced renewal fees. The board determined that there are no adverse effects due to these proposed amendments so there is no alternative method(s) to eliminate adverse effects.

Documentation of the board's above-stated determinations is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdbbh@mt.gov.

13. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
CATHY JENNI, LCPC, LMFT
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 February 4, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PROPOSED
RULE I pertaining to federal-state) ADOPTION
poultry grading service – shell eggs)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 6, 2020 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

NEW RULE I FEDERAL-STATE POULTRY GRADING SERVICE – SHELL EGGS (1) The department shall charge fees and expenses for shell egg grading, auditing, and regulatory services as stipulated in the Cooperative Agreement between the Agricultural Marketing Service of the United States Department of Agriculture and the department.

AUTH: 81-1-102, 81-2-102, 81-2-104, 81-20-101, MCA

IMP: 81-1-102, 81-2-102, 81-2-104, 81-20-101, 81-20-201, MCA

REASON: The department proposes to adopt NEW RULE I to provide the regulatory authority for fees and expenses. The department provides USDA grading services for shell egg producers as determined by the Cooperative Agreement 19-LQAD-MT0021, which establishes the fees to be charged for the services.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 13, 2020.

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

comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., March 13, 2020.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected by this rule has been determined to be 4, based on 39 producers from Montana Egg Plant, LLC.

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

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

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

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

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

Certified to the Secretary of State February 4, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.8.101 pertaining to	)	AMENDMENT
definitions and adoption of Grade A)	
pasteurized milk ordinance and	)	NO PUBLIC HEARING
associated documents	)	CONTEMPLATED

TO: All Concerned Persons

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

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 6, 2020, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.8.101 DEFINITIONS AND ADOPTION OF GRADE A PASTEURIZED MILK ORDINANCE AND ASSOCIATED DOCUMENTS (1) remains the same.

(2) The Department of Livestock ~~hereby~~ adopts and incorporates by reference as rules of the department the following as they are now described and as they may from time to time be amended:

(a) "Grade A Pasteurized Milk Ordinance, ~~1978~~ 2017 Recommendations of the United States Public Health Service/Food and Drug Administration" (PMO) together with attached recommended administrative procedures, appendices, and index, except sections ~~9, 15,~~ 16, and 17.

(b) "Methods of Making Sanitation Ratings of Milk Supplies," ~~1978~~ 2017 edition issued by the U.S. Public Health Service/Food and Drug Administration (MMSR).

(c) ~~"Fabrication of Single-Service Containers for Milk and Milk Products, Sanitary Standards," 1978 Edition issued by the U.S. public health service/food and drug administration (SSCC).~~ "Evaluation of Milk Laboratories," 2017 edition (EML).

(d) ~~"Evaluation of Milk Laboratories," 1978 Edition (EML).~~ "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers," 2017 edition.

(e) ~~"Grade A Condensed and Dry Milk Products and Condensed and Dry Whey, 1978 Recommended Sanitation Ordinance for Condensed and Dry Milk Products and Condensed and Dry Whey used in Grade A Pasteurized Milk Products" (DMO).~~

~~(f) "Procedures Governing the Cooperative State Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers," 1997 edition.~~

(3) and (4) remain the same.

AUTH: 81-2-102, MCA

IMP: 2-4-307, 81-2-102, MCA

REASON: The department is proposing to update ARM 32.8.101 to conform with federal regulations (Grade A Pasteurized Milk Ordinance (PMO), 2017). The PMO noted in ARM 32.8.101(2)(a) is revised every two years by the National Conference of Interstate Milk Shippers (NCIMS), which includes representatives from all aspects of the dairy industry, in an effort to keep up with the ever-changing technology and challenges affecting milk safety.

Changes have been made to this document since 1978, including the inclusion of the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey" document and the "Fabrication of Single Service Containers for Milk and Milk Products, Sanitary Standards" document (now Appendix J),. The department is proposing (2)(c) and (e) be removed as stand-alone references.

Additionally, the PMO standards in Sections 9 and 15 have been amended and are no longer contrary to our Montana rules and therefore the department is proposing having them removed from exclusion in (2)(a).

Finally, the department is proposing updating the remaining stand-alone reference documents in (2)(b), (c), and (f) to the most current released versions of "Methods of Making Sanitation Ratings of Milk Supplies," "Evaluation of Milk Laboratories," and "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers."

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 13, 2020.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., March 13, 2020.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the businesses who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or

from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 6, based on approximately 60 Grade A Plants and producers who are directly affected by this proposed rule amendment.

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

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

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

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

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

Certified to the Secretary of State February 4, 2020.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.86.3607 pertaining to an) PROPOSED AMENDMENT
increase in rates and billing practices)

TO: All Concerned Persons

1. On March 5, 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 of the above-stated rule.

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 February 28, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for ~~Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated January 1, 2018~~ Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated March 1, 2020.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for ~~Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated January 1, 2018~~ Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated March 1, 2020. A copy of the manual may be obtained

through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.3607 which pertains to updated Targeted Case Management Services for Individuals with Developmental Disabilities (TCM-DD) Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated March 1, 2020. The proposed change would accomplish three objectives: require that targeted case management (TCM) services be delivered in regions specified in the provider contract rather than statewide; enact House Bill (HB) 680 from the 2019 legislature; and add specific requirements to bill for case management services.

DPHHS changed from a statewide delivery model to a regional contract model for delivery of TCM-DD services. Theoretically, more providers may be able to bid on regional contracts than a statewide contract, resulting in a higher level of service throughout the state. The proposed manual update reflects that change.

The 2019 legislature enacted HB 680, which requires that a contract for case management services targeted for people with developmental disabilities must include funding to allow for an average caseload of no more than 35 clients per case manager. To do so, the monthly rate for TCM-DD services would be increased to \$134.82 per member per month. This amount is calculated to provide for an average caseload of no more than 35 clients per case manager.

In addition, the proposed change would only allow payment for TCM when at least one of four billable TCM-DD services is provided in a month: performing a member's assessment or reassessment; plan of care development or revision; referral activities; or monitoring and follow-up activities.

This proposed change helps ensure members receive ongoing, active, quality services as part of their TCM.

Fiscal Impact

The department estimates that the proposed amendment would cost approximately \$1,427,348, in Fiscal Year (FY) 2020 and \$1,419,648, in FY 2021. Up to 5 contracted providers and approximately 2,400 members receiving contracted TCM would be affected.

The proposed rule amendment adopts and incorporates an updated manual, which would have an effective date retroactive to March 1, 2020.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., March 13, 2020.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on February 4, 2020.

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

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

/s/ Erica Johnston for Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State February 4, 2020.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
8.94.3802, 8.94.3804, 8.94.3805,)
8.94.3807, 8.94.3809, and 8.94.3812)
pertaining to the Treasure State)
Endowment Program (TSEP))

TO: All Concerned Persons

1. On December 27, 2019, the Department of Commerce published MAR Notice No. 8-94-177 pertaining to the proposed repeal of the above-stated rules at page 2283 of the 2019 Montana Administrative Register, Issue Number 24.
2. No comments or testimony were received.
3. The department has repealed the above-stated rules as proposed.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Tara Rice
Tara Rice
Director
Department of Commerce

Certified to the Secretary of State February 4, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.5.709 pertaining to the Pilot)
Program for Aquatic Invasive Species)
in the Flathead Basin)

TO: All Concerned Persons

1. On December 27, 2019, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-523 pertaining to the proposed amendment of the above-stated rule at page 2286 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: The department received numerous comments in support of the amendment to remove the expiration date of the rule and for the mandatory inspection requirements to be indefinite for the Flathead Basin. Comments stated that the program has been successful so far and urged to continue the protection for waters in the Flathead Basin.

RESPONSE #1: The department appreciates your participation and support in this rulemaking process.

COMMENT #2: The department received a few comments in support of expanding the program to other lakes and major launch sites across the state.

RESPONSE #2: The AIS program has lake-based inspection stations at some high traffic locations (Tongue River and Fresno Reservoir), but the main focus of the program is to address AIS transport risk for boats entering Montana and crossing west over the Continental Divide.

COMMENT #3: A few comments were received in support of severe fines for those that fail to obey the rule.

RESPONSE #3: These comments are outside the scope of this rulemaking. Fines for violations are set forth by law under 80-7-1014, MCA.

COMMENT #4: A few comments were received in support of extending the season and hours of the inspection stations. One comment suggested that the stations be staffed 24/7 in order to make sure that no vessels ever get missed.

RESPONSE #4: Watercraft inspection season and hours of operation are being extended in 2020 with many stations operating during daylight hours. Nighttime inspection station operations are costly, have additional safety concerns, and would require enforcement support.

COMMENT #5: A comment was received suggesting that boats that never leave the Flathead Basin should get a tag.

RESPONSE #5: A boat that never leaves the Flathead Basin does not require an inspection.

COMMENT #6: The department received a comment in opposition to any and all mandatory inspection requirements. The comment stated that it was an inconvenience for outdoorsmen and that migratory waterfowl will eventually bring AIS to Montana waters. The comment suggested that money used for AIS prevention could be better used at managing Flathead Lake as a destination trophy trout fishery.

RESPONSE #6: Watercraft inspection is the best available tool to address the spread of AIS on watercraft. There is no data supporting the transport of AIS on waterfowl for long distances.

COMMENT #7: The department received a comment in opposition of the amendment and in support of letting the rule expire. The comment stated that it was repetitive and unnecessary and that it sends the message that the Flathead is more important than the rest of the state.

RESPONSE #7: The highest risk waters in the state for invasive mussel introduction are Fort Peck and Flathead Lake. Additional focus on prevention at both waterbodies is warranted but is not impacted by this rule.

COMMENT #8: A comment was received in support of the amendment to make the rule indefinite but with hopes that it will become easier for boats to go through inspections.

RESPONSE #8: For local boats that are clean, drained, and dry, inspections should take less than five minutes.

COMMENT #9: The department received a comment that suggested an inspection station was needed at Hungry Horse.

RESPONSE #9: A boat that is traveling from outside the basin should be inspected at one of the existing stations prior to reaching Hungry Horse Reservoir.

COMMENT #10: A few comments were received that stated that more funding was needed to support the program.

RESPONSE #10: These comments are outside the scope of this rulemaking.

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

/s/ Martha Williams

Martha Williams

Director

Department of Fish, Wildlife and Parks

Certified to the Secretary of State February 4, 2020.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 12.5.707 pertaining to)	
Removing Canyon Ferry Reservoir)	
from the list of Identified Bodies of)	
Water Confirmed or Suspected for)	
Aquatic Invasive Mussels)	

TO: All Concerned Persons

1. On December 27, 2019, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-524 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2288 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: The department received numerous comments in support of the amendment to remove Canyon Ferry Reservoir from the list of waterbodies identified as confirmed or suspected of AIS.

RESPONSE #1: The department appreciates your participation and support in this rulemaking process.

COMMENT #2: The department received a comment in support of keeping both the mandatory inspections and the local boater program in place at Canyon Ferry.

RESPONSE #2: Early detection monitoring will continue on Canyon Ferry for years to come. The current lack of evidence of invasive mussels supports lifting restrictions.

COMMENT #3: A comment was received in support of removing Canyon Ferry from the list and also questioned why Tiber was not also being removed from the list.

RESPONSE #3: Tiber had multiple invasive mussel larvae detected on two separate occasions in 2016. On Canyon Ferry, only one larva was detected during one sampling event. These situations have occurred in other states and standard western protocols have been established for listing and delisting waters for mussels. For a situation like Canyon Ferry, delisting can be evaluated after three years. For situations like Tiber where detections occurred during two separate sampling events, five years of restrictions are required.

COMMENT #4: A comment was received that stated that unless migratory waterfowl could be stopped from migrating, there is no way to stop AIS.

RESPONSE #4: Watercraft inspection is the best available tool to address the spread of AIS on watercraft. There is no data supporting the transport of AIS on waterfowl for long distances.

COMMENT #5: A few comments were received in opposition to removing Canyon Ferry stating that with increased growth it only takes one boat and that it is not worth the risk.

RESPONSE #5: Resources that were dedicated to Canyon Ferry are being allocated to stations at state borders and on the Continental Divide, expanding the inspection season and hours of operation, which will help address the risk to all Montana's waters.

COMMENT #6: A few comments were received in support of removing Canyon Ferry and focusing efforts instead on the borders of Montana.

RESPONSE #6: Resources from Canyon Ferry will be reallocated to borders and the Continental Divide.

COMMENT #7: A comment was received in support of removing Canyon Ferry but also questioning if that meant the local boater program would go away and if there would still be mandatory inspection stations at the boat ramps.

RESPONSE #7: Mandatory exit inspections will no longer be required on Canyon Ferry. The Certified Boater program will be discontinued for Canyon Ferry.

COMMENT #8: A comment was received stating that decisions should not be made based off of eDNA analysis as a negative result may not mean that there is an absence of that organism in the waterbody.

RESPONSE #8: FWP does not make decisions on the presence or absence of invasive mussels based on eDNA.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

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

Certified to the Secretary of State February 4, 2020.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT AND
17.36.802 and 17.38.106 pertaining to)	ADOPTION
subdivision and public water and)	
wastewater review fees, and New Rule)	(SUBDIVISIONS)
I pertaining to certification under 76-4-)	(PUBLIC WATER AND SEWAGE
127, MCA)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On August 23, 2019, the Board of Environmental Review (board) and Department of Environmental Quality (department) published MAR Notice No. 17-405, pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1228 of the 2019 Montana Administrative Register, Issue No. 16.

2. The board has amended ARM 17.38.106 as proposed but with the following changes from the original proposal, stricken matter interlined and new matter underlined:

17.38.106 FEES (1) remains as proposed.

(2) Department review will not be initiated until fees calculated under (2)(a) through (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	\$ 4,000 <u>875</u>
point-of-use/point-of-entry treatment	\$ 4,000 <u>875</u>
Section 1.0 Engineering Report	\$ 400 <u>350</u>
Section 3.1 Surface water	
quality and quantity	\$ 4,000 <u>875</u>
structures	\$ 4,000 <u>875</u>
Section 3.2 Ground water	\$ 4,200 <u>1,050</u>
Section 4.1 Microscreening	\$ 400 <u>350</u>
Section 4.2 Clarification	
standard clarification	\$ 4,000 <u>875</u>
solid contact units	\$ 2,000 <u>1,750</u>
Section 4.3 Filtration	

rapid rate	\$ 2,500 <u>2,190</u>
pressure filtration	\$ 2,000 <u>1,750</u>
diatomaceous earth	\$ 2,000 <u>1,750</u>
slow sand	\$ 2,000 <u>1,750</u>
direct filtration	\$ 2,000 <u>1,750</u>
biologically active filtration	\$ 2,000 <u>1,750</u>
membrane filtration	\$ 2,000 <u>1,750</u>
micro and ultra filtration	\$ 2,000 <u>1,750</u>
bag and cartridge filtration	\$ 600 <u>520</u>
Section 4.4 Disinfection	\$ 1,000 <u>875</u>
Section 4.5 Softening	\$ 1,000 <u>875</u>
Section 4.6 Ion Exchange	\$ 1,000 <u>875</u>
Section 4.7 Aeration	
natural draft	\$ 400 <u>350</u>
forced draft	\$ 400 <u>350</u>
spray/pressure	\$ 400 <u>350</u>
packed tower	\$ 1,000 <u>875</u>
Section 4.8 Iron and manganese	\$ 1,000 <u>875</u>
Section 4.9 Fluoridation	\$ 1,000 <u>875</u>
Section 4.10 Stabilization	\$ 600 <u>520</u>
Section 4.11 Taste and odor control	\$ 800 <u>700</u>
Section 4.12 Adsorptive media	\$ 1,000 <u>875</u>
Chapter 5 Chemical application	\$ 1,400 <u>1,220</u>
Chapter 6 Pumping facilities	\$ 1,400 <u>1,220</u>
Section 7.1 Plant storage	\$ 1,400 <u>1,220</u>
Section 7.2 Hydropneumatic tanks	\$ 600 <u>520</u>
Section 7.3 Distribution storage	\$ 1,400 <u>1,220</u>
Chapter 8 Distribution system	
per lot fee	\$ 100 <u>90</u>
non-standard specifications	\$ 600 <u>520</u>
transmission distribution (per lineal foot)	\$ 0.35 <u>0.30</u>
rural distribution system (per lineal foot)	\$ 0.04
sliplining existing mains (per lineal foot)	\$ 0.20
Chapter 9 Waste disposal	\$ 1,000 <u>875</u>
Appendix A	
new systems	\$ 400 <u>350</u>
modifications	\$ 200 <u>175</u>

(b) The fee schedule for designs requiring review for compliance with Department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans	
engineering reports (minor)	\$ 400 <u>350</u>
comprehensive facility plan (major)	\$ 2,000 <u>1,750</u>
Chapter 30 Design of sewers	

per lot fee	\$ 400 <u>90</u>
non-standard specifications	\$ 600 <u>520</u>
collection system (per lineal foot)	\$ 0.35 <u>0.30</u>
sliplining existing mains (per lineal foot)	\$ 0.20
Chapter 40 Sewage pumping station	
force mains (per lineal foot)	\$ 0.35 <u>0.30</u>
1000 gpm or less	\$ 1,000 <u>875</u>
greater than 1000 gpm	\$ 2,000 <u>1,750</u>
Chapter 60 Screening grit removal	
screening devices and comminutors	\$ 600 <u>520</u>
grit removal	\$ 600 <u>520</u>
flow equalization	\$ 1,000 <u>875</u>
Chapter 70 Settling	\$ 1,500 <u>1,400</u>
Chapter 80 Sludge handling	\$ 3,000 <u>2,800</u>
Chapter 90 Biological treatment	\$ 4,700 <u>4,200</u>
nonaerated treatment ponds	\$ 1,500 <u>1,400</u>
aerated treatment ponds	\$ 2,800 <u>2,450</u>
Chapter 100 Disinfection	\$ 1,200 <u>1,120</u>
Chapter 120 Irrigation and Rapid Infiltration Systems	\$ 1,400 <u>1,220</u>
Appendices A and C (per design)	\$ 1,400 <u>1,220</u>

(c) The fee schedule for designs requiring review for compliance with Department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water	\$ 1,200 <u>1,050</u>
Chapter 6 Pump facilities	\$ 600 <u>520</u>
Chapter 7 Finished storage/hydropneumatic tanks	\$ 600 <u>520</u>
Chapter 8 Distribution system	\$ 600 <u>520</u>

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	\$ 400 <u>350</u>
Chapter 5 Septic Tanks	\$ 400 <u>350</u>
Chapter 6 Soil Absorption Systems	\$ 400 <u>350</u>
Chapter 6, Subchapter 6.8 ETA and ET Systems	\$ 1,000 <u>875</u>
Chapter 7, Subchapters 7.1, 7.2, and 7.3 Filters	\$ 400 <u>350</u>
Chapter 7, Subchapter 7.4 Aerobic Treatment	\$ 1,000 <u>875</u>
Chapter 7, Subchapter 7.5 Chemical	
Nutrient-Reduction Systems	\$ 1,000 <u>875</u>
Chapter 7, Subchapter 7.6 Alternate Advanced	
Treatment Systems	\$ 1,000 <u>875</u>
Chapter 8 Holding Tanks, Pit Privy, Seepage Pits,	

Waste Segregation, Experimental Systems	\$ 400 <u>350</u>
Appendix D	\$ 400 <u>350</u>
Non-degradation Review	\$ 600 <u>520</u>

(e) The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:

SCHEDULE V	
Spring box and collection lateral	\$ 500 <u>440</u>

(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI	
Cisterns	\$ 600 <u>520</u>

(3) through (7) remain as proposed.

3. The department has amended ARM 17.36.802 and adopted New Rule I (ARM 17.36.610) as proposed but with the following changes from the original proposal, stricken matter interlined and new matter underlined:

17.36.802 FEE SCHEDULES (1) An applicant for approval under this subchapter shall pay the following fees:

(a) type of lots:	
(i) subdivision lot or parcel or townhouse	\$ 175 <u>160</u>
(ii) condominium/trailer court/recreational camping vehicle campground unit or space	\$ 70 <u>60</u>
(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel	\$ 100 <u>90</u>
(b) type of water system:	
(i) individual or shared water supply system (existing and proposed) per unit	\$ 120 <u>110</u>
(ii) multiple-user system (non-public):	
(A) - each new system	\$ 440 <u>400</u> (plus \$ 150 <u>130</u> / hour for review in excess of four hours)
(B) - new distribution system design per lineal foot	\$ 0.50 <u>0.30</u>
(C) - connection to distribution system per lot or unit	\$ 100 <u>90</u>
(iii) public water system:	
(A) new system per component	per ARM 17.38.106 fee schedule
(c) type of wastewater disposal:	
(i) existing systems per unit	\$ 105 <u>90</u>

(ii) new gravity fed system per drainfield	\$ 130 <u>120</u>
(iii) new dosed system, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:	
(A) per design	\$ 250 <u>240</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(B) per drainfield	\$ 70 <u>60</u>
(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems	\$ 130 <u>120</u> (plus \$ 450 <u>130</u> / hour in excess of two hours)
(v) multiple-user wastewater system (non-public):	
(A) - new collection system design per lineal foot	\$ 0.35 <u>0.30</u>
(B) - connection to collection system per lot or unit	\$ 100 <u>90</u>
(vi) new public wastewater system per component	per ARM 17.38.106 fee schedule
(d) other:	
(i) deviation from circular per request or design	\$ 300 <u>250</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(ii) waiver from rule per request	\$ 300 <u>250</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	\$ 90 <u>70</u>
(iv) review of revised lot layout document per request	\$ 175 <u>160</u>
(v) municipal facilities exemption checklist (former master plan exemption) per application	\$ 150 <u>120</u>
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) - individual/shared systems per drainfield	\$ 90 <u>70</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)
(B) - multiple-user non-public systems per lot or structure	\$ 45 <u>40</u> (plus \$ 450 <u>130</u> / hour for review in excess of two hours)

(C) - source specific mixing zone per drainfield	\$ 275 <u>250</u>
(D) - public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) - Circular DEQ-8 simple plan review per project	\$ 450 <u>130</u>
(B) - Circular DEQ-8 standard plan review:	
(I) per project	\$ 250 <u>220</u>
(II) plus per lot	\$ 60 <u>50</u> (plus \$ 450 <u>130</u> / hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements:	actual cost
(ix) review for compliance with ARM 17.30.718	\$ 900 (plus \$450 <u>130</u> / hour for review in excess of 6 hours).

NEW RULE I (17.36.610) CERTIFYING AUTHORITY UNDER 76-4-127,
MCA (1) through (1)(b) remain as proposed.
~~(c) is within a jurisdictional area covered by a growth policy pursuant to Title~~
~~76, chapter 1, MCA;~~
(d) through (2) remain as proposed.

4. The following comments were received and appear with the board and department's response:

COMMENT NO. 1: One commenter stated it supports the department's proposal to raise subdivision review fees in ARM 17.36.802. The commenter explained that it is a county contract subdivision reviewer and recognized that the current fees do not cover the cost of review.

RESPONSE: The department appreciates the comment.

COMMENT NO. 2: One commenter requested that the department eliminate the subdivision hourly rate fees in ARM 17.36.802 instead of increasing the fees as proposed. The commenter stated that the fee schedule already accounted for the complexity of subdivisions and that the hourly rate disincentivizes efficiencies within the department and unjustly places an undefinable and potentially unlimited cost on applicants. The commenter noted that ARM 17.36.805 already allows the department to assess fees if there are any changes to an application due to comments of deficiency or changes in project scope.

RESPONSE: The purpose of the hourly rate is for the department to recover review costs when extremely complex or poorly prepared submittals are received. This hourly fee is assessed very rarely. In FY19, the department charged the hourly rate for two out of approximately 500 files reviewed by the department. The

department can assess fees under ARM 17.36.805 only if there are changes to the reviewed facilities. In some cases, the proposed facilities do not change, so this fee cannot be assessed for every file.

COMMENT NO. 3: One commenter noted that the proposed fees for new water distribution systems differed between ARM 17.36.802 and 17.38.106. The commenter suggested that the department correct this discrepancy and change the fee in ARM 17.36.802 to 35 cents per lineal foot, rather than the proposed 50 cents.

RESPONSE: The department agrees with this comment and has changed the subdivision distribution fee in ARM 17.36.802 to 35 cents per lineal foot.

COMMENT NO. 4: Two commenters stated the proposed fee increase must be accompanied with a commitment from the department to improve service. One commenter stated that it is unfair for the department to ask the regulated community for a 40 percent fee increase and in return provide no more than the current level of service. The other commenter stated that the proposed fee increases should include a guarantee of timely and accurate review, not just the same level of service at an increased price.

RESPONSE: The department is committed to improving customer service irrespective of the fee increase. For instance, the department is undertaking a comprehensive rule update to clarify and consolidate rules and standards. As described in the statement of reasonable necessity, the operating costs of the department's public water and subdivision review section have exceeded current revenue, and it is necessary to increase fees to maintain program solvency. The department and board are adopting an approximate 25 percent fee increase in response to comments, as described in the response to Comment No. 5. This lower fee increase does not allow for the hiring of additional staff, but is sufficient to address immediate budget shortfalls to maintain adequate staff to conduct timely and accurate reviews.

COMMENT NO. 5: Two commenters suggested that the increased fees be phased in over time, rather than being adopted all at once. One of these commenters stated that the proposed fee increase would have an unavoidable impact on housing costs. The commenter also noted that the fees should be implemented gradually over a period of years because the increases are meant to cover the department's increased costs over time. The other commenter also stated that the proposed fee increase would contribute to growing unaffordability for home buyers. The commenter suggested that the fees be incrementally phased in, stating that incremental fee increases are more affordable for the regulated community and consumers to bear than an immediate 40 percent increase.

RESPONSE: The department and board agree that a phased-in approach would create less of a burden on the regulated community and consumers. To implement the phased-in approach suggested by the commenters, the department and board are adopting an approximate 25 percent fee increase to address immediate budget shortfalls, with the anticipation of proposing additional fee increases, as necessary, to cover future costs. The cumulative impact of the modified fee increase would be approximately 15 percent less than the impacts of

the 40 percent increase that was originally proposed.

COMMENT NO. 6: One commenter stated they understand the rationale for charging the subdivision per lot fee for townhomes but will closely scrutinize any future rule proposals to conflate townhomes with subdivision lots.

RESPONSE: The department appreciates the comment.

COMMENT NO. 7: One commenter stated that individual permittees should not bear the entire cost of subdivision review because subdivision review benefits the public in general. The commenter noted that this is a policy decision outside the scope of this rulemaking.

RESPONSE: The commenter's suggestion is outside the scope of this rulemaking, but the department appreciates the comment.

COMMENT NO. 8: One commenter objected to the statement in the statement of reasonable necessity that the department had consulted with a broad representation of stakeholders and had received no negative feedback. The commenter stated that it had expressed hesitation at the fee increases and had repeatedly stated that the organization and its members would like to review the actual proposal in detail rather than give a blanket approval to concepts introduced at informal meetings. The commenter stated that informal meetings are not a substitute for the formal process of rulemaking and that statements of the regulated community's opinion of proposed rules is an attempt to circumvent the rulemaking process and short-circuit public input.

RESPONSE: The department thanks the commenter for the comment. The department consulted with stakeholders to vet general concepts and build consensus before publishing the rule notice for the proposed rules. The statement to which the commenter objected is the department's impression of those discussions and was included to explain the particular approach taken in the rule notice. As discussed in response to Comment No. 5, the department and board have modified the proposed rules in response to the regulated community's comments.

COMMENT NO. 9: One commenter requested that the department remove the proposed requirement in New Rule I that a certifying authority be required to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA. The commenter noted that some county water and sewer districts are not covered by county growth policies and that county water and sewer districts are not bound by growth policies, which are advisory in nature.

RESPONSE: The department agrees with this comment and has eliminated this requirement from New Rule I. Necessary planning will be accomplished by the utility master plan requirement. The department has renumbered the rule to account for this change.

COMMENT NO. 10: One commenter requested that the department remove storm water from the county water and sewer district certification requirements proposed in New Rule I. The commenter stated that the ability to provide adequate

water and wastewater treatment is separate from reviewing and overseeing construction plans and verifying that storm water is properly addressed. The commenter stated that the storm water requirement made it very unlikely that a county water and sewer district would become a certifying authority, and the legislative change to allow county and water sewer districts to act as certifying authorities would be of no use.

RESPONSE: The department has not modified the proposed rule in response to this comment. The requirement to review storm water facilities is necessary to comply with 76-4-127(1) and (2)(i), MCA, both of which require the certifying authority to review and approve plans to ensure adequate storm water drainage. The statutory provision would have to be amended before the commenter's proposed change could be made.

5. The effective date for the proposed rulemaking was January 1, 2020. Because the board and department did not adopt the notice of proposed rulemaking by that date, the board and department are extending the effective date to March 1, 2020, to provide additional notice to the regulated community.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State, February 4, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.101 model procedural)
rules)

TO: All Concerned Persons

1. On November 22, 2019, the Department of Livestock published MAR Notice No. 32-19-301 pertaining to the proposed amendment of the above-stated rule at page 2082 of the 2019 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State February 4, 2020.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 32.6.701 definitions, 32.6.702	)	ADOPTION, AND REPEAL
applications to be in writing;)	
inspection of plans and facilities prior)	
to issuance of license, and 32.6.712)	
food safety and inspection service)	
(meat, poultry), the adoption of NEW)	
RULES I and II, and the repeal of)	
ARM 32.6.703 through 32.6.711, and)	
32.6.801 through 32.6.815)	

TO: All Concerned Persons

1. On December 27, 2019, the Department of Livestock published MAR Notice No. 32-19-303 regarding the proposed amendment, adoption, and repeal of the above-stated rules at page 2298 of the 2019 Montana Administrative Register, Issue Number 24.

2. The department has amended ARM 32.6.701, 32.6.702, and 32.6.712 as proposed.

3. The department has adopted NEW RULE I (32.6.713) and NEW RULE II (32.6.714) as proposed.

4. The department has repealed ARM 32.6.703 through 32.6.711, and ARM 32.6.801 through 32.6.815 as proposed.

5. No comments or testimony were received.

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

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

Certified to the Secretary of State February 4, 2020.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.24.450 milk control)
assessments)

TO: All Concerned Persons

1. On December 27, 2019, the Board of Milk Control published MAR Notice No. 32-19-305 pertaining to the proposed amendment of the above-stated rule at page 2311 of the 2019 Montana Administrative Register, Issue Number 24.
2. The board has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective July 1, 2020.

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

/s/ W. Scott Mitchell
W. Scott Mitchell
Chair
Board of Milk Control

Certified to the Secretary of State February 4, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.108.507 pertaining to update)
of the Healthcare Effectiveness Data)
and Information Set (HEDIS))

TO: All Concerned Persons

1. On December 27, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-906 pertaining to the proposed amendment of the above-stated rule at page 2315 of the 2019 Montana Administrative Register, Issue Number 24.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. The department intends to apply these rule amendments retroactively to January 1, 2020. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State February 4, 2020.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.5.2202 and 38.5.2302)
pertaining to pipeline safety)

TO: All Concerned Persons

1. On November 22, 2019, the Department of Public Service Regulation published MAR Notice No. 38-5-244 pertaining to the proposed amendment of the above-stated rules at page 2089 of the 2019 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ JUSTIN KRASKE
JUSTIN KRASKE
Rule Reviewer

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

Certified to the Secretary of State February 4, 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 August 23, 2019, through January 31, 2020, 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 and 2020 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.

ADMINISTRATION, Department of, Title 2

2-4-581	Accounting and Financial Reporting Standards - Report Filing Fees - Filing Penalties - Waivers and Extensions of Penalties - Audit and Audit Reporting Standards - Roster of Independent Auditors - Resolution and Corrections of Audit Findings - Financial Reviews - Incorporation by Reference of Various Standards, Accounting Policies, and Federal Laws and Regulations - Audit Contracts, p. 761, 987, 2217
2-13-585	Public Safety Answering Point (PSAP) Certification and Funding, p. 558, 903, 1368
2-13-592	Applicant Priority and Criteria for Awarding 9-1-1 Grants, p. 1759, 2095
2-13-593	Applicant Priority and Criteria for Awarding 9-1-1 Grants, p. 2075, 179
2-21-584	Voluntary Employees' Beneficiary Association (VEBA), p. 1195, 2011
2-59-586	Government Sponsored Enterprises - Designated Manager Supervisory Requirements - False, Deceptive, or Misleading Advertising - Internet or Electronic Advertising, p. 1917, 2338
2-59-587	Semiannual Assessment for Banks, p. 1682, 2228
2-59-590	Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 1545, 2017

(Public Employees' Retirement Board)

- 2-43-591 Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board - Allocation of Additional Employer Contributions on Behalf of Montana University System Employees in the Optional Retirement Program, p. 2274

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